

AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") as lessee, and **BANC OF AMERICA PUBLIC CAPITAL CORP** ("Lessor"), a Kansas_ _ corporation, as lessor.

WITNESSETH:

WHEREAS, the City and the Lessor previously entered into an Equipment Lease Purchase Agreement dated September 27, 2018 relating to the Lease Purchase of a helicopter for the benefit of the City's Department of Safety (the "Agreement"); and

WHEREAS, the Federal Aviation Administration ("FAA") requires a language change in order to register the helicopter; and

WHEREAS, the need for this amendment will delay the first payment for the helicopter;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. Article VI of the Agreement, is amended to read as follows:

ARTICLE VI

Section 6.01. Liens and Encumbrances. During the Lease Term the City agrees that the Lessor shall be entitled to receive (a) any value attached or added to the Equipment at any time, (b) any money or property from the sale of the Equipment, and (c) any money from an insurance claim if the Equipment is lost or damaged. Unless an Event of Nonappropriation or an Event of Default has occurred and is continuing, upon acceptance thereof, the City shall have the right to peacefully possess and use the Equipment during the Lease Term. The City will at all times protect and defend, at its own cost and expense, the Equipment from and against all claims, liens, and legal processes of the City's creditors, and keep all Equipment free and clear of all such claims, liens and processes.

Section 6.02. Financing Documents. Neither the Lessor nor the City will execute, or cause to be filed, any financing or security documents in respect of this Lease or the Equipment unless such financing or security documents shall consist of financing statements filed by the Lessor reflecting (a) the Lessor's

interest in the Equipment and designated as "filed for notice purposes only" or (b) the Lessor's assignment of its interests in this Lease and the Equipment as provided in Section 11.01.

Section 6.03. Personal Property. The Equipment is and will remain personal property. Upon the request of the Lessor, the City will, at the City's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

2. The pages attached as Exhibit I reflecting this Amendment are attached hereto and authorized to be replaced in the Equipment Lease Purchase Agreement dated September 27, 2018 by the Lessor or its attorneys for the submission to obtain FAA registration for the Equipment.

3. The revised Lease Term and Rental Payment/Purchase Price Schedule is attached hereto and incorporated herein as Exhibit C-1 and all references to "Exhibit C" are hereby amended to read "Exhibit C-1".

4. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

Remainder of page left intentionally blank.

Contract Control Number:
Contractor Name:

FINAN-201951240-01 Alfresco 201842877-01
BANC OF AMERICA PUBLIC CAPITAL CORP

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

Mayor

Clerk and Recorder, Ex-Officio Clerk of the City
and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

Assistant City Attorney

Manager of Finance

By:

Auditor

Contract Control Number:
Contractor Name:

FINAN-201951240-01 Alfresco 201842877-01
BANC OF AMERICA PUBLIC CAPITAL CORP

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

FINAN-201951240-01 Alfresco 201842877-01
BANC OF AMERICA PUBLIC CAPITAL CORP

By: 

Name: Terri Preston
(please print)

Title: Authorized agent
(please print)

ATTEST: [if required]

By: 

Name: AUGUSTINE REICHENBACH
(please print)

Title: AUTHORIZED AGENT
(please print)

EXHIBIT C-1

LEASE TERM AND RENTAL PAYMENTS/PURCHASE PRICE SCHEDULE

Lease Term

The term of this Lease shall begin on the Commencement Date and shall expire on December 31, 2019, subject to the unilateral option of the City to renew for up to ten additional one year terms. The first Renewal Term shall be from January 1, 2020, to December 31, 2020; the second Renewal Term shall be from January 1, 2021, to December 31, 2021; the third Renewal Term shall be from January 1, 2022, to December 31, 2022; the fourth Renewal Term shall be from January 1, 2023, to December 31, 2023; the fifth Renewal Term shall be from January 1, 2024, to December 31, 2024; the sixth Renewal Term shall be from January 1, 2025, to December 31, 2025; the seventh Renewal Term shall be from January 1, 2026, to December 31, 2026; the eighth Renewal Term shall be from January 1, 2027, to December 31, 2027; the ninth Renewal Term shall be from January 1, 2028, to December 31, 2028; and the tenth Renewal Term shall be from January 1, 2029, to February 28, 2029. Such options shall be exercised by the action of the City Council in effecting Appropriations of funds for the Rental Payments due in the Original Term and subsequently, each Renewal Term. If such Appropriation of funds for any Renewal Term is not made for a future Fiscal Year, the City will be deemed to have thereby failed to exercise its option to renew this Lease for such Fiscal Year, and the Lessor's sole remedy shall be the return of the Equipment to the Lessor at the expiration of the then current term.

