

TAB 11



City of Palmetto Agenda Item

Meeting Date

3/1/10

Presenter: Jim Freeman

Department: City Clerk

Title:
Resolution #2010-09 - Lease Documents for 2010 Capital Lease

During the 2010 budget season, the City Commission approved the budget for the financing of three police cruisers for a total of \$84,000. The cruisers have been ordered and the financing needs to be approved.

The City has a Master Lease Agreement with Florida League of Cities and in the past, Banc of America has provided the financing. This year Florida League of Cities has changed financing providers to BB&T which has provided a proposal to the City. The capital lease would be financed at the interest rate of 3.01% for four years at quarterly payments of \$5,592.10. The 2010 budget includes \$21,000 for lease payments of which only \$11,184 will be needed this year.

All financing documents are included and the closing date is projected to be on or around March 2, 2010.

| | | | | | | | |
|-------------------------|-------------|---------------------------|-----|--------------------------|-------------|----------------------------|-------------|
| Budgeted Amount: | \$21,000.00 | Budget Page No(s): | 109 | Available Amount: | \$21,000.00 | Expenditure Amount: | \$11,184.00 |
|-------------------------|-------------|---------------------------|-----|--------------------------|-------------|----------------------------|-------------|

Additional Budgetary Information:

| | | | | | | | |
|---------------------------|--------------|------------------------------------|--|-----------------------------------|--|----------------|--|
| Funding Source(s): | 001-521-7305 | Sufficient Funds Available: | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Budget Amendment Required: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Source: | |
|---------------------------|--------------|------------------------------------|--|-----------------------------------|--|----------------|--|

| | | | | | | |
|--------------------------------|--|---------------------------------------|---|-------------------------|---|--|
| City Attorney Reviewed: | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Advisory Board Recommendation: | <input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> N/A | Consistent With: | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | |
|--------------------------------|--|---------------------------------------|---|-------------------------|---|--|

Potential Motion/Direction Requested: Motion to approve Resolution 2010-09 and authorize the Mayor to execute the financing documents for the capital lease purchase of three police cruisers.

Staff Contact: Karen Simpson

Attachments: Resolution 2010-09; Financing proposal dated Jan. 26, 2010; Lease Agreement; Project Fund Agreement; Closing certificate; Use of proceeds certificate

RESOLUTION NO. 2010-09

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER LEASE/PURCHASE AGREEMENT WITH BRANCH BANKING AND TRUST (BB&T) AUTHORIZING A LEASE OF EQUIPMENT THEREUNDER; AUTHORIZING THE EXECUTION OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO COMPLETE THE TRANSACTIONS CONTEMPLATED HEREBY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS: The City of Palmetto, FL ("City") has previously determined to undertake a project for the purchase of three police cruisers ("Project"), and the Finance Officer has now presented a proposal for the financing of such projects.

BE IT THEREFORE RESOLVED, as follows:

- Section 1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated January 26, 2010. The amount financed shall not exceed \$84,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.01% and the financing term shall not exceed four (4) years from closing.
- Section 2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. The Mayor of the City, along with the City Clerk and Finance Director is hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Projects as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as BB&T may request.
- Section 3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Mayor is authorized to approve changes to any Financing Documents previously signed by City officers, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

Section 4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

Section 5. The City intends that the adoption of this resolution will be a declaration of the City's official intent to reimburse expenditures for the Projects that are to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City's general fund, or any other City fund related to the Projects, for project costs may be reimbursed from the financing proceeds.

Section 6. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Section 7. This Resolution shall take effect immediately upon its adoption.

PASSED AND DULY ADOPTED, in regular session, by the city Commission of the City of Palmetto, with a quorum present and voting, this 1st day of March, 2010

CITY OF PALMETTO, FLORIDA,
BY AND THROUGH THE
CITY COMMISSION OF THE
CITY OF PALMETTO

By: _____
SHIRLEY GROOVER BRYANT,
MAYOR

ATTEST: JAMES R. FREEMAN

By: _____
City Clerk



255 S. Orange Avenue
Orlando, FL 32801
(407) 241-3570
Fax (877) 320-4453

January 26, 2010

Ms. Karen Simpson
Finance Director
City of Palmetto

Dear Ms. Simpson:

Branch Banking and Trust Company ("BB&T") is pleased to offer this proposal for the financing requested by the City of Palmetto, FL ("City").

- (1) **Project:** Financing of 3 Police Cruisers
- (2) **Amount To Be Financed:** Not to exceed \$84,000.00
- (3) **Interest Rates, Financing Terms and Corresponding Payments:**

| <u>Term</u> | <u>BQ Rate</u> |
|-------------|----------------|
| 4 years | 3.01% |

Principal and Interest on this financing transaction shall be due monthly, quarterly, semi-annually or annually at the City's request. Interest on the principal balance will accrue based on a 30/360 day count basis. Upon being awarded this financing transaction an amortization schedule must be mutually agreed upon between BB&T and the City.

In the event that the above mentioned vehicles have not been received by the City prior to closing, the financing proceeds shall be deposited on behalf of the City into a project fund account with BB&T. Earnings on the project fund shall accrue to the benefit of the City for use on project costs or interest payments.

The interest rate stated above is valid for a closing not later than 45 days after today. Closing of the financing is contingent upon completing documentation acceptable to BB&T and upon the condition of the property acceptable to BB&T.

All applicable taxes, permits, costs of counsel for the City and any other costs shall be the City's responsibility and separately payable by the City.

The financing documents shall allow prepayment of the principal balance in whole on a scheduled payment date with a 1% prepayment premium.

The stated interest rate above assumes that the City expects to borrow less than \$30,000,000 in the calendar year 2010 and that the financing shall comply with the applicable IRS Code Sections 141, 148, 149(e), 265(b)(3) and the American Recovery and Reinvestment Act of 2009, if applicable. BB&T reserves the right to terminate its interest in this bid or to negotiate a mutually acceptable rate if the financing is not a qualified tax-exempt financing.

(4) Financing Documents:

BB&T shall use its standard form financing contracts and related documents for this installment financing. We shall provide a sample of those documents to you should BB&T be the successful proposer. BB&T shall also require that the City's local counsel provide an acceptable legal opinion. A draft of this opinion will be provided with our documents.

(5) Security:

This financing shall be secured by a covenant to budget and appropriate from legally available non ad-valorem revenues.

* * * * *

BB&T appreciates the opportunity to make this financing proposal and requests to be notified within ten days of this proposal should BB&T be the successful proposer.

