

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("*Escrow Agreement*") is made as of February 20, 2018, by and among U.S. Bancorp Government Leasing and Finance, Inc. ("*Lender*"), the City of Fayetteville, North Carolina ("*City*") and U.S. BANK NATIONAL ASSOCIATION, as escrow agent ("*Escrow Agent*").

Lender and City have heretofore entered into that certain Installment Financing Agreement, dated as of February 20, 2018") (the "*Agreement*") which contemplates that certain personal property described therein (the "*Equipment*") is to be acquired from the vendor(s) or manufacturer(s) thereof (collectively, the "*Vendor*"). The Equipment is to be financed by Lender to City pursuant to the terms of the Agreement.

The Agreement further contemplates that Lender will deposit in an escrow account established with Escrow Agent (the "*Escrow Fund*") an amount equal to the anticipated aggregate acquisition cost of the Equipment and various financing costs (the "*Advance*"), being \$3,223,745, to be held in escrow and applied on the express terms set forth herein. Such deposit, together with all interest and other additions received with respect thereto and held in the Escrow Fund, is to be applied to pay (i) the Vendor its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by City);(ii) if applicable, to reimburse City for progress payments already made by it to the Vendor of the Equipment and (iii) various financing costs approved by Lender.

The parties desire to set forth the terms on which the Escrow Fund is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The moneys and investments held in the Escrow Fund are for the benefit of City and Lender, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either City or Lender. Lender, City and Escrow Agent intend that the Escrow Fund constitute an escrow account in which City has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein for the disbursement of funds by the Escrow Agent therefrom. However, if the parties' intention that City shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lender have a security interest in the Escrow Fund, and such security interest is hereby granted by City to secure payment of all sums due to Lender under the Agreement. For such purpose, Escrow Agent hereby agrees to act as agent for Lender in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Escrow Fund, the Lender's interest therein.

2. On such day as is determined to the mutual satisfaction of the parties (the "Closing Date"), Lender shall deposit with Escrow Agent cash in the amount of the Advance, to be held in escrow by Escrow Agent on the express terms and conditions set forth herein.

On the Closing Date, Escrow Agent agrees to accept the deposit of the Advance by Lender, and further agrees to hold the amount so deposited, together with all interest and other additions received with respect thereto, as the Escrow Fund hereunder, in escrow on the express terms and conditions set forth herein.

3. Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments comprising the Escrow Fund from time to time shall be held or registered in the name of Escrow Agent (or its nominee). The

Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lender).

4. The cash comprising the Escrow Fund from time to time shall be invested and reinvested by Escrow Agent in one or more investments as directed by City. Absent written direction from City, the cash will be invested in the **[North Carolina Capital Management: Cash Portfolio][U.S. Bank National Association Money Market Deposit Fund (see Exhibit 1 Investment Direction Letter), but only to such extent that such fund is a permitted investment for City under Section 159-30 of the General Statutes of North Carolina, as amended]**. City represents and warrants to Escrow Agent and Lender that any investments selected by City for investment of the Escrow Fund are permitted investments for City under all applicable laws. Escrow Agent will use due diligence to collect amounts payable under a check or other instrument for the payment of money comprising the Escrow Fund and shall promptly notify City and Lender in the event of dishonor of payment under any such check or other instruments. Interest or other amounts earned and received by Escrow Agent with respect to the Escrow Fund shall be deposited in and comprise a part of the Escrow Fund. Escrow Agent shall maintain accounting records sufficient to permit calculation of the income on investments and interest earned on deposit of amounts held in the Escrow Fund. The parties acknowledge that to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the escrow, the parties waive receipt of such confirmations, to the extent permitted by law. The Escrow Agent shall furnish a statement of security transactions on its regular monthly reports. Attached as Exhibit 6 hereto is the Class Action Negative Consent Letter to be reviewed by City.

