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This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Cheryl J. Spivey
Chief Financial Officer

INSTALLMENT FINANCING AGREEMENT

Dated as of February 20, 2018

between

CITY OF FAYETTEVILLE, NORTH CAROLINA

and

U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC.

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INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of February 20, 2018 (the "Agreement"), between the CITY OF FAYETTEVILLE, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the "City"), and U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC. (the "Lender");

WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the City may finance the acquisition of certain improvements and equipment by contracts that create in such improvements and equipment a security interest to secure repayment of the moneys advanced or made available to acquire or improve such equipment;

WHEREAS, after due consideration, the City Council of the City has determined to finance the cost of various radio communications equipment for use by various departments of the City (the "Equipment");

WHEREAS, in order for the City to obtain the funds to finance the Equipment, the City has determined to enter into this Agreement whereby the Lender will advance funds to the City to be applied, together with any other available funds, to (a) pay the costs of the Equipment and (b) pay certain financing costs relating thereto, and the City will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligation under this Agreement, including the payment of the installment payments hereunder, the City will execute and deliver a Security Agreement, dated as of February 20, 2018 (the "Security Agreement"), for the benefit of the Lender, pursuant to which the City will grant the Lender a security interest in the Equipment;

WHEREAS, the Lender is willing to advance moneys to the City for the purpose of financing the costs of the Equipment, and the City is willing to repay the moneys so advanced by the Lender in installments as more fully provided herein; and

WHEREAS, the City and the Lender have each duly authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words “hereby”, “herein”, “hereof”, “hereto”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subsections hereof. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subsections of this Agreement unless some other reference is indicated.

“Act” means Section 160A-20 of the General Statutes of North Carolina, as amended.

“Advancement” means the advance being made by the Lender to the City in the amount of \$3,223,745 pursuant to Section 3.1 to pay the costs of the Equipment and related Closing Costs.

“Agreement” means this Installment Financing Agreement, including any amendment or supplement hereto.

“City” means the City of Fayetteville, North Carolina, a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successors or assigns.

“City Council” means the City Council of the City.

“Closing” means the date on which the City executes and delivers this Agreement, and the Lender makes the Advancement to the City.

“Closing Costs” means and further includes all items of expense directly or indirectly payable by or reimbursable to the City relating to the financing of the Equipment, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“Determination of Taxability” means and shall be deemed to have occurred on the date when (a) the City shall receive notice from the Lender that the Internal Revenue Service has assessed as includable in gross income the interest component of the Installment Payments made by the City under this Agreement that is the result of the occurrence of an Event of Taxability or (b) the City or the Lender shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest component of the Installment Payments made by the City under this Agreement is includable in the gross income of the Lender for federal income tax purposes that is the result of the occurrence of an Event of Taxability.

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the City in any action for breach of a contractual obligation

incurred under the Act and that the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement.

“Equipment” means all of the equipment financed by the City from the proceeds advanced to the City pursuant to this Agreement, as more particularly described in Exhibit A to the Security Agreement.

“Escrow Agreement” means the Escrow Agreement, dated as of February 20, 2018, among the Lender, the City and U.S. Bank National Association, as escrow agent, including any amendment or supplement thereto.

“Escrow Fund” has the meaning set forth in the Escrow Agreement.

“Event of Nonappropriation” means (a) the failure by the City Council to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the City Council’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a) above. In the event that during any Fiscal Year, any additional payments shall become due that were not included in the City’s current budget, and if there are no moneys available to pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred upon notice by the City to the Lender to such effect.

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by the failure of the City to comply with any covenants in this Agreement or any document or certificate executed by the City in connection with the transactions contemplated by this Agreement which has the effect of causing the interest component of the Installment Payments made by the City under this Agreement to be includable in the gross income of the Lender for federal income tax purposes.

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Inclusion Date” means the effective date that the interest component of the Installment Payments made by the City under this Agreement is includable in the gross income of the Lender as a result of a Determination of Taxability.

“Installment Payment Date” means each of the dates set forth on the Installment Payment Schedule attached hereto as Exhibit A.

“Installment Payments” means the payments required to be paid by the City pursuant to Section 4.1 in order to repay the Advancement, as specified in Exhibit A attached hereto.

“Lender” means U.S. Bancorp Government Leasing and Finance, Inc., and any of its successors or assigns.