BB&T shall have the right to cancel this offer by notifying the City of its election to do so (whether or not this offer has previously been accepted by the City) if at any time prior to the closing there is a material adverse change in the City's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the City or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to BB&T. We reserve the right to negotiate and/or terminate our interest in this transaction should we be the successful proposer.

Should we become the successful proposer, we have attached the form of a resolution that your governing board can use to award the financing to BB&T. If your board adopts this resolution, then BB&T shall not require any further board action prior to closing the transaction.

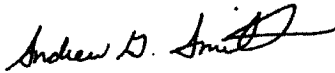
Please call me at (803) 251-1328 with your questions and comments or contact Michael C. Smith in our Orlando, FL office at:

255 South Orange Avenue
Orlando, FL 32801
Phone: 407.241.3570
Fax: 877.320.4453
Email: mcsmith@bbandt.com

We look forward to hearing from you.

Sincerely,

BRANCH BANKING AND TRUST COMPANY



Andrew G. Smith
Senior Vice President

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is dated as of February ____, 2010, and is between the **CITY OF PALMETTO**, a public body of the State of Florida (the "Lessee"), and **BRANCH BANKING AND TRUST COMPANY** ("BB&T").

RECITALS:

The Lessee has the power to acquire such personal property as it may deem appropriate for carrying out its governmental and proprietary functions, and to acquire such property pursuant to lease agreements. This Agreement provides for BB&T to make available to the Lessee the sum of \$84,000.00 to enable the Lessee to acquire the Equipment (as defined below) by lease, and provides for securing the Lessee's obligations under this Agreement in favor of BB&T.

NOW THEREFORE, for and in consideration of the mutual promises in this Agreement, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

"Additional Payments" means any of BB&T's reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of BB&T's expenses (including attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which BB&T is required to pay as a result of this Agreement, inspection and re-inspection fees, and any other amounts payable by the Lessee (or paid by BB&T on the Lessee's behalf) due and owing under this Agreement (together with interest that may accrue on any of the above if the Lessee shall fail to pay the same, as set forth in this Agreement).

"Amount Advanced" has the meaning assigned in Section 2.02.

"Base Payments" means the rental payments payable by the Lessee pursuant to Section 3.01.

"Bond Counsel Opinion" means a written opinion (in form and substance acceptable to BB&T) of an attorney or firm of attorneys acceptable to BB&T.

"Budget Officer" means the Lessee officer from time to time charged with preparing the Lessee's draft budget as initially submitted to the Governing Board for its consideration.

"Business Day" means any day on which banks in the State are not by law authorized or required to remain closed.

"Closing Date" means the date on which this Agreement is first executed and delivered by the parties.

"Code" means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the Lessee's obligations under this Agreement and all proposed (including temporary) regulations which, if adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

"Equipment" has the meaning assigned in Section 2.03, and is generally expected to include the personal property described in Exhibit A.

"Event of Default" means one or more events of default as defined in Section 6.01.

"Event of Nonappropriation" means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the Lessee that includes an appropriation for Required Payments as contemplated by Section 3.05.

"Fiscal Year" means the Lessee's fiscal year beginning July 1, or such other fiscal year as the Lessee may later lawfully establish.

"Governing Board" means the Lessee's governing board as from time to time constituted.

"Lessee" means the City of Palmetto, Florida.

"Lessee Representative" means the Lessee's Finance Director or such other person or persons at the time designated, by a written certificate furnished to BB&T and signed on the Lessee's behalf by the presiding officer of the Lessee's Governing Board, to act on the Lessee's behalf for any purpose (or any specified purpose) under this Agreement.

"Net Proceeds," when used with respect to any amounts derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Equipment, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including attorneys' fees and costs) incurred in the collection of such proceeds, and after reimbursement to the Lessee or BB&T for amounts previously expended to remedy the event giving rise to such payment or proceeds.

"Payment Dates" means the dates indicated in Exhibit B.

"Prime Rate" means the interest rate so denominated and set by Branch Banking & Trust Company of North Carolina (whether or not such Bank, or any affiliate thereof, is at any time the counterparty to this Agreement) as its "Prime Rate," as in effect from time to time.

"Project Costs" means all costs of the design, planning, acquiring and installing the Equipment as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Base Payments payable by the Lessee under this Agreement, including (a) sums required to reimburse the Lessee or its agents for advances for any such costs, (b) interest during the period of the acquisition and installation of the Equipment and for up to six months thereafter, and (c) all costs related to the financing of the Equipment through this Agreement and all related transactions.

"Project Fund" has the meaning assigned in Section 2.02.

"Project Fund Agreement" has the meaning assigned in Section 2.02.

"Required Payments" means Base Payments and Additional Payments.

"State" means the State of Florida.

All references in this Agreement to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Agreement. The words "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

ARTICLE II

LEASE; ADVANCE

2.01. Lease. BB&T hereby leases to the Lessee, and the Lessee hereby leases from BB&T, the Equipment, for a term beginning on the Closing Date and ending upon final payment of all Required Payments, unless this Lease is earlier terminated. The Lessee shall be entitled to possession of all property constituting any portion of the Equipment and may retain possession of all property constituting any portion of the Equipment so long as no Event of Default is continuing under this Agreement and no Event of Nonappropriation has occurred.

2.02. Advance. BB&T advances \$84,000.00 (the "Amount Advanced") to the Lessee on the Closing Date, and the Lessee hereby accepts the Amount Advanced from BB&T. BB&T is advancing the Amount Advanced by making a deposit to the Project Fund (the "Project Fund") as

provided in the Project Fund Agreement of even date between Lessee and BB&T. All amounts on deposit in the Project Fund including the Amount Advanced and all investment earnings shall be used only for Project Costs until the Project Fund is terminated as provided under the Project Fund Agreement. Notwithstanding anything herein to the contrary, no funds will be advanced to Lessee hereunder until BB&T receives from Lessee the vehicle identification number(s) (VIN) and/or serial number(s) associated with the Equipment.

2.03. [Reserved].

2.04. Lessee's Limited Obligation. (a) No provision of this Agreement shall be construed or interpreted as creating a pledge of the Lessee's faith and credit within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as an improper delegation of governmental powers or as a donation or a lending of the Lessee's credit within the meaning of the State constitution. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Lessee's moneys (other than the funds held under the Project Fund Agreement or this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the Lessee's bonds or obligations payable from any class or source of the Lessee's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Equipment).

