



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

State of West Virginia  
**Master Agreement**

Order Date: 01-19-2021

CORRECT ORDER NUMBER MUST  
 APPEAR ON ALL PACKAGES, INVOICES,  
 AND SHIPPING PAPERS. QUESTIONS  
 CONCERNING THIS ORDER SHOULD BE  
 DIRECTED TO THE DEPARTMENT  
 CONTACT.

<b>Order Number:</b>	CMA 0212 0212 FINANCE21 1	<b>Procurement Folder:</b>	830615
<b>Document Name:</b>	Statewide Contract for Financing Services	<b>Reason for Modification:</b>	Award of CRFQ 0212 SWC2100000005
<b>Document Description:</b>	Original PF: 791475		
<b>Procurement Type:</b>	Statewide MA (Open End)		
<b>Buyer Name:</b>			
<b>Telephone:</b>			
<b>Email:</b>			
<b>Shipping Method:</b>	Best Way	<b>Effective Start Date:</b>	2021-02-01
<b>Free on Board:</b>	FOB Dest, Freight Prepaid	<b>Effective End Date:</b>	2022-01-31

VENDOR		DEPARTMENT CONTACT	
<b>Vendor Customer Code:</b>	000000191232	<b>Requestor Name:</b>	David W Mullins
BANC OF AMERICA PUBLIC CAPITAL CORP		<b>Requestor Phone:</b>	(304) 558-0076
BANK OF AMERICA CENTER		<b>Requestor Email:</b>	dave.w.mullins@wv.gov
RICHMOND	VA	<div style="text-align: center; font-size: 2em; font-weight: bold;">21</div> <p>FILE LOCATION <u>44381</u></p>	
US	232193500		
<b>Vendor Contact Phone:</b>	804-788-3345 Extension:		
<b>Discount Details:</b>			
<b>#1</b>	No	0.0000	0
<b>#2</b>	No		
<b>#3</b>	No		
<b>#4</b>	No		

INVOICE TO	SHIP TO
ACCOUNTING SECTION DEPARTMENT OF ADMINISTRATION  2019 WASHINGTON ST E  PO BOX 50121  CHARLESTON WV 25305-0121  US	FINANCE DIVISION DEPARTMENT OF ADMINISTRATION  BLDG 17 2101 WASHINGTON ST E  CHARLESTON WV 25305  US

Purchasing Division's File Copy

Total Order Amount: Open End

**SCANNED**

**RETURNED TO SENDER**  
**DATE: JAN 28 2021**

**PURCHASING DIVISION AUTHORIZATION**  
 DATE: Tamara [Signature]  
 ELECTRONIC SIGNATURE ON FILE

**ATTORNEY GENERAL APPROVAL AS TO FORM**  
 DATE: [Signature]  
 ELECTRONIC SIGNATURE ON FILE

**ENCUMBRANCE CERTIFICATION**  
 DATE: Beverly Toler  
 ELECTRONIC SIGNATURE ON FILE

1/26/2021

*1-22-2021  
 SBT  
 MA 01/19/2021*

**Extended Description:**

**STATEWIDE CONTRACT:**

The Vendor, BANC OF AMERICA PUBLIC CAPITAL CORP., agrees to enter into an Open-End Statewide Contract with all State Agencies and Political Subdivisions to provide Financing Services for Equipment and other Capital Financing Needs of various State Agencies in the form of a Master Lease Purchase, per the Specifications, General Terms and Conditions, Bid Requirements, and Banc of America Public Capital Corp. submitted and accepted bid on 10/22/2020, incorporated herein by reference and made a part of hereof.

\*\*\*\*\*  
**ORDERING INSTRUCTIONS**

Statewide Contract: CMA 0212 FINANCE21

1). An agency may request to use the Statewide Contract when financing a capital purchase over \$100,000. Agencies can find the Master Lease Submission Request form attached to the Statewide Contract website. Please complete said form and submit to Patty Johns of the Finance Division to obtain prior approval to use the CMA FINANCE21 contract.

patty.r.johns@wv.gov  
304-558-6181 Ext. 214

2). A CDO must be created in Oasis with the appropriate documentation attached. CDO will follow the standard approval path.

3). Contact Patty Johns of the Finance Division to coordinate the contract processing with Vendor.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	84101703				0.000000
	<b>Service From</b>	<b>Service To</b>			
	2021-02-01	2022-01-31			

**Commodity Line Description:** Financing Agreement

**Extended Description:**

Please see attached pricing per Exhibit A - Pricing Page.

December 30, 2020

Charles T. Maguire  
Senior Vice President  
Banc of America Public Capital Corp.  
1111 E. Main Street, 18<sup>th</sup> Floor  
Richmond, VA 23219

**Re: CRFQ SWC2100000005  
State of West Virginia Master Lease Purchase Finance Contract ("Master  
Lease Agreement")**

Mr. Maguire,

After reviewing Banc of America Public Capital Corp.'s ("Banc of America") proposal submitted in response to the request for quotation identified as CRFQ SWC2100000005, the Purchasing Division has determined that the following items in your firm's bid (including but not limited to the terms sheet and clarifications/comments) need to be addressed.

1. **Lessee:** The lessee will be identified in each appendix. The Department of Administration, Purchasing Division is not the Lessee.
2. **Maximum Funding:** The State of West Virginia cannot commit to a certain level of funding and does not in any way guarantee that financing of any amount will be utilized. Any reference to commitment is limited to Banc of America's commitment to make funds available.
3. **Index:** The Summary of Terms section entitled "Index" stating that prices will be valid for one year from the date of the proposal is modified to state pricing is valid for one year from the date of contract award.
4. **Indemnification:** Any reference to indemnification is rejected and eliminated from any contractual document where it appears. The State of West Virginia is prohibited by its Constitution from indemnifying another entity.

5. **Documents:** Only those documents that have been reviewed and approved by the West Virginia Purchasing Division and the West Virginia Attorney General's Office, and then expressly including in the contractual agreement will be utilized.
6. **General Disclaimer:** The general disclaimer term in the Summary of Terms and Conditions is rejected. Any term contained in the Request for Quotation identified above that is not expressly modified herein or by the Master Lease Agreement will remain in full force and effect even if it is not incorporated in the Master Lease Agreement.
7. **Market Disruption:** The Market Disruption provision of the Summary of Terms and Conditions is rejected in its entirety. Pricing must remain valid for the initial one-year term of the contract.
8. **EMMA Disclosure and SEC Disclosure:** The State rejects the inclusion of language related to redaction or prior approval of EMMA disclosures in the Master Lease Agreement and hereby rejects the SEC Disclosure term contained in the Summary of Terms and Conditions. As an entity subject to the Freedom of Information Act, and as you were informed in the Request for Quotation, the State will not ask for permission or approval before releasing information it deems to be disclosable.
9. **Rates:** The reference to the Federal Reserve H.15 rate in the Master Lease Agreement will be modified to reflect the rate utilized in the RFQ pricing pages.
10. **Security Interest:** The Master Lease Agreement has been modified to mirror the provision included in the prior contract with Banc of America.
11. **Escrow:** The escrow requirements of the contract will be governed by the Master Escrow and Account Control Agreement attached to the Master Lease Agreement.
12. **Electronic Signatures:** The Master Lease Agreement has been modified to reflect what electronic signatures the State can accept.
13. **USA Patriot Act:** The State has modified the Master Lease Agreement to include the language previously agreed to regarding the USA Patriot Act.
14. **Order of Precedence:** The parties agree that the order of precedence for documents that comprise this Contract will be the as follows:
  - a. This Document – First priority
  - b. Master Lease Agreement – Second Priority
  - c. Attachments to the Master Lease Agreement – Third Priority
  - d. Terms and Conditions contained in the Request for Quotation identified as SWC2100000005 and any Addenda issued – Fourth Priority
  - e. Summary of Terms and Conditions – Fifth Priority

If Banc of America can accept these items listed above, please sign and initial this letter and return it to me at your earliest convenience via email or facsimile to me at

[james.d.meadows@wv.gov](mailto:james.d.meadows@wv.gov) or 304-558-0006. A copy of the modified Master Lease has also been enclosed with this letter for your review.

Agreed to by: Banc of America Public Capital Corp.

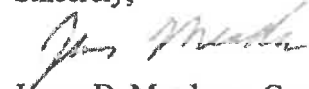
By: 

Its: Authorized Agent

Date: 1/15/2021

If you have any questions regarding this matter please contact me at 304-558-8806 at your convenience.

Sincerely,



James D. Meadows, General Counsel  
West Virginia Purchasing Division

Encl: Master Lease Agreement

**STATE OF WEST VIRGINIA MASTER LEASE  
PURCHASE FINANCING AGREEMENT**

THIS MASTER LEASE PURCHASE FINANCING AGREEMENT ("MLPFA"), made this 1st day of February, 2021, by and between Banc of America Public Capital Corp ("Lessor"), and the PURCHASING DIVISION OF THE DEPARTMENT OF ADMINISTRATION of the State of West Virginia ("Purchasing"), on behalf of the Lessees specified in the attached appendices ("Lessee" or "Lessees").

The parties hereto do mutually covenant and agree as follows:

1. **MLPFA**

Pursuant to the provisions of Chapter 5A of the West Virginia Code, Purchasing, on behalf of the Lessees specified in the attached appendices, as body politics duly organized and existing under the laws of the State of West Virginia, agrees to lease from Lessor the various items of equipment specified in each appendix ("Equipment"), and Lessor, as specified above, agrees to lease to Lessees the Equipment in accordance with the terms and conditions of this MLPFA. Upon execution, this MLPFA is binding on and enforceable against Lessor and Lessees in accordance with its terms and each appendix.

This MLPFA will control each financing completed, and an appendix evidencing each financing will be issued as a Central Delivery Order ("CDO") for each user agency referencing this MLPFA (an "Appendix" or "Appendices"). As each agency has its own various accounts, internal approval requirements, etc., a separate Appendix and CDO must be issued for each financing. The Lessor shall have the sole right to accept or reject an Appendix to the MLPFA.

Several items for an agency may be combined into one Appendix. Therefore, funds for certain Appendices may need to be escrowed, while in other cases no escrow will be needed. Lessor must be able to provide escrowed funds or offer an alternative acceptable to Purchasing and Lessee.

2. **Covenants of Lessor**

Lessor, and any assignee of Lessor, shall allow Lessees to quietly have, hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor during the term of this MLPFA, except as expressly set forth in this Lease.

3. **Covenants of Lessees**

By executing an Appendix, Lessees certify that: (a) they are not prohibited by the Constitution or laws of the State of West Virginia from entering into this MLPFA, (b) no approval, consent or withholding of objection is required from any governmental authority not a signatory to this MLPFA or the Appendix with respect to the performance or obligations of Lessees under this MLPFA, (c) this MLPFA will not violate any judgment, law or regulation applicable to Lessees or result in any breach of, or constitute a default under, or result in the creation of any lien or encumbrance upon the assets of the Lessees or on the Equipment pursuant to, any other instrument to which Lessees are a party.

4. Equipment Delivery and Acceptance

Lessees shall accept the Equipment when and if delivered and placed in good working order in accordance with the purchase order issued to the equipment supplier for such item of Equipment and hereby authorize the Lessor to add to the appropriate Appendix the serial number of each item of Equipment so delivered. Lessees shall have thirty (30) days from date of delivery to accept the Equipment and deliver an Equipment Acceptance Certificate or to have the Equipment returned. Notice of any Equipment defects shall be given to Lessor and the equipment supplier within thirty (30) days of delivery, unless not discovered at that time by reasonable efforts.

