



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: 09-05-2024

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

Order Number:	CMA 0212 0212 FINANCE24 1	Procurement Folder:	1372040
Document Name:	Capital Financing Services	Reason for Modification:	Award of CRFQ SWC2400000004
Document Description:	Capital Financing Services		
Procurement Type:	Statewide MA (Open End)		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2024-10-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-09-30

VENDOR			
Vendor Customer Code:	000000191232		
BANC OF AMERICA PUBLIC CAPITAL CORP			
1111 E MAIN ST 18TH FLOOR			
RICHMOND	VA	232193500	
US			
Vendor Contact Phone:	804-788-3345	Extension:	
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	No		
#3	No		
#4	No		

DEPARTMENT CONTACT	
Requestor Name:	Patricia R Johns
Requestor Phone:	(304) 558-6181
Requestor Email:	patty.r.johns@wv.gov
<h1>2025</h1> <p>FILE LOCATION _____</p>	

INVOICE TO	
ACCOUNTING SECTION	
DEPARTMENT OF ADMINISTRATION	
2019 WASHINGTON ST E	
PO BOX 50121	
CHARLESTON	WV 25305-0121
US	

SHIP TO	
FINANCE DIVISION	
DEPARTMENT OF ADMINISTRATION	
BLDG 17	
2101 WASHINGTON ST E	
CHARLESTON	WV 25305
US	

9/6/24 61

Purchasing Division's File Copy

Total Order Amount:	Open End
---------------------	----------

MA 09/05/2024

PURCHASING DIVISION AUTHORIZATION
SIGNED BY : Frank Whittaker
DATE: 2024-09-05
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: 9/5/24
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
DATE: 9-9-24
ELECTRONIC SIGNATURE ON FILE

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 Subdivision to provide Financing Services for Equipment and other Capital Financing Needs of various State Agencies in the form of a Master Lease Purchase Agreement, per the Specifications, General Terms & Conditions, Bid Requirements, and Banc of America Public Capital Corp. submitted and accepted bid on 02/22/2024, incorporated herein by reference and made a part of hereof.

ORDERING INSTRUCTIONS:

Statewide Contract CMA 0212 FINANCE24

- 1). An agency may request to use the Statewide Contract when financing a capital purchase over \$100,000.00. 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 FINANCE24 contract.
- 2). Contact Patty Johns at the Finance Division to coordinate the contract processing with Vendor.

Patty.R.Johns@wv.gov
304-558-6181 Ext. 214

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	84120000				0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Financing Agreement

Extended Description:

See Exhibit_A Pricing Page for Contract Pricing

Banc of America CMA 0212 FINANCE24

ORDER OF PRECEDENCE AND MODIFICATION AGREEMENT

THIS ORDER OF PRECEDENCE AND MODIFICATION AGREEMENT, (hereinafter "Modification Agreement") by and between Banc of America Public Capital Corp (hereinafter "Vendor") and the Purchasing Division of the Department of Administration of the State of West Virginia (hereinafter "State"), (both referred to as "Parties"), is intended to identify the various documents that comprise the contract resulting from CRFQ 0212 SWC24*04 for Financing Services ("Contract"), to establish an order of precedence for the various documents, and to modify documents as necessary.

NOW THEREFORE, the Parties hereto hereby agree as follows:

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the document in this section. In that way, any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.


Terms Agreement Documents:

- a. **Order of Precedence and Modification Agreement** (this document) – First Priority
 - b. **Addendum to Vendor's Standard Contractual Forms (WV-96)** – Second Priority
 - c. **Master Lease Agreement** – Third Priority
 - d. **Attachments to the Master Lease Agreement** – Fourth Priority
 - e. **Terms and Conditions contained in the Request for Quotation identified as SWC24*04** – Fifth Priority
 - f. **Summary of Terms and Conditions** – Fifth Priority
2. **Modifications:** The State and the Vendor hereby agree to the following clarifications to Section 2 and Section 4 of the Addendum to Vendor's Standard Contractual Forms ("WV-96") as follows:
 - a. The Parties hereby agree that upon funding by the Vendor under an Appendix (as defined in the Contract), the Vendor has provided the related services under Section 2 with respect to such Appendix and the State will make payments to the Vendor in accordance with the payment schedule as provided in the individual release order with respect to such Appendix.
 - b. The Parties hereby agree that the funding by the Vendor under any Appendix executed prior to the effective Contract termination date shall constitute "undisputed services rendered or goods received before the termination's effective date" for which payment is due by the State, consistent with Section 4 of the Addendum.