(b) Nothing in this Section is intended to impair or prohibit execution on the Equipment if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Agreement or the Project Fund Agreement.

2.05. Lessee's Continuing Obligations. The Lessee shall remain liable for full performance of all its covenants under this Agreement (subject to the limitations described in Section 2.04), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) BB&T's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Agreement, whether granted to the Lessee, a subsequent owner of the Equipment or any other person;
- (c) The release of all or part of the Equipment or the release of any party who assumes all or any part of such performance;
- (d) Any act or omission by BB&T (but this section provision does not relieve BB&T of any of its obligations under this Agreement) or the Project Fund Agreement;
- (e) The sale of all or any part of the Equipment; or
- (f) Another party's assumption of the Lessee's obligations under this Agreement.

ARTICLE III

LESSEE'S PAYMENT OBLIGATION AND RELATED MATTERS

3.01. Rental; Purchase Option. (a) As rental for the Equipment, the Lessee shall make Base Payments to BB&T in lawful money of the United States at the times and in the amounts set forth in Exhibit B, except as otherwise provided in this Agreement. As indicated in Exhibit B, the Base Payments reflect the repayment of the Amount Advanced and include designated interest components.

(b) Upon payment of all the Base Payments and all Additional Payments, the Lessee may, at its option, purchase all of BB&T's interest in the Equipment, on an as-is, where-is basis, upon notice and payment to BB&T of the sum of Ten Dollars. This option to purchase the Equipment is personal to the Lessee and is not assignable.

3.02. Additional Payments. The Lessee shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

3.03. Prepayment. At its option on any on any scheduled Payment Date, the Lessee may prepay the outstanding principal component of the Amount Advanced (in whole but not in part), and thereby obtain ownership of all the Equipment free of this lease and BB&T's interest in the Equipment, by paying (a) all Additional Payments then due and payable, (b) all interest accrued and unpaid to the prepayment date, and (c) 101% of the outstanding principal component of the Amount Advanced.

3.04. Late Payments. If the Lessee fails to pay any Base Payment when due, the Lessee shall pay additional interest on the principal component of the late Base Payment at an annual rate equal to the Prime Rate from the original due date.

3.05. Appropriations. (a) The Budget Officer shall include in the initial proposal for each of the Lessee's annual budgets the amount of all Base Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Budget Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Board may determine not to include such an appropriation in the Lessee's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver to BB&T, within 15 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Base Payments and estimated Additional Payments coming due during the next Fiscal Year has been appropriated by the Lessee in such budget for such purposes.

(c) The actions required of the Lessee and its officers pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty

of each and every Lessee official to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Lessee to carry out and perform the actions required pursuant to this Section and the remainder of this Agreement to be carried out and performed by the Lessee.

(d) The Lessee reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

(e) The Lessee acknowledges and agrees that the nonappropriation provisions of this Agreement are not intended to be used (i) as a substitute for convenience termination nor (ii) to allow the Lessee to replace the Equipment with other substantially identical or functionally equivalent property. The Lessee, to the extent permitted by law, agrees not to use the nonappropriation provisions for any such purpose.

3.06. No Abatement. There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Equipment, except as expressly provided in this Agreement. The Lessee assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever. The Base Payments shall be made in all events unless the Lessee's obligation to make Base Payments is terminated as otherwise provided in this Agreement.

3.07. Interest Rate and Payment Adjustment. (a) "Rate Adjustment Event" means any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining (i) that the interest component of Base Payments, or any portion thereof, is includable in any counterparty's gross income for federal income tax purposes or (ii) that the Lessee's obligations under this Agreement are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "265 Event"), in any case as a result of any misrepresentation by the Lessee or as a result of any action the Lessee takes or fails to take.

(b) Upon any Rate Adjustment Event, (i) the unpaid principal portion of the Amount Advanced shall continue to be payable on dates and in amounts as set forth in Exhibit B, but (ii) the interest components of the Base Payments shall be recalculated, at an interest rate equal to an annualized interest rate equal to the Prime Rate plus 2% (200 basis points), to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in any counterparty's gross income for federal income tax purposes (in the case of a 265 Event, retroactively to the Closing Date).

(c) The Lessee shall pay interest at such adjusted rate (subject to credit for interest previously paid) to each affected counterparty, notwithstanding the fact that any particular counterparty may not be a counterparty to this Agreement on the date of a Rate Adjustment Event. The Lessee shall additionally pay to all affected counterparties any interest, penalties or other charges assessed against or payable by such counterparty and attributable to a Rate Adjustment Event notwithstanding the prior repayment of the entire Amount Advanced or any transfer to another counterparty.

ARTICLE IV

LESSEE'S' COVENANTS, REPRESENTATIONS AND WARRANTIES

4.01. Indemnification. To the extent permitted by law, the Lessee shall indemnify, protect and save BB&T and its officers and directors harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Equipment or the transactions contemplated by this Agreement, including without limitation the possession, condition or use of the Equipment. The indemnification arising under this Section shall survive the Agreement's termination.

4.02. Covenant as to Tax Exemption. (a) The Lessee shall not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Agreement to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Base Payments to which such components would otherwise be entitled. If the Lessee should take or permit, or omit to take or cause to be taken, any such action, the Lessee shall take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(b) In particular, the Lessee covenants that it shall not permit the Amount Advanced, plus the investment earnings thereon (the "Proceeds"), to be used in any manner that would result in 5% or more of the Base Payments being directly or indirectly secured by an interest in property, or derived from payments in respect of property or borrowed money, being in either case used in a trade or business carried on by any person other than a governmental unit, as provided in Code Section 141(b), or result in 5% or more of the Proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Code Section 141(c); provided, however, that if the Lessee receives a Bond Counsel Opinion that compliance with any such covenant is not required to prevent the interest components of Base Payments from being includable in the counterparty's gross income for federal income tax purposes under existing law, the Lessee need not comply with such covenant.

(c) Unless the Lessee qualifies for one or more exceptions to the arbitrage rebate requirement with respect to this financing, the Lessee shall provide for the rebate to the United States of (i) at least 90% of the required rebate amount (A) on or before 60 days after the date that is five years from the Closing Date, and (B) at least once during each five years thereafter while the Obligations remain outstanding, and (ii) the entire required rebate amount on or before 60 days after the date of final payment of the Obligations. Payments shall be made in the manner prescribed by the Internal Revenue Service. The Lessee shall cause the required rebate amount to be recomputed as of each fifth anniversary of the Closing Date, and again as of the date of final payment of the Obligations. The Lessee shall provide BB&T with a copy of the results of such computation within 20 days after the end of each computation period or final payment of the Obligations. Each computation shall be prepared or approved, at the Lessee's expense, by a person with experience in

matters of accounting for federal income tax purposes, a bona fide arbitrage rebate calculating and reporting service, or nationally-recognized bond counsel, in any case reasonably acceptable to BB&T. The Lessee shall engage such rebate consultant to perform the necessary calculations not less than 60 days prior to the date of the required payment.