Lessor agrees to pay the invoices for the accepted Equipment within seven (7) days of receipt of the Equipment Acceptance Certificate and Request for Payment, but shall not be liable for the specific performance of the MLPFA or for damages, if for any reason, the equipment supplier delays or fails to fill the order. Any delay in such delivery shall not affect the validity of this MLPFA.

In the event any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under an Appendix, then the amount of the funding remaining shall be applied as a partial prepayment on that Appendix.

5. Term

The MLPFA shall be for an original term of one (1) year, subject to renewal in accordance with Section 22 of this MLPFA. The term of each Appendix, evidencing each financing, shall commence on the date specified in each Appendix and shall terminate upon the first to occur:

- (a) The payment of the purchase option price;
- (b) The payment of all lease payments;
- (c) An Event of Non-appropriation; or
- (d) An Event of Default.

The terms and conditions contained in this MLPFA shall be the terms and conditions of each Appendix and the terms and conditions during any renewal of the financing available under this MLPFA.

6. Event of Non-Appropriation

If a Lessee is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this MLPFA by the West Virginia Legislature, the Lessee may terminate the Appendix at the end of the affected current fiscal period without further charge or penalty. An "Event of Non-appropriation" shall be deemed to have occurred if: (a) Sufficient funds are not appropriated for lease payments under an Appendix in any fiscal year; and (b) a Lessee shall have at such time no funds duly authorized or otherwise available for the lease payments. Lessee agrees to provide written notice of an Event of Non-appropriation to Lessor as soon as Lessee determines that such an event exists. No penalty shall accrue to the Lessee in the event this provision is exercised.

Upon the occurrence of an Event of Non-appropriation, that Appendix shall terminate without penalty at the end of the then current fiscal year and the MLPFA and other payments under that Appendix shall be canceled. Lessee agrees to return the Equipment to Lessor, together with a release of all Lessees' title and interest therein. It is the intention of the parties that any transfer of title to Lessor pursuant to this

Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer. An Event of Non-appropriation shall not be deemed an event of default. Furthermore, an Event of Non-appropriation under one Appendix shall not be deemed an Event of Non-appropriation under any other Appendix.

7. MLPFA Termination

The Lessor may not unilaterally terminate this MLPFA at any time; however, this MLPFA is subject to termination upon the occurrence of anyone of the following events:

- (a) The Director of Purchasing terminates the MLPFA for any reason and at any time upon providing Lessor a thirty (30) day written notice thereof;
- (b) The expiration of the current term without any further action or notice by either party; or
- (c) The mutual written agreement of the parties prior to the expiration of the then current term.

Any such termination of the MLPFA shall not affect the financing under any Appendix executed prior to the effective MLPFA termination date.

8. Warranties/Guarantees

Each Lessee acknowledges that it has selected the Equipment financed under this MLPFA and that Lessor is not the manufacturer or dealer in the Equipment herein leased. As Lessor is not the manufacturer or dealer in the Equipment, Lessor makes, and has made no representations or warranties whatsoever as to the existence or availability of warranties by the vendor of any item(s) of Equipment. Lessor hereby assigns to each Lessee for and during the lease term all manufacturers' warranties or guarantees, expressed or implied, issued on or applicable to the Equipment acquired by that Lessee, if any.

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS MLPFA OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEES' USE OF ANY ITEM(S) OF EQUIPMENT PROVIDED IN THIS MLPFA. HOWEVER, LESSOR AGREES TO BE LIABLE FOR ANY LOSS TO TANGIBLE PERSONAL PROPERTY OR INJURY TO PERSONS CAUSED BY THE NEGLIGENCE OF LESSOR.

9. Lease Payments

Lessees agree to pay to Lessor monthly lease payments, comprised of the principal and accrued interest, in the amounts set forth in each payment schedule. The term of each Appendix shall not exceed the useful life of the Equipment financed under that Appendix. The interest rate for an Appendix will be calculated as shown below for each applicable term. The interest rate is comprised of the annualized interest on two (2), three (3), or four (4) year interest rate SWAPS, as published by the Intercontinental Exchange ("ICE") on its website (which as of the date of this agreement is located at



<https://www.theice.com/marketdata/reports/180>) on the date of execution of an Appendix, less the discount, plus the fixed spread or basis points originally bid by Lessor and shown below:

- (a) 3 Year Financing Term= 2-year SWAP Rate X .79 Discount + .7204 Fixed Spread \_\_\_\_\_
- (b) 4 Year Financing Term= 2-year SWAP Rate X .79 Discount + .7660 Fixed Spread \_\_\_\_\_
- (c) 5 Year Financing Term= 3-year SWAP Rate X .79 Discount + .8087 Fixed Spread \_\_\_\_\_
- (d) 7 Year Financing Term= 4-year SWAP Rate X .79 Discount + .8758 Fixed Spread \_\_\_\_\_

For purposes of calculating the interest rate for an Appendix, in no event shall the applicable swap rate be less than zero (0).

In the event ICE does not publish the applicable swap rate on the date of the execution of an Appendix, the parties agree to use the swap rate publication posted on the Bloomberg Terminal for that date, and if requested by Lessee, Lessor will provide a screen shot from the Bloomberg Terminal evidencing such swap rate.

The interest rate applied to an Appendix will remain fixed during the term of each Appendix, and the interest rate calculation listed above will remain fixed during the term of this MLPFA, and any renewal or extension thereof.

All payments shall be made in arrears for the preceding period, and shall be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, except as expressly provided in Section 6 of this MLPFA, provided with respect to any item of Equipment Lessor has provided the funds to finance such item of Equipment and no payment with respect to such item of Equipment has been withheld from a vendor. Lessor shall provide invoices to Lessees in a timely manner.

The obligation of each Lessee to pay lease payments hereunder is a current expense of that Lessee and not a debt in contravention of any applicable constitutional or statutory limitation or requirement, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies.

Lessees executing an Appendix reasonably believe that sufficient funds can be obtained to make all lease payments during the term of this MLPFA and hereby covenant that they will use their best efforts to obtain, maintain and properly request funds from which the MLPFA payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, and using their best efforts to have such portion of the budget approved. Lessees executing an Appendix also intend to make lease payments for the full term of this MLPFA and represent that the Equipment will be used for one or more authorized governmental or proprietary functions essential to their proper, efficient and economic operation.

#### 10. Use and Maintenance

Lessees agree to comply with all federal, state and local laws, ordinances, and regulations applicable to the possession, use or maintenance of the Equipment.

Lessees will not use, operate or maintain the Equipment improperly, carelessly, or in violation of any applicable law. Lessees will, at their expense, maintain, preserve and keep the Equipment in good repair, working order and condition.

Material alterations, modifications, additions or attachments to the Equipment must have the written approval of the Lessor, which consent shall not be unreasonably withheld, and such action shall be performed at the sole expense of each Lessee. All alterations, modifications, additions or attachments shall not reduce the value or usefulness of the Equipment.

During the term of this MLPFA, Lessor and its officers, employees or agents shall have the right at all reasonable times during business hours of each Lessee to enter into and upon the property of such Lessee for the purpose of inspecting the Equipment.

11. Insurance and Loss of Equipment

Lessees are self-insured through the West Virginia Board of Risk and Insurance Management and will protect the interests of the Lessor and Lessee against Equipment losses or damage. Lessees are also self-insured against liability related to the Equipment. In the event of any loss, damage, injury or accident involving the Equipment, the appropriate Lessee shall promptly provide the Lessor with written notice thereof and make available to Lessor all information and documentation thereof.

If any Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or if title to, or the temporary use of, the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the net proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification or replacement of the Equipment or, at Lessee's option, to the payment of the ratable portion of the purchase option price.

Any balance of the net proceeds remaining after such work or purchase has been completed shall be paid to the appropriate Lessee. Net proceeds shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses incurred in the collection of such claims or award. If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall either: (a) Complete the work and pay any cost in excess of the amount of net proceeds; or (b) pay to Lessor the purchase option price. The amount of the net proceeds in excess of the then applicable purchase option price, if any, may be retained by Lessee.

In the event the purchase option payment for any item(s) of Equipment is paid in accordance with this section Lessor agrees to release any security interest on that item(s) of Equipment.

12. Title to Leased Equipment

During the term of this MLPFA, title to the Equipment listed in an Appendix shall vest in the related Lessee so long as such Lessee shall not be in default or this MLPFA shall not have been terminated as to such Equipment. To secure all obligations hereunder, the related Lessee hereby grants to Lessor a security interest in any and all right, title and interest of Lessee in the Equipment, any related Acquisition Fund, and any proceeds of the foregoing. Lessee shall promptly discharge any mechanics', materialmen's or other liens placed on the Equipment.

Lessor shall convey all of the Lessor's right and interest in and to the Equipment listed in an Appendix to Lessee upon payment of all the lease payments required in accordance with the related Appendix or the purchase option price set forth in the applicable payment schedule, if the Lessee is not on such date in default as to any terms of this MLPFA.

13. Taxes and Other Charges

Lessees represent that they are exempt from federal, state and local taxation, and as such, shall not be liable or responsible for the payment or reimbursement of any tax of any type incurred in connection with this MLPFA, nor will they file any tax returns or reports on behalf of Lessor or its assignees.

As title to the Equipment shall vest in the appropriate Lessees during the term of this MLPFA, the Equipment is exempt from personal property tax pursuant to West Virginia Code § 11-3-9(a)(27). Each Lessee also represents that, to the best of its knowledge, no licensing or titling fees based upon the use, possession or acquisition of the Equipment are due under the current laws of West Virginia.

It is the intention of the Lessor and Lessees that the interest portion of the lease payments made under this MLPFA be and remain exempt from federal income taxation. Lessees covenant that they will take any and all action reasonably necessary to maintain the exemption from federal income taxation of the interest portion of the lease payments, and that they will not perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating or denying the exemption from federal income taxation of the interest portion of the lease payments, including, 'without limitation, leasing all or any portion of the Equipment or contracting with a third party for the use or operation of all or any portion of the Equipment if entering into such lease or contract would have such effect.

Upon the occurrence of a determination that the interest component of rental payments payable pursuant to an Appendix is includible for federal income tax purposes in the gross income of the Lessor due to a Lessee's action or failure to take any action, the Lessee shall pay to the Lessor upon demand (i) an amount which, with respect to rental payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state, and local taxes imposed on the interest due through the date of such event), will restore to the Lessor its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of rental payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Appendix through the date of such event and (ii) as additional rental payments to the Lessor on each succeeding rental payment date such amount as will maintain such after-tax yield to the Lessor.

14. Assignment

This MLPFA, the Appendices, and the obligations of Lessees to make payments thereunder, may not be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or sub-assignees by Lessor, except upon the written consent of the appropriate Lessee, the Purchasing Division, and the Attorney General's office (as to form) which consent will not be unreasonably withheld or delayed. Further, Lessor hereby covenants not to sell or offer to sell this MLPFA through, nor shall this MLPFA be sold through, (1) a certificate of participation program, whereby two or more interests are created in the MLPFA, the Equipment or the lease payments; or (2)

other similar instruments, agreements, securitizations and obligations through a pool, trust, limited partnership, or other entity, except with the express written consent of Lessee.

To request consent to assign Lessor's interest herein, in whole or in part, Lessor will cause a written request to assign to be sent to the appropriate Lessee, requesting approval. Upon submission of the request, Lessor shall provide the Lessee with a duplicate original counterpart of the documents effectuating the assignment, or a written notice signed by both Lessor and the assignee confirming the assignment of Lessor's interest in one or more Appendices, the name and address of the assignee, and stating that assignee accepts the assignment under the terms and conditions of this MLPFA. Any assignment documents or other instruments of sale will then be submitted to the Purchasing Division and must also be approved as to form by the Attorney General.