“Net Proceeds” means any proceeds of insurance or taking by eminent domain or condemnation paid with respect to the Equipment remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means, and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than 60 days from the filing thereof; (c) attachments remaining undischarged for not longer than 60 days from the making thereof; (d) the lien created by the Security Agreement; (e) this Agreement and (f) any lease of the Equipment permitted by Section 8.2(b).

“Security Agreement” means the Security Agreement, dated as of February 20, 2018, from the City for the benefit of the Lender, including any amendment or supplement thereto.

“State” means the State of North Carolina.

SECTION 1.2. Exhibits. The following exhibits are attached to, and by reference made a part of, this Agreement:

Exhibit A	Installment Payment Schedule
Exhibit B	Form of Self-Insurance Letter

ARTICLE II

REPRESENTATIONS OF THE CITY AND THE LENDER

SECTION 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Lender as follows:

(a) The City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.

(b) The Constitution and laws of the State authorize the City to (i) execute and deliver this Agreement, the Security Agreement and the Escrow Agreement, (ii) enter into the transactions contemplated thereby and (iii) carry out its obligations thereunder.

(c) The City has duly authorized and executed this Agreement, the Security Agreement and the Escrow Agreement in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Agreement, the Security Agreement or the Escrow Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions or any charter provision, restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the City of this Agreement, the Security Agreement, the Escrow Agreement and all other documents related thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the City challenging the validity or enforceability of this Agreement, the Security Agreement, the Escrow Agreement or any other documents relating hereto and the performance of the City's obligations hereunder and thereunder.

(g) The City is not in violation of any laws or regulations relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001) (the "Patriot Act"). Specifically, the City (i) is not an entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (ii) is not an entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) is not an entity with which the Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) is not an entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or (v) is not an entity that is named as a "specially designated national and blocked person" on the most current list published by the Office of

Foreign Asset Control (“OFAC”) or any list of persons or entities issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list. The City does not and will not conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any blocked or prohibited person or entity described in the preceding sentence or deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or the Patriot Act.

(h) The City acknowledges and agrees that this transaction is an arm’s-length commercial transaction between the City and the Lender. In connection with this transaction, the Lender is acting solely as a principal and not as the City’s agent, advisor or fiduciary. The Lender has not assumed a fiduciary responsibility with respect to this transaction, and nothing in this transaction or in any prior relationship between the City and the Lender shall be deemed to create an advisory, fiduciary or agency relationship between the City and the Lender in respect of this transaction. The City has consulted its own legal and other advisors to the extent it has deemed appropriate.

SECTION 2.2. Representations, Covenants and Warranties of the Lender. The Lender represents, covenants and warrants to the City as follows:

(a) The Lender is a Minnesota corporation and has the requisite power and authority to enter into this Agreement.

(b) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Lender or any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound.

ARTICLE III

ADVANCEMENT; ESCROW FUND

SECTION 3.1. Advancement; Creation of Escrow Fund. In consideration of the covenants, warranties and representations contained herein, and in consideration of the City's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance to the City at Closing moneys in the aggregate amount of \$3,223,745 (the "Advancement") to pay the costs of the Equipment and the Closing Costs. On the date of Closing, the Lender shall deposit the proceeds of the Advancement into the Escrow Fund established pursuant to the Escrow Agreement, which amount shall be applied in accordance with the provisions of the Escrow Agreement.

SECTION 3.2. Acquisition and Installation of the Equipment. The City shall enter into one or more contracts or purchase orders providing for the acquisition and installation of the Equipment substantially as described herein and in the Escrow Agreement.

SECTION 3.3. Reliance of the Lender on Documents. The Lender may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Lender shall not be liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Lender's duties hereunder shall be limited to the receipts of such moneys, instruments or other documents received by it as the Lender, and for the disposition of the same in accordance herewith.

SECTION 3.4. Disclaimer of the Lender. The City acknowledges and agrees that the design of the Equipment has not been made by the Lender, and the Lender has not supplied any plans or specifications with respect thereto and that the Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Equipment or similar projects, (b) has not made any recommendation, given any advance nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Equipment or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Equipment or any component part thereof or any property or rights relating thereto at any stage of the acquisition or installation thereof, (c) has not at any time had physical possession of the Equipment or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Equipment or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the City intends therefore, or (iii) is safe in any manner of respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF TO THE CITY OR ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE

MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP, QUALITY OR CAPACITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE CITY OBTAINS FROM THE LENDER PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENT WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE CITY, TO PAY THE COST OF ACQUIRING OR INSTALLING THE EQUIPMENT; OR ANY OTHER CHARACTERISTICS OF THE EQUIPMENT, IT BEING AGREED THAT ALL RISKS RELATING TO THE EQUIPMENT, THE COMPLETION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE CITY, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE CITY.