(d) The Lessee acknowledges that its personnel must be familiar with the arbitrage rebate rules, because the tax-exempt status of the interest on the Obligations depends upon continuing compliance with such rules. The Lessee therefore covenants to take all reasonable action to assure that Lessee personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

4.03. Validity of Organization and Acts. The Lessee is validly organized and existing under State law, has full power to enter into this Agreement and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Agreement. This Agreement is a valid, legal and binding obligation of the Lessee.

4.04. Maintenance of Existence. The Lessee shall maintain its existence, shall continue to be a local governmental unit of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental unit of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the Lessee's obligations under this Agreement.

4.05. Acquisition of Permits and Approvals. All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required on the Lessee's part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the acquisition and installation of the Equipment have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

4.06. No Breach of Law or Contract. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (a) to the best of the Lessee's knowledge, constitutes a violation of any provision of law governing the Lessee or (b) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the Lessee is a party or by which the Lessee is bound.

4.07. No Litigation. There is no litigation or any governmental administrative proceeding to which the Lessee (or any official thereof in an official capacity) is a party that is pending or, to the best of the Lessee's knowledge after reasonable investigation, threatened with respect to (a) the Lessee's organization or existence, (b) its authority to execute and deliver this Agreement or to comply with the terms of this Agreement, (c) the validity or enforceability of this Agreement or the transactions contemplated by this Agreement, (d) the title to office of any Governing Board member or any other Lessee officer, (e) any authority or proceedings relating to the Lessee's execution or

delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

4.08. No Current Default or Violation. (a) The Lessee is not in violation of any existing law, rule or regulation applicable to it, (b) the Lessee is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the Lessee is a party or by which it is bound or to which any of its assets are subject, including this Agreement, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Agreement, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

4.09. No Misrepresentation. No representation, covenant or warranty by the Lessee in this Agreement is false or misleading in any material respect.

4.10. Environmental Warranties and Indemnification. (a) The Lessee warrants and represents to BB&T that, to the best of the Lessee's knowledge after thorough investigation, the Equipment is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials.

(b) The Lessee covenants that the Equipment shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal maintenance and operation of the Equipment, and the Lessee shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any Lessee, the release of Hazardous Materials onto the Equipment or suffer the presence of Hazardous Materials on the Equipment, except in connection with the normal maintenance and operation of the Equipment.

(c) The Lessee shall comply with, and ensure compliance by all users and Lessees with, all applicable federal, State and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Equipment free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. If the Lessee receives any notices from any governmental agency or any Lessee with regard to Hazardous Materials on, from or affecting the Equipment, the Lessee shall immediately notify BB&T. The Lessee shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Equipment in accordance with all applicable federal, State and local laws, ordinances, rules, regulations and policies and to BB&T's satisfaction.

(d) "Hazardous Materials" means any explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any materials containing asbestos, or any other substance or material as defined by any federal, State or local environmental law, ordinance, rule or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49

U.S.C. sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. sections 9601 et seq.), and the regulations adopted and publications promulgated pursuant thereto.

(e) To the extent permitted by law, the Lessee shall indemnify and hold BB&T harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against BB&T as a direct or indirect result of any warranty or representation made by the Lessee in subsections (a) through (c) above being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by BB&T or the Lessee or any transferee or assignee BB&T or the Lessee.

(f) The Lessee's obligations under this Section shall continue in full force and effect notwithstanding full payment of the Required Payments under this Agreement.

4.11. Further Instruments. Upon BB&T's request, the Lessee shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by BB&T to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated by this Agreement, and all or any part of the Equipment intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

4.12. BB&T's Advances for Performance of Lessee's Obligations. If the Lessee fails to perform any of its obligations under this Agreement, BB&T is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by BB&T (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Equipment, and any associated legal or other expenses), together with interest thereon at the Prime Rate, shall be secured as Additional Payments under this Agreement. The Lessee promises to pay all such amounts to BB&T immediately upon demand.

4.13. Equipment Will Be Used and Useful. The acquisition and installation of the Equipment is necessary and expedient for the Lessee, and will perform essential functions of the Lessee appropriate for units of local government. The Lessee has an immediate need for, and expects to make immediate use of, all of the Equipment, and does not expect such need or use to diminish in any material respect during the term of the Agreement. The Equipment will not be used in any private business or put to any private business use.

4.14. Financial Information. (a) The Lessee shall send to BB&T a copy of the Lessee's audited financial statements for each Fiscal Year within 30 days of the Lessee's acceptance of such statements, but in any event within 180 days of the completion of such Fiscal Year.

(b) The Lessee shall furnish BB&T, at such reasonable times as BB&T shall request, all other financial information (including, without limitation, the Lessee's annual budget as submitted or

approved) as BB&T may reasonably request. The Lessee shall permit BB&T or its agents and representatives to inspect the Lessee's books and records and make extracts therefrom.

4.15. Taxes and Other Governmental Charges. The Lessee shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Lessee shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The Lessee shall not allow any liens for taxes, assessments or governmental charges with respect to the Equipment or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Equipment or any portion thereof which, if not paid, will become a charge on any interest in the Equipment, including BB&T's interest, or the rentals and revenues derived therefrom or hereunder).

4.16. Lessee's Insurance. (a) The Lessee shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all Equipment in an amount equal to the estimated replacement cost, including installation costs, of the Equipment. Such property damage insurance shall include BB&T as a loss payee. The Lessee shall provide evidence of such coverage to BB&T promptly upon installation of the Equipment. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 5.14.

(b) The Lessee shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$1,000,000 for personal injury or death and \$1,000,000 for property damage.

(c) The Lessee shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the Lessee against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers and may carry reasonable deductible or risk-retention amounts. All such policies shall be deposited with BB&T, provided that in lieu of such policies there may be deposited with BB&T a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in full effect. Prior to the expiration of any such policy, the Lessee shall furnish BB&T evidence satisfactory to BB&T that the policy has been renewed or replaced or is no longer required by this Agreement.