Upon receipt of a request to assign, the Lessee will notify Lessor in writing of its decision. In the event the Lessee approves the request to assign, the Lessee shall (i) acknowledge its approval in writing to Lessor, and (ii) record the assignment in its book entry system as that term is defined in the Internal Revenue Code of 1986, as amended. Upon assignment of a Lessee's interest herein, such Lessee will cause written notice of such assignment to be sent to Lessor disclosing the name and address of an assignee. No further action will be required by Lessor or by Lessee to evidence an assignment.

Lessees agree to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, set-off or counterclaim whatsoever, whether arising from a breach of the purchase order for the Equipment or otherwise, that such Lessee may from time to time have against any provider of the Equipment. Lessees agree to execute all documents, including notices of assignment, chattel mortgages or financing statements, which may be reasonably requested by Lessor or assignee to protect its interests in the Equipment and in this MLPFA.

During the term of this MLPFA, the Lessees shall each keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended. The Lessees may require the person requesting any transfer to reimburse them for any tax or other governmental charge payable in connection therewith.

This MLPFA and the interest of the Lessees in the Equipment may not be sold, assigned or encumbered by any Lessee without the prior written consent of Lessor, except that each Lessee shall have the right to assign or MLPFA the Equipment, in whole or in part, to other agencies or the State of West Virginia for governmental use only. Any such transfer or lease of the Equipment shall not diminish Lessee's obligations to make payments under this MLPFA.

15. Indemnification

The laws and Constitution of West Virginia prohibit the Lessees from protecting, holding harmless or indemnifying Lessor from and against any liability, obligations, losses, claims or damages whatsoever. Therefore, the Lessees only agree to be responsible for their own actions under this MLPFA.

16. Personal Property

The Equipment is and shall at all times during the lease term be and remain personal property.

17. Option to Purchase

Lessees shall be entitled to purchase the Equipment as follows:

- (a) Upon payment of all lease and other payments required under an Appendix; or
- (b) Upon written notice delivered to Lessor by the appropriate Lessee at least thirty (30) days before the proposed date for payment, and upon the payment on such date of the purchase option price for that Appendix.

As used herein, purchase option price means the amount equal to the outstanding principal, as set forth in the payment schedule, plus any unpaid interest that has accrued on such principal to the date of payment of the purchase option price, provided that any other sum due under this MLPFA has or is being paid, payable at the option of Lessee for the purpose of purchasing the Equipment.

A Lessee may, at Lessee's option, make partial prepayments of a portion of the purchase option price upon written notice delivered at least thirty (30) days in advance of the proposed date for payment and upon payment on such date of the partial prepayment, being an amount equal to a portion of the outstanding principal set forth in the payment schedule and any unpaid interest that has accrued on such portion of the outstanding principal to the date of payment of the partial prepayment. As provided herein, if any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under an Appendix, then the amount of the funding remaining shall be applied as a partial prepayment toward that Appendix.

A revised payment schedule reflecting all partial prepayments, consistent with the financing structure contemplated herein, to reflect such partial prepayment shall be attached to the related Appendix as a change order to the Appendix. Partial prepayments shall entitle Lessee to a release of any security interest on the item(s) of Equipment which have been prepaid in full.

18. Event of Default

The following constitute an "Event of Default" under this MLPFA:

- (a) Failure by a Lessee to pay any lease payment or other payment required to be paid under an Appendix within forty-five (45) days of when due; or
- (b) Failure by a Lessee to maintain insurance on the Equipment in accordance with this MLPFA; or
- (c) Failure by a Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of thirty (30) days after written notice is given to the Lessee by Lessor, specifying such failure and requesting that it be remedied, provided that if the failure stated in such notice cannot be corrected within such thirty (30) day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; or
- (d) Initiation by or against a Lessee of a proceeding under any federal or state bankruptcy or insolvency laws.

An Event of Non-appropriation shall not be deemed an Event of Default. Furthermore, a default under one Appendix shall not be deemed an Event of Default under any other Appendix.

19. Remedies on Default

Upon the occurrence of an Event of Default as specified in this MLPFA, Lessor shall provide written notification of default which that Lessee must remedy within thirty (30) days from the date of notice of default, or Lessor shall have the right, at its option, without any further demand or notice, to pursue anyone or more of the following remedial steps:

- (a) Terminate this MLPFA and retake possession of the Equipment and sell, lease, sublease or make other disposition of the Equipment in a reasonable and commercial manner;
- (b) Declare an amount equal to all payments due during the fiscal year in which the default occurred to be immediately due and payable, whereupon the same shall become immediately due and payable; or
- (c) Proceed by appropriate court action to enforce performance by the Lessee of the applicable covenants of this MLPFA or to recover for the breach thereof.

All of Lessee's right, title and interest in any Equipment the possession of which is retaken by Lessor upon the occurrence of an Event of Default shall terminate immediately upon such repossession. Lessee agrees to return the Equipment to Lessor, together with a release all of Lessee's title and interest therein. It is the intent of the parties hereto that any transfer of title to Lessor shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this MLPFA or now hereafter existing at law or in equity.

20. Force Majeure

If by reason of force majeure, Lessor or a Lessee is unable, in whole or in part, to carry out its obligations under this MLPFA, other than payments of lease payments or other payments required hereunder, Lessor or Lessee, as the case may be, shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State of West Virginia or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

21. Escrow Agent

Lessor shall have the right to designate an entity to act as the Escrow Agent and an Escrow Account for the purpose of holding and administering special trust funds designated as Acquisition Funds for the benefit of Lessor and the appropriate Lessee. The appointment of BOKE National Association as Escrow Agent is hereby acknowledged. The Master Escrow and Account Control Agreement attached hereto as Attachment M will govern the operation and use of the Escrow Account.

22. Renewal

Upon written mutual agreement of the parties, this MLPFA may be renewed under the same terms and conditions for a maximum of three (3) additional terms of one (1) year each, or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 36 months in total. A written renewal notice, as initiated by either party evidencing the intent to renew the MLPFA, shall be provided to the other party at least ninety (90) days prior to the expiration of the current term of the MLPFA. If no renewal notice is provided to one party by the other party prior to expiration, this MLPFA will terminate on the expiration date.

23. Notices

All notices to be given under this MLPFA shall be made in writing and mailed to the other party at its address set forth in the appropriate Appendix or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days subsequent to mailing.

24. Binding Effect

This MLPFA shall inure to the benefit of and shall be binding upon Lessor and Lessees and their respective successors and assigns.

25. Severability

In the event any provision of this MLPFA shall be held invalid, prohibited or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

26. Amendments

All amendments, modifications, alterations or changes to this MLPFA shall be in writing and signed by both parties.

27. Execution in Counterparts

This MLPFA may be executed in several counterparts. The parties hereto agree that multiple originals of this MLPFA have been executed.

28. Section Headings

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this MLPFA.

29. Governing Law

This MLPFA shall be governed by and construed in accordance with the laws of the State of West Virginia.

30. Delivery of Related Documents

Upon the request of the Lessor, a Lessee will provide all documentation reasonably requested by the Lessor, including, without limitation, (i) annual audited financial statements within 270 days of Lessee's fiscal year end; (ii) Lessee's annual budget for the following fiscal year when approved; and (iii) such other financial statements and information as Lessor may reasonably request. In the event an Internal Revenue Service Form 8038-G or 8038-GC needs to be filed in connection with this transaction, Lessee shall prepare and file such form. A copy of the form filed will be sent to Lessor for its records.

31. **Electronic Signature:** This Agreement, any Schedule, and any other documents or instruments executed by either party in connection herewith and therewith (collectively the "Related Documents"), may be executed and then a copy thereof delivered by facsimile or email. Any such signatures shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon after such request as reasonably practical.

32. Entire Agreement: Waiver

This MLPFA, together with the Appendices, Request for Quotation ("RFQ"), purchase order(s) and Addendum(s) thereto, purchase order(s) and other attachments hereto, and other documents or instruments executed by Lessor, the Purchasing Division, and/or Lessees in connection herewith, constitute the entire agreement between the parties with respect to the Equipment. The waiver by one party of any breach of any term, covenant or condition hereto must be in writing and shall not operate as a waiver of any subsequent breach thereof.

33. **Information Required Under USA PATRIOT Act:**

The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal Regulations that became effective on October 1, 2003 (Section 326 of the USA Patriot Act), and as subsequently amended, all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.



WITNESS THE FOLLOWING SIGNATURES:

LESSOR Banc of America Public Capital Corp

PURCHASING DIVISION, DEPT OF ADMINISTRATION, STATE OF WV

BY: [Signature]

BY: [Signature]

TITLE: Authorized Agent

TITLE: Purchasing Director

APPROVED AS TO FORM THIS

16th DAY OF January, 2021.

BY: [Signature]

TITLE: ASSISTANT ATTORNEY GENERAL

List of Closing Documents for this Master MLPFA:

- Lessor's Incumbency Certificate
- Notice and Consent to Assignment, if necessary
- Opinion of Counsel Letter (MLPFA)

Attachments:

- A. Counterpart No.1 - Lessor's Original
- B. Counterpart No.2 - Lessee's Copy
- C. Equipment Schedule (Copies of Purchase Orders)
- D. Payment Schedule
- E. Certificate of Essential Use
- F. Acceptance Certificate and Request for Payment
- G. Tax Compliance Agreement and No Arbitrage Certificate  
G1. Exhibit A
- H. IRS Form 8038G, or 8038-GC (completed by Lessee)
- I. Sales Tax: Exemption
- J. Opinion of Lessee's Counsel (Each Appendix)
- K. Submission Request
- L. ICE Report Center SWAP USD 1100 Rate (as of 9/10/20-for example purpose)
- M. Equipment financed from 2017-2020
- N. Master Escrow and Account Control Agreement

**MASTER LEASE PURCHASE FINANCING AGREEMENT  
PURCHASE ORDER  
APPENDIX # \_\_\_\_\_**

**THIS APPENDIX** ("Appendix"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, ("Lessor") and the \_\_\_\_\_, ("Lessee"), to that MASTER LEASE PURCHASE FINANCING AGREEMENT ("Lease") dated \_\_\_\_\_ 20\_\_\_\_, by and between Lessor and the Purchasing Division of the Department of Administration of the State of West Virginia ("Purchasing").

The parties hereto do mutually covenant and agree, as follows:

1. This Appendix is made a part of the Lease and hereby attached thereto and the terms and conditions of the Lease control this Appendix.
2. The term of this Appendix shall commence \_\_\_\_\_ 20\_\_\_\_, and shall terminate in accordance with the Lease.
3. The Equipment financed by Lessor is listed in the attached Equipment Schedule.
4. Payments shall be made by Lessee in accordance with the attached Payment Schedule and the Lease.
5. Funds in the amount of \$\_\_\_\_\_ will be deposited in an escrow account. If the dollar amount in this paragraph 5 is zero, then no funds have been deposited into escrow for this Appendix.

This is one of two serially numbered, manually executed counterparts of this document. To the extent that this Appendix constitutes chattel paper under the Uniform Commercial Code, a security interest in this Appendix may be created through the transfer and possession of Counterpart No. 1 only, without the need to transfer possession of any other original or counterpart or copy of this Appendix or any original or counterpart or copy of any exhibits, addenda, schedules, certificates, riders, or other documents and instruments executed and delivered in connection with this Appendix.

