



State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
ISCH0253

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
KRISTA FERRELL 304-558-2596

RFQ COPY
TYPE NAME/ADDRESS HERE

WACHOVIA BANK, NATIONAL ASSOCIATION
ATTN: PATRICK K. DIXON, SVP
201 S. JEFFERSON ST., VA7440
2nd FLOOR
ROANOKE, VA 24011
PHONE (540) 563-6059, email patrick.dixon@wachovia.com

DEPARTMENT OF ADMINISTRATION
IS&C - CHIEF FINANCIAL OFFICER
1 DAVIS SQUARE
CHARLESTON, WV 25301
304-558-5472

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
06/13/2008				
BID OPENING DATE: 06/19/2008		BID OPENING TIME 01:30PM		

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		946-54		
FINANCING						
REQUEST FOR QUOTATION						
THE WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY, THE WEST VIRGINIA OFFICE OF TECHNOLOGY, IS SOLICITING BIDS TO PROVIDE THE AGENCY WITH FINANCING SERVICES FOR MICROSOFT SOFTWARE TO BE PROCURED FROM THE ENTERPRZ04/08 STATEWIDE CONTRACT COVERING THE STATE'S MICROSOFT ENTERPRISE AGREEMENT PER THE ATTACHED SPECIFICATIONS.						
EXHIBIT 3						
LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON AWARD AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.						
UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.						

RECEIVED

2008 JUN 18 A 9:32

PURCHASING DIVISION
STATE OF WV

SIGNATURE <i>Patrick K. Dixon</i>		TELEPHONE 540-563-6059		DATE 6-18-08
TITLE SVP	FEN 22-1147033	ADDRESS CHANGES TO BE NOTED ABOVE		

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125.00 registration fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA Business Associate Addendum** - The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

SIGNED BID TO:

Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130



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Department of Administration
Purchasing Division
2019 Washington Street East
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WACHOVIA BANK

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DEPARTMENT OF ADMINISTRATION
IS&C - CHIEF FINANCIAL OFFICER
1 DAVIS SQUARE

CHARLESTON, WV
25301 304-558-5472

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.						
BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.						
REV. 04/11/2001						
VENDOR PREFERENCE CERTIFICATE						
CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).						
A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:						
() BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR						
() BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORA-						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>TION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD- QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHIP INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL, PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDO WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES WORKING ON THE PROJECT BEING BID ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID; OR</p> <p>() BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST</p>						
SEE REVERSE SIDE FOR TERMS AND CONDITIONS						
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WACHOVIA BANK

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<p>75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p> <p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX & REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p> <p>UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASING DIVISION IN WRITING IMMEDIATELY.</p> <p>BIDDER: ----- WACHOVIA BANK, NATIONAL ASSOCIATION</p>						
SEE REVERSE SIDE FOR TERMS AND CONDITIONS						
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BID OPENING DATE: 06/19/2008 BID OPENING TIME 01:30PM

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<p>DATE: JUNE 18, 2008</p> <p>SIGNED: <i>Patrick A. Styer</i></p> <p>TITLE: SENIOR VICE PRESIDENT</p> <p>* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: KRISTA FERRELL-FILE 21</p>						

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6

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BID OPENING DATE: 06/19/2008		BID OPENING TIME 01:30PM				
LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
RFQ. NO.: ISCH0253						
BID OPENING DATE: 06/19/2008						
BID OPENING TIME: 1:30 PM						
PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						
----- (540) 563-6320 -----						
CONTACT PERSON (PLEASE PRINT CLEARLY):						
----- PATRICK K. DIXON -----						
***** THIS IS THE END OF RFQ ISCH0253 ***** TOTAL: _____						
SEE REVERSE SIDE FOR TERMS AND CONDITIONS						
SIGNATURE		TELEPHONE		DATE		
TITLE		FEIN		ADDRESS CHANGES TO BE NOTED ABOVE		

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REQUEST FOR QUOTATION
Financing for Microsoft Software

The Acquisition and Contract Administration Section of the Purchasing Division, on behalf of the WV Office of Technology, is soliciting quotes to provide financing for Microsoft Enterprise software licenses to be purchased from the ENTPRZ statewide contract covering the State's Microsoft Enterprise Agreement.

