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P. Hrngs. _____
Pgs. 23
Filed: 07-24-18

Sponsored by: Hosmer

First Reading: _____

Second Reading: _____

COUNCIL BILL 2018-200

SPECIAL ORDINANCE _____

AN ORDINANCE

1 AUTHORIZING the City of Springfield, Missouri, to enter into Schedule of Equipment
2 No. 8, which will become a part of its existing Master Equipment Lease
3 Purchase Agreement, the proceeds of which will be used to pay the
4 costs of acquiring equipment for the City; to do all things necessary to
5 carry out the lease-purchase transaction, including the execution of
6 certain documents in connection therewith; and amending the budget
7 of the City for Fiscal Year 2018-2019 in the amount of \$551,000.
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10 WHEREAS, as authorized by Special Ordinance 26455, the City, as lessee,
11 previously entered into a Master Equipment Lease Purchase Agreement dated as of
12 October 17, 2014, (the "Master Lease"), with U.S. Bancorp Government Leasing and
13 Finance, Inc., as lessor (the "Lessor"), pursuant to which the City will from time to time
14 lease certain equipment on a tax-exempt basis from the Lessor pursuant to schedules
15 of equipment thereto, on a year-to-year basis with an option to purchase the Lessor's
16 interest in such equipment; and
17

18 WHEREAS, the City desires to obtain funds to pay the costs of acquiring
19 equipment for the City (as further described in Schedule No. 8 defined below, as it may
20 be revised) (the "Parks Department Equipment"); and
21

22 WHEREAS, financing the Parks Department Equipment through the execution
23 and delivery of Schedule of Equipment No. 8 to the Master Lease will allow the City to
24 acquire the Parks Department Equipment at a favorable interest rate; and
25

26 WHEREAS, the Finance Department has obtained a competitive rate quotation
27 for the financing; and
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29 WHEREAS, the Parks Department Equipment will be acquired in accordance
30 with the City's purchasing policy; and
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32 WHEREAS, in order to facilitate the foregoing and to pay the cost thereof, it is
33 necessary and desirable for the City to take the following actions:

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1. Enter into Schedule of Equipment No. 8 to the Master Lease (which incorporates the terms and conditions set forth in the Master Lease), in substantially the form attached hereto and incorporated herein by reference as "Exhibit 1" ("Schedule No. 8") with the Lessor, pursuant to which the City, as lessee, will lease the Parks Department Equipment described therein from the Lessor, on a year-to-year basis with an option to purchase the Lessor's interest in the Parks Department Equipment at an interest rate of 3.225 percent per annum.
2. Enter into an Escrow Agreement in substantially the form attached hereto and incorporated herein by reference as "Exhibit 2" (the "Escrow Agreement") with the Lessor and the escrow agent to be named therein, pursuant to which the proceeds of Schedule No. 8 will be held in trust by said escrow agent pending the City's use of such proceeds to purchase the Parks Department Equipment financed pursuant to Schedule No. 8.

(Schedule No. 8 and the Escrow Agreement are referred to collectively herein as the "City Documents"); and

WHEREAS, the maximum annual payments for Schedule No. 8 for the Parks Department Equipment are appropriated in the Fiscal Year 2018-2019 operating budget and a budget adjustment is necessary to appropriate the proceeds of Schedule No. 8; and

WHEREAS, the amendment to the budget for the City for Fiscal Year 2018-2019 for the acquisition of the Parks Department Equipment has been recommended and approved by the City Manager or Acting City Manager.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as follows, that:

Section 1 – The financing of the Parks Department Equipment is hereby approved, with the final terms to be set forth in the City Documents upon the execution thereof, including the final interest rate and form of Schedule No. 8, and the signature of the City Manager or Acting City Manager shall constitute conclusive evidence of the City Manager's or Acting City Manager's approval thereof and the City's approval thereof.

Section 2 – The City Manager, or his designee, is hereby authorized to sign and execute, for and on behalf of the City, the City Documents in substantially in the form and content as those attached hereto and incorporated herein by reference as "Exhibit 1" and "Exhibit 2," with such changes therein as shall be consistent with the terms of this ordinance and as are approved by the City Manager or Acting City Manager, such signature thereon being conclusive evidence of approval thereof. The City Clerk is hereby authorized to affix the City's Seal to the City Documents, if necessary, and attest said Seal.