WITNESS THE FOLLOWING SIGNATURES:

LESSOR: \_\_\_\_\_ LESSEE: \_\_\_\_\_

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

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

APPROVED: \_\_\_\_\_  
LESSEE'S LEGAL COUNSEL

**Counterpart No. 1 - Lessor's Copy**

**MASTER LEASE PURCHASE FINANCING AGREEMENT  
PURCHASE ORDER  
APPENDIX # \_\_\_\_\_**

**THIS APPENDIX** ("Appendix"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, ("Lessor") and the \_\_\_\_\_, ("Lessee"), to that MASTER LEASE PURCHASE FINANCING AGREEMENT ("Lease") dated \_\_\_\_\_ 20\_\_\_\_, by and between Lessor and the Purchasing Division of the Department of Administration of the State of West Virginia ("Purchasing").

The parties hereto do mutually covenant and agree, as follows:

1. This Appendix is made a part of the Lease and hereby attached thereto and the terms and conditions of the Lease control this Appendix.
2. The term of this Appendix shall commence \_\_\_\_\_ 20\_\_\_\_, and shall terminate in accordance with the Lease.
3. The Equipment financed by Lessor is listed in the attached Equipment Schedule.
4. Payments shall be made by Lessee in accordance with the attached Payment Schedule and the Lease.
5. Funds in the amount of \$\_\_\_\_\_ will be deposited in an escrow account. If the dollar amount in this paragraph 5 is zero, then no funds have been deposited into escrow for this Appendix.

This is one of two serially numbered, manually executed counterparts of this document. To the extent that this Appendix constitutes chattel paper under the Uniform Commercial Code, a security interest in this Appendix may be created through the transfer and possession of Counterpart No. 1 only, without the need to transfer possession of any other original or counterpart or copy of this Appendix or any original or counterpart or copy of any exhibits, addenda, schedules, certificates, riders, or other documents and instruments executed and delivered in connection with this Appendix.

WITNESS THE FOLLOWING SIGNATURES:

LESSOR: \_\_\_\_\_ LESSEE: \_\_\_\_\_

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

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

APPROVED: \_\_\_\_\_  
LESSEE'S LEGAL COUNSEL

**Counterpart No. 2 - Lessee's Copy**





CERTIFICATE OF ESSENTIAL USE

THE UNDERSIGNED, \_\_\_\_\_ of the State of West Virginia, on behalf of the named Lessee in that certain APPENDIX \_\_\_\_\_ to the Lease Purchase Financing Agreement ("Appendix") dated \_\_\_\_\_, with \_\_\_\_\_, Lessor, hereby certifies as follows:

1. The Equipment will be used by the Lessee for the specific purpose of \_\_\_\_\_.
2. The Equipment is essential for the functioning of Lessee and is immediately needed by Lessee. Such need is neither temporary nor expected to diminish during the term of the Lease. The Equipment is expected to be used by Lessee for a period in excess of the term of the Appendix.
3. Funds for lease payments are expected to come from the \_\_\_\_\_.
4. The Appendix was issued under and pursuant to West Virginia law to finance the acquisition of the Equipment described therein.
5. Pursuant to the Appendix, Lessee is entitled to receive the Equipment in consideration for the obligation under the Appendix. The Equipment will be used in furtherance of the public purposes of Lessee. The Lessee does not intend to sell or to otherwise dispose of the Equipment during the term of the Appendix.
6. Lessee expects to make lease payments from its annual appropriation. The remaining funds of the Lessee are not reasonably expected to be used to make such payments and no other monies are pledged to the Appendix.
7. Lessee has not received notice that this Certificate may not be relied upon with respect to its own debt issues nor has it been advised that any adverse action by the Commissioner of the Internal Revenue Service is contemplated.
8. None of the proceeds of the Appendix or the investment earnings thereon will be used, directly or indirectly, in any trade or business carried on or by any person other than a "governmental unit" within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended ("Code").
9. Where an Acquisition Fund is created, Lessee hereby appoints the Escrow Agent as its agent for the purpose of maintaining a book entry system as required by the Code. In compliance with Section 149(a) of the Code, Lessee agrees to affix a copy of each notification of assignment to Lessee's counterpart of the Appendix.
10. No more than 10% of the use of the Equipment in any month will be by persons or entities other than the Lessee or its employees on matters relating to such employment, and no

more than 5% of use of the Equipment in any month will be unrelated to use by or for the Lessee. No management contract shall be entered into with respect to the Equipment unless (a) at least half of the compensation is on a periodic, fixed-fee basis; (b) no compensation is based on a share of net profits; and (c) Lessee is able to terminate the contract without penalty at the end of any three years.

11. The undersigned has the power and authority to execute this Certificate on behalf of Lessee.

To the best of my knowledge, information, and belief, the expectations expressed herein are reasonable and there are no facts, estimates, or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
LESSEE :



**ACCEPTANCE CERTIFICATE AND REQUEST FOR PAYMENT**

Number xx  
APPENDIX NO. \_\_\_\_\_

The Lessee, \_\_\_\_\_, hereby accepts the equipment described below and requests the Lessor, \_\_\_\_\_, to pay to the person or corporation designated below as Payee, the sum set forth below in payment of the acquisition and installation costs of the Equipment in accordance with the Appendix issued to that Lease between Lessor and the Purchasing Division, Department of Administration of the State of West Virginia, on behalf of Lessee, dated \_\_\_\_\_, 20\_\_\_\_. The amount shown below is due and payable under the invoice of the Payee with respect to the Equipment and has not formed the basis of any prior request for payment. This Certificate is based upon facts, circumstances, estimates, and expectations of Lessee as of the date on which the Appendix was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances, and estimates are true and correct and such expectations are reasonable.

PAYEE:

AMOUNT: \$

DESCRIPTION OF EQUIPMENT: See Attached

DATED:

LESSEE:

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

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

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

LESSOR: \_\_\_\_\_

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

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

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

**TAX COMPLIANCE AGREEMENT  
AND  
NO ARBITRAGE CERTIFICATE**

THIS TAX COMPLIANCE AGREEMENT AND NO ARBITRAGE CERTIFICATE ("Certificate") is issued in connection with the Master Lease Purchase Financing Agreement dated \_\_\_\_\_ (the "Lease") by and between \_\_\_\_\_, ("Lessor") and the Purchasing Division of the Department of Administration of the State of West Virginia ("Purchasing"), on behalf of duly organized and existing agencies thereof that enter into Appendices pursuant thereto ("Lessees").

In connection with the execution and delivery of Appendix No. \_\_\_\_\_ and related documents (consisting of a Payment Schedule, Equipment Schedule to Appendix No. \_\_\_\_\_, Certificate of Essential Use, and Opinion of Lessee's Counsel), all dated as of \_\_\_\_\_, 20\_\_\_\_, and constituting Appendix No. \_\_\_\_\_ under the Lease (collectively, the "Appendix"), Lessee ("Lessee") that will be using the items of Equipment subject to the Appendix, by duly authorized officers, hereby certify as follows with respect to the financing of \$ \_\_\_\_\_ (the "Takedown Amount") of Equipment pursuant to the Appendix and the Lease:

1. In General.

1.1 This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee on the date hereof as to future events regarding the financing of certain equipment by Lessee as described in the Lease and all related documents executed pursuant thereto, including the Appendix.

1.2 The undersigned are duly authorized to, and are executing and delivering this Certificate with respect to the Lessee on behalf of Lessee as an officer of Lessee, each delegated with the responsibility of reviewing, executing, and administering the Lease and the Appendix. This Certificate may be relied upon as the certificate of the Lessee.

1.3 The undersigned are familiar with the facts, circumstances and estimates herein certified. To the best of the undersigned's knowledge, information and belief, the expectations contained in this Certificate are reasonable.

1.4 Lessee has not been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer whose certifications as to arbitrage and related matters may not be relied upon, or of any disqualification of Lessee by the Internal Revenue Service because a certification made by the Lessee contains a material misrepresentation.

2. Purpose of the Appendix.

The Appendix has been entered into by the Lessee for the purpose of financing the cost of acquiring, equipping and installing certain equipment which is essential to the governmental functions of the Lessee (the "Equipment"), which Equipment is or will be more specifically described in the Acceptance Certificates and Requests for Payment executed or to be executed by

the Lessee and made a part of the Appendix. The Appendix was executed and delivered by the Lessee pursuant to the Lease for the purpose of obtaining funds to be paid to the vendors of the Equipment. Included as part of the Appendix is a Payment Schedule which sets forth the principal and interest components of each Lease Payment to be made by the Lessee under the financing transaction evidenced by the Appendix and the Lease. The aggregate principal amount of the financing shown on the Payment Schedule, being the Takedown Amount, is expected to be used to pay the acquisition cost of the Equipment to vendors of the Equipment within six months of the date hereof, with the acquisition cost of each item of Equipment to be paid to the vendor thereof upon execution and delivery by the Lessee to the Lessor of an Acceptance Certificate and Request for Payment with respect thereto.

3. Proceeds of Appendix.

3.1 Of the total Takedown Amount of \$ \_\_\_\_\_, \$ \_\_\_\_\_ is to be paid to Lessee or the vendors of the Equipment by the Lessor on the date hereof pursuant to Acceptance Certificate(s) and Request(s) for Payment executed by Lessee and attached to the Appendix. The remaining balance of the Takedown Amount, or \$ \_\_\_\_\_, plus interest earnings thereon (the "Acquisition Fund") is expected to be used to pay the remaining acquisition costs of the Equipment on or before the six-month anniversary of the date hereof as a result of the Lessee submitting Acceptance Certificate(s) and Request(s) for Payment with respect thereto by such date. Pending use of the Acquisition Fund to pay Equipment acquisition costs, such amount will be held by the Escrow Agent in escrow, with interest earnings thereon being credited to the account of the Lessee. In the event that the full Acquisition Fund, plus interest earnings thereon, has not been used to pay acquisition costs of Equipment on or before the six-month anniversary of the date hereof, the Lessee hereby agrees that such failure shall constitute notice that no additional funds are needed from the Acquisition Fund created with the proceeds of the Appendix and directs the Lessor to apply such remaining amount, less expenses, on such date first against the lease payment due on that date or, if no lease payment, with any amount remaining after such application to be applied to prepayment of Lessee's lease payment obligation under the Appendix.

3.2 To the extent that the Acquisition Fund is invested in certificates of deposit, time deposits, or demand deposits with a bank or savings institution provided that such is insured by the Federal Deposit Insurance Corporation, the Lessee will insure that the certificates of deposit are traded on an active secondary market or the financial institution accepting such deposits has certified that the deposits produce a market yield equal to or in excess of the yield on Treasury securities or comparable obligations traded on an active secondary market.

3.3 Payments due under the Payment Schedule included as part of the Appendix will be made from funds of Lessee with monies appropriated to it. Lessee does not expect that any sinking or other similar fund for the payment of the principal of and interest on the amount financed pursuant to the Appendix will be created or established.

3.4 The Lessee does not expect to sell or otherwise dispose of the Equipment being financed pursuant to the Appendix, in whole or in part, at a date which is significantly earlier

than the due date of the final lease payment due under the Payment Schedule included as part of the Appendix.

3.5 The Takedown Amount represents and equals the purchase price of Appendix. By a Certificate attached hereto as Exhibit A, the Lessor has set out information regarding the fair market value at which the Lessor could transfer its interest in the lease of Equipment pursuant to the Appendix.

4. Exempt Use.

4.1 None of the proceeds of the financing pursuant to the Appendix, or the Equipment, will be used in any "private business use" within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended (the "Code").