(e) No Lessee agent or employee shall have the power to adjust or settle any property damage loss greater than \$50,000 with respect to the Equipment, whether or not covered by insurance, without BB&T's prior written consent.

(f) BB&T shall not be responsible for the sufficiency or adequacy of any required insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by BB&T.

(g) The Lessee shall deliver to BB&T annually by June 30 of each year a certificate stating that the risk coverages required by this Agreement are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

ARTICLE V

THE EQUIPMENT

5.01. Acquisition and Installation. The Lessee shall comply with all provisions of law applicable to the acquisition of the Equipment, accept all portions of the Equipment when properly delivered, provide for the proper installation thereof and thereafter promptly place each such portion in service.

5.02. Changes in Location. The Lessee shall promptly inform BB&T if any component of the Equipment shall be moved from the location designated for such Equipment at the time of its acquisition.

5.03. Acquisition and Installation within Funds Available. The Lessee represents that, based upon its examination of the plans and specifications for the Equipment, estimated installation costs and the Equipment's anticipated configuration, the Equipment can be acquired and installed for a total price within the total amount of funds to be available therefore in the Project Fund, income anticipated to be derived from the investment thereof and other funds previously identified and designated for such purposes. If the total amount available for such purposes in the Project Fund shall be insufficient to pay the entire cost of acquiring and installing the Equipment, the Lessee promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the Lessee under this Agreement.

5.04. Disclaimer of Warranties. The Lessee agrees that BB&T has not designed the Equipment, that BB&T has not supplied any plans or specifications with respect thereto and that BB&T (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Equipment or similar Equipment, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Equipment or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Equipment or any component part thereof or any property or rights relating thereto at any stage of the acquisition, installation and equipping thereof, (c) has not at any time had physical possession of the Equipment or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Equipment or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Lessee intends therefore, or (iii) is safe in any manner or respect.

BB&T MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Equipment's ability to perform any function; that the Amount Advanced will be sufficient to pay all costs of the acquisition and installation of the Equipment; or any other characteristic of the Equipment; it being agreed that the Lessee is to bear all risks relating to the Equipment, the installation thereof and the transactions contemplated by this Agreement, and the Lessee hereby waives the benefits of any and all implied warranties and representations of BB&T.

The provisions of this Section shall survive the Agreement's termination.

5.05. Right of Entry and Inspection. BB&T and its representatives and agents shall have the right to enter upon the Lessee's property and inspect the Equipment from time to time during installation and after the completion of installation, and the Lessee shall cause any vendor, contractor or sub-contractor to cooperate with BB&T and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon BB&T any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by BB&T shall be deemed to impose upon BB&T any duty or obligation whatsoever to identify or correct any defects in the Equipment or to notify any person with respect thereto, and no liability shall be imposed upon BB&T, and no warranties (either express or implied) are made by BB&T as to the quality or fitness of any improvement, any such inspection and approval being made solely for BB&T's benefit.

5.06. Compliance with Requirements. (a) The Lessee shall cause the Equipment to be installed in a careful manner and in compliance with all applicable legal requirements.

(b) The Lessee shall observe and comply promptly with all current and future requirements relating to the Equipment's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Equipment or any portion thereof or (ii) any insurance company writing a policy covering the Equipment or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Equipment.

(c) The Lessee shall obtain and maintain in effect all licenses and permits required for the Equipment's operation.

(d) The Lessee shall in no event use the Equipment or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Equipment or any part thereof, nor any article to be brought thereon, which may be

dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

5.07. Use and Operation. The Lessee shall use and operate the Equipment and related property as police cruisers, and for no other purpose unless required by law. The Lessee shall be solely responsible for the Equipment's operation, and shall not contract with any other person or entity for the Equipment's operation.

5.08. Maintenance and Repairs; Additions. (a) The Lessee shall keep the Equipment in good order and repair (reasonable wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Equipment might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The Lessee may, also at its own expense, make from time to time any additions, modifications or improvements to the Equipment that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Equipment. The Lessee shall do, or cause to be done, all such things as may be required by law in order fully to protect the interests of and all of BB&T's rights under this Agreement.

(c) Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the "Equipment" for the purposes of this Agreement.

(d) Notwithstanding the provisions of subsection (c) above, however, the Lessee may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Equipment. All such property shall remain the Lessee's sole property in which BB&T shall have no interest; provided, however, that any such property which becomes permanently affixed to the Equipment shall be subject to BB&T's interest arising under this Agreement if BB&T shall reasonably determine that the Equipment would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

5.09. Security. The Lessee shall take all reasonable steps necessary to safeguard the Equipment against theft. The security afforded the Equipment shall at all times be equal to or better than the security afforded the Lessee's personal property that is not subject to this Agreement.

5.10. Utilities. The Lessee shall pay all charges for utility services furnished to or used on or in connection with the Equipment.

5.11. Risk of Loss. The Lessee shall bear all risk of loss to and condemnation of the Equipment.

5.12. Condemnation.

(a) The Lessee shall immediately notify BB&T if any governmental authority shall institute, or shall notify the Lessee of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Equipment or any interest therein under the power of eminent domain, or if there shall be any damage to the Equipment due to governmental action, but not resulting in a taking of any portion of the Equipment. The Lessee shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to BB&T, and to the extent permitted by law hereby irrevocably authorizes and empowers BB&T, in the Lessee's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the Lessee receives any Net Proceeds arising from any such action, the Lessee shall apply such Net Proceeds as provided in Section 5.14.

(b) If any of the real or personal property acquired or improved by the Lessee (in whole or in part) using any portion of the Amount Advanced consists of or is located on any real property acquired by the Lessee through the exercise of the power of eminent domain, or through the threat of the exercise of the power of eminent domain, then during the term of this Agreement the Lessee may not transfer any interest in such real property to any entity other than a local governmental unit without BB&T's prior express written consent.

5.13. No Encumbrance, Mortgage or Pledge of Equipment.

(a) The Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to the Equipment. The Lessee shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) The Lessee shall reimburse BB&T for any expense incurred by BB&T to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

5.14. Damage and Destruction; Use of Net Proceeds. (a) The Lessee shall promptly notify BB&T if (i) the Equipment or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the installation of the Equipment shall become apparent, or (iii) title to or the use of all or any portion of the Equipment shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage, destruction or taking.

(b) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is not more than \$50,000, the Lessee shall retain such Net Proceeds and apply the same to the prompt completion, repair or restoration of the Equipment, and shall promptly thereafter report to BB&T regarding the use of such Net Proceeds.