The amount to be financed shall not exceed \$12,000,000 which shall be paid over a 3-year period in quarterly installments. The due date for such payments shall be mutually agreed upon between the State and the vendor. The vendor will be required to use the attached State financing agreements. The vendor may offer suggested substitute language; however, the State will have the option to accept or reject the vendor's suggested language.

RFQ ISCH0253
COST BID FORM

The vendor hereby agrees provide financing for a sum not to exceed \$12,000,000 which sum shall be expended over a three (3) year period with payments being made quarterly.

Interest Rate 3.9800 %

This rate is predicated upon a closing that would take place not later than June 30, 2008. It presumes a full funding at closing in an amount not to exceed \$12,000,000.00.

Since a State financing agreement was not included with the RFQ, we are attaching a sample installment financing agreement that in principle is satisfactory to Wachovia Bank.

If not closed prior to June 30, 2008, the interest rate quoted herein is subject to change with market conditions. Wachovia Bank is pleased to furnish an updated quote at the State's request with a new time window for acceptance.

RFQ No. ISEH 0253STATE OF WEST VIRGINIA
Purchasing Division**PURCHASING AFFIDAVIT**

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

LICENSING: Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY: The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit www.state.wv.us/admin/purchase/privacy for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor's Name: Wachovia Bank, National Association

Authorized Signature: Robert K. Dixon Date: 6/18/08



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06/16/2008				

BID OPENING DATE: 06/19/2008 BID OPENING TIME 01:30PM

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ADDENDUM NO. 1						
THIS ADDENDUM IS ISSUED TO PROVIDE CLARIFICATION AND TO REPLACE PAGES 7, 9, AND 11 WITH THE ATTACHED PAGES.						
EACH VENDOR IS RESPONSIBLE FOR DETERMINING IF THIS WOULD BE BANK QUALIFYING TAX EXEMPT.						
BID OPENING DATE REMAINS: 06/19/2008						
BID OPENING TIME REMAINS: 1:30 PM						
***** END ADDENDUM NO. 1 *****						
0001	1	LS		946-54		
FINANCING						
***** THIS IS THE END OF RFQ ISCH0253 ***** TOTAL:						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS	
SIGNATURE <i>Patricia A. Smith</i>	TELEPHONE 540-563-6059
TITLE SVP	DATE 6-18-08
FEIN 22-1147033	ADDRESS CHANGES TO BE NOTED ABOVE

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SIGNED BID TO:

Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

INSTALLMENT FINANCING AGREEMENT

Dated as of June __, 2008

between

STATE/STATE OF _____, WEST VIRGINIA

and

WACHOVIA BANK, NATIONAL ASSOCIATION

INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of June __, 2008 (the Agreement”), between _____, WEST VIRGINIA, a municipal corporation organized and existing under the laws of the State of West Virginia (the “State”), and WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America (the “Bank”);

WITNESSETH:

WHEREAS, the State is a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of West Virginia;

WHEREAS, pursuant to Section _____ of the General Statutes of West Virginia, as amended, the State may finance the acquisition of certain equipment, property, etc. by contracts that create in the equipment, property, etc., a security interest to secure repayment of the moneys advanced or made available to purchase such equipment/property;

WHEREAS, after due consideration, the State has determined to acquire the equipment, property as more particularly described in Exhibit A attached hereto (the “Equipment and/or Property”);

WHEREAS, in order for the State to obtain the funds to pay the costs of the Equipment and/or Property, the State has determined to enter into this Agreement whereby the Bank will advance funds to the State to pay the costs of the Equipment and/or Property, and the State will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligation under this Agreement, including the payment of the installment payments hereunder, the State will execute and deliver a Security Agreement, dated as of June __, 2008 (the “Security Agreement”), for the benefit of the Bank, pursuant to which the State will grant the Bank a security interest in the Equipment and Property;

WHEREAS, the Bank is willing to advance moneys to the State for payment of the cost of acquisition of the Equipment and or Property, and the State is willing to repay the moneys so advanced by the Bank in installments as more fully provided herein; and

WHEREAS, the State and the Bank have each duly authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words “hereby”, “herein”, “hereof”, “hereto”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement unless some other reference is indicated.

“Act” means Section 160A-20 of the General Statutes of West Virginia, as amended.

“Advancement” means the loan advance being made by the Bank to the State pursuant to this Agreement.

“Agreement” means this Installment Financing Agreement, including any amendment or supplement hereto permitted herein.