80
81 Section 3 – The obligation of the City to pay Rental Payments (as defined in the
82 Master Lease) under Schedule No. 8 is subject to annual appropriation and will
83 constitute a current expense of the City and will not in any way be construed to be an
84 indebtedness or liability of the City in contravention of any applicable constitutional,
85 charter or statutory limitation or requirement concerning the creation of indebtedness or
86 liability by the City, nor will anything contained in Schedule No. 8 constitute a pledge of
87 the general tax revenues, funds or moneys of the City, and all provisions of Schedule
88 No. 8 will be construed so as to give effect to such intent.

89
90 Section 4 – City Council hereby amends the budget for the City for Fiscal Year
91 2018-2019 in the accounts and in the amounts as shown on Budget Adjustment 0006, a
92 copy of which is attached hereto and incorporated herein by reference as “Exhibit 3.”
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94 Section 5 – City Council hereby finds that the budget adjustment made above
95 has been recommended by the City Manager or Acting City Manager. City Council
96 hereby directs the City Manager or Acting City Manager to cause the appropriate
97 accounting entries to be made in the books and records of the City.
98

99 Section 6 – The officers of the City, including the City Manager, Finance Director,
100 City Attorney and the City Clerk, are hereby authorized and directed to execute all
101 documents (including without limitation a Federal Tax Certificate), and take such actions
102 as they may deem necessary or advisable in order to carry out and perform the
103 purposes of this Ordinance and to make any changes or additions to the foregoing
104 agreements, statements, instruments and other documents herein approved, authorized
105 and confirmed which they determine to be in the City’s best interest, and the execution
106 or taking of such action shall be conclusive evidence of such determination.
107

108 Section 7 – The City expects to make capital expenditures after the date of the
109 adoption of this Ordinance in connection with acquisition of the Parks Department
110 Equipment, and the City intends to reimburse itself for such expenditures and also
111 expenditures made with respect to acquisition of the Parks Department Equipment on or
112 after sixty days before the date of this Ordinance with proceeds received under
113 Schedule No. 8.
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115 Section 8 – This Ordinance shall be in full force and effect from and after
116 passage.
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118 Passed at meeting: _____
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Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: , Assistant City Attorney

Approved for Council action: , City Manager or
Acting City Manager

EXPLANATION TO COUNCIL BILL 2018-200

FILED: 07-24-18

ORIGINATING DEPARTMENT: Finance

PURPOSE: Authorizing the City of Springfield, Missouri, to enter into Schedule of Equipment No. 8, which will become a part of its existing Master Equipment Lease Purchase Agreement, the proceeds of which will be used to pay the costs of acquiring equipment for the City; to do all things necessary to carry out the lease-purchase transaction, including the execution of certain documents in connection therewith; and amending the budget of the City for Fiscal Year 2018-2019 in the amount of \$551,000.

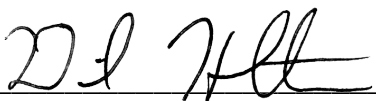
BACKGROUND INFORMATION: As authorized by Special Ordinance 26455, the City has utilized the Master Lease Agreement over the last several years as a low-cost means of acquiring capital equipment. This financing mechanism has allowed the Parks Department to acquire much-needed capital equipment at a very favorable interest rate. The financing term is five years. At the end of the five year period, the City will own the equipment.

The proceeds of this transaction will be used to purchase equipment for the Parks Department and golf including the following: a Zamboni for the Ice Park; a skid loader, work truck, and mowers for park operations; fitness equipment for family centers; radio and communication equipment for park rangers; and mowers for the golf courses.

The transaction will be financed by U.S. Bank under the Master Lease Agreement which was bid and executed in 2014. The interest rate on this transaction is 3.225 percent. This is a five-year financing with quarterly payments.

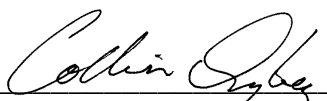
This Ordinance supports the following Field Guide 2030 goal: Chapter 13, Recreation and Leisure, Parks, Open Space and Greenways; Major Goal 2, Future Plan of Action; Parks will be updating its strategic plan to include many new parks, facilities and services, and providing for improvements to our existing parks system

Submitted by:



David Holtmann, Director of Finance

Approved by:



Collin Quigley, Acting City Manager

Exhibit 1

Gilmore & Bell, P.C.
Draft #1-July 11, 2018

SCHEDULE OF EQUIPMENT NO. 8

COUNTERPART NO. _____

LESSOR'S INTEREST IN, TO AND UNDER THIS SCHEDULE AND THE AGREEMENT AS IT RELATES TO THIS SCHEDULE MAY BE SOLD OR PLEDGED ONLY BY DELIVERING POSSESSION OF COUNTERPART NO. 1 OF THIS SCHEDULE, WHICH COUNTERPART NO. 1 SHALL CONSTITUTE CHATTEL PAPER FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE.

