



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: 2017-01-25

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

12

Order Number: CMA 0209 0209 FAR1700000001	Procurement Folder: 257810
Document Name: Master Agreement for Financing Services	Reason for Modification: Change Order # 1 issued as an administrative change to attach the executed Master Lease Purchase Financing Agreement
Document Description: Statewide Contract for Financing Services	
Procurement Type: Statewide MA (Open End)	
Buyer Name: Linda Harper	
Telephone: (304) 558-0468	
Email: linda.b.harper@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2016-12-01
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2017-11-30

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000191232 BANC OF AMERICA PUBLIC CAPITAL CORP PO BOX 100918 ATLANTA GA 303840918 US Vendor Contact Phone: (804) 788-3345 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: David W Mullins Requestor Phone: (304) 558-0076 Requestor Email: dave.w.mullins@wv.gov <div style="text-align: center; font-size: 2em; font-weight: bold;">17</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILE LOCATION <u>35569</u></div>

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

Purchasing Division's File Copy

Total Order Amount	Open End
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SCANNED

ENTERED

LBH 1-26-2017

PURCHASING DIVISION AUTHORIZATION SIGNED BY: <i>[Signature]</i> DATE: 1/26/17 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM SIGNED BY: <i>[Signature]</i> DATE: <i>[Signature]</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION SIGNED BY: <i>[Signature]</i> DATE: 1-30-17 ELECTRONIC SIGNATURE ON FILE
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1-30-17

Extended Description:

Change Order # 1

Administrative Change Order Only

To attach the executed Master Lease Purchase Financing Agreement and corrected Opinion of Counsel letter.

No further changes. All provisions of the original contract not modified herein shall remain in full force and effect.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	84101703				\$0.000000
	Service From	Service To			
	2016-12-01	2017-11-30			

Commodity Line Description: Financing Agreement

Extended Description:

Please see attached pricing per Exhibit A - Pricing Page.

STATE OF WEST VIRGINIA MASTER LEASE
PURCHASE FINANCING AGREEMENT

THIS MASTER LEASE PURCHASE FINANCING AGREEMENT ("MLPFA"), made this 1st day of December , 2016 , by and between Banc of America Public Capital Corp. ("Lessor"), and the PURCHASING DIVISION OF THE DEPARTMENT OF ADMINISTRATION of the State of West Virginia ("Purchasing"), on behalf of the Lessees specified in the attached appendices ("Lessee" or "Lessees").

The parties hereto do mutually covenant and agree as follows:

1. MLPFA

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

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

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

2. Covenants of Lessor

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

3. Covenants of Lessees

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

4. Equipment Delivery and Acceptance

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

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

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

5. Term

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

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

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

6. Event of Non-Appropriation

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

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

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

7. MLPFA Termination

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

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

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

8. Warranties/Guarantees

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

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

9. Lease Payments

Lessees agree to pay to Lessor monthly lease payments, comprised of the principal and accrued interest, in the amounts set forth in each payment schedule. The term of each Appendix shall not exceed the useful life of the Equipment financed under that Appendix. The interest rate for an Appendix will be calculated as shown below for each applicable term. The interest rate is comprised of the annualized interest on either two-year (for three and four-year terms), three-year (for five-year term), or four-year (for seven-year) Interest SWAP Rates (the "ICE SWAP Rate") as published on the day the request is submitted (the "Daily Rate") on the Intercontinental Exchange, Inc. website under ICE Benchmark

Administration Market (“ICE Benchmark”). For each Appendix, the Daily Rate will be used to calculate the interest rate by applying the discount and adding the fixed spread or basis points originally bid by Lessor shown below. If the Intercontinental Exchange, Inc. website discontinues such announcement or posting of SWAP Rates, then Lessor and Purchasing shall agree to substitute a comparable source of information.

- (a) 3 Year Financing Term= 36 months: Prior week ending (2 yrs) Swaps x 65%, plus 0.5526 basis points
- (b) 4 Year Financing Term= 48 months: Prior week ending (2 yrs) Swaps x 65%, plus 0.6233 basis points
- (c) 5 Year Financing Term= 60 months: Prior week ending (3 yrs) Swaps x 65%, plus 0.6142 basis points
- (d) 7 Year Financing Term= 84 months: Prior week ending (4 yrs) Swaps x 65%, plus 0.6091 basis points

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

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

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

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

10. Use and Maintenance

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

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

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

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

11. Insurance and Loss of Equipment

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

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

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

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

12. Title to Leased Equipment

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

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

13. Taxes and Other Charges

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

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

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

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

14. Assignment

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

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

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

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

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

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

15. Indemnification

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

16. Personal Property

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

17. Option to Purchase

Lessees shall be entitled to purchase the Equipment as follows:

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

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

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

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

18. Event of Default

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

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

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

19. Remedies on Default

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

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

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

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

20. Force Majeure

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

21. Escrow Agent

Lessor shall have the right to designate an entity to act as the Escrow Agent 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 Deutsche Bank as Escrow Agent is hereby acknowledged.