“Bank” means Wachovia Bank, National Association, a national banking association organized and existing under the laws of the United States of America, and any successor thereto.

“State” means the State of West Virginia, a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of West Virginia, and any successor entity.

“Closing” means the date on which the State executes and delivers this Agreement, and the Bank makes the Advancement to the State.

“Closing Costs” means and further includes all items of expense directly or indirectly payable by or reimbursable to the State relating to the financing of the Equipment/property, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“Determination of Taxability” means and shall be deemed to have occurred on the date when (a) the State shall receive notice from the Bank that the Internal Revenue Service has assessed as includable in gross income the interest component of the Installment Payments made by the State under this Agreement due to the occurrence of an Event of Taxability or (b) the State or the Bank shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest component of the Installment Payments made by the State under this Agreement is includable in the gross income of the Bank for federal income tax purposes due to the occurrence of an Event of Taxability.

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the State in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement.

“Equipment and/or Property” means the equipment and/or property identified in Exhibit A attached hereto the cost of which is being paid by the State from the Advancement.

“Event of Nonappropriation” means (a) the failure by the State to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the State’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a). In the event that during any Fiscal Year, any additional payments shall become due that were not included in the State’s current budget, and if there are no moneys available to pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred upon notice by the Bank to the State to such effect.

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by the failure of the State to comply with any covenants in this Agreement or any document or certificate executed by the State in connection with the transactions contemplated by this Agreement which has the effect of causing the interest component of the Installment Payments made by the State under this Agreement to be includable in the gross income of the Bank for federal income tax purposes.

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Inclusion Date” means the effective date that the interest component of the Installment Payments made by the State under this Agreement is includable in the gross income of the Bank as a result of a Determination of Taxability.

“Installment Payment Date” means each of the dates set forth on the Installment Payment Schedule attached hereto as Exhibit B.

“Installment Payments” means the payments required to be paid by the State pursuant to Section 3.1 in order to repay the Advancement, as specified in Exhibit B.

“Net Proceeds” means any proceeds of insurance paid with respect to the Equipment/property remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means, and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than 60 days from the filing thereof; (c) attachments remaining undischarged for not longer than 60 days from the making thereof; (d)

the lien created by the Security Agreement; (e) this Agreement and (f) any lease of the Equipment/property permitted by Section 7.2(b).

“Scheduled Due Date” means the date the principal components of the Installment Payments would, but for prepayment or acceleration, have become due and payable.

“Security Agreement” means the Security Agreement, dated as of June __, 2008, from the State to the Bank, securing the Installment Payments and other obligations specified hereunder and thereunder, as supplemented and amended from time to time. The Security Agreement will consist principally of a UCC filing on the Property being financed.

“State” means the State of West Virginia.

SECTION 1.2. Exhibits. The following exhibits are attached to, and by reference made a part of, this Agreement:

Exhibit A:	Description of the Equipment/Property
Exhibit B:	Installment Payment Schedule

ARTICLE II

REPRESENTATIONS OF THE STATE AND BANK

SECTION 2.1. Representations, Covenants and Warranties of the State. The State represents, covenants and warrants to the Bank as follows:

(a) The State is a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of West Virginia.

(b) The Constitution and laws of the State authorize the State to execute and deliver this Agreement and the Security Agreement and to enter into the transactions contemplated by and to carry out its obligations under this Agreement and the Security Agreement.

(c) The State has duly authorized and executed this Agreement and the Security Agreement in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Agreement and the Security Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions or any charter provision, restriction or any agreement or instrument to which the State is now a party or by which the State is bound, or constitutes a default under any of the foregoing.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the State of this Agreement, the Security Agreement and all other documents related thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the State challenging the validity or enforceability of this Agreement, the Security Agreement or any other documents relating hereto and the performance of the State's obligations hereunder and thereunder.

(g) The State will obtain or caused to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the State or the Equipment/property that are necessary for the acquisition and operation of the Equipment/property.

SECTION 2.2. Representations, Covenants and Warranties of the Bank. The Bank represents, covenants and warrants to the State as follows:

(a) The Bank is a national banking association organized, existing and in good standing under and by virtue of the laws of the United States of America and has the power and authority to enter into this Agreement.

(b) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Bank or any restriction or any agreement or instrument to which the Bank is now a party or by which the Bank is bound.