4.2 None of the proceeds of the financing pursuant to the Appendix will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

5. No Federal Guarantee.

5.1 Payment of the principal or interest due under the Payment Schedule included as part of the financing pursuant to the Appendix is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

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

6. Miscellaneous.

6.1 The Lessee agrees to comply with the rebate requirement set forth in Section 148(f) of the Code in the event that for any reason the entire proceeds of the Appendix are not expended, and the Acquisition Fund fully depleted, within six months from the date hereof such that Section 148(f)(4)(B) is applicable to the financing pursuant to the Appendix.

6.2 The Lessee shall keep a complete and accurate record of all owners or assignees of the Lease and the financing of Equipment pursuant to the Appendix in form and substance satisfactory to comply with Section 149(a) of the Code.

6.3 The Lessor or the Escrow Agent, as applicable shall maintain complete and accurate records establishing the expenditure of the proceeds of the financing pursuant to the Appendix and interest earning thereon.

IN WITNESS WHEREOF, We have executed this Tax Compliance Agreement and No Arbitrage Certificate on behalf of the Lessee named below, as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

Lessee:

\_\_\_\_\_

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

**EXHIBIT A**

**TO TAX COMPLIANCE AGREEMENT  
AND NO ARBITRAGE CERTIFICATE**

**CERTIFICATE OF LESSOR**

\_\_\_\_\_, as Lessor ("Lessor"), under the Master Lease Purchase Financing Agreement dated as of \_\_\_\_\_ (the "Lease") between the Lessor and the Purchasing Division of the Department of Administration of the State of West Virginia ("Purchasing"), on behalf of the agencies of the State specified as lessees on the Appendices attached to the Lease ("Lessees") and under the Appendix and related documents constituting Appendix No. \_\_\_\_\_ under the Lease (the "Appendix"), which Appendix relates to the financing of \$ \_\_\_\_\_ of Equipment and was executed and delivered by \_\_\_\_\_ as the Lessee (the "Lessee") to the Lessor on the date hereof, hereby certifies as follows in connection with the Lessee's execution of the Appendix.

1. On the date hereof, the Lessor has acquired its interest in the Appendix for the aggregate purchase price of \$ \_\_\_\_\_. No payment was made in respect to accrued interest on the Appendix.
2. The Lessor acknowledges that any assignment of the Appendix must comply with the terms of Article 14 of the Lease.
3. As of the date hereof the fair market value of the Appendix is not greater than \$ \_\_\_\_\_.

IN WITNESS WHEREOF, this Certificate is executed on behalf of the Lessor as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST/WITNESS:

LESSOR: \_\_\_\_\_

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

Form **8038-G**

(Rev. September 2011)

Department of the Treasury  
Internal Revenue Service

**Information Return for Tax-Exempt Governmental Obligations**

▶ Under Internal Revenue Code section 149(e)

▶ See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

**Part I Reporting Authority**

If Amended Return, check here

1 Issuer's name		2 Issuer's employer identification number (EIN)	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)	
6 City, town, or post office, state, and ZIP code		7 Date of issue	
8 Name of issue		9 CUSIP number	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

**Part II Type of Issue (enter the issue price). See the instructions and attach schedule.**

11 Education	11
12 Health and hospital	12
13 Transportation	13
14 Public safety	14
15 Environment (including sewage bonds)	15
16 Housing	16
17 Utilities	17
18 Other. Describe ▶	18
19 If obligations are TANs or FIANs, check only box 19a	<input type="checkbox"/>
If obligations are BANs, check only box 19b	<input type="checkbox"/>
20 If obligations are in the form of a lease or installment sale, check box	<input type="checkbox"/>

**Part III Description of Obligations. Complete for the entire issue for which this form is being filed.**

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23
24 Proceeds used for bond issuance costs (including underwriters' discount)	24
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issues	27
28 Proceeds used to advance refund prior issues	28
29 Total (add lines 24 through 28)	29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

**Part V Description of Refunded Bonds. Complete this part only for refunding bonds.**

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	▶	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	▶	years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	▶	
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	▶	

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 83773S

Form **8038-G** (Rev. 9-2011)

**Part VI Miscellaneous**

<b>35</b>	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>		
<b>36a</b>	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>		
<b>b</b>	Enter the final maturity date of the GIC ▶ _____			
<b>c</b>	Enter the name of the GIC provider ▶ _____			
<b>37</b>	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>		
<b>38a</b>	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
<b>b</b>	Enter the date of the master pool obligation ▶ _____			
<b>c</b>	Enter the EIN of the issuer of the master pool obligation ▶ _____			
<b>d</b>	Enter the name of the issuer of the master pool obligation ▶ _____			
<b>39</b>	If the issuer has designated the issue under section 285(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ▶ <input type="checkbox"/>			
<b>40</b>	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ▶ <input type="checkbox"/>			
<b>41a</b>	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
<b>b</b>	Name of hedge provider ▶ _____			
<b>c</b>	Type of hedge ▶ _____			
<b>d</b>	Term of hedge ▶ _____			
<b>42</b>	If the issuer has superintegrated the hedge, check box . . . . . ▶ <input type="checkbox"/>			
<b>43</b>	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ▶ <input type="checkbox"/>			
<b>44</b>	If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ▶ <input type="checkbox"/>			
<b>45a</b>	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement . . . . . ▶ _____			
<b>b</b>	Enter the date the official intent was adopted ▶ _____			

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	Signature of issuer's authorized representative		Date	Type or print name and title
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed <b>PTIN</b>
	Firm's name ▶	Firm's EIN ▶		
	Firm's address ▶	Phone no.		



## Streamlined Sales and Use Tax Agreement

## Certificate of Exemption

This is a multi-state form. Not all states allow all exemptions listed on this form. Purchasers are responsible for knowing if they qualify to claim exemption from tax in the state that would otherwise be due tax on this sale. The seller may be required to provide this exemption certificate (or the data elements required on the form) to a state that would otherwise be due tax on this sale.

The purchaser will be held liable for any tax and interest, and possibly civil and criminal penalties imposed by the member state, if the purchaser is not eligible to claim this exemption. A seller may not accept a certificate of exemption for an entity-based exemption on a sale made at a location operated by the seller within the designated state if the state does not allow such an entity-based exemption.

1.  Check if you are attaching the Multi-state Supplemental form.  
  If not, enter the two-letter postal abbreviation for the state under whose laws you are claiming exemption.

2.  Check if this certificate is for a single purchase and enter the related invoice/purchase order # \_\_\_\_\_.

## 3. Please print

Name of purchaser <u>State of WV, Department of Administration</u>			
Business Address		City	State
<u>2101 Washington St E Bldg 17</u>		<u>Charleston</u>	<u>WV</u>
Purchaser's Tax ID Number		State of Issue	Country of Issue
<u>55052658001</u>		<u>WV</u>	<u>USA</u>
If no Tax ID Number	FEIN	Driver's License Number/State Issued ID Number	Foreign diplomat number
Enter one of the following:	<u>550526580</u>	State of Issue: Number	
Name of seller from whom you are purchasing, leasing or renting			
Seller's address		City	State
			Zip code

## 4. Type of business. Circle the number that describes your business

- |   |                                       |
|---|---------------------------------------|
| 01 Accommodation and food services            | 11 Transportation and warehousing     |
| 02 Agricultural, forestry, fishing, hunting   | 12 Utilities                          |
| 03 Construction                               | 13 Wholesale trade                    |
| 04 Finance and insurance                      | 14 Business services                  |
| 05 Information, publishing and communications | 15 Professional services              |
| 06 Manufacturing                              | 16 Education and health-care services |
| 07 Mining                                     | 17 Nonprofit organization             |
| 08 Real estate                                | <u>18</u> Government                  |
| 09 Rental and leasing                         | 19 Not a business                     |
| 10 Retail trade                               | 20 Other (explain) _____              |

## 5. Reason for exemption. Circle the letter that identifies the reason for the exemption.

- |   |   |
|---|---|
| A Federal government (department) _____               | H Agricultural production # _____             |
| B State or local government (name) <u>State of WV</u> | I Industrial production/manufacturing # _____ |
| C Tribal government (name) _____                      | J Direct pay permit # _____                   |
| D Foreign diplomat # _____                            | K Direct mail # _____                         |
| E Charitable organization # _____                     | L Other (explain) _____                       |
| F Religious or educational organization # _____       |   |
| G Resale # _____                                      |   |

## 6. Sign here. I declare that the information on this certificate is correct and complete to the best of my knowledge and belief.

Signature of Authorized Purchaser

Print Name Here

Title

Date

**OPINION OF COUNSEL LETTER (FOR EACH APPENDIX)**  
**(Lessee Letterhead)**

Lessor \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RE: Master Lease Purchase Financing Agreement**

Gentlemen:

As counsel for [insert name and title of counsel for Lessee], I have examined duly executed originals of the Master Lease Purchase Financing Agreement ("Lease") dated \_\_\_\_\_, between the State of West Virginia Department of Administration, Purchasing Division and \_\_\_\_\_, Lessor, and Appendix number \_\_\_\_\_ between \_\_\_\_\_ and Lessor. Based upon the examination and upon such other examination as I have deemed appropriate, I am of the opinion that:

1. The Lease has been duly authorized, executed, and delivered by Purchasing and is a legal, valid, and binding obligation of the Lessee, enforceable in accordance with its terms.
2. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way affecting the validity of the Lease.
3. The signatures of the officials of Lessee as they appear on the Appendix are true and genuine. I know said officials and know them to hold the positions set forth below their names.
4. West Virginia is a state within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings.

Very truly yours,

COUNSEL FOR LESSEE

STATE OF WEST VIRGINIA  
MASTER LEASE PROGRAM  
SUBMISSION FORM

Date: \_\_\_\_\_ Appendix Number 2017-

State Unit Requiring Equipment: \_\_\_\_\_

Finance Package Contact (Name & Title) \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overnight Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Billing Contact (Name & Title) \_\_\_\_\_

Billing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Description of Equipment Usage:**

Nature of State Unit=s Operation: \_\_\_\_\_  
Equipment Description: \_\_\_\_\_  
How is this equipment essential to operation? \_\_\_\_\_  
Is this replacement or additional equipment? \_\_\_\_\_  
If replacement, how old is current equipment and how often is equipment normally replaced? \_\_\_\_\_  
What is the expected useful life of this equipment? \_\_\_\_\_

Equipment Cost: \_\_\_\_\_ Term Requested: \_\_\_\_\_  
Down Payment: \_\_\_\_\_ Anticipated Delivery Date: \_\_\_\_\_

Amount Financed: \_\_\_\_\_

Are escrow funds to be invested? (please circle) YES NO

Is the agency a subunit of the State=s General Revenue Fund? \_\_\_\_\_  
If yes, we do not need financial statements. If no, please submit financial statements and current fiscal year operating budget.

**\*\* Attach a copy of the purchasing requisition**

We have reviewed the above request and certify that the request complies with the standards for the State Master Lease Program and certify that as of the request, it is our reasonable belief that funds will be available to make lease payments throughout the lease term.

\_\_\_\_\_  
Lessee Department of Administration

\_\_\_\_\_  
Date Date

\_\_\_\_\_  
Governor's Office Lessor

\_\_\_\_\_  
Date Date

9/14/2020

ICE Report Center - Data

MENU

# Report Center

## Welcome to the ICE Report Center

To view all report categories or recently viewed reports, please scroll down. Please note that the Data Tab has been renamed to FUTURES U.S. COMMODITY AND INDICES DATA below.