(c) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the Lessee shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) designated by BB&T for deposit in a special escrow fund to be held by such escrow agent. The Lessee shall thereafter provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Equipment, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in the form of Exhibit A to the Project Fund Agreement. If the Net Proceeds shall be insufficient to pay in full the cost of completion, repair or restoration, the Lessee shall either (i) complete the work and pay any cost in excess of the Net Proceeds, or (ii) not carry out such completion, repair or restoration, and instead apply the Net Proceeds, together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03.

(d) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the Lessee's property and shall be part of the Equipment.

ARTICLE VI

DEFAULTS AND REMEDIES; TERMINATION

6.01. Events of Default. An "Event of Default" is any of the following:

(a) The Lessee's failing to make any Base Payment when due.

(b) The Lessee's breaching or failing to perform or observe any term, condition or covenant of this Agreement or of the Project Fund Agreement on its part to be observed or performed, other than as provided in subsection (a) above, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the Lessee by BB&T, unless BB&T shall agree in writing to an extension of such time prior to its expiration.

(c) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the Lessee as a debtor, or the appointment of a receiver, custodian or similar officer for the Lessee or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.

(d) Any warranty, representation or statement made by the Lessee in this Agreement or in the Project Fund Agreement is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).

(e) Any lien, charge or encumbrance affecting the validity of the Agreement, is found to exist, or proceedings are instituted against the Lessee to enforce any lien, charge or encumbrance against the Equipment .

(f) The Lessee's failing to pay when due any principal of or interest on any of its general obligation debt.

6.02. Remedies on Default. Upon the continuation of any Event of Default, BB&T may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Base Payments immediately due and payable;

(b) Proceed by appropriate court action to enforce the Lessee's performance of the applicable covenants of this Agreement or to recover for the breach thereof;

(c) As provided in the Project Fund Agreement, require BB&T to pay over any balance remaining in the Project Fund to be applied against outstanding Required Payments in any manner BB&T may reasonably deem appropriate; and

(d) Avail itself of all available remedies under this Agreement, and recovery of attorneys' fees and other expenses.

6.03. [Reserved].

6.04. Consequences of Nonappropriation. Upon an Event of Nonappropriation, the Lessee shall have no further obligation to pay Base Payments beyond the end of the Fiscal Year for which amounts have been appropriated for Base Payments. This Agreement shall terminate on the last day of the Fiscal Year for which amounts have been appropriated for Base Payments without any penalty to the Borrower whatsoever. The Lessee agrees to peaceably surrender possession the Equipment to BB&T or its assignees on the first day of the Fiscal Year to which the Event of Nonappropriation applies, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States or Canada designated by BB&T.

In addition, upon the occurrence of any Event of Nonappropriation, BB&T may, without any further demand or notice, (a) apply any balance remaining in the Project Fund against outstanding Required Payments in any manner BB&T may reasonably deem appropriate, and (b) take action with respect to the Lessee and the Equipment as contemplated in Section 6.05. An Event of Nonappropriation and resulting termination of this Agreement shall not relieve the Lessee of liability for any defaults under this Agreement or the Project Fund Agreement occurring prior to the Event of Nonappropriation, or of liability under those provisions of this Agreement and the Project Fund Agreement which are stated to survive termination.

6.05. Possession of Equipment. Upon the continuation of an Event of Default or the occurrence of an Event of Nonappropriation, the Lessee shall immediately lose the right to possess, use and enjoy the Equipment (but may remain in possession of the Equipment as a Lessee at the will of BB&T), and thereupon the Lessee (a) shall pay monthly in advance to BB&T a fair and reasonable rental value for the use and possession of the Equipment (in an amount BB&T shall

determine in its reasonable judgment), and (b) upon BB&T's demand, shall deliver possession of the Equipment to BB&T or, at BB&T's direction, to any purchaser of the Equipment after an execution sale.

In addition, upon the continuation of any Event of Default or the occurrence of an Event of Nonappropriation, BB&T, to the extent permitted by law, is hereby authorized to (i) take possession of the Equipment, with or without legal action, (ii) lease the Equipment, (iii) collect all rents and profits therefrom, with or without taking possession of the Equipment, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to the Lessee's account and in reduction of the Lessee's corresponding Required Payments in such fashion as BB&T shall reasonably deem appropriate. BB&T shall be liable to account only for rents and profits it actually receives.

6.06. No Remedy Exclusive; Delay Not Waiver. All remedies under this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default shall occur and thereafter be waived by BB&T, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

6.07. Payment of Costs and Attorney's Fees. If BB&T employs an attorney to assist in the enforcement or collection of Required Payments, or if BB&T voluntarily or otherwise shall become a party to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Equipment, to protect the lien of this Agreement, to enforce collection of the Required Payments or to enforce compliance by the Lessee with any of the provisions of this Agreement, the Lessee agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at the Prime Rate) shall be secured as Required Payments.

ARTICLE VII

MISCELLANEOUS

7.01. Notices. (a) Any communication required or permitted by this Agreement must be in writing.

(b) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, addressed as follows:

- (i) If to the Lessee, to 516 8th Avenue West, Palmetto, Florida 34220, Attention: Finance Director; or

(ii) If to BB&T, to 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217, Attention: Account Administration/Municipal.

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

7.02. No Assignments by Lessee. The Lessee shall not sell or assign any interest in this Agreement.

7.03. Assignments by BB&T. BB&T may, at any time and from time to time, assign all or any part of its interest in the Equipment or this Agreement, including, without limitation, BB&T's rights to receive Required Payments. Any assignment made by BB&T or any subsequent assignee shall not purport to convey any greater interest or rights than those held by BB&T pursuant to this Agreement.

The Lessee agrees that this Agreement may become part of a pool of obligations at BB&T's or its assignee's option. BB&T or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement. Notwithstanding the foregoing, no assignment or reassignment of BB&T's interest in the Equipment or this Agreement shall be effective unless and until the Lessee shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The Lessee further agrees that BB&T's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for BB&T.

The Lessee agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Lessee, and the Lessee shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Lessee shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

7.04. Amendments. No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the Lessee and BB&T.

7.05. Governing Law. The Lessee and BB&T intend that Florida State law shall govern this Agreement.

7.06. Liability of Officers and Agents. No officer, agent or employee of the Lessee shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated by this Agreement. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their

individual capacities. This Section shall not relieve an officer, agent or employee of the Lessee from the performance of any official duty provided by law.