ARTICLE III

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 3.1. Repayment of the Advancement. (a) Subject to the provisions of subsection (c) of this Section, the State shall repay the Advancement, with interest, computed at the rate of 3.9800% per annum, for the 36 months project, in installments due at the times and in the amounts set forth in Exhibit B1 and Exhibit B2.

(b) All payments required to be made to the Bank hereunder shall be made at the Bank's principal office at the address set forth in Section 11.1 or as may otherwise be directed by the Bank.

(c) In the event of a Determination of Taxability, the interest rate payable under this Agreement, from and after the Inclusion Date, shall be adjusted to preserve the Bank's after-tax economic yield with respect to the interest components of the Installment Payments, taking into account any interest expense deductions lost by the Bank as a direct or indirect result of the State's actions. In the event of a Determination of Taxability, the Bank shall provide the State with a new Installment Payment Schedule which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit B.

SECTION 3.2. Budget and Appropriation. (a) The officer of the State at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the State, in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Security Agreement. Any budget item referred to in this Section shall be deleted from the applicable budget by the State only by the adoption of a resolution to such effect containing a statement of its reasons therefore. The State shall furnish the Bank with copies of its annual budget promptly after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Agreement or the Security Agreement. The State shall promptly provide notice of any Event of Nonappropriation to the Bank.

(b) **NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE STATE WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE STATE TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE STATE FOR ANY FISCAL**

YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE STATE TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE STATE TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE STATE IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS AGREEMENT AND THE TAXING POWER OF THE STATE IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS AGREEMENT.

No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the State's moneys, nor shall any provision of this Agreement restrict the future issuance of any of the State's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

SECTION 3.3. Security Agreement. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the State will execute and deliver the Security Agreement simultaneously with the execution and delivery of this Agreement. The Security Agreement will contain a UCC filing on the financed Equipment and/or Property.

SECTION 3.4. No Set-Off; Recoupment, Etc. Subject to Section 3.2 and the Enforcement Limitation, the obligation of the State to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the State will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the State may have against the Bank.

ARTICLE IV

INSURANCE

SECTION 4.1. Insurance. (a) The State shall, during the term of this Agreement and at all times before all Installment Payments have been paid, continuously insure the Equipment/property, or cause the Equipment/property to be insured, against loss or damage to any portion of the Equipment/property in an amount equal to 100% of the replacement cost of such Equipment/property (subject to a deductible clause not to exceed \$100,000 for any one loss), paying as the same become due all premiums in respect thereof. The policy providing for such insurance shall name the Bank as loss payee. In addition the State shall (i) maintain a comprehensive general liability policy or policies in protection of the State, its officers, agents and employees, which policy or policies shall cover such losses and shall have such deductible amounts as shall be satisfactory to the State and (ii) maintain workers' compensation insurance to insure its employees against liability for workers' compensation under the laws of the State.

(b) Notwithstanding the foregoing, in lieu of obtaining the policies of insurance required by this Section, the State may adopt alternative risk management programs which it determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other institutions, to participate in programs of captive insurance companies, to participate with other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the State. In addition, any insurance coverage pursuant to this Section may also be pursuant to a program whereby the State self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of this Section.

(c) The insurance coverage required under this Section may be maintained under a blanket policy covering other properties of the State.

(d) The State shall cause to be delivered to the Bank annually on or about July 1 of each year a certificate or other evidence showing that the insurance policies or alternative risk management programs required or permitted by this Agreement are in full force and effect.

(e) The State shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy maintained pursuant to this Section.

SECTION 4.2. Damage and Destruction. If at any time before all Installment Payments have been paid, the Equipment/property is damaged or destroyed by fire, flood, windstorm or other casualty, the State shall cause the Net Proceeds from insurance, or an amount equal thereto, to be used for the repair, restoration or replacement of the Equipment/property. In the case of any damage to or destruction of the Equipment/property exceeding \$500,000 in any Fiscal Year, the State shall give prompt written notice thereof to the Bank. All equipment, machinery or other personal property so acquired from such Net Proceeds pursuant to this

Section shall be purchased free of all liens and encumbrances, other than Permitted Encumbrances, and shall become a part of the Equipment/property subject to the security interest created by the Security Agreement.

The State agrees that, after exhaustion of the Net Proceeds, subject to the provisions of Section 3.2, it shall pay or cause to be paid any portion of the repair, restoration or replacement in excess of the Net Proceeds, and it shall not be entitled to any reimbursement therefor from the Bank and it shall not be entitled to any abatement or diminution of the payments required to be made by the State pursuant to this Agreement.