Rental Payments/Purchase Price Schedule*

*The Purchase Price is in addition to all Rental Payments (including the Rental Payment shown on the same line as the Purchase Price on any particular Payment Date) due on the related Payment Date.

date	funding	Rental payment	interest 3.0893%	principal	balance	Purchase Price
-----	-----	-----	-----	-----	-----	-----
9/27/2018	4,108,537.00	\$0.00	\$0.00	\$0.00	\$4,108,537.00	
10/1/2019		\$127,459.70	\$128,334.43	-\$874.73	\$4,109,411.73	N/A
11/1/2019		\$127,459.70	\$10,579.27	\$116,880.43	\$3,992,531.30	N/A
2/1/2020		\$127,459.70	\$30,835.11	\$96,624.59	\$3,895,906.70	N/A
5/1/2020		\$127,459.70	\$30,088.85	\$97,370.85	\$3,798,535.86	N/A
8/1/2020		\$127,459.70	\$29,336.84	\$98,122.86	\$3,700,413.00	N/A
11/1/2020		\$127,459.70	\$28,579.02	\$98,880.68	\$3,601,532.32	N/A
2/1/2021		\$127,459.70	\$27,815.34	\$99,644.36	\$3,501,887.96	N/A
5/1/2021		\$127,459.70	\$27,045.77	\$100,413.93	\$3,401,474.03	N/A
8/1/2021		\$127,459.70	\$26,270.25	\$101,189.45	\$3,300,284.58	N/A
11/1/2021		\$127,459.70	\$25,488.75	\$101,970.95	\$3,198,313.63	N/A
2/1/2022		\$127,459.70	\$24,701.21	\$102,758.49	\$3,095,555.14	N/A
5/1/2022		\$127,459.70	\$23,907.58	\$103,552.12	\$2,992,003.02	N/A
8/1/2022		\$127,459.70	\$23,107.83	\$104,351.87	\$2,887,651.15	N/A
11/1/2022		\$127,459.70	\$22,301.90	\$105,157.80	\$2,782,493.35	N/A
2/1/2023		\$127,459.70	\$21,489.74	\$105,969.96	\$2,676,523.39	N/A
5/1/2023		\$127,459.70	\$20,671.32	\$106,788.38	\$2,569,735.01	N/A
8/1/2023		\$127,459.70	\$19,846.57	\$107,613.13	\$2,462,121.88	N/A
11/1/2023		\$127,459.70	\$19,015.45	\$108,444.25	\$2,353,677.63	N/A
2/1/2024		\$127,459.70	\$18,177.92	\$109,281.78	\$2,244,395.85	N/A
5/1/2024		\$127,459.70	\$17,333.91	\$110,125.79	\$2,134,270.06	N/A
8/1/2024		\$127,459.70	\$16,483.39	\$110,976.31	\$2,023,293.75	N/A
11/1/2024		\$127,459.70	\$15,626.30	\$111,833.40	\$1,911,460.34	N/A
2/1/2025		\$127,459.70	\$14,762.58	\$112,697.12	\$1,798,763.23	N/A
5/1/2025		\$127,459.70	\$13,892.20	\$113,567.50	\$1,685,195.73	N/A
8/1/2025		\$127,459.70	\$13,015.10	\$114,444.60	\$1,570,751.13	N/A
11/1/2025		\$127,459.70	\$12,131.22	\$115,328.48	\$1,455,422.65	\$1,455,422.65
2/1/2026		\$127,459.70	\$11,240.52	\$116,219.18	\$1,339,203.47	\$1,339,203.47
5/1/2026		\$127,459.70	\$10,342.93	\$117,116.77	\$1,222,086.70	\$1,222,086.70
8/1/2026		\$127,459.70	\$9,438.42	\$118,021.28	\$1,104,065.41	\$1,104,065.41
11/1/2026		\$127,459.70	\$8,526.91	\$118,932.79	\$985,132.63	\$985,132.63
2/1/2027		\$127,459.70	\$7,608.37	\$119,851.33	\$865,281.30	\$865,281.30
5/1/2027		\$127,459.70	\$6,682.74	\$120,776.96	\$744,504.34	\$744,504.34
8/1/2027		\$127,459.70	\$5,749.95	\$121,709.75	\$622,794.59	\$622,794.59
11/1/2027		\$127,459.70	\$4,809.97	\$122,649.73	\$500,144.86	\$500,144.86
2/1/2028		\$127,459.70	\$3,862.72	\$123,596.98	\$376,547.88	\$376,547.88
5/1/2028		\$127,459.70	\$2,908.15	\$124,551.55	\$251,996.33	\$251,996.33
8/1/2028		\$127,459.70	\$1,946.22	\$125,513.48	\$126,482.85	\$126,482.85
11/1/2028		\$127,459.70	\$976.85	\$126,482.85	\$0.00	\$0.00
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	\$4,108,537.00	\$4,843,468.60	\$734,931.60	\$4,108,537.00		
	\$500,000.00 (City deposit to escrow)					

EXHIBIT I

(exhibit follows)

whatsoever shall be due hereunder and this Lease shall be deemed null and void from the designated termination date.

Any such termination may be effected by the mailing of a notice of such termination, including the statement of the City's designated termination date, by the City Representative to the Lessor and the Escrow Agent.

IF LESS THAN ALL PROCEEDS ARE USED, THE CITY MAY REQUEST ESCROW AGENT REFUND THOSE PROCEEDS TO THE CITY FOR USE AS RENTAL PAYMENTS AT DISCRETION OF THE CITY.