Re: Schedule of Equipment No. 8 dated August 17, 2018 (the "Schedule"), to Master Equipment Lease Purchase Agreement dated as of October 17, 2014 (collectively, the "Agreement"), between U.S. Bancorp Government Leasing and Finance, Inc., as Lessor, and City of Springfield, Missouri, as Lessee.

1. **Defined Terms.** All terms used herein have the meanings ascribed to them in the Agreement.
2. **Equipment.** The Equipment included under this Schedule is comprised of the items described in the Equipment Description attached hereto as **Attachment 1**, together with all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.
3. **Payment Schedule.** The Rental Payments and Purchase Prices under this Schedule are set forth in the Payment Schedule attached as **Attachment 2** hereto.
4. **Representations, Warranties and Covenants.** Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of commencement of Rental Payments on this Schedule.
5. **Certification as to Arbitrage.** Lessee hereby represents as follows:
 - (a) The estimated total costs of the Equipment listed in this Schedule, together with any costs of entering into this Schedule that are expected to be financed under this Schedule, will not be less than the total principal portion of the Rental Payments listed in this Schedule.
 - (b) The Equipment listed in this Schedule has been ordered or is expected to be ordered within six months of the commencement of this Schedule, and the Equipment is expected to be delivered, and the Vendor fully paid, within eighteen months of the commencement of this Schedule.
 - (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments listed in this Schedule, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments listed in this Schedule.

(d) The Equipment listed in this Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments listed in this Schedule.

(e) To the best of Lessee's knowledge, information and belief, the above expectations are reasonable.

(f) Lessee has not been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.

Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended, including without limitation Sections 103, 141 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

6. The Agreement. This Schedule is hereby made as part of the Agreement, and Lessor and Lessee hereby ratify and confirm the Agreement. The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated by reference and made a part hereof.

7. Other Provisions.

None.

Dated: August 17, 2018.

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

By: _____
Title: _____
Address: 13010 SW 68th Parkway, Suite 100
Portland, OR 97223

CITY OF SPRINGFIELD, MISSOURI

By: _____
Title: City Manager
Address: 840 Boonville Ave.
Springfield, MO 65802

APPROVED AS TO FORM:

_____, City Attorney

**ATTACHMENT 1 TO
SCHEDULE OF EQUIPMENT NO. 8**

EQUIPMENT DESCRIPTION

The Equipment consists of the following equipment to be used by Lessee, together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof:

| Description | Estimated Cost |
|--|----------------|
| One (1) Zamboni Machine (Mediacom Ice Park) | \$145,000 |
| One (1) Skid Loader (Park Operations) | 33,500 |
| One (1) Work Truck (Park Operations) | 33,500 |
| Five (5) Zero Turn Mowers (Park Operations) | 75,000 |
| One (1) Wide-Area Mower (Park Operations) | 46,000 |
| Fitness Equipment (Chesterfield Family Center) | 31,500 |
| Fitness Equipment (Doling Family Center) | 17,000 |
| Radio and Communications Equipment (Park Ranger) | 46,000 |
| Fitness Equipment (Dan Kinney Family Center) | 19,500 |
| One (1) Tow-Behind Rotary Spreader (Rivercut, Horton Smith and Stewart Golf Courses) | 12,500 |
| One (1) Rough-Area Mower Cart (Rivercut, Horton Smith and Stewart Golf Courses) | 17,000 |
| One (1) Bank Mower (Rivercut, Horton Smith and Stewart Golf Courses) | 31,500 |
| One (1) Bank Mower (Rivercut, Horton Smith and Stewart Golf Courses) | 36,000 |
| Total | \$544,000 |

This Equipment Description shall be deemed to be supplemented by the descriptions of the Equipment included in the Payment Requests and Acceptance Certificates submitted to U.S. Bank National Association, as escrow agent, pursuant to the Escrow Agreement dated as of August 17, 2018, among Lessor, Lessee and U.S. Bank National Bank, as escrow agent, which descriptions shall be deemed to be incorporated herein.

**ATTACHMENT 2 TO
SCHEDULE OF EQUIPMENT NO. 8**

PAYMENT SCHEDULE

Rental payments will be made in accordance with **Section 4.01** of the Agreement and this Payment Schedule.