End Of Day report packages in .csv format are available for purchase on a subscription basis. [View Content](#)

REPORTS

V'AP

CATEGORY: ICE SWAP RATE MARKET: ICE BENCHMARK ADMINISTRATION

### Report Date

10-Sep-2020

### Series / Run

USD Rates 1100

Submit

## ICE Swap Rate Historical Rates

Export to CSV 10-SEP-2020

Tenor	USD Rates 1100	
	10-Sep-2020	
1 Year		0.24200
2 Years		0.22800
3 Years		0.23900
4 Years		0.27700
5 Years		0.33900
6 Years		0.41500
7 Years		0.49700
8 Years		0.57500
9 Years		0.64800
10 Years		0.71400
15 Years		0.93100
20 Years		1.04000
30 Years		1.10200

State of West Virginia  
Equipment Financed from  
2017-2020

<u>Appendix</u>	<u>Description</u>	<u>Amount</u>	<u>Funding Date</u>	<u>Maturity Date</u>
2017-01	Fleet - vehicles	1,282,875.00	2/16/2017	2/1/2021
2017-02	Fleet - vehicles	242,638.00	2/21/2017	3/1/2021
2017-03	Fleet - vehicles	1,140,264.00	5/15/2017	5/1/2021
2017-04	Fleet - vehicles	154,790.00	7/25/2017	8/1/2021
2017-05	Marshall University - softball field resurfacing	385,951.00	8/1/2017	8/1/2024
2017-06	Fleet - vehicles	1,940,919.00	8/29/2017	9/1/2021
2017-07	Fleet - vehicles	170,904.00	9/1/2017	9/1/2021
2017-08	Fairmont - airplane	397,250.00	12/19/2017	2/1/2025
2017-09	Fleet - vehicles	1,342,542.00	12/1/2017	12/1/2021
2017-10	Fleet - vehicles	460,514.00	1/9/2018	1/1/2022
2017-11	Fleet - vehicles	5,402,521.00	2/13/2018	2/1/2022
2017-12	Fairmont - airplane	145,000.00	2/27/2018	3/1/2025
2017-13	Fleet - vehicles	578,224.00	2/13/2018	2/1/2022
2017-14	Fleet - vehicles	139,385.00	3/20/2018	4/1/2022
2017-15	Fleet - vehicles	1,254,830.00	4/3/2018	4/1/2022
2017-16	Fairmont - airplane & flight control simulator	105,000.00	4/13/2018	4/1/2025
2017-17	Fleet - vehicles	262,840.00	5/11/2018	5/1/2022
2017-18	Fleet - vehicles	325,015.00	9/1/2018	8/1/2022
2017-19	Fleet - vehicles	2,627,765.00	4/1/2019	3/1/2023
2017-20	Fleet - vehicles	697,056.00	5/1/2019	4/1/2023
2017-21	Fleet - vehicles	237,974.00	6/1/2019	5/1/2023
2017-22	Fleet - vehicles	1,976,245.00	7/1/2019	6/1/2023
2017-23	Fleet - vehicles	2,011,430.00	9/1/2019	8/1/2023
2017-24	Fleet - vehicles	264,730.00	11/1/2019	10/1/2023
2017-25	Fleet - vehicles	282,321.00	11/1/2019	10/1/2023
2017-26	Fleet - vehicles	2,295,314.00	11/1/2019	10/1/2023
2017-28	Fleet - vehicles	371,691.00	3/1/2020	2/1/2024
2017-29	Fleet - vehicles	248,071.00	3/1/2020	2/1/2024
2017-30	Fleet - vehicles	2,018,455.00	4/1/2020	3/1/2024
2017-31	Fleet - vehicles	1,494,973.00	5/1/2020	4/1/2024
2017-32	Fleet - vehicles	1,518,098.00	6/1/2020	5/1/2024
2017-33	Fleet - vehicles	423,427.00	6/1/2020	5/1/2024
2017-34	Fleet - vehicles	731,714.00	7/1/2020	6/1/2024
2017-35	Fleet - vehicles	1,983,792.00	7/1/2020	6/1/2024
2017-36	Fleet - vehicles	415,027.00	9/1/2020	8/1/2024
	<b>Total Financed</b>	<b><u>35,329,545.00</u></b>		

## ATTACHMENT N

### Master Escrow and Account Control Agreement

This Master Escrow and Account Control Agreement (this "Agreement"), dated as of February 1, 2021, by and among Banc of America Public Capital Corp, a Kansas corporation (together with its successors and assigns, hereinafter referred to as "Lessor"), the Purchasing Division of the Department of Administration of the State of West Virginia, (hereinafter referred to as "Purchasing"), on behalf of certain agencies which constitute body politics duly organized and existing under the laws of the State of West Virginia (each, a "Lessee"), and BOKF, National Association, a national banking association organized under the laws of the United States of America (hereinafter referred to as "Escrow Agent").

Reference is made to that certain Master Lease Purchase Finance Agreement dated as of February 1, 2021 between Lessor and Purchasing (hereinafter referred to as the "MLPFA" or "Lease"), covering the acquisition and lease of certain Equipment from time to time by Lessees, as further documented in a related Appendix to the MLPFA. It is a requirement of the Lease that the Acquisition Amount of each Appendix be deposited into a segregated Escrow Account under terms satisfactory to Lessor and Purchasing, for the purpose of fully funding an Appendix, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment under such Appendix.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created an escrow fund to be known as the "Finance Division of the Department of Administration of the State of West Virginia Escrow Fund" (the "Escrow Fund"), and therein, separate accounts to be created from time to time in connection with the execution and delivery of an Appendix which requires funds to be deposited with the Escrow Agent (each, an "Escrow Account") to be held by the Escrow Agent for the purposes stated herein, for the benefit of Lessor, Purchasing and Lessees, to be held, disbursed and returned in accordance with the terms hereof.

(b) Escrow Agent shall deposit funds into an Escrow Account upon receipt of (i) an executed Appendix and (ii) written instructions from Lessor and Lessee directing Escrow Agent to create an Escrow Account for such Appendix and to deposit funds therein.

Lessee hereby directs the Escrow Agent to invest cash deposited into each Escrow Account in the Qualified Investment (defined below) identified as Federated Treasury Obligation Fund (TOTXX) In the event that TOTXX is not available, Purchasing (in consultation with the Finance Division) shall provide written instructions to the Escrow Agent to invest the funds on deposit in the Escrow Account(s) in another specified Qualified Investment. Interest or other amounts earned and received by the Escrow Agent with respect to an Escrow Account shall be deposited therein and comprise part of such Escrow Account. No investment shall be made

which would cause the Lease to be deemed an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended. If any cash is received for an Escrow Account after the cut-off time for TOTXX or other fund agreed to in writing by all parties as described above, the Escrow Agent shall hold such cash uninvested until the next Business Day. Interest on an Escrow Account shall become part of such Escrow Account, and gains and losses on the investment of the moneys on deposit in such Escrow Account shall be borne solely by the Lessee. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Accounts. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Accounts and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Accounts, except upon specific written instructions stated herein. For purposes of this Agreement, "Qualified Investments" means an investment account holding (a) direct general obligations of the United States of America, (b) obligations of which the timely payment of the principal and interest are fully and unconditionally guaranteed by the United States of America, or (c) certificates of deposit, time deposits, or demand deposits with any bank or savings institution insured to the maximum amount allowed by the Federal Deposit Insurance Corporation. The parties hereto acknowledge that Lessor shall not be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Accounts.

(c) Unless an Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in an Escrow Account are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment relating to such Escrow Account. Any moneys remaining in an Escrow Account on or after the earlier of (i) the last day of the eighteenth month after which funds were deposited into the applicable Escrow Account (the "Acquisition Period") or (ii) the date on which Lessee executes a final Acceptance Certificate and Request for Payment form with respect to such Escrow Account (a form of which is attached hereto as Schedule 1) shall be applied as provided in Section 4 hereof.

(d) Each Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in such Escrow Account, (ii) the date on which Lessee executes a final Acceptance Certificate and Request for Payment form or (iii) written notice given by Lessor of the occurrence of an Event of Default under the Lease or termination of the Lease due to an Event of Non-appropriation. Notwithstanding the foregoing, this Agreement shall not terminate nor shall an Escrow Account be closed until all funds deposited hereunder have been disbursed.

(e) In connection with this Agreement, Lessor shall deliver to the Escrow Agent an authorized signers form acceptable to the Escrow Agent and Lessee. In connection with the initial funding of each Escrow Account, Lessee shall deliver to Escrow Agent a copy of the Appendix, all related closing documents and the certificate of incumbency (attached hereto as Schedule II). The Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications reasonably believed by it to have been sent or given by a person or persons authorized on behalf of the parties. The Escrow Agent specifically allows for receiving direction by written or electronic transmission from an authorized representative of

Lessor identified on authorized signors form and from an authorized representative of Lessee identified on the certificate of incumbency in the form attached hereto as Schedule II.

In the event conflicting instructions as to the disposition of all or any portion of an Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement in the Circuit Court of Kanawha County, West Virginia. In connection therewith, Escrow Agent shall be entitled to retain its own legal counsel and to rely on the opinion of such counsel in good faith.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to Purchasing, each Lessee with funds on deposit in an Escrow Account, and Lessor of its intention to resign and of the proposed date of resignation (the "Effective Date"), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless. Such resignation shall take effect on the Effective Date, unless (a) no successor shall theretofore have been appointed and qualified, in which case such resignation shall be of no effect until such a successor Escrow Agent has so accepted and qualified or (b) an earlier resignation date and the appointment of a successor shall have been approved by Purchasing, each Lessee with funds on deposit in an Escrow Account, and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) Neither the Escrow Agent nor Lessor shall have any responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations of Escrow Agent or Lessor shall be read into this Agreement.

## 2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the applicable Escrow Account. Lessee will also represent the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. Escrow Agent shall have no duty to monitor or enforce Lessee's compliance with the foregoing covenant.

(b) Authorized Escrow Account Disbursements. It is agreed as between Lessee and Lessor that disbursements from an Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish



the purposes hereinafter described) the cost of acquiring the Equipment described in the related Appendix.

(c) Requisition Procedure. No disbursement from an Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from an Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of an Acceptance Certificate and Request for Payment

Each Acceptance Certificate and Request for Payment form shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as may be required by the MLPFA and any additional documentation reasonably requested by Lessor.

Lessee and Lessor agree that their execution of the Acceptance Certificate and Request for Payment form and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

3. Deposit to Escrow Account. Upon satisfaction of the conditions specified in the MLPFA, Lessor will cause the Acquisition Amount to be deposited in the Escrow Account.

4. Excessive Escrow Account. Upon receipt of written instructions from Lessor including a representation that one of the following conditions has been satisfied (upon which representation Escrow Agent shall conclusively rely), any funds remaining in an Escrow Account on or after the earlier of (a) the expiration of the applicable Acquisition Period or (b) the date on which Lessee executes an Acceptance Certificate and Request for Payment form for the related Appendix, or upon a termination of such Escrow Account as otherwise provided herein, shall be distributed by the Escrow Agent to the Lessor in order for the Lessor to apply such funds to amounts owed by Lessee under the MLPFA and applicable Appendix.

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

6. Control of Escrow Account. In order to perfect Lessor's security interest by means of control in (i) the Escrow Account established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Account,

(iii) all of Lessee's rights in respect of the Escrow Account, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lessor, Lessee and Escrow Agent further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the state of West Virginia ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Account investments shall be held in the name of the Escrow Agent, Escrow Agent hereby represents and warrants (a) that the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (b) that, at the time of execution and delivery of this Agreement, Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lessor if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided herein and in this paragraph (e) and subject to Section 1(b) hereof, Lessee will not, without the prior written consent of Lessor, withdraw any Collateral from the Escrow Account. Escrow Agent acknowledges that Lessor reserves the right, by delivery of written notice to Escrow Agent, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in an Escrow Account. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lessor to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and Lessee hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 8 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below.