Section 5.02. Enjoyment of Equipment. After Acceptance, the Lessor shall provide the City with quiet use and enjoyment of the Equipment during the Lease Term, and the City shall peaceably and quietly have, hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from the Lessor, except as otherwise expressly set forth in this Lease. No Registered Owner shall interfere with such quiet use and enjoyment during the Lease Term so long as this Lease has not been terminated as a result of the occurrence of an Event of Nonappropriation or an Event of Default.

Section 5.03. Location; Inspection. Once accepted, no item of the Equipment will be hanged except for in the location specified for it on Exhibit A without the Lessor's consent, which consent shall not be unreasonably withheld. If the Lessor provides, on any business day, to the City's Representative at least 24 hours' written notice of intent to inspect, the Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the locations of the Equipment for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. After Acceptance, the City will not use, operate or maintain the Equipment carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. The City shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In respect of the Equipment, the City agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided that the City may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not adversely affect the interest of the Lessor in and to the Equipment or its interest or rights under this Lease.

The City agrees that it will, at the City's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order. The Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment.

ARTICLE VI

Section 6.01. Liens and Encumbrances. During the Lease Term the City agrees that the Lessor shall be entitled to receive (a) any value attached or added to the Equipment at any time, (b) any money or property from the sale of the Equipment, and (c) any money from an insurance claim if the Equipment is lost or damaged. Unless an Event of Nonappropriation or an Event of Default has occurred and is continuing, upon acceptance thereof, the City shall have the right to peacefully possess and use the Equipment during the Lease Term. The City will at all times protect

and defend, at its own cost and expense, the Equipment from and against all claims, liens, and legal processes of the City's creditors, and keep all Equipment free and clear of all such claims, liens and processes.

Section 6.02. Financing Documents. Neither the Lessor nor the City will execute, or cause to be filed, any financing or security documents in respect of this Lease or the Equipment unless such financing or security documents shall consist of financing statements filed by the Lessor reflecting (a) the Lessor's interest in the Equipment and designated as "filed for notice purposes only" or (b) the Lessor's assignment of its interests in this Lease and the Equipment as provided in Section 11.01.

Section 6.03. Personal Property. The Equipment is and will remain personal property. Upon the request of the Lessor, the City will, at the City's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. The City shall keep the Equipment free of all levies, liens and encumbrances except those created by this Lease. The Lessor and the City contemplate that the Equipment will be used and possessed by the City for a governmental or proprietary purpose of the City and that the Equipment will therefore be exempt from all property taxes. Because of such contemplation, the Lessor agrees that it will not declare the Equipment to the Assessor's office of the City, the State or any other taxing entity and will not take any other action that may cause an improper tax billing to be prepared in respect of the Equipment. If the use, possession or acquisition of the Equipment is nevertheless determined to be subject to taxation, the City shall pay when due (a) all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment and (b) all utility and other charges incurred in the use and maintenance of the Equipment, provided that the City shall have effected an Appropriation for the payment of any such taxes or charges. The City shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as accrue during the Lease Term.

Section 7.02. Insurance. At its own expense, the City shall, during the Lease Term, either (a) maintain casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, in an amount at least equal to the then applicable Purchase Price of the Equipment or (b) self-insure against such risks evidencing such self-insurance by providing a statement of self-insurance coverage in an amount not less than the cost of the Equipment. Upon the Lessor's written request to the City Representative from time to time throughout the Lease Term, the City Representative shall furnish to the Lessor evidence of such insurance or self-insurance coverage. The City shall not materially modify or cancel such insurance or self-insurance coverage without first giving written notice thereof to the Lessor at least 10 days in advance of such cancellation or modification. To the extent that the City is not self-insured in respect of the Equipment, the required casualty insurance shall contain a provision making any losses payable to the City and the Lessor as their respective interest may appear.

Section 7.03. Advances. In the event the City shall fail to keep the Equipment in good repair and working order, the Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by the Lessor shall constitute additional rent for the then current Original Term or Renewal Term and, only if an Appropriation has been effected by the City for this purpose, the City agrees to pay such amounts so advanced by the Lessor with interest thereon from the due date until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, the City and the Lessor will cause the Net Proceeds to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment to substantially the same condition as existed prior to the event causing such damage, destruction, or condemnation unless the City shall have exercised its option to purchase the Equipment pursuant to Section 10.01. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to the City.

For purposes of this Article, the term "Net Proceeds" shall mean (a) the amount of insurance proceeds received by the City for rebuilding, repairing, restoring, or replacing the damaged or destroyed Equipment or (b) the amount remaining from the gross proceeds of any condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, City shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pursuant to Section 10.01 purchase the Lessor's interest in all of the Equipment. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Lessor's interest in all of the Equipment shall be retained by the City. If the City shall make any payments pursuant to this Section, the City shall not be entitled to any reimbursement therefor from the Lessor nor shall the City be entitled to any diminution of the amounts payable under Article IV. If the City does not timely budget and appropriate sufficient funds to proceed under either (a) or (b), an Event of Nonappropriation shall be deemed to have occurred and the Lessor may pursue remedies available to it following an Event of Nonappropriation.

ARTICLE IX