5. Escrow Agent shall send monthly statements of account to City and Lender, which statements shall set forth all withdrawals from and interest earnings on the Escrow Fund, as well as the investments in which the Escrow Fund is invested.

6. Escrow Agent shall take the following actions with respect to the Escrow Fund:

(a) Upon Escrow Agent's acceptance of the deposit of the Advance, an amount equal to Escrow Agent's set-up fee, if any, as set forth on Exhibit 2 hereto, shall be disbursed from the Escrow Fund to Escrow Agent in payment of such fee.

(b) Escrow Agent shall pay costs of the Equipment and related financing costs upon receipt of a duly executed Requisition Request (substantially in the format of Exhibit 3) signed by Lender and City. Lender's authorized signatures are provided in Exhibit 5. City's authorized signatures will be set forth in an incumbency and signature certificated provided to Lender and Escrow Agent on the Closing Date. Escrow Agent shall use best efforts to process requests for payment within one (1) business day of receipt of requisitions received prior to 2:00 p.m. Central Time. The final Requisition shall be accompanied by a duly executed Final Acceptance Certificate form attached as Exhibit 4 hereto.

(c) Upon receipt by Escrow Agent of written notice from Lender that an Event of Default or an Event of Nonappropriation has occurred and is continuing under the Agreement, all funds then on deposit in the Escrow Fund shall be paid to Lender for application in accordance with the Agreement, and this Escrow Agreement shall terminate.

(d) Upon receipt by Escrow Agent of written notice from Lender that the Advance of the Equipment has been paid in full, Escrow Agent shall pay the funds then on deposit in the Escrow Fund to Lender to be applied to the next succeeding Installment Payment or Payments due under the Agreement until such funds are fully exhausted. Upon disbursement of all amounts in the Escrow Fund, this Escrow Agreement shall terminate.

(e) Unless otherwise terminated earlier in accordance with the provisions of this Escrow Agreement, this Escrow Agreement shall terminate eighteen (18) months from the date of this Escrow Agreement. The term of this Escrow Agreement, may, however, be extended by mutual

consent of City and Lender in writing to Escrow Agent. All funds on deposit in the Escrow Fund at the time of termination under this paragraph, unless otherwise directed by City in writing (electronic means acceptable), shall be transferred to Lender to be applied to the next succeeding Installment Payment or Payments due under the Agreement until such funds are fully exhausted.

7. The reasonable fees and expenses, including any legal fees, of Escrow Agent incurred in connection with the performance of its duties hereunder shall be the responsibility of City. The basic fees and expenses of Escrow Agent, if any, shall be as set forth on Exhibit 2 hereto, and Escrow Agent is hereby authorized to deduct any such fees and expenses from the Escrow Fund as and when the same are incurred without any further authorization from City or Lender. Escrow Agent may employ legal counsel and other experts as it deems reasonably necessary for advice in connection with its obligations hereunder. Escrow Agent waives any claim against Lender with respect to compensation hereunder.

8. Escrow Agent shall have no liability for acting upon any written instruction presented by Lender in connection with this Escrow Agreement, which Escrow Agent in good faith believes to be genuine. Furthermore, Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own negligence, willful misconduct or bad faith. Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made by Escrow Agent.

9. Escrow Agent may resign at any time by giving thirty (30) days' prior written notice to Lender and City. Lender may at any time remove Escrow Agent as Escrow Agent under this Escrow Agreement upon written notice. Such removal or resignation shall be effective on the date set forth in the applicable notice. Upon the effective date of resignation or removal, Escrow Agent shall transfer the Escrow Fund to the successor Escrow Agent selected by Lender.

10. City hereby represents, covenants and warrants that pursuant to Section 1.148-7(d) of the Treasury Regulations, the gross proceeds of the Agreement are reasonably expected to be expended for the governmental purposes for which the Agreement was entered into, as follows: at least 15% within six months after the Closing Date, at least 60% within 12 months after the Closing Date 100% within 18 months after the Closing Date. If City does not comply with Section 1.148-7(d) of the Treasury Regulations, City shall, at its sole expense and cost, compute the rebatable arbitrage on the Agreement, if any, and pay such rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final Installment Payment due under the Agreement.

11. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing Escrow Agent may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing Escrow Agent shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue so to refrain and refuse so to act until:

(a) the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; or

(b) all differences shall have been resolved by all interested parties, and Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.

12. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, and shall be sufficiently given and served upon the other party if delivered (a) personally, (b) by United States registered or certified mail, return receipt requested, postage prepaid, (c) by an overnight delivery by a service such as Federal Express or Express Mail from which written confirmation of overnight delivery is available, or (d) by facsimile with a confirmation copy by regular

United States mail, postage prepaid, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

13. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lender.

14. This Escrow Agreement shall be governed by and construed in accordance with the laws in the State of North Carolina. This Escrow Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties.

15. This Escrow Agreement and any written direction may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC., AS LENDER
By:
Name:
Title:
Address: 13010 SW 68 th Parkway, Suite 100 Portland, OR 97223

CITY OF FAYETTEVILLE, NORTH CAROLINA, AS CITY
By:
Name:
Title:
Address: 433 Hay Street P.O. Drawer D Fayetteville, North Carolina 28302 Attention: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, AS ESCROW AGENT
By:
Name:
Title:
Address: U.S. Bank National Association 950 17 th Street, 12 th Floor Denver, CO 80202

EXHIBIT 1

U.S. BANK NATIONAL ASSOCIATION MONEY MARKET ACCOUNT AUTHORIZATION FORM DESCRIPTION AND TERMS

The U.S. Bank Money Market account is a U.S. Bank National Association ("U.S. Bank") interest-bearing money market deposit account designed to meet the needs of U.S. Bank's Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank's discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank, as Agent for its trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

City of Fayetteville, North Carolina

Company Name

Signature of Authorized Directing Party

Trust Account Number – includes existing and
future sub-accounts unless otherwise directed

Title/Date

EXHIBIT 2

Fee Schedule for Services as Escrow Agent Equipment Installment Financing Agreement Escrow Fund

CTS01010A	Acceptance Fee The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time, non-refundable fee, payable at closing.	-0-
CTS04460	Escrow Agent Annual fee for the standard escrow agent services associated with the administration of the account. Administration fees are payable in advance.	-0-
	Direct Out of Pocket Expenses Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel after the initial close, travel expenses and filing fees.	At Cost
	Extraordinary Services Extraordinary Services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the services and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.	

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

EXHIBIT 3

REQUISITION REQUEST

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under that certain Escrow Agreement, dated as of February 20, 2018 (the "*Escrow Agreement*"), by and among U.S. Bancorp Government Leasing and Finance, Inc. (the "*Lender*"), City of Fayetteville, North Carolina (the "*City*"), and U.S. Bank National Association (the "*Escrow Agent*"), the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to City) with respect to equipment being financed or related financing costs under that certain Installment Financing Agreement, dated as of February 20, 2018 (the "*Agreement*"), by and between the Lender and the City, and has not formed the basis of any prior requisition request.

PAYEE	AMOUNT	INVOICE NO. (IF APPLICABLE)	EQUIPMENT OR OTHER FINANCING COST

Total requisition amount \$ _____

The undersigned, as City under the Agreement, hereby certifies:

1. If this requisition relates to the acquisition of the Equipment, the items of the Equipment being acquired with the proceeds of this disbursement have been delivered and installed at the location(s) contemplated by the Agreement. The City has conducted such inspection and/or testing of the Equipment being acquired with the proceeds of this disbursement as it deems necessary and appropriate, and such Equipment has been accepted by the City.
2. The costs of the Equipment or financing costs to be paid from the proceeds of this disbursement have been properly incurred, are a proper charge against the Escrow Fund and have not been the basis of any previous disbursement.
3. No part of the disbursement requested hereby will be used to pay for materials not yet incorporated into the Equipment or for services not yet performed in connection therewith.
4. The Equipment is covered by insurance in the types and amounts required by the Agreement.
5. No Event of Default or Event of Nonappropriation (if applicable), as each such term is defined in the Agreement, and no event which with the giving of notice or lapse of time, or both, would become such an Event of Default or Event of Nonappropriation has occurred and is continuing on the date hereof.
6. If City paid an invoice prior to the commencement date of the Agreement, and is requesting reimbursement for such payment, City has satisfied the requirements for reimbursement set forth in Section 1.150-2 of the Treasury Regulations.

Request Date: _____

Lender: U.S. Bancorp Government Leasing and Finance, Inc.
By:
Name:
Title:

City: City of Fayetteville, North Carolina
By:
Name:
Title:

EXHIBIT 4

FINAL ACCEPTANCE CERTIFICATE

U.S. Bancorp Government Leasing and Finance, Inc.
13010 SW 68th Parkway, Suite 100
Portland, OR 97223

Re: Installment Financing Agreement, dated February __, 2018 (the "Agreement"), between U.S. Bancorp Government Leasing and Finance, Inc. and City of Fayetteville, North Carolina

Ladies and Gentlemen:

In accordance with the Agreement, the undersigned ("City") hereby certifies and represents to, and agrees with, U.S. Bancorp Government Leasing and Finance, Inc. ("Lender"), as follows:

- (1) The Equipment, as such term is defined in the Agreement, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) City has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default or an Event of Nonappropriation (as such terms are defined in the Agreement) exists at the date hereof.

Acceptance Date: _____

City: City of Fayetteville, North Carolina
By:
Name:
Title:

EXHIBIT 6

CLASS ACTION NEGATIVE CONSENT LETTER

_____, 20__

City of Fayetteville, North Carolina
433 Hay Street
P.O. Drawer D
Fayetteville, North Carolina 28302

RE: USBGLF/City of Fayetteville, North Carolina Escrow Fund - Class Action Litigation Claims

Dear Chief Financial Officer:

U.S. Bank National Association ("U.S. Bank") has established its policies and procedures relative to class action litigation claims filed on behalf of its clients' accounts. This policy may impact future claims filed by U.S. Bank on behalf of the above-referenced account. Listed below are the policies regarding class action litigation claims:

1. U.S. Bank will file class action litigation claims, at no charge, on behalf of open, eligible agency or custody accounts upon receipt of proper documented authorization. This notice, with your ability to opt out as further described below, constitutes such documented authorization.
2. U.S. Bank will not file claims for agency or custody accounts that were open during the class action period but were closed prior to receipt of any notice of the class action litigation.
3. Assuming requisite information is provided by the payor to identify the applicable account, settlement proceeds of the class action litigation will be posted within a reasonable time following receipt of such proceeds to the entitled accounts that are open at such time. If entitled accounts are closed prior to distribution and receipt of settlement proceeds, they will be remitted to entitled beneficiaries or successors of the account net of any research and filing fees. Proceeds, less any research and filing fees, will be escheated if the entitled beneficiaries or successors of the account cannot be identified /located.

If you wish U.S. Bank to continue to file class action litigation proofs of claim on behalf of your account, you do not need to take any further action. However, if you do not wish U.S. Bank to file class action proofs of claim on behalf of your account, you may notify us of this election by returning this letter with your signature and date provided below within 30 days or by filing a separate authorization letter with your Account Manager by the same date.

The authorization and understanding contained in this communication constitutes an amendment of any applicable provisions of the account document for the above-referenced account.

If you have any questions, please contact me at the below number.

Sincerely,

Vice President
[Insert Phone Number]

☐ No, U.S. Bank is not authorized to file class action litigation proofs of claim on behalf of the above-referenced account(s). By making this election, I acknowledge that U.S. Bank is not responsible for forwarding notices received on class action or litigation claims.

Authorized Signer

Date