ARTICLE V

DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS

SECTION 5.1. Obligation of the State to Repair and Replace the Equipment/property. Unless applied to the payment in full or in part of the remaining Installment Payments pursuant to Section 5.2, the State shall cause the Net Proceeds of any insurance policies to be deposited in a separate fund maintained by the State with the Bank or its designee. Except as set forth in Section 6.2, all Net Proceeds so deposited shall be applied to the prompt repair, restoration or replacement of the Equipment/property and shall be disbursed upon receipt of requisitions of the State approved by the Bank, stating, with respect to each payment to be made, (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund, and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Bank shall cooperate with the State in the administration of such fund and shall not unreasonably withhold its approval of requisitions under this Section. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the State, subject to the Security Agreement and Permitted Encumbrances, and shall be included as part of the Equipment/property under this Agreement.

SECTION 5.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the State to Repair the Equipment/property. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Equipment/property, the State may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the State agrees that, if by reason of any such insufficiency of the Net Proceeds, the State shall make any payments pursuant to the provisions of this subsection (a), the State shall not be entitled to any reimbursement therefor from the Bank, nor shall the State be entitled to any diminution of the Installment Payments payable under Section 3.1.

(b) If the State elects not to apply the Net Proceeds to the repair, restoration or replacement of the Equipment/property, the State may apply the Net Proceeds of such insurance policies to the prepayment of the principal component of the Installment Payments in accordance with Section 9.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the State.

Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Bank, the State shall commence the repair, restoration or replacement of the Equipment/property, or shall elect, by written notice to the Bank, to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 9.1. For purposes of this subsection, "commence" shall include the retention of an engineer in anticipation of the

repair, restoration, modification, improvement or replacement of the Equipment/property. In the event that the State shall, after commencing the repair, restoration, modification, improvement or replacement of the Equipment/property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the State may, subject to the proviso set forth above, elect to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 10.1.

SECTION 5.3. Cooperation of the Bank. The Bank shall cooperate fully with the State in filing any proof of loss with respect to any insurance policy covering the events specified in Section 4.1. In no event shall the Bank or the State voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Equipment/property without the written consent of the other.

ARTICLE VI

COVENANTS OF THE STATE

SECTION 6.1. Access to the Equipment/property and Inspection. The Bank and its agents and employees, shall have the right, at all reasonable times during normal business hours of the State upon the furnishing of reasonable notice to the State under the circumstances, to examine and inspect the Equipment/property and to examine and copy the books and records of the State insofar as such books and records relate to the Equipment/property. No right of inspection shall be deemed to impose on the Bank any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Bank shall be deemed to impose upon the Bank any duty or obligation to identify any defects in the Equipment/property or to notify any person with respect thereto.

SECTION 6.2. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the State shall provide for the repair and replacement of the Equipment/property required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the State shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against the Equipment/property; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the State shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The State may, at the State's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the State shall furnish to the Bank an opinion of counsel acceptable to the Bank to the effect that, by nonpayment of any such items, the interest of the Bank in the Equipment/property will not be materially endangered and that the Equipment/property will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the State shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 6.3. Modification of the Equipment/property. The State shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to the Equipment/property if such additions, modifications or improvements are necessary or beneficial for the use of the Equipment/property. Such additions, modifications and improvements shall not in any way damage the Equipment/property (unless such damage is to be repaired as provided in Section 6.1) or cause the Equipment/property to be used for purposes other than those authorized under the provisions of law, and the Equipment/property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Equipment/property immediately prior

to the making of such additions, modifications and improvements. The Equipment/property, as so modified, shall be subject to the lien of the Security Agreement.

Except for Permitted Encumbrances, the State shall not permit any lien to be established or remain against the Equipment/property for labor or materials furnished in connection with any additions, modifications or improvements made to the Equipment/property by the State pursuant to this Section; provided, however, that if any such lien is established, the State may, at its own expense and in its name, in good faith contest any lien filed or established against the Equipment/property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the State shall furnish to the Bank full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Bank.

SECTION 6.4. Encumbrances. Except as provided in this Article (including, without limitation, Section 6.3 and this Section), the State shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Equipment/property, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the State shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the State may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Bank with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Bank.