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement. (a) The City shall repay the Advancement, with interest, computed at the rate of 2.45% per annum, in installments due at the times and in the amounts set forth in Exhibit A.

(b) All Installment Payments required to be made to the Lender hereunder shall be made to U.S. Bancorp Government Leasing and Finance, Inc. at the following address, or otherwise as may be authorized or directed by the Lender:

Lockbox: U.S. Bancorp Government Leasing and Finance, Inc.
P.O. Box 959067
St. Louis, MO 63179-9067

(c) In the event of a Determination of Taxability, the interest rate payable under this Agreement, from and after the Inclusion Date, shall be adjusted to preserve the Lender's after-tax economic yield with respect to the interest components of the Installment Payments, taking into account any interest expense deductions lost by the Lender as a direct or indirect result of the City's actions. In addition, the City shall pay to the Lender (i) an amount necessary to reimburse the Lender for any interest, penalties, or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of the Lender's failure to include the interest portion of the Installment Payments in its gross income for income tax purposes, and (ii) upon request of the Lender, additional interest as a result of the increase in the interest rate on all previous payments made by the City after the Inclusion Date. In the event of a Determination of Taxability, the Lender shall provide the City with a new Installment Payment Schedule which reflects the new interest rate which will replace the Installment Payment Schedules set forth in Exhibit A.

(d) The City agrees to give prompt written notice to the Lender upon the City's receipt of any notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability shall have occurred.

SECTION 4.2. Budget and Appropriation. (a) The officer of the City at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the City Council in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Security Agreement. Any budget item referred to in this Section shall be deleted from the applicable budget by the City Council only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be included within the minutes of the City Council. The City shall furnish the Lender with copies of its annual budget promptly after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Agreement or the Security Agreement promptly after its adoption. The City shall promptly provide written notice to the Lender of any Event of Nonappropriation.

(b) NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE CITY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE CITY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE CITY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTAIN THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS AGREEMENT AND THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS AGREEMENT.

No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys, nor shall any provision of this Agreement restrict the future issuance of any of the City's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

SECTION 4.3. Security Agreement. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the City will execute and deliver the Security Agreement simultaneously with the execution and delivery of this Agreement granting to the Lender a security interest in the Equipment.

SECTION 4.4. No Set-Off, Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the City to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the City will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the City may have against the Lender.

ARTICLE V

INSURANCE

SECTION 5.1. Insurance. (a) The City shall, during the term of this Agreement and at all times before all Installment Payments have been paid, maintain or caused to be maintained a comprehensive general liability policy or policies (including umbrella coverage) in protection of the City, its officers, agents and with a minimum liability limit of \$1,000,000 for personal injury or death and \$1,000,000 for property damage for any one occurrence and an aggregate a minimum annual aggregate liability limit of \$2,000,000. Said policy or policies shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the City Council and, in the judgment of the City Council, shall protect the City against losses not protected under the principles of sovereign immunity and shall name the Lender as an additional insured. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

(b) The City shall, during the term of this Agreement and at all times before all Installment Payments have been paid, continuously insure the Equipment, or cause the Equipment to be insured, against loss or damage to any portion of the Equipment with a value in excess of \$25,000 by fire and all other risks in an amount equal to 100% of the actual cash value of such Equipment (subject to a deductible clause not to exceed \$50,000 for any one loss), paying as the same become due all premiums in respect thereof. The policy providing for such insurance shall name the Lender as loss payee.

(c) In lieu of obtaining the policies of insurance required by this Section, the City may adopt alternative risk management programs which it determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other institutions, to participate in programs of captive insurance companies, to participate with other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City. In addition, any insurance coverage pursuant to this Section may also be pursuant to a program whereby the City self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of this Section. In the event that the City maintains such self-insurance or other alternative risk management programs as permitted by this subsection, the City shall provide to the Lender a letter in substantially the form set forth in Exhibit B attached hereto.

(d) The insurance coverage required under this Section may be maintained under a blanket policy covering other properties of the City.

(e) The City shall cause to be delivered to the Lender annually on or about July 1 of each year a certificate or other evidence showing that the insurance policies or alternative risk management programs required or permitted by this Agreement are in full force and effect. Furthermore, the City shall not cancel or modify such insurance or other coverage required by

this Section in any way that would affect the interests of the Lender without first giving, or causing to be given, written notice thereof to the Lender at least 30 days in advance of such cancellation or modification.