Principal Amount: \$551,000

Interest Rate: 3.225%, 30/360 basis; quarterly compounding

| Rental Payment Date | Total Rental Payment | Interest Portion | Principal Portion | Purchase Price* |
|------------------------|-------------------------|---------------------|----------------------|--------------------|
| 12/01/2018 | \$29,978.81 | \$5,133.48 | \$24,845.33 | \$541,939.31 |
| 03/01/2019 | 29,978.81 | 4,242.12 | 25,736.69 | 515,430.52 |
| 06/01/2019 | 29,978.81 | 4,034.62 | 25,944.19 | 488,708.00 |
| 09/01/2019 | 29,978.81 | 3,825.44 | 26,153.37 | 461,770.03 |
| 12/01/2019 | 29,978.81 | 3,614.58 | 26,364.23 | 434,614.88 |
| 03/01/2020 | 29,978.81 | 3,402.02 | 26,576.79 | 407,240.78 |
| 06/01/2020 | 29,978.81 | 3,187.75 | 26,791.07 | 379,645.98 |
| 09/01/2020 | 29,978.81 | 2,971.74 | 27,007.07 | 351,828.70 |
| 12/01/2020 | 29,978.81 | 2,754.00 | 27,224.81 | 323,787.14 |
| 03/01/2021 | 29,978.81 | 2,534.50 | 27,444.31 | 295,519.50 |
| 06/01/2021 | 29,978.81 | 2,313.23 | 27,665.58 | 267,023.95 |
| 09/01/2021 | 29,978.81 | 2,090.18 | 27,888.64 | 238,298.65 |
| 12/01/2021 | 29,978.81 | 1,865.32 | 28,113.49 | 209,341.76 |
| 03/01/2022 | 29,978.81 | 1,638.66 | 28,340.15 | 180,151.40 |
| 06/01/2022 | 29,978.81 | 1,410.17 | 28,568.65 | 150,725.69 |
| 09/01/2022 | 29,978.81 | 1,179.83 | 28,798.98 | 121,062.74 |
| 12/01/2022 | 29,978.81 | 947.64 | 29,031.17 | 91,160.63 |
| 03/01/2023 | 29,978.81 | 713.58 | 29,265.24 | 61,017.44 |
| 06/01/2023 | 29,978.81 | 477.62 | 29,501.19 | 30,631.21 |
| 09/01/2023 | 29,978.81 | 239.77 | 29,739.04 | 0.00 |

* Purchase Price is equal to 103% of the remaining balance on such Rental Payment Date with 30 days' written notice to Lessor. Lessee may exercise its option to purchase pursuant to **Section 10.01(b)** of the Agreement at any time; option to purchase pursuant to **Section 10.01(a)** of the Agreement may be exercised on September 1, 2019 or any Rental Payment Date thereafter.

Exhibit 2

Gilmore & Bell, P.C.
Draft #1-July 11, 2018

ESCROW AGREEMENT

This Escrow Agreement (the “Escrow Agreement”), dated as of August 17, 2018 and entered into among **U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC.**, a corporation organized and existing under the laws of the State of Minnesota together with its successors and assigns, “Lessor”), **CITY OF SPRINGFIELD, MISSOURI**, a home rule charter city and political subdivision existing under the laws of Missouri (“Lessee”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, as escrow agent (together with its successors and assigns, “Escrow Agent”).

Name of Acquisition Fund: “City of Springfield, Missouri Acquisition Fund-Schedule of Equipment No. 8”
Amount of Deposit into the Acquisition Fund: \$551,000

TERMS AND CONDITIONS

1. This Escrow Agreement relates to and is hereby made a part of the Schedule of Equipment No. 8 dated August 17, 2018 (the “Schedule”) to that Master Equipment Lease Purchase Agreement dated as of October 17, 2014 (the “Agreement,” and together with the Schedule, the “Lease”), between Lessor and Lessee.

2. Except as otherwise defined herein, all terms defined in the Agreement will have the same meaning for the purposes of this Escrow Agreement as in the Agreement.

3. Lessor, Lessee and Escrow Agent agree that Escrow Agent will act as sole Escrow Agent under the Lease and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. Escrow Agent will not be deemed to be a party to the Lease, and this Escrow Agreement will be deemed to constitute the entire agreement among Lessor, Lessee and Escrow Agent.