7.07. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

7.08. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

7.09. Entire Agreement. This Agreement constitutes the Lessee's entire agreement with respect to the general subject matter covered by this Agreement.

7.10. Binding Effect. Subject to the specific provisions of this Agreement, and in particular Section 7.03, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

(The remainder of this page has been left blank intentionally).

IN WITNESS WHEREOF, the parties have duly signed, sealed and delivered this Agreement by duly authorized officers, all as of the date first above written.

(SEAL)

ATTEST:

CITY OF PALMETTO, FLORIDA

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

**BRANCH BANKING AND
TRUST COMPANY**

By: _____

Printed Name: _____

Title: _____

*[Lease Agreement between the City of Palmetto, Florida
and Branch Banking and Trust Company]*

EXHIBIT A -- PROJECT AND EQUIPMENT DESCRIPTION

Three police cruisers

EXHIBIT B -- PAYMENT SCHEDULE

Payment Schedule to Lease Agreement dated as of February __, 2010 (the "Lease Agreement"), between the City of Palmetto, Florida, and Branch Banking and Trust Company

Contract Number: 003-1601496-002

The payments required to repay the advance made pursuant to the Lease Agreement call for an amortization period of approximately four (4) years. Payments are quarterly in the amount of \$5,592.10. A portion of each payment is paid as and represents payment of interest at an annual interest rate of 3.01%.

Payments are due beginning on May __, 2010 and quarterly thereafter, with a final payment of all outstanding principal and accrued and unpaid interest due on February __, 2014, all as set forth in the attached amortization schedule.

City of Palmetto, Florida
 Three (3) police cruisers
 003-1601496-002

Compound Period: Quarterly
 Nominal Annual Rate: 3.010 %

CASH FLOW DATA

| | Event | Date | Amount | Number | Period | End Date |
|---|--------------|-------------|---------------|---------------|---------------|-----------------|
| 1 | Loan | 02/05/2010 | 84,000.00 | 1 | | |
| 2 | Payment | 05/05/2010 | 5,592.10 | 16 | Quarterly | 02/05/2014 |

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

| | Date | Payment | Interest | Principal | Balance |
|--------------|-------------|----------------|-----------------|------------------|----------------|
| Loan | 02/05/2010 | | | | 84,000.00 |
| 1 | 05/05/2010 | 5,592.10 | 632.10 | 4,960.00 | 79,040.00 |
| 2010 Totals | | 5,592.10 | 632.10 | 4,960.00 | |
| 2 | 08/05/2010 | 5,592.10 | 594.78 | 4,997.32 | 74,042.68 |
| 3 | 11/05/2010 | 5,592.10 | 557.17 | 5,034.93 | 69,007.75 |
| 4 | 02/05/2011 | 5,592.10 | 519.28 | 5,072.82 | 63,934.93 |
| 5 | 05/05/2011 | 5,592.10 | 481.11 | 5,110.99 | 58,823.94 |
| 2011 Totals | | 22,368.40 | 2,152.34 | 20,216.06 | |
| 6 | 08/05/2011 | 5,592.10 | 442.65 | 5,149.45 | 53,674.49 |
| 7 | 11/05/2011 | 5,592.10 | 403.90 | 5,188.20 | 48,486.29 |
| 8 | 02/05/2012 | 5,592.10 | 364.86 | 5,227.24 | 43,259.05 |
| 9 | 05/05/2012 | 5,592.10 | 325.52 | 5,266.58 | 37,992.47 |
| 2012 Totals | | 22,368.40 | 1,536.93 | 20,831.47 | |
| 10 | 08/05/2012 | 5,592.10 | 285.89 | 5,306.21 | 32,686.26 |
| 11 | 11/05/2012 | 5,592.10 | 245.96 | 5,346.14 | 27,340.12 |
| 12 | 02/05/2013 | 5,592.10 | 205.73 | 5,386.37 | 21,953.75 |
| 13 | 05/05/2013 | 5,592.10 | 165.20 | 5,426.90 | 16,526.85 |
| 2013 Totals | | 22,368.40 | 902.78 | 21,465.62 | |
| 14 | 08/05/2013 | 5,592.10 | 124.36 | 5,467.74 | 11,059.11 |
| 15 | 11/05/2013 | 5,592.10 | 83.22 | 5,508.88 | 5,550.23 |
| 16 | 02/05/2014 | 5,592.10 | 41.87 | 5,550.23 | 0.00 |
| 2014 Totals | | 16,776.30 | 249.45 | 16,526.85 | |
| Grand Totals | | 89,473.60 | 5,473.60 | 84,000.00 | |

PROJECT FUND AGREEMENT

THIS PROJECT FUND AGREEMENT is dated as of February ___, 2010, and is by and between the **CITY OF PALMETTO**, a public body of the State of Florida (the "City"), and **BRANCH BANKING AND TRUST COMPANY** ("BB&T").

RECITALS

The City is, simultaneously with the execution and delivery of this Project Fund Agreement, executing and delivering a Lease Agreement dated as of February ___, 2010 (the "Lease Agreement"), by and between the City and BB&T. The purpose of the Lease Agreement is to provide for BB&T's advance of \$84,000.00 to the City to finance the City's acquisition of equipment, as defined in the Lease Agreement. In partial consideration for BB&T's entering into the Lease Agreement, the City has agreed to provide for financing proceeds to be deposited and disbursed pursuant to this Project Fund Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. DEFINITIONS

In this Project Fund Agreement, the term "***Project Costs***" means all costs of the design, planning, acquiring, installing of the Equipment as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the City under the Lease Agreement, including (a) sums required to reimburse the City or its agents for advances made for any such costs, (b) interest during the installation process and for up to six months thereafter, and (c) all costs related to the financing of the Equipment through the Lease Agreement and all related transactions.

In addition, any capitalized terms used in this Project Fund Agreement and not otherwise defined shall have the meanings assigned thereto in the Lease Agreement.

SECTION 2. PROJECT FUND.

2.1. Project Fund. On the Closing Date, BB&T will deposit \$84,000.00 into a special account of the City at Branch Banking and Trust Company to be designated "2010-002 Palmetto Project Fund" (the "Project Fund"). This account shall be held separate and apart from all other funds of the City. The Project Fund is the City's property, but the City will withdraw amounts on deposit in the Project Fund only as provided in this Project Fund Agreement and only for application from time to time to the payment of Project Costs. Pending such application, such amounts shall be subject to a lien and charge in favor of BB&T to secure the City's obligations under the Lease Agreement.