(f) The City shall cooperate fully with the Lender in filing any proof of loss with respect to any insurance policy maintained pursuant to this Section.

SECTION 5.2. Damage and Destruction. If at any time before all Installment Payments have been paid, the Equipment is damaged or destroyed by fire, flood, windstorm or other casualty, the City shall cause the Net Proceeds from insurance, or an amount equal thereto, to be used for the repair, restoration or replacement of the Equipment or to the prepayment of the principal components of the Installment Payments as provided in Article VI. In the case of any damage to or destruction of the Equipment exceeding \$100,000 in any Fiscal Year, the City shall give prompt written notice thereof to the Lender. All equipment, machinery or other personal property so acquired from such Net Proceeds pursuant to this Section shall be purchased free of all liens and encumbrances, other than Permitted Encumbrances, and shall become a part of the Equipment, subject to the security interest created by the Security Agreement.

SECTION 5.3. Advances. In the event the City shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 5.1, the Lender may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by the Lender shall constitute additional amounts advanced hereunder, and, subject to the Enforcement Limitation, the City agrees to pay such amounts so advanced by the Lender with interest thereon from the due date until paid at a rate equal to 5.00% per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VI
DAMAGE, DESTRUCTION AND EMINENT DOMAIN;
USE OF NET PROCEEDS

SECTION 6.1. Obligation of the City to Repair and Replace the Equipment. Unless applied to the payment in full of the remaining Installment Payments pursuant to Section 6.2 and Section 10.1, the City shall cause the Net Proceeds of any insurance policies in excess of \$100,000 to be deposited in a separate fund maintained by the City in a depository account approved by the Lender. Except as set forth in Section 6.2, all Net Proceeds so deposited shall be applied to the prompt repair, restoration or replacement of the Equipment and shall be disbursed upon receipt of requisitions in the same manner specified in Section 3.4 for disbursements from the Equipment Fund. The Lender shall cooperate with the City in the administration of such account and shall not unreasonably withhold its approval of requisitions under this Section. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the City, subject to the Security Agreement and Permitted Encumbrances, and shall be included as part of the Equipment under this Agreement.

SECTION 6.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the City to Repair the Equipment. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Equipment, the City may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this subsection, the City shall not be entitled to any reimbursement therefor from the Lender, nor shall the City be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the City elects not to apply the Net Proceeds to the repair, restoration or replacement of the Equipment, the City may apply the Net Proceeds of such insurance policies, together with any other available funds of the City, to the prepayment in whole of the principal component of the Installment Payments in accordance with Section 10.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the City.

Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the City shall commence the repair, restoration or replacement of the Equipment, or shall apply the Net Proceeds and any other available funds of the City to the prepayment of the Installment Payments under the provisions of Section 10.1. For purposes of this subsection, “commence” shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Equipment. In the event that the City shall, after commencing the repair, restoration, modification, improvement or replacement of the Equipment, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the City may, subject to the provisions set forth above, elect to apply the Net Proceeds to

the prepayment of the principal components of the Installment Payments under the provisions of Section 10.1.

SECTION 6.3. Cooperation of the Lender. The Lender shall cooperate fully with the City in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.1. In no event shall the Lender or the City voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Equipment without the written consent of the other.

ARTICLE VII

COVENANTS OF THE CITY

SECTION 7.1. Access to the Equipment. The City agrees that the Lender and its agents and employees, shall have the right, at all reasonable times during normal business hours of the City upon the furnishing of reasonable notice to the City under the circumstances, to examine and inspect the Equipment or any portion thereof. The City further agrees that the Lender and the Lender's successors, assigns or designees shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by the City to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Lender any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Lender shall be deemed to impose upon the Lender any duty or obligation to identify any defects in the Equipment or to notify any person with respect thereto.

SECTION 7.2. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the City shall provide for the repair and replacement of any portion of the Equipment required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the City shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Equipment; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the City shall furnish to the Lender an opinion of counsel acceptable to the Lender to the effect that, by nonpayment of any such items, the interest of the Lender in the Equipment will not be materially endangered and that all or any portion of the Equipment will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the City shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 7.3. Modification of the Equipment. The City shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any portion of the Equipment if such additions, modifications or improvements are necessary or beneficial for the use of the Equipment. Such additions, modifications and improvements shall not in any way damage any of the Equipment (unless such damage is to be repaired as provided in Section 6.1) or cause the Equipment to be used for purposes other than those authorized under the provisions of law, and the Equipment, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Equipment immediately prior to the making of such additions, modifications and improvements. All such items, as so modified, shall be free of all liens and encumbrances except

for Permitted Encumbrances, shall become part of the Equipment and shall subject to the lien of the Security Agreement.