4. There is hereby established in the custody of Escrow Agent a special fund designated as set forth above (the “Acquisition Fund”) to be held and administered by Escrow Agent for the benefit of Lessor and Lessee in accordance with this Escrow Agreement.

5. Lessor will deposit in the Acquisition Fund the amount specified above (the “Escrow Funds”). Lessee warrants that it will only direct Escrow Agent to invest and reinvest upon written order of a Lessee Representative, which shall be in accordance with the Federal Tax Certificate executed by Lessee as of the date hereof, in Qualified Investments (as defined below) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. Escrow Agent shall provide no investment advice and has no responsibility to determine if any investment it is directed to make is a Qualified Investment or otherwise meets the requirements of this Escrow Agreement. If a Lessee Representative fails to timely direct the investment of any moneys held hereunder, Escrow Agent will invest and reinvest such moneys in Qualified Investments described in **Section 6(vii)** below. Such investments will be held by Escrow Agent in the Acquisition Fund; any interest and gain earned on such investments will be deposited in the Acquisition Fund, and any losses on such investments will be charged to the Acquisition Fund. Escrow Agent may act as Lessor or agent in

the making or disposing of any investment. Escrow Agent shall not have any liability for any loss in an investment made pursuant to the terms of this Escrow Agreement. Escrow Agent has no responsibility whatsoever to determine the market value of any investment and makes no representation or warranty as to the accuracy of any such market valuations. To the extent applicable regulations grant rights to receive brokerage confirmations for certain security transactions, Lessor and Lessee waive receipt of such confirmations.

6. “Qualified Investments” means, to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations the timely payment of principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America acceptable to Lessor; (iv) certificates of deposit, time deposits or demand deposits with any bank or savings institution including Escrow Agent or any affiliate thereof, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, are fully secured by obligations described in (i), (ii) or (iii) above; or (v) repurchase agreements with any state or national bank or trust company, including Escrow Agent or any affiliate thereof, that are secured by obligations of the type described in (i), (ii) or (iii) above, provided that such collateral is free and clear of claims of third parties and that Escrow Agent or a third party acting solely as agent for Escrow Agent has possession of such collateral and a perfected first security interest in such collateral; (vi) money market mutual funds that are invested in securities described in (i), (ii) or (iii) and that are rated “Aaa” by Moody’s Investors Service or “AAAm-G” by Standard & Poor’s Ratings Services or the comparable rating by Fitch IBCA, Inc.; or (vii) U.S. Bank National Association Money Market Deposit Accounts as described in **Exhibit D**.

7. Moneys in the Acquisition Fund will be used by Lessee to pay for the cost of acquisition of the Equipment listed in the Lease and to pay certain costs of entering into the Lease. Such payment will be made from the Acquisition Fund upon presentation to Escrow Agent of one or more Payment Request and Acceptance Certificates, a form of which is attached as **Exhibit A**, executed by Lessee and approved by Lessor, together with an invoice for the cost of the acquisition of said Equipment and a written approval by Lessor of the Vendor to be paid, or in the event that certain costs of entering into the Lease are described in the Payment Request and Acceptance Certificate, an invoice specifying the amount of such costs. In making any disbursement pursuant to this **Section 7**, Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in such Payment Request and Acceptance Certificate, and Escrow Agent will not be required to make any inquiry, inspection or investigation, including with respect to any attachment thereto, in connection therewith. The approval of each Payment Request and Acceptance Certificate by Lessor will constitute unto Escrow Agent an irrevocable determination by Lessor that all conditions precedent to the payment of the amounts set forth therein have been completed.

8. The Acquisition Fund will terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate and the Final Acceptance Certificate, a form of which is attached as **Exhibit B**, executed by Lessee and approved by Lessor, or (b) the presentation of written notification to Escrow Agent by Lessor, or, if Lessor has assigned its interest under the Lease, then the assignees or subassignees of all of Lessor’s interest under the Lease or an agent on their behalf, that the Lease has been terminated pursuant to **Section 3.03(a)** or **(c)** of the Agreement (a “Termination Notice”), upon which notice Escrow Agent may conclusively rely without inquiry, investigation or notice to Lessee. Upon termination as described in clause (a) of this paragraph, Lessor may direct Escrow Agent to disburse any amount remaining in the Acquisition Fund to prepay the principal portion of Rental Payments unless Lessor directs that payment of such amount be made in such other manner directed by Lessor that, in the opinion of nationally recognized counsel in the area of

tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is used to prepay principal, the Rental Payment Schedule attached to the Lease will be revised accordingly as specified by Lessor. Upon Escrow Agent's receipt of a Termination Notice as described in clause (b) of this paragraph, any amount remaining in the Acquisition Fund will immediately be paid to Lessor or to any assignees or subassignees of Lessor's interest in this Lease as directed by Lessor in writing.