IN WITNESS WHEREOF, the Parties have entered into this Terms Agreement as of the date of the last signature below.

Banc of America CMA 0212 FINANCE24

**STATE OF WEST VIRGINIA
Purchasing Division
Department of Administration**

By: 
Name: Samantha L. Willis
Its: Director + General Counsel
Date: 9/5/24

**BANC OF AMERICA PUBLIC
CAPITAL CORP**

By: 
Name: Augustine Reichenbach
Its: Authorized Agent
Date: 9/4/24

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): Purchasing Division of the Department of Administration of the State of West Virginia
Vendor: Banc of America Public Capital Corp
Contract/Lease Number ("Contract"): CMA FINANCE24
Commodity/Service: Financing Services

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** -- Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** -- Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** -- The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** -- Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** -- Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** -- Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** -- Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** -- Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** -- Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: WV Purchasing Division
By: Aunt L. Willis
Printed Name: Samantha L. Willis
Title: Director & General Counsel
Date: 9/5/24

Vendor: Banc of America Public Capital Corp
By: [Signature]
Printed Name: Augustine Reichenbach
Title: Authorized Agent
Date: 9/4/24

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

THIS MASTER LEASE PURCHASE FINANCING AGREEMENT ("MLPFA"), made this 1st day of June, 2024, by and between Banc of America Public Capital Corp (BAPCC) ("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-, three-, or four-year Secured Overnight Financing Rate ("SOFR") Swap (the "Index Interest Rate"), less the discount, plus the fixed spread or basis points originally bid by Lessor and shown below:

- (a) 3 Year Financing Term= 2-year Index Interest Rate X .7835 Discount + .6782 Fixed Spread
- (b) 4 Year Financing Term= 2-year Index Interest Rate X .7835 Discount + .5433 Fixed Spread
- (c) 5 Year Financing Term= 3-year Index Interest Rate X .7835 Discount + .6765 Fixed Spread
- (d) 7 Year Financing Term= 4-year Index Interest Rate X .7835 Discount + .7727 Fixed Spread

In each case the Index Interest Rate shall be the applicable SOFR Swap Rate as published on the report date, at 8:30 a.m. eastern time, on the applicable Refinitiv Swaps Index screen page (or any mutually agreed upon successor thereto if Refinitiv is no longer making any of the aforementioned SOFR Swap Rates available), no more than eight (8) business days prior to funding of an Appendix unless otherwise mutually agreed upon. All published SOFR Swap Rates shall be converted from an actual/360 basis to a 30/360 convention. Any such SOFR Swap Rate shall not be less than zero (0).

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 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 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 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 BOKF, N.A., 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 Agreement.

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 for 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 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 and 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") dated February 7, 2024, 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) 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 established the relationship or opening the account and may 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: 

BY: 

TITLE: AUTHORIZED AGENT

TITLE: Purchasing Director

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. Equipment financed from 2021 to 2024
- M. 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.

OMB No. 1545-0720

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

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 RANs, 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. 63773S

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

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	
35a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)	35a	
b	Enter the final maturity date of the GIC ▶ _____		
c	Enter the name of the GIC provider ▶ _____		
37	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37	
38a	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	Enter the date of the master pool obligation ▶ _____		
c	Enter the EIN of the issuer of the master pool obligation ▶ _____		
d	Enter the name of the issuer of the master pool obligation ▶ _____		
39	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box		<input type="checkbox"/>
40	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box		<input type="checkbox"/>
41a	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:		
b	Name of hedge provider ▶ _____		
c	Type of hedge ▶ _____		
d	Term of hedge ▶ _____		
42	If the issuer has superintegrated the hedge, check box		<input type="checkbox"/>
43	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"/>
44	If the issuer has established written procedures to monitor the requirements of section 148, check box		<input type="checkbox"/>
45a	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement ▶ _____		
b	Enter the date the official intent was adopted ▶ _____		