Except for Permitted Encumbrances, the City shall not permit any lien to be established or remain against the Equipment for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided, however, that if any such lien is established, the City may, at its own expense and in its name, in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the City shall furnish to the Lender full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.4. Encumbrances. Except as provided in this Article (including, without limitation, Section 7.3 and this Section), the City shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Equipment, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the City may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Lender with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.5. Risk of Loss. Whether or not covered by insurance or self-insurance, the City hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve the City of the obligation to make the Installment Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, the City hereby agrees to reimburse Lender (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lender, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person, and/or (d) the breach of any covenant of the City in connection with this Agreement or any material misrepresentation provided by the City in connection with this Agreement. The provisions of this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of this Agreement for any reason.

SECTION 7.6. Financial and Other Information to the Lender. The City agrees that it will furnish to the Lender, (a) when the same become available, but in no event later than 180 days after the end of the Fiscal Year, its annual audited financial statements, (ii) upon the written

request of the Lender, information regarding its annual budget as submitted or approved, and any amendments or supplements thereto, and (iii) upon the written request of the Lender, such other financial information relating to the ability of City to perform its obligations under this Agreement. In addition, the City shall provide to the Lender the information required by Section 4.2 hereof.

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1. Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution all or any part of its interest in the Equipment or this Agreement, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution. The City agrees that this Agreement may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign either the entire pool or any partial interest herein. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Equipment or this Agreement shall be effective unless and until the City shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The City covenants and agrees with the Lender and each subsequent assignee of the Lender that it will maintain for the full term of this Agreement a written record of each such assignment or reassignment. The City agrees to execute any document reasonably required by the Lender or any assignee in connection with any such assignment. Notwithstanding any assignment by the Lender of its interest in this Agreement, the City shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.6.

After the giving of notice described above to the City, the City shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgement shall in no way be deemed to make the assignment effective.

The Lender covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Lender's rights in this Agreement will contain a statement to the effect that the City has not reviewed and is not responsible for the disclosure document. The Lender covenants to defend, indemnify and hold harmless the City and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such indemnified party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the City shall have expressly approved the use of such disclosure document.

SECTION 8.2. Assignment and Lease by the City. (a) This Agreement may not be assigned by the City.

(b) The City may lease all or any portion of the Equipment, subject to each of the following conditions:

(i) the obligation of the City to make Installment Payments hereunder shall remain obligations of the City;

(ii) the City shall within thirty (30) days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Lender, a true and complete copy of the form of such lease;

(iii) the Lender shall have received evidence satisfactory to the Lender that such lease is subordinate in all respects to the lien of the Security Agreement; and

(iv) the lease by the City shall not cause the Equipment to be used for a purpose other than a governmental or proprietary function of the City authorized under the provisions of the Constitution and laws of the State and shall not cause the interest component in the Installment Payments to be includable in gross income of the Lender for federal income tax purposes.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the City to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure of the City or the Lender to receive insurance proceeds as a result of damage or destruction of any of the Equipment resulting from the failure of the City to maintain the insurance coverage required by Section 5.1.

(d) Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a), (b) or (c) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lender; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the City within the applicable period and diligently pursued, the City shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued.

(e) The City becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the City) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the City.

(f) The occurrence of an “Event of Default” under the Security Agreement as defined therein.

(g) The City shall fail to pay the principal of or the interest or any redemption premium on any general obligation bonds or notes of the City as required by such bonds or notes or the documents providing for the issuance thereof.

(h) Any warranty, representation or statement made by the City herein or in the Security Agreement, the Escrow Agreement or any other document executed and delivered by the City in connection herewith is found to be incorrect or misleading in any material respect as of the date made.

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Lender may, without any further demand or notice (except as expressly provided below), exercise any one or more of the following remedies:

(a) by written notice to the City, declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Security Agreement or the Escrow Agreement, including sale of the Equipment, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due; and

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the City of the applicable covenants of this Agreement or to recover for the breach thereof.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE CITY IN FAVOR OF THE LENDER OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE EQUIPMENT IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lender is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 9.4. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Prepayment of Installment Payments. (a) Upon at least ten (10) days' prior written notice to the Lender (unless otherwise waived by the Lender), the City may prepay the outstanding principal component of the Installment Payments in whole, but not in part, on any Installment Payment Date on or after August 20, 2019, at a prepayment price equal to the lesser of (i) 103% of the principal component of the Installment Payments to be prepaid and (ii) the Break Funding Amount (as defined below), plus accrued interest thereon to the prepayment date.