9. Escrow Agent may at any time resign by giving at least 30 days' written notice to Lessee and Lessor, but such resignation will not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee upon at least 30 days' written notice to Escrow Agent. In the event of any resignation or removal of Escrow Agent, a successor Escrow Agent will be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent will indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent will, without any further act or deed, be fully vested with all the powers, rights, duties and obligations of Escrow Agent under this Escrow Agreement and the predecessor Escrow Agent will deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent whereupon the duties and obligations of the predecessor Escrow Agent will cease and terminate. If a successor Escrow Agent has not been so appointed within 90 days of such resignation or removal, Escrow Agent may petition, at Lessor's and Lessee's joint cost, a court of competent jurisdiction to have a successor Escrow Agent appointed.

10. Any corporation or association into which Escrow Agent may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, will be and become successor Escrow Agent hereunder and will be vested with all the powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

11. Escrow Agent incurs no responsibility to make any disbursements pursuant to this Escrow Agreement except from Escrow Funds held in the Acquisition Fund. Escrow Agent makes no representations or warranties as to the title to any Equipment listed in the Lease or as to the performance of any obligations of Lessor or Lessee under this Escrow Agreement or any other agreement. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. Escrow Agent has no fiduciary or discretionary duties of any kind. Escrow Agent's permissive rights shall not be construed as duties. Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any document other than this Escrow Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein and whether or not a copy of such document has been provided to Escrow Agent. Escrow Agent shall not be responsible for or have any duty to make any calculations under this Escrow Agreement, or to determine when any calculation required under the provisions of this Escrow Agreement should be made, how it should be made or what it should be, or to confirm or verify any such calculation.

12. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion

contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Escrow Agent will not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of this Escrow Agreement other than its own execution thereof or any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder will be limited to those specifically provided herein. Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines, which determination is not subject to appeal, that Escrow Agent's negligence or willful misconduct directly caused a loss to Lessor or Lessee. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, attacks or intrusions, power failures, earthquakes or any other circumstance beyond its control. Escrow Agent may consult, at Lessor's cost, legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving this Escrow Agreement, and shall incur no liability and shall be fully indemnified (subject to the restrictions set out in **Section 13** below with respect to Lessee's ability to indemnify any party) from any liability whatsoever in acting in accordance with the advice of such counsel.

13. Except to the extent that a court of competent jurisdiction determines that a loss to Lessor or Lessee was directly caused by Escrow Agent's gross negligence or willful misconduct with regard to its duties hereunder, Lessee, to the extent permitted by law, without waiver of its sovereign immunity rights, and Lessor jointly and severally hereby agree to indemnify Escrow Agent and hold it harmless from any and all claims (whether asserted by Lessor, Lessee or any other person or entity), liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement or the enforcement of its rights under this Section 13; and in connection therewith, to indemnify Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

14. Lessor and Lessee agree, jointly and severally, to pay upon demand the aggregate amount of the costs, fees, and expenses of Escrow Agent in connection with the creation of the escrow described in and created by this Escrow Agreement and in carrying out any of the duties, terms or provisions of this Escrow Agreement is a one-time fee in the amount of \$-0-, to be paid by Lessee concurrently with the execution and delivery of this Escrow Agreement.

Notwithstanding the preceding paragraph, Escrow Agent will be entitled to reimbursement from Lessee of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Escrow Agreement. Claims for such reimbursement may be made to Lessee and in no event will such reimbursement be made from funds held by Escrow Agent pursuant to this Escrow Agreement. Escrow Agent agrees that it will not assert any lien whatsoever on any of the money or Qualified Investments on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by Escrow Agent under this Escrow Agreement or otherwise.

15. If Lessee, Lessor or Escrow Agent are in disagreement about the interpretation of the Lease or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by Escrow Agent hereunder, Escrow Agent may, but will not be required to, file an appropriate civil action to resolve the disagreement. Escrow Agent will be indemnified by Lessor and Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees and expenses, in

connection with such civil action, and will be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

16. The persons and telephone numbers for call-backs may be changed only in writing actually received by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. Escrow Agent, Lessor and Lessee agree that Escrow Agent, Lessor and Lessee may at their option record any telephone calls made pursuant to this Section. Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided in writing by Lessor or Lessee to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank so designated. Lessor, Escrow Agent and Lessee acknowledge that these optional security procedures are commercially reasonable.

17. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other parties at their respective addresses shown on page 8 of this Escrow Agreement or at such other address as each such party shall from time to time designate in writing to the other parties; and shall be effective on the date or receipt.

18. This Escrow Agreement will be governed by and construed in accordance with the laws of the state in which Lessee is located.

19. In the event any provision of this Escrow Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

20. This Escrow Agreement may not be amended or assigned except by a written instrument executed by Lessor, Lessee and Escrow Agent.

21. This Escrow Agreement may be executed in several counterparts, each of which so executed will be an original.

22. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

23. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Escrow Agreement agree that they will provide to Escrow Agent such information as it may request, from time to time, in order for Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

24. Lessor and Lessee each respectively make the following representations and warranties to each other and to the Escrow Agent:

(a) it has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder; and this Escrow Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms.

(b) each of the applicable persons designated on **Exhibit C** attached hereto has been duly appointed to act as its authorized representative hereunder and individually has full power and authority on its behalf to execute and deliver any instruction or direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as its authorized representative under this Escrow Agreement and no change in designation of such authorized representatives shall be effective until written notice of such change is delivered to each other party to this Escrow Agreement pursuant to this Escrow Agreement and Escrow Agent has had reasonable time to act upon it.

(c) the execution, delivery and performance of this Escrow Agreement by Escrow Agent does not and will not violate any applicable law or regulation and no printed or other material in any language, including any prospectus, notice, report, and promotional material that mentions "U.S. Bank" or any of its affiliates by name or the rights, powers, or duties of Escrow Agent under this Escrow Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of Escrow Agent.

(d) there is no security interest in the Escrow Funds or any part thereof and no financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the Escrow Funds or any part thereof.

25. Escrow Agent and any stockholder, director, officer or employee of Escrow Agent may buy, sell and deal in any of the securities of any other party hereto and contract and lend money to any other party hereto and otherwise act as fully and freely as though it were not Escrow Agent under this Escrow Agreement. Nothing herein shall preclude Escrow Agent from acting in any other capacity for any other party hereto or for any other person or entity.

26. This Escrow Agreement constitutes the entire agreement between the signatory parties hereto relating to the holding, investment and disbursement of Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to Escrow Funds. Nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any person other than the signatory parties any right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

27. Escrow Agent shall have no responsibility for the tax consequences of this Escrow Agreement and Lessor and Lessee shall consult with independent counsel concerning any and all tax matters. Lessor and Lessee jointly and severally agree to (a) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Escrow Agreement and (b) request and direct Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations. Except as otherwise agreed by Escrow Agent in writing, Escrow Agent has no tax reporting or withholding obligation except with respect to Form 1099-B reporting on payments of gross proceeds

under Internal Revenue Code Section 6045 and Form 1099 and Form 1042-S reporting with respect to investment income earned on the Escrow Funds, if any. To the extent that U.S. federal imputed interest regulations apply, Lessor and Lessee shall, no later than 5 Business Days after the effective date of this Escrow Agreement, so inform Escrow Agent, provide Escrow Agent with all imputed interest calculations and direct Escrow Agent to disburse imputed interest amounts as Lessor and Lessee deem appropriate. Escrow Agent shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information. Lessor and Lessee shall provide Escrow Agent a properly completed IRS Form W-9 or Form W-8, as applicable, for each payee. If requested tax documentation is not so provided, Escrow Agent is authorized to withhold taxes as required by the United States Internal Revenue Code and related regulations. Lessor and Lessee have determined that any interest or income on Escrow Funds shall be reported on an accrual basis and deemed to be for the account of Lessee.

[Signature page follows.]

IN WITNESS WHEREOF, Lessor, Lessee and Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives as of the date set forth above.