Notices and other communications hereunder may be delivered or furnished by electronic mail provided that any formal notice be attached to an email message in PDF format and provided further that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt.

**If to Lessor:** Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration  
Fax: (443) 541-3057

**If to Purchasing:** West Virginia Purchasing Division  
2019 Washington Street, East  
Charleston, WV 25305  
**Attn:** Mark Atkins  
**Fax:** (304) 558-4115  
Email: Mark.A.Atkins@wv.gov

**If to Escrow Agent:** BOKF, NA  
200 N. Broadway, Suite 1710  
St. Louis, MO 63102  
Attention: Corporate Trust Department  
Telephone: (314) 375-5279  
Fax: (913) 802-5795

**If to Lessee:** Contact information located in applicable Appendix to the MLPFA (copy of which will be provided to Escrow Agent)

9. Lessee and Lessor understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "Tax Certification" shall mean an IRS form W-9 or W-8 as described above. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a foreign person, the Escrow Agent will withhold U.S. tax as required by law and report such earnings and taxes withheld, if any, for the benefit of such foreign person on IRS Form 1042-S (or any other required form), unless such earnings and withheld taxes are exempt from reporting under Treasury Regulation Section 1.1461-1(c)(2)(ii) or under other applicable law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and Lessee as payee. Escrow Agent shall recognize Lessee as the designated party for regulatory reporting purposes.

Lessee and Lessor agree that they are not relieved of their respective obligations, if any, to prepare and file information reports under Code Section 6041, and the Treasury regulations thereunder, with respect to amounts of imputed interest income, as determined pursuant to Code Sections 483 or 1272. The Escrow Agent shall not be responsible for determining or reporting such imputed interest.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia and the parties hereto consent to jurisdiction in the State of West Virginia and venue in either the Circuit Court of Kanawha County, or the West Virginia Claims commission depending on which location has statutory jurisdiction.

11. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

12. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

13. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

14. Escrow Agent will treat information related to this Agreement as confidential but, unless prohibited by law, Lessee and Lessor authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates and other representatives and advisors of Escrow Agent and third parties selected by any of them, wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessor will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and Lessee authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lessor and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Lessor and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process.

In Witness Whereof, the parties have executed this Escrow and Account Control Agreement as of the date first above written.

Banc of America Public Capital Corp  
as Lessor

Purchasing Division, Department of  
Administration, State of West Virginia  
Virginia

By: 

By: 

Name: Terri J. Preston

Name: L. Michael Sheets

Title: Authorized Agent

Title: Purchasing Director

BOKF, National Association  
As Escrow Agent

By: 

Name: VICTOR ZARRILLI

Title: SR. Vice President

SCHEDULE I

FORM OF ACCEPTANCE CERTIFICATE AND REQUEST

**ACCEPTANCE CERTIFICATE AND REQUEST FOR PAYMENT**

Number xx  
APPENDIX NO. \_\_\_\_\_

The Lessee, \_\_\_\_\_, hereby accepts the equipment described below and requests the Lessor, \_\_\_\_\_, to pay to the person or corporation designated below as Payee, the sum set forth below in payment of the acquisition and installation costs of the Equipment in accordance with the Appendix issued to that Lease between Lessor and the Purchasing Division, Department of Administration of the State of West Virginia, on behalf of Lessee, dated \_\_\_\_\_, 20\_\_\_\_. The amount shown below is due and payable under the invoice of the Payee with respect to the Equipment and has not formed the basis of any prior request for payment. This Certificate is based upon facts, circumstances, estimates, and expectations of Lessee as of the date on which the Appendix was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances, and estimates are true and correct and such expectations are reasonable.

PAYEE:

AMOUNT: \$

DESCRIPTION OF EQUIPMENT: See Attached

DATED:

LESSEE:

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

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

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

LESSOR: \_\_\_\_\_

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

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

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



**SCHEDULE II**

**FORM OF CERTIFICATE OF INCUMBENCY OF LESSEES**

**Certificate of Incumbency**

Client Name: \_\_\_\_\_ (“Lessee”)

As an Authorized officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor of such entity, and that the title and signature appearing beside each name is true and correct. The person below are authorized on behalf of the Lessee to execute, deliver and negotiate the Appendices entered into by Lessee pursuant to that certain Master Lease Purchase Financing Agreement dated as [December 1, 2016](the “MLPHFA”), between Banc of America Public Capital Corp and the Purchasing Division of the Department of Administration of the State of West Virginia, Appendices entered into pursuant to the MLPFA and the Acceptance Certificate and Request for Payment Form (collectively, the “Agreements”) and that these Agreements are binding and authorized Agreements of Lessee, enforceable in all respects in accordance with their terms.

**Name of Official**

**Signature & Title**

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In Witness Whereof this certificate has been executed by a duly authorized Officer:

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

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

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

**REQUEST FOR QUOTATION  
CRFQ 0212 SWC210000005  
(FINANCE21)**

Financing Services for equipment and other capital  
financing needs of various State agencies in the form of a Master Lease Purchase Agreement

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**SPECIFICATIONS**

**1. PURPOSE AND SCOPE:** The West Virginia Department of Administration, Purchasing Division, on behalf of the Department of Administration, Finance Division, is soliciting quotations from qualified vendors to provide an open-end contract for financing of equipment and other capital financing needs of various State agencies in the form of a Master Lease Purchase Agreement per the specifications provided in this document.

**1.1 Background:** The state of West Virginia has held a statewide financing contract known generally as the Master Lease Purchasing Financing Agreement (“Finance Agreements”) since 1996. Leasing/financing against the Finance Agreements have been initiated by an appendix added to the Financing Agreements for each transaction. There have been 91 appendices from 2004-2020. Since the last contract dated December 1, 2016, there have been 36 appendices totaling \$35,329,545 with the highest single appendix being \$5.4 million. The Finance Division anticipates \$8 million to \$12 million in new obligations annually under the financing agreement resulting from this solicitation. The financing agreement resulting from this solicitation will be available to all West Virginia State Agencies. (See **attachment M**)

**1.2 Scope of Work**

**A. Terms of the Master Lease Finance Purchase Agreement:** Attached hereto as **Exhibit\_B**, is the Master Lease Purchase Financing Agreement (“MLPFA”) that will govern each financing completed. As noted in the MLPFA, each financing will require an appendix evidencing the terms specific to each financing. A separate appendix must be issued as a central delivery order for each financing.

The Lessor shall have the right to accept or reject an appendix to the MLPFA.

Each appendix will include the State agency, source of funding, use of equipment, beginning date, term, list of equipment, payment schedule, essential use certificate, tax compliance agreement, no arbitrage certificate, and opinion of counsel. The payment schedule will specify the amount financed, rate, term payment due dates, and the principal balance, payment amount, and interest for each payment. The applicable documents are attached to the MLPFA.

Agencies (designated as Lessees in the MLPFA) will be responsible for coordinating with the West Virginia Department of Administration, Finance Division in preparing all appendices, for coordinating the same with the vendor

REQUEST FOR QUOTATION  
CRFQ 0212 SWC2100000005  
(FINANCE21)

Financing Services for equipment and other capital  
financing needs of various State agencies in the form of a Master Lease Purchase Agreement

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awarded the MLPFA, and processing the appendices as a central delivery order in wvOASIS.

**Interest Rate:** The interest rate applicable to an appendix will be calculated as described in the MLPFA and will be fixed on the date of execution of an appendix with payments to be made in arrears. In general, the interest rate will consist of the applicable SWAP Rate, less the discount for Tax Exemption, plus any fixed spread or basis points bid. The SWAP rate will be the ICE SWAP Rate using the USD 1100 daily SWAP interest rate as of the date of execution of an appendix, for the applicable lease/financing term.

- B. Lease Payment:** The initial lease payment will be due on the first day of the month following the month in which the appendix became effective, with subsequent payments due on the first day of each following month for the term of the financing, unless otherwise agreed. Lease payments will be calculated on a level payment basis, using a single fixed rate of interest for either: three, four, five, or seven-year terms. Interest will be calculated on a 360/365-day basis.
- C. Purchasing Procedure:** The initial purchase to be leased/financed under the MLPFA will be conducted in accordance with applicable purchasing laws, regulations, and policies, and will consist only of personal property and capital expenditures deemed essential.
- D. Minimum Lease/Financing Amount:** Each lease/financing must be a minimum of \$100,000 in total. Several items for an agency may be combined into one (1) appendix to reach the \$100,000 threshold.
- E. Escrow of Funds:** Bidders must be able to provide escrowed funds or offer an alternative acceptable to the State.
- F. Estimated Values Only: Total outstanding financing balance under the Agreement is not expected to exceed \$30,000,000 for the term of the Agreement. The State does not guarantee that any purchases will be made during the term of the Agreement.** It is also not known how the lease/financing amounts will be distributed among the three, four, five, and seven-year terms. Furthermore, the exact equipment or capital expenditure needs of the agencies are not known and will not be surveyed for the purpose of this Request for Quotation (RFQ). However, a listing of equipment leased/financed in the last four (4) years pursuant to the similar financing agreement is attached as **Attachment "M"** for the sole purpose of demonstrating past uses and is not to be construed as an indication of future uses.

**REQUEST FOR QUOTATION  
CRFQ 0212 SWC2100000005  
(FINANCE21)**

Financing Services for equipment and other capital  
financing needs of various State agencies in the form of a Master Lease Purchase Agreement

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The State plans to finance only essential needs and to finance such over a period not to exceed the equipment's useful life or seven years, whichever is less.

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

**2.1 “Contract Services”** means leasing/financing for equipment and other capital financing needs of various State agencies as more fully described in these specifications.

**2.2 “Pricing Page”** means the page attached hereto as **Exhibit “A”**, upon which Vendor should list its proposed discount and fixed spread/base points to establish the contract Interest Rate formula and to provide a basis upon which to evaluate Vendors’ bids

**2.3 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.4 “Appendix”** means the individual leasing/financing package as described above.

**2.5 “Escrow Agent”** means the financial institution that will escrow the financed funds.

- 3. QUALIFICATIONS:** [Reserved]

**4. MANDATORY REQUIREMENTS:**

**4.1 Mandatory Contract Services Requirements and Deliverables:** Contract Services must meet or exceed the mandatory requirements listed below.

**4.1.1 Contract Services Deliverable**

**4.1.1.1** The financial institution must set a fixed interest rate, amortization payment schedule and closing date of each appendix to the MLPFA in which said fixed interest rate will remain in effect for 15 business days to allow a timeframe for processing of financing appendix contracts by the Agency

**REQUEST FOR QUOTATION  
CRFQ 0212 SWC210000005  
(FINANCE21)**

Financing Services for equipment and other capital  
financing needs of various State agencies in the form of a Master Lease Purchase Agreement

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**4.1.1.2** Vendor must execute the MLPFA and use its Attachments as the contract documents for the completion of each appendix to the MLPFA.

**4.1.1.3** Vendor must set up an escrow agent in order to escrow funds for payments to vendor upon request. The Vendor will use Attachment "F" to the MLPFA for the request to make payments to vendor from the Escrow account. The Escrow agent will provide monthly statements of activity

**5. CONTRACT AWARD:**

**5.1 Contract Award:** The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest Total Annual Interest as shown on the Pricing Pages.