(b) The following shall apply for purposes of this Section:

“Break Funding Amount” shall mean the amount which is derived by summing the present values of each prospective payment of the principal component of the Installment Payments and the interest component of the Installment Payments which, without such prepayment, would otherwise have been received by the Lender over the remaining contractual life of the Installment Payment Schedule. The individual discount rate used to present value each prospective payment of the interest and/or principal component of the Installment Payments shall be the Money Market Rate at Prepayment for the maturity matching that of each specific payment of such principal and/or interest component of the Installment Payments.

“Money Market Rate at Prepayment” shall mean that zero-coupon rate, calculated on the prepayment date, and determined the Lender in its reasonable discretion, as the rate at which the Lender would be able to borrow funds in Money Markets for the prepayment amount matching the maturity of a specific prospective Installment Payment Schedule payment, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. A separate Money Market Rate at Prepayment shall be calculated for each prospective Installment Payment Date.

“Money Markets” shall mean one or more wholesale funding markets available to and selected by the Lender, including negotiable certificates of deposit, commercial paper, Eurodollar deposits, bank notes, federal funds, interest rate swaps or others.

In calculating the Break Funding Amount, the Lender is authorized to make such assumptions regarding the source of funding, redeployment of fund and other related matters as the Lender may deem appropriate. The Lender shall provide the City with reasonable evidence supporting its calculation of the Break Funding Amount.

ARTICLE XI
MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the City:

City of Fayetteville, North Carolina
433 Hay Street
P.O. Drawer D
Fayetteville, North Carolina 28302
Attention: Chief Financial Officer

If to the Lender:

U.S. Bancorp Government Leasing and Finance, Inc.
13010 SW 68th Parkway, Suite 100
Portland, Oregon 97223
Attention: Legal

The City and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Lender and their respective successors and assigns. Whenever in this Agreement either the City or the Lender is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Commitment Letter. The terms of this Agreement shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Lender. To the extent of any conflict between this Agreement and such other documents, this Agreement shall take priority.

SECTION 11.6. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

SECTION 11.7. E-Verify. The Lender understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Lender shall require that any subcontractor that it uses in connection with the performance of its obligations under this Agreement to certify to such subcontractor’s compliance with E-Verify.

IN WITNESS WHEREOF, the City and the Lender have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.

CITY OF FAYETTEVILLE, NORTH CAROLINA

[SEAL]

By: _____
City Manager

Attest:

City Clerk

U.S. BANCORP GOVERNMENT LEASING AND
FINANCE, INC.

By: _____

Name: _____

Title: _____

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

<u>Installment Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
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FORM OF SELF-INSURANCE LETTER

U.S. Bancorp Government Leasing and Finance, Inc.
13010 SW 68th Parkway, Suite 100
Portland, Oregon 97223
Attention: Legal

Re: Installment Financing Agreement, dated as of February 20, 2018 (the “Agreement”), between the City of Fayetteville, North Carolina (the “City”) and U.S. Bancorp Government Leasing and Finance, Inc. (the “Lender”)

In connection with the above-referenced Agreement (the “Agreement”), the City of Fayetteville, North Carolina (the “City”) hereby warrants and represents to U.S. Bancorp Government Leasing and Finance, Inc. the following information. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Agreement.

1. The City is self-insured for damage or destruction to the Equipment. The dollar amount limit for property damage to the Equipment under such self-insurance program is \$_____.

2. The City is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Equipment. The dollar limit for such liability claims under the City’s self-insurance program is \$_____. [The City maintains an excess insurance policy for claims in excess of City’s self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment in the amount of \$_____.]

[3]. The City maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover City’s self-insurance liabilities is \$_____. [Amounts paid from the City’s self-insurance fund are subject to a dollar per claim of \$_____.]

[3]. The City does not maintain a self-insurance fund. The City obtains funds to pay claims for which it has self-insured from the following sources: _____. Amounts payable for claims from the such sources are limited as follows: _____.

4. Attached hereto are copies of certificates of insurance with respect to any policies maintained by City.

CITY OF FAYETTEVILLE, NORTH CAROLINA

By: _____
City Representative