Signature and Consent	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	
Paid Preparer Use Only	Print/type preparer's name		Preparer's signature	
	Date		Type or print name and title	
	Firm's name ▶		Check <input type="checkbox"/> if self-employed PTIN	
	Firm's address ▶		Firm's EIN ▶	
		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 <u>2101 Washington St E Bldg 17</u>		City <u>Charleston</u>	State <u>WV</u>
Purchaser's Tax ID Number <u>55052658001</u>		State of Issue <u>WV</u>	Country of Issue <u>USA</u>
Zip Code <u>25305</u>	If no Tax ID Number Enter one of the following: FEIN Driver's License Number/State Issued ID Number Foreign diplomat number		
	<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 | 18 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 20XX-_____

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

State of West Virginia
Equipment Financed From
2021-2024

<u>Appendix</u>	<u>Description</u>	<u>Amount</u>
2021-01	Vehicles	\$2,757,716
2021-02	Vehicles	\$1,301,868
2021-03	Vehicles	\$1,079,262
2021-04	Vehicles	\$745,009
2021-05	Vehicles	\$199,499
2021-06	Vehicles	\$3,872,538
2021-07	Vehicles	\$231,798
2021-08	Highways – Drilling Rig	\$1,581,188
2021-09	Vehicles	\$149,633.40
2021-10	Vehicles	\$4,747,551.56
2021-11	Vehicles	\$1,290,328.56
2021-12	Vehicles	\$456,634
2021-13	Vehicles	\$474,128
2021-14	Vehicles	\$0 (Cancelled)
2021-15	Vehicles	\$0 (Cancelled)
2021-16	Marshall University – Astro Turf	\$884,121
	Total Financed	<u>\$19,771,274.52</u>

Master Escrow and Account Control Agreement

This Master Escrow and Account Control Agreement (this "Agreement"), dated as of June 1, 2024, 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 June 1, 2024 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 Class Institutional version of the Treasury Portfolio Fund (TRPXX) (CUSIP 825252406) (hereinafter, "TRPXX"). In the event that TRPXX 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 TRPXX 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.

(f) 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.

(g) 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.

(i) 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
Administration,
as Lessor

Purchasing Division, Department of
State of West Virginia

By: _____

By: Samantha L. Willis

Name: _____

Name: Samantha L. Willis

Title: _____

Title: Purchasing Director

BOKF, National Association
As Escrow Agent

By: Risa M. Shay


Name: Risa M. Shay
Vice President

Title: _____

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
Administration,
as Lessor

Purchasing Division, Department of
State of West Virginia

By: 
Name: Augustine Reichenbach
 Authorized Agent
Title: _____

By: _____
Name: _____
Title: _____

BOKF, National Association
As Escrow Agent

By: _____
Name: _____
Title: _____

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 Purchasing Financing Agreement dated [_____] (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

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

By: _____

Date: _____

Title: _____

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. REVIEW DOCUMENTS THOROUGHLY: The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

2. MANDATORY TERMS: The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

3. PREBID MEETING: The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

4. VENDOR QUESTION DEADLINE: Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted emails should have the solicitation number in the subject line.

Question Submission Deadline: February 12, 2024 at 10:00am EST

Submit Questions to: Mark Atkins
2019 Washington Street, East
Charleston, WV 25305
Fax: (304) 558-3970
Email: Mark.A.Atkins@wv.gov

5. VERBAL COMMUNICATION: Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

6. BID SUBMISSION: All bids must be submitted on or before the date and time of the bid opening listed in section 7 below. Vendors can submit bids electronically through *wvOASIS*, in paper form delivered to the Purchasing Division at the address listed below either in person or by courier, or in facsimile form by faxing to the Purchasing Division at the number listed below. Notwithstanding the foregoing, the Purchasing Division may prohibit the submission of bids electronically through *wvOASIS* at its sole discretion. Such a prohibition will be contained and communicated in the *wvOASIS* system resulting in the Vendor's inability to submit bids through *wvOASIS*. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via email. Bids submitted in paper or facsimile form must contain a signature. Bids submitted in *wvOASIS* are deemed to be electronically signed.

Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason.

For Request for Proposal ("RFP") Responses Only: Submission of a response to a Request for Proposal is not permitted in *wvOASIS*. In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal prior to the bid opening date and time identified in Section 7 below, plus Not Applicable convenience copies of each to the Purchasing Division at the address shown below. Additionally, the Vendor should clearly identify and segregate the cost proposal from the technical proposal in a separately sealed envelope.

Bid Delivery Address and Fax Number:

Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130
Fax: 304-558-3970

A bid submitted in paper or facsimile form should contain the information listed below on the face of the submission envelope or fax cover sheet. Otherwise, the bid may be rejected by the Purchasing Division.

VENDOR NAME:

BUYER: Mark Atkins
SOLICITATION NO.: CRFQ 0212 SWC2400000004
BID OPENING DATE: 02/22/2024
BID OPENING TIME: 1:30pm EST
FAX NUMBER: 304-558-3970

7. BID OPENING: Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery).

Bid Opening Date and Time: February 22, 2024 at 1:30pm EST

Bid Opening Location: Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130

8. ADDENDUM ACKNOWLEDGEMENT: Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

9. BID FORMATTING: Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

10. ALTERNATE MODEL OR BRAND: Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

This Solicitation is based upon a standardized commodity established under W. Va. Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

11. EXCEPTIONS AND CLARIFICATIONS: The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

12. COMMUNICATION LIMITATIONS: In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

13. REGISTRATION: Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

14. UNIT PRICE: Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

15. PREFERENCE: Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: www.state.wv.us/admin/purchase/vrc/Venpref.pdf.

15A. RECIPROCAL PREFERENCE: The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: www.state.wv.us/admin/purchase/vrc/Venpref.pdf.

16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES: For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37 and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women- owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

17. WAIVER OF MINOR IRREGULARITIES: The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

18. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in *wvOASIS* can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

19. NON-RESPONSIBLE: The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.”

20. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

21. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

22. WITH THE BID REQUIREMENTS: In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.6. This authority does not apply to instances where state law mandates receipt with the bid.

23. EMAIL NOTIFICATION OF AWARD: The Purchasing Division will attempt to provide bidders with e-mail notification of contract award when a solicitation that the bidder participated in has been awarded. For notification purposes, bidders must provide the Purchasing Division with a valid email address in the bid response. Bidders may also monitor WVOASIS or the Purchasing Division's website to determine when a contract has been awarded.

24. ISRAEL BOYCOTT CERTIFICATION: Vendor's act of submitting a bid in response to this solicitation shall be deemed a certification from bidder to the State that bidder is not currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel. This certification is required by W. Va. Code § 5A-3-63.

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ 0212 SWC2400000004

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Banc of America Public Capital Corp
Company

Authorized Signature
2/20/24
Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

REQUEST FOR QUOTATION
CRFQ 0212 SWC240000004

Financing Services for Equipment and other Capital
Financing needs for various State Agencies in the form of a Master Lease Purchase Finance
Agreement (MLPFA)

SPECIFICATIONS

1. PURPOSE AND SCOPE: The West Virginia Department of Administration, Purchasing Division, on behalf of the Department of Administration, Finance Division, is soliciting bids from qualified vendors to provide an Open-End Statewide Contract for Financing of Equipment and other Capital Financing Needs of various State Agencies in the form of a Master Lease Purchase Finance Agreement (MLPFA), 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 107 appendices from 2004-2024. Since the last contract dated February 1, 2021, there have been 16 appendices totaling \$19,771,274.52 with the highest single appendix being \$4.7 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 _L**)

1.2 Scope of Work

A. Terms of the Master Lease Purchase Finance 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.

REQUEST FOR QUOTATION
CRFQ 0212 SWC2400000004

Financing Services for Equipment and other Capital
Financing needs for various State Agencies in the form of a Master Lease Purchase Finance
Agreement (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 awarded the MLPFA and processing the appendices as a Central Delivery Order (CDO) 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 Index Rate, less the discount for Tax Exemption, plus any fixed spread or basis points bid.