SECTION 6.5. Indemnification of the Bank. To the extent permitted by law, the State covenants to defend, indemnify and hold harmless the Bank and its officers, directors, members, employees and agents (collectively, the "Indemnified Party") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the Security Agreement and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Security Agreement. In particular, without limitation, the State shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the State in the performance of any of its obligations under this Agreement or the Security Agreement.

SECTION 6.6. Financial Statements. The State agrees that it will furnish the Bank, when the same become available, but in no event later than 180 days after the end of the Fiscal Year, its annual audited financial statements and information regarding its annual budget as submitted or approved.

ARTICLE VII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 7.1. Assignment by the Bank. The Bank may not assign all or any part of its interest in the Equipment/property or this Agreement, including, without limitation, the Bank's rights to receive the Installment Payments and any additional payments due and to become due hereunder without the prior written consent of the State.

SECTION 7.2. Assignment by the State. (a) This Agreement may not be assigned by the State.

(b) The State may lease the Equipment/property, subject to all of the following conditions:

(i) the obligation of the State to make Installment Payments hereunder shall remain obligations of the State;

(ii) the State shall within thirty (30) days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Bank, a true and complete copy of the form of such lease; and

(iii) the lease by the State shall not cause the Equipment/property to be used for a purpose other than a governmental or proprietary function of the State authorized under the provisions of the Constitution and laws of the State and shall not cause the interest component of the Installment Payments to be includable in gross income of the Bank for federal income tax purposes.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the State to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the State to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the State by the Bank; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the State within the applicable period and diligently pursued, the State shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued.

(d) The State becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the State) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the State.

(e) The occurrence of an “Event of Default” under the Security Agreement as defined therein.

(f) Any warranty, representation or statement made by the State herein or in the Security Agreement or any other document executed and delivered by the State in connection herewith is found to be incorrect or misleading in any material respect as of the date made.

SECTION 8.2. Remedies on Default. Upon the occurrence of any event of default under Section 8.1, the Bank may, without any further demand or notice, exercise any one or more of the following remedies:

(a) declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Security Agreement, including sale of the Equipment/property, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due; and

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the State of the applicable covenants of this Agreement or to recover for the breach thereof.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF WEST VIRGINIA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE STATE IN FAVOR OF THE BANK OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE EQUIPMENT/PROPERTY IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER.

SECTION 8.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Bank is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 8.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the State should default under any of the provisions hereof and the Bank should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the State contained herein, the State agrees that it will pay on demand to the Bank, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of West Virginia, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Bank. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based on any percentage of the outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 8.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

ARTICLE IX

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 9.1. Prepayment of Installment Payments. The State may not prepay, in whole or in part, the outstanding principal component of the Installment Payments on any date, unless, in the event of loss or condemnation of or damage to the Project, if the State determines not to apply any Net Proceeds to the repair, restoration, modification, improvement or replacement of the Project as permitted by Section 5.2(b) and if the State has otherwise performed all of its obligations under this Contract, the State shall prepay the principal component of the Installment Payments then outstanding, plus accrued interest thereon to the date of prepayment, on any date selected by the State, in full or in part, at a prepayment price of 100% of the principal amount being prepaid by paying such Net Proceeds to the Bank

ARTICLE X
MISCELLANEOUS

SECTION 10.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the State:

State of _____, West Virginia
[INSERT APPROPRIATE ADDRESS]

Attention: Chief Financial Officer

If to the Bank:

Wachovia Bank, National Association
201 S. Jefferson St, 2nd Floor, VA7440
Roanoke, VA 24011
Attention: Government and Institutional Banking, Patrick K. Dixon

The State and the Bank, by notice given hereunder, may designate different addresses to which subsequent notices; certificates or other communications will be sent.

SECTION 10.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the State and the Bank and their respective successors and assigns. Whenever in this Agreement either the State or the Bank is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the State or the Bank shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 10.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.6. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the State and the Bank have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.

STATE OF _____, WEST VIRGINIA

[SEAL]

By: _____
Mayor

Attest:

State Clerk

WACHOVIA BANK, NATIONAL ASSOCIATION

[SEAL]

By: _____
Senior Vice President

Attest:

Assistant Secretary

EXHIBIT A

DESCRIPTION OF THE EQUIPMENT/PROPERTY

The Equipment/property consists of all equipment/property purchased with the proceeds of the Advancement pursuant to this Agreement, including the following:

[State to provide detailed list.] [See attached list.]