Lessor shall deposit the amount specified in each Appendix in a separate Acquisition Fund. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon order of a representative of the appropriate Lessee in Qualified Investments, as hereinafter defined, maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. Such investments shall be held by the Escrow Agent in the

appropriate Acquisition Fund, and any interest earned on such investments shall be deposited in that Acquisition Fund. The Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

"Qualified Investments" means (a) direct general obligations of the United States of America; (b) obligations the timely payment of the principal of and interest on which is 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 including the Escrow Agent or any affiliate thereof, provided that such is insured to the maximum amount allowed by the Federal Deposit Insurance Corporation.

Moneys in each Acquisition Fund shall be used to pay for the cost of acquisition of the Equipment specified in the appropriate Appendix. Payment shall be made from the appropriate Acquisition Fund for the cost of acquiring part or all of the Equipment upon presentation to the Escrow Agent of one or more Payment Request and Acceptance Certificates, properly executed by the appropriate Lessee and approved by Lessor, together with an invoice for the cost of the acquisition of the Equipment.

Each Acquisition Fund shall terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate designated "Final Acceptance Certificate" properly executed by that Lessee or a properly executed notice by the Lessee that no additional funds will be needed from that Acquisition Fund, or (b) the presentation of written notification by Lessor, or an assignee or sub-assignee of all of Lessor's interest in this MLPFA or an Agent on their behalf, that an Event of Default or Non-appropriation has occurred with respect to the appropriate Appendix or that such Lessee has terminated the MLPFA. Upon termination as described in clause (a) of this paragraph, any amount remaining in that Acquisition Fund shall be used to prepay the principal component of Rental Payments for that Appendix, *unless* otherwise directed by Lessor and Lessee, and the Payment Schedule shall be revised accordingly. Upon termination as described in clause (b) of this paragraph, any amount remaining in that Acquisition Fund shall be immediately paid to Lessor or, pro rata, to any assignee or sub-assignees of Lessor.

The Escrow Agent may resign by giving at least 30 days' written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, 'with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligation as Escrow Agent under this MLPFA, and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this MLPFA to such successor Escrow Agent.

The Escrow Agent shall incur no liability to make any disbursements except from funds held in the appropriate Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Equipment or as to the performance of any obligations of Lessor or Lessee. In executing this MLPFA, the Escrow Agent agrees to be bound by the provisions of this Section.

22. Renewal

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

23. Notices

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

24. Binding Effect

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

25. Severability

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

26. Amendments

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

27. Execution in Counterparts

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

28. Section Headings

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

29. Governing Law

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

30. Delivery of Related Documents

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

31. Entire Agreement; Waiver

This MLPFA, together with the Appendices, Request for Quotation ("RFQ") dated 09/28/2016, 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.

32. 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.

WITNESS THE FOLLOWING SIGNATURES:

LESSOR: BANC OF AMERICA PUBLIC
CAPITAL CORP

PURCHASING DIVISION, DEPT OF
ADMINISTRATION, STATE OF WV

BY: Budgett A Arnold

BY: [Signature]

TITLE: Authorized Agent

TITLE: DIRECTOR

ESCROW AGENT:

BY:

Rima Dalal 1/24/17

**Rima Dalal
Associate**

TITLE:

Andrew Ball 1/24/17

**Andrew Ball
Vice President**

APPROVED AS TO FORM THIS

30th DAY OF *January*, 20*17*

BY:

Edward M. Wenger

TITLE: ASSISTANT ATTORNEY GENERAL



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

JIM JUSTICE
GOVERNOR

JOHN A. MYERS
CABINET SECRETARY

January 23, 2017

Banc of America Public Capital Corp.
Post Office Box 100918
Atlanta, GA 303840

Re: Master Lease Purchase Financing Agreement - Opinion of Counsel

Gentlemen:

As Counsel for the Purchasing Division of the Department of Administration of the State of West Virginia ("Purchasing"), I have examined duly executed originals of the Master Lease Purchase Financing Agreement ("Lease") dated November 15, 2016, between Purchasing and Banc of America Public Capital Corp., 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 Department of Administration of the State of West Virginia, 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 Purchasing as they appear on the Lease 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,

Robert Paulson
General Counsel

RPP:PRJ:jkj