- 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 (3), four (4), five (5), or seven (7) 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 (3), four (4), five (5), and seven (7) 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

REQUEST FOR QUOTATION
CRFQ 0212 SWC240000004

Financing Services for Equipment and other Capital
Financing needs for various State Agencies in the form of a Master Lease Purchase Finance
Agreement (MLPFA)

pursuant to a similar financing agreement is attached as **Attachment “L”** for the sole purpose of demonstrating past uses and is not to be construed as an indication of future uses.

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’ bid.

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 fifteen (15)

REQUEST FOR QUOTATION
CRFQ 0212 SWC240000004

Financing Services for Equipment and other Capital
Financing needs for various State Agencies in the form of a Master Lease Purchase Finance
Agreement (MLPFA)

business days to allow a timeframe for processing of financing appendix contracts by the Agency.

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 Pricing Page **Exhibit "A"** by inserting a proposed interest index, a discount to the rate 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.

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

The Pricing Page must include your proposed interest index (**Column C**). The spreadsheet is formulated to multiply the discount premium percentage (**Column D**) and add the fixed spread/base points (**Column E**) to the applicable index rate (**Column C**), yielding an Interest Rate (**Column F**). The interest rate from **Column F** is then multiplied by the estimated

REQUEST FOR QUOTATION
CRFQ 0212 SWC240000004

Financing Services for Equipment and other Capital
Financing needs for various State Agencies in the form of a Master Lease Purchase Finance
Agreement (MLPFA)

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.

Any changes to the Pricing Page “Exhibit A” (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

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.

REQUEST FOR QUOTATION
CRFQ 0212 SWC240000004

Financing Services for Equipment and other Capital
Financing needs for various State Agencies in the form of a Master Lease Purchase Finance
Agreement (MLPFA)

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.
- 8.1.4. Failure to remedy deficient performance upon request.

8.2. The following remedies shall be available to the 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: Charles T. Maguire

Telephone Number: 804 763 8742

Fax Number: -

Email Address: charles.maguire@bofa.com

SUMMARY OF TERMS AND CONDITIONS

- Date:** February 21, 2024
- 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.

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

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.

INSTRUCTIONS TO VENDORS SUBMITTING BIDS:

24. Israel Boycott Certification. BAPCC agrees to provide this certification, except to the extent such activities are permitted under federal law.

MASTER LEASE:

Section 9, Lease Payments – need to revise this language to include reference to average-life swaps, Secured Overnight Funding Rate (“SOFR”), source and timing of rates (Refinitiv, 8:30 a.m. eastern, each morning), zero floor and triggers for change for both publication source and SOFR cessation consistent with phrasing in currently negotiated MLPFA.

Section 12. Title to Leased Equipment – need to reference security interest in the escrow account and potential proceeds from collateral and escrow.

Section 21. Escrow – We requested the following three provisions that were included in the executed Escrow and Account Control agreement dated December 1, 2023 between the State and our energy services group be included in this Escrow and Account Control Agreement:

- (f) Unless the Escrow Agent is guilty of negligence or willful misconduct with regard to its duties hereunder, to the fullest extent permitted by law and subject to W. Va. Code § 5A-3-62, Lessee agrees to and does hereby release and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this agreement; and in connection therewith, does to the extent permitted by law and, subject to W. Va. Code § 5A-3-62, indemnify the Escrow Agent against any and all expenses; including reasonable attorneys’ fees and the cost of defending any action, suit or proceeding or resisting any claim.
- (h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.
- (i) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent’s attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent’s powers and duties hereunder in connection with any Event of Default under the Lease, any termination of the Lease due to an Event of Non-appropriation, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

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.

A	B	C	D	E	F	G	H
Term (YRS)	Average Life Swap Rate	ICE SWAP RATE (from Attachment L, Report Date 9/10/2020)	Less Discount Premium to Convert Rate for Tax Exemption (Express as Percentage)	Plus Fixed Spread/Base Points (Expressed as Percentage Point Increase)	Interest Rate (Percent Per Year)	Estimated Principal (for Evaluation Only)	Annual Interest Charges
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		
						Total Annual Interest	