2.2. Requisitions from Project Fund. The City may withdraw funds from the Project Fund only after authorization from BB&T. BB&T will disburse funds from the Project Fund only to the City and only upon its receipt of one or more written requisitions signed by one of the below listed designated City Representatives substantially in the form of Exhibit A.

The City may designate additional Representatives to sign requisitions upon written notification to BB&T.

Upon receipt of a requisition from the City, BB&T will promptly undertake such review of the matters referred to in such requisition as it shall deem appropriate, and will then promptly notify the City of its approval of the requisition or the reasons for its disapproval.

2.3. Disposition of Project Fund Balance.

(a) ***Upon completion*** -- Promptly after the acquisition and installation of the Equipment has been completed, the City shall deliver to BB&T a certificate to such effect signed by a City Representative.

(b) ***Upon default*** -- Upon the occurrence of an Event of Default, BB&T may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments in any manner BB&T may reasonably deem appropriate.

(c) ***Upon Nonappropriation*** - Upon the occurrence of an Event of Nonappropriation, BB&T may, without demand or notice, apply any balance remaining in the Project Fund against outstanding Required Payments in any manner BB&T may reasonably deem appropriate.

(d) ***After delay or inactivity*** -- If (i) more than two years have elapsed from the Closing Date or (ii) at least six months has passed from BB&T's most recent receipt of a requisition for Project Costs, then BB&T, upon 30 days' notice from BB&T to the City, may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments.

(e) ***Application of Project Fund balance*** -- BB&T will apply any amounts paid to it pursuant to this section (i) first against all Additional Payments then due and payable, (ii) then to interest accrued and unpaid to the disposition date of the Project Fund. Such prepayment, however, will not affect any other City payment obligation under the Lease Agreement. BB&T will notify

the City of any withdrawal from the Project Fund made under this Section 2.3, and in the notice will describe its application of the funds withdrawn.

2.4. Investment. (a) The City and BB&T agree that money in the Project Fund will be continuously invested and reinvested in a public funds money rate savings account.

(b) From and after the date that is three years from the Closing Date, the City will not purchase or hold any investment which has a "yield," as determined under the Code, in excess of the "yield" on the City's obligations under the Lease Agreement, unless the City has supplied BB&T with a Bond Counsel Opinion to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled.

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any profit or loss realized upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

(d) All earnings on moneys in the Project Fund must be used for Project Costs.

SECTION 3. MISCELLANEOUS.

3.1. Notices. Any notice or other communication required or contemplated by this Project Fund Agreement shall be deemed to be delivered if in writing, addressed as provided below and if (a) actually received by such addressee, or (b) in the case of mailing, when indicated to have been delivered by a signed receipt returned by the United States Postal Service after deposit in the United States mails, postage and registry fees prepaid, and clearly directed to be transmitted as registered or certified mail:

(i) If intended for the City, addressed to it at the following address: City of Palmetto, Attention: Finance Director, 516 8th Avenue West, Palmetto, Florida 34220.

(ii) If intended for BB&T, addressed to it at the following address: BB&T Governmental Finance, Attention: Account Administration/Municipal – Project Fund Agreement Notice, 5030 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217.

Any party may designate a different or alternate address for notices by notice given under this Project Fund Agreement.

3.2. Survival of Covenants and Representations. All covenants, representations and warranties made by the City in this Project Fund Agreement and in any certificates delivered pursuant to this Project Fund Agreement shall survive the delivery of this Project Fund Agreement.

3.3. Choice of Law. The parties intend that Florida law shall govern this Project Fund Agreement.

3.4. Amendments. This Project Fund Agreement may not be modified or amended unless such amendment is in writing and signed by BB&T and the City .

3.5. No Third-Party Beneficiaries. There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Project Fund Agreement.

3.6. Successors and Assigns. All of the covenants and conditions of this Project Fund Agreement shall be binding upon and inure to the benefit of the parties to this Project Fund Agreement and their respective successors and assigns.

3.7. Severability. If any court of competent jurisdiction shall hold any provision of this Project Fund Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Project Fund Agreement.

3.8. Counterparts. This Project Fund Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all together only one agreement.

3.9. Termination. Except as otherwise provided in this Project Fund Agreement, this Project Fund Agreement shall cease and terminate upon payment of all funds (including investment proceeds) from the Project Fund.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, each of the parties has caused this Project Fund Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

SEAL

CITY OF PALMETTO, FLORIDA

ATTEST

By: _____

By: _____

Printed Name: _____

Name: _____

Title: _____

Title: _____

BRANCH BANKING AND TRUST COMPANY

By: _____

Printed Name: _____

Title: _____

[Project Fund Agreement dated as of February ____, 2010]

CLOSING CERTIFICATE

The undersigned officers of the City of Palmetto, Florida (the "City"), hereby certify as follows:

1. On March 1, 2010, the City's governing board (the "Board") adopted the attached resolution (the "Resolution"), authorizing and providing for a lease financing with Branch Banking and Trust Company. The Resolution was duly adopted at a meeting duly called and held at which a quorum was present and acting throughout. The Resolution has not been repealed, revoked, rescinded or amended, but remains in full effect as of today. A copy of the Resolution is attached hereto.

2. The signatures set forth below are the true and genuine signatures of the persons holding the indicated offices. The indicated persons have held such offices at all times since the Resolution was adopted.

| <u>Printed Name</u> | <u>Title</u> | <u>Signature</u> |
|-------------------------------|-----------------------|------------------|
| <u>Shirley Groover Bryant</u> | Mayor or City Manager | _____ |
| <u>Karen L. Simpson</u> | Finance Director | _____ |
| <u>James R. Freeman</u> | Clerk | _____ |

3. The City's Attorney is Mark Barnebey.

4. The City has duly authorized, executed and delivered the Lease Agreement and the Project Fund Agreement provided for by the Resolution. We have reviewed the City's representations as set forth in such Agreements, and all of such representations are correct and complete in all material respects as if made today. The City has appropriated at least \$ _____ for Base Payments under the Lease Agreement coming due between today and the end of the City's current fiscal year.

5. The seal impressed below is the City's official seal, and has been the City's official seal since prior to the adoption of the Resolution.

WITNESS our signatures and the seal of the City of Palmetto, Florida, this ___ day of February, 2010.

(SEAL)

By: _____ By: _____ By: _____
Mayor or City Manager Finance Director Clerk