**Pricing Page:** Vendor must complete the **Exhibit\_A Pricing Page** by inserting a discount to the rate provided and any fixed spread or basis point increases to the rate. The discounts and spread/basis point additions will remain fixed during the term of the Agreement and any renewal or extension thereof.

**Each bidder is required to bid for each of the three (3), four (4), five (5) and seven (7) year lease/financing terms for monthly payments in arrears.**

**NOTE: Failure to bid for each of the four terms will result in vendor's bid being disqualified.**

The **Pricing Page** already includes the ICE Report Center SWAP USD 1100 Rate for the date 09/10/2020 SWAP interest rates (**Attachment "L"**) in Column B. The spreadsheet is formulated to multiply the discount premium percentage (Column D) and add the fixed spread/base points (Column E) to the applicable SWAP rate (Column C), yielding an Interest Rate (Column F). The interest rate from Column F is then multiplied by the estimated principal (Column G) to obtain Annual Interest Charges (Column H). The annual interest charges for each of the four terms from Column H are then added to obtain the Total Annual Interest.

**REQUEST FOR QUOTATION  
CRFQ 0212 SWC2100000005  
(FINANCE21)**

Financing Services for equipment and other capital  
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---

**Any changes to the Exhibit\_A Pricing Page (i.e. adding lines/columns, changing already locked cells) will automatically “Disqualify” the vendor.** The Pricing Page was created in Microsoft Excel and will auto calculate when the vendor enters their information. Only fields that vendor is to enter information on will allow changes.

The Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address:  
[Mark.A.Atkins@wv.gov](mailto:Mark.A.Atkins@wv.gov)

**5.2 Awarding of Contract:** The vendor selected as the lowest responsible bidder, determined by compliance with specifications and the lowest Total Annual Interest, will be required to execute the Master Lease Purchase Financing Agreement (MLPFA) **Exhibit “B”** and awarded this Contract.

**6. PAYMENT:** Agency shall pay according to the payment schedule established in each Appendix.

**7. TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor’s bid, but such costs will not be paid by the Agency separately.

**8. VENDOR DEFAULT:**

**8.1.** The following shall be considered a vendor default under this Contract.

**8.1.1.** Failure to perform Contract Services in accordance with the requirements contained herein.

**8.1.2.** Failure to comply with other specifications and requirements contained herein.

**8.1.3.** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

REQUEST FOR QUOTATION  
CRFQ 0212 SWC210000005  
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Financing Services for equipment and other capital  
financing needs of various State agencies in the form of a Master Lease Purchase Agreement

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8.1.4. Failure to remedy deficient performance upon request.

8.2. The following remedies shall be available to Agency upon default.

8.2.1. Immediate cancellation of the Contract.

8.2.2. Immediate cancellation of one or more release orders issued under this Contract.

8.2.3. Any other remedies available in law or equity.

9. MISCELLANEOUS:

9.1. **Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: Lisa Coggi

Telephone Number: 312 537 6773

Fax Number: 312 453 - 6781

Email Address: Lisa.a.coggi@bofa.com



## SUMMARY OF TERMS AND CONDITIONS

- Date:** November 21, 2020
- Lessee:** State of West Virginia – Purchasing Division of the Department of Administration
- Lessor:** Banc of America Public Capital Corp (“BAPCC”) or its designee/assignee (“Lessor”)
- Equipment:** Essential use assets as outlined in RFP
- Structure:** This Master Lease will be intended as a **NON BANK QUALIFIED** secured transaction; all tax benefits will remain with Lessee; all expenses, including (but not limited to) insurance, maintenance, and taxes, will be for the account of Lessee.
- Term:** 3, 4, 5 and 7 years.
- Maximum Funding:** Initial annual funding is expected to be up to \$12 million per section 1.1 of the Specifications section.
- Based on the needs of the State, the \$12,000,000 in annual financing can be increased upon mutual agreement of the parties.
- Index:** Any funding will be based on the formula in the attached pricing page which will be good for one year from date of proposal, after which time it may be adjusted subject to the mutual agreement of both parties
- Utilization:** Lease approval is valid for one-year from commencement with optional one-year extensions at commencement anniversary subject to credit and pricing review. The extension will be mutually agreeable to Lessee and Lessor.
- Governmental**
- Entity Lease:** The Base Rent installments are calculated on the assumptions, and Lessee will represent, that Lessee is a state or political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code (the “Code”), that this transaction will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code. Lessee shall provide Lessor with such evidence as Lessor may request to substantiate and maintain such tax status.
- Lessee will indemnify Lessor only as to the actions or omissions of the Lessee, on an after-tax basis, against any loss of Federal income tax exemption of the interest portion of the rentals and against any penalties and interest imposed by the Internal Revenue Service on Lessor in connection therewith on a lump-sum basis.
- Expenses:** Lessee and Lessor will each be responsible for its own expenses incurred in connection with the preparation, negotiation and closing of the lease documentation. There are no other fees or costs associated with this transaction.

*The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, (“BAPCC”) in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.*

**Escrow  
Account:**

*Lessee may direct that proceeds be deposited*, subject to compliance with applicable regulations under the Internal Revenue Code, including, but not limited to arbitrage regulations, the proceeds of the Lease in an escrow acceptable to Lessor, and disbursements made therefrom to pay for the Project upon the execution and delivery of an acceptance certificate (and related documents) by Lessee and approved by Lessor.

- There will be no fees associated with escrow account as long as monies are held in a Bank of America proprietary investment vehicle.

**Documents:**

Lease documents in form and substance satisfactory to Lessor and its local counsel must be executed and delivered. If Lessor requests, Lessee will also furnish duly executed landlord and mortgage waivers and supporting information. Lessee will also provide board resolutions, incumbency certificates and other documentation required by Lessor. Validity Opinion will be required on the Master Lease and each Appendix.

*Please see additional comments on our Clarification to Documents attachment.*

**Non-Appropriation**

**Termination:**

Lessee affirms that funds are available for the current fiscal year and reasonably believes that sufficient funds can be obtained to make all rental payments during each subsequent fiscal year. Lessee will regularly budget for and otherwise use its best efforts to obtain funds for the continuation of the rentals in this transaction.

**General**

**Disclaimer:**

Many of the terms and conditions contained in the RFP and its attachments are not applicable to a financing transaction such as is contemplated by the RFP and this proposal response. Consequently, the terms and conditions contained in the final lease agreement negotiated and executed by and between the parties shall govern the relationship. Unless a provision is expressly included in that final lease agreement or its related documentation, said provision will not apply.

**Private**

**Placement:**

The proposed transaction is a private placement that will not require (i) any additional public ongoing disclosure requirements, (ii) any additional public offering document generation requirements, or (iii) any underwriting or related fees.

**Market**

**Disruption:**

Notwithstanding anything contained herein to the contrary, in the event any material change shall occur in the financial markets after the date of this Proposal Letter, including but not limited to any governmental action or other event which materially adversely affects the extension of credit by banks, leasing companies or other lending institutions, the Lessor may modify the indicative pricing described above.

**SEC**

**Disclosure:**

Lessee acknowledges and agrees that, if, in connection with its efforts to comply with the requirements of SEC Rule 15c2-12(b)(5) of the Securities and Exchange Act of 1934, Lessee decides to file any documentation related to the proposed transaction to EMMA (the "Disclosed Documents"), such Disclosed Documents shall be filed with redactions that will be mutually agreed upon by the parties to ensure that there is no confidential information of Lessor included in the posted documents (i.e. account information, names of signatories).

*The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.*

**USA Patriot Act**

**Compliance:**

The Lessee acknowledges that pursuant to the requirements of the USA Patriot Act, as amended from time to time (including as amended by the USA Freedom Act of 2015) (the "Patriot Act"), the Lessor is required to obtain, verify and record information that identifies the Lessee, which information includes the name and address of the Lessee and other information that will allow the Lessor to identify the Lessee in accordance with the Patriot Act.

*The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.*

## CLARIFICATIONS/COMMENTS TO RFP MASTER LEASE

We recommend starting with the most recent version of the form as executed between the parties in 2016. Examples of updates that need to be made:

- Section 9, Lease Payments, references the Federal Reserve H.15 report which no longer includes swap rates. This should be updated to reflect ICE and/or Bloomberg.
- Section 12, Title to Leased Equipment, should be updated to include a security interest grant in the acquisition/escrow fund along with any proceeds therefrom.
- Due to the fact that the current escrow provider is no longer willing to provide escrow services under the construct and provisions in the Master, we are suggesting removing the escrow language from the Master and entering into a separate Escrow Agreement for each funding. This approach is much more in line with current market practices.
- Requested Additions:

### EMMA Disclosure:

In connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), notice of its incurrence of its obligations under the Related Documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with the Related Documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an "EMMA Posting"). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lessor or its affiliates in any portion of such EMMA Posting: address and account information of the Lessor or its affiliates; and e-mail addresses telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates

The Lessee acknowledges and agrees that the Lessor and its affiliates are not responsible for the Lessee's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

### Electronic Signatures

*Electronic Signatures.* This Agreement, any Schedule, and any other documents or instruments executed by either party in connection herewith and therewith (collectively the "Related Documents"), may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("PDF")). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

*The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.*

Specification, Section E. Escrow of Funds – Bank of America, National Association’s (an affiliate of BAPCC) standard escrow agreement is included with our proposal. We are happy to review for application with the State and BANA in context of the Master contract to be executed with the State. A restricted account funding mechanism with funds held by the State may be another option.

Validity Opinion: Validity Opinion will be required on the Master Lease and each Appendix, this was incorporated in most recent master lease.

*The transaction described in this document is an arm’s length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, (“BAPCC”) in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.*

**EXHIBIT A**

**PRICING PAGE  
Vendor Bid Evaluation Only**

**NO ALTERATIONS TO THIS SPREADSHEET WILL BE ACCPTED**

**VENDOR NAME:** Banc of America Public Capital Corp.

**Vendor must insert values for all four terms in Columns D and E even if that value is zero.**

**Spreadsheet is set to perform calculations automatically, but vendor must ensure that spreadsheet accurately calculates desired interest rate in column F prior to bid submission.**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
<b>Term (YRS)</b>	<b>Average Life Swap Rate</b>	<b>ICE SWAP RATE (from Attachment L, Report Date 9/10/2020)</b>	<b>Less Discount Premium to Convert Rate for Tax Exemption (Express as Percentage)</b>	<b>Plus Fixed Spread/Base Points (Expressed as Percentage Point Increase)</b>	<b>Interest Rate (Percent Per Year)</b>	<b>Estimated Principal (for Evaluation Only)</b>	<b>Annual Interest Charges</b>
3	2	0.2280	0.7900	0.7204	0.9005		
4	2	0.2280	0.7900	0.7660	0.9461		
5	3	0.2390	0.7900	0.8087	0.9975		
7	4	0.2770	0.7900	0.8758	1.0946		
						<b>Total Annual Interest</b>	

## ORDERING INSTRUCTIONS

Statewide Contract

CMA 0212 FINANCE21

- 1) An agency may request to use the Statewide Contract when financing a capital purchase over \$100,000. Agencies can find the Master Lease Submission Request form attached to the Statewide Contract website. Please complete said form and submit to Patty Johns of the Finance Division to obtain prior approval to use the CMA FINANCE21 contract.  
[patty.r.johns@wv.gov](mailto:patty.r.johns@wv.gov)  
304-558-6181 Ext. 214
- 2) A CDO must be created in Oasis with the appropriate documentation attached. CDO will follow the standard approval path.
- 3) Contact Patty Johns of the Finance Division to coordinate the contract processing with Vendor.