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

By: _____
Title: _____
Address: 13010 SW 68th Parkway, Suite 100
Portland, OR 97223

**CITY OF SPRINGFIELD, MISSOURI
LESSEE**

By: _____
Title: City Manager
Address: 840 Boonville Ave.
Springfield, MO 65802

APPROVED AS TO FORM:

_____, City Attorney

**U.S. BANK NATIONAL ASSOCIATION
ESCROW AGENT**

By: _____
Title: _____
Address: 13010 SW 68th Parkway, Suite 100
Portland, OR 97223

EXHIBIT A

FORM OF PAYMENT REQUEST AND ACCEPTANCE CERTIFICATE

To: U.S. Bank National Association, as Escrow Agent
13010 SW 68th Parkway, Suite 100
Portland, OR 97223

Re: City of Springfield, Missouri Acquisition Fund established by the Escrow Agreement, dated as of August 17, 2018 (the "Escrow Agreement"), among U.S. Bancorp Government Leasing and Finance, Inc., as lessor ("Lessor"), City of Springfield, Missouri, as lessee ("Lessee"), and U.S. Bank National Association, as escrow agent (the "Escrow Agent")

Ladies and Gentlemen:

The Escrow Agent is hereby requested to pay from the above-referenced Acquisition Fund to the person or corporation designated below as Payee, the amount set forth below in payment of a portion or all of the cost of the acquisition of the equipment or costs incurred in entering into the Lease described below. The amount shown below is due and payable under the invoice of the Payee attached hereto with respect to the cost of the acquisition of the equipment or costs incurred in entering into the Lease described below and has not formed the basis of any prior request for payment.

The equipment or costs described below are (a) part or all of the "Equipment" that is listed in Equipment Schedule No. 8 dated August 17, 2018 (the "Schedule"), to that certain Master Equipment Lease Purchase Agreement dated as of October 17, 2014 (the "Agreement," and together with the Schedule, the "Lease"), described in the Escrow Agreement or (b) costs incurred in entering into the Lease.

| <u>Quantity</u> | <u>Serial Number</u> | <u>Item</u> | <u>Amount</u> |
|-----------------|----------------------|-------------|---------------|
|-----------------|----------------------|-------------|---------------|

Payee: _____

Lessee hereby certifies and represents to and agrees with Lessor and Escrow Agent as follows:

- (1) The Equipment described above (a) has been delivered, installed and accepted on the date hereof, or (b) the amount requested is a down payment currently due on said Equipment.
- (2) If (1)(a) is applicable, Lessee has conducted such inspection and/or testing of said Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts said Equipment for all purposes.

(3) If (1)(a) is applicable, Lessee is currently maintaining the insurance coverage required by **Section 7.02** of the Agreement.

Lessee hereby certifies and represents to Lessor that no event or condition that constitutes, or with notice or lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

Dated: _____, 20__.

CITY OF SPRINGFIELD, MISSOURI
LESSEE

By: _____
Title: _____

APPROVED FOR PAYMENT:

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

By: _____
Title: _____

EXHIBIT B

FINAL ACCEPTANCE CERTIFICATE

[THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL EQUIPMENT
HAS BEEN ACCEPTED]

The undersigned hereby certifies that the equipment described above, together with the equipment described in and accepted by Payment Request and Acceptance Certificates previously filed by Lessee with Escrow Agent and Lessor pursuant to the Escrow Agreement, constitutes all of the Equipment subject to the Lease.

Dated: _____

CITY OF SPRINGFIELD, MISSOURI
LESSEE

By: _____

Title: _____

EXHIBIT C

LESSOR AND LESSEE REPRESENTATIVES

Each of the following person(s) is a **Lessor Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Lessor's behalf (only one signature required):

| | | |
|---------------|-----------------------------|------------------------|
| _____ Name | _____ Specimen signature | _____ Telephone No. |
| _____ Name | _____ Specimen signature | _____ Telephone No. |
| _____ Name | _____ Specimen signature | _____ Telephone No. |

If only one person is identified above, the following person is authorized for call-back confirmations:

| | |
|---------------|---------------------------|
| _____ Name | _____ Telephone Number |
|---------------|---------------------------|

Each of the following person(s) is a **Lessee Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Lessee's behalf (only one signature required):

| | | |
|---------------|-----------------------------|------------------------|
| _____ Name | _____ Specimen signature | _____ Telephone No. |
| _____ Name | _____ Specimen signature | _____ Telephone No. |
| _____ Name | _____ Specimen signature | _____ Telephone No. |

If only one person is identified above, the following person is authorized for call-back confirmations:

| | |
|---------------|---------------------------|
| _____ Name | _____ Telephone Number |
|---------------|---------------------------|

EXHIBIT D

MONEY MARKET AUTHORIZATION FORM

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 Springfield, Missouri

Company Name

Signature of Authorized Directing Party

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

Title/Date

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Exhibit 3

Budget Adjustment
0006

Revenues:

| Fund | Dept | Org | Account | P&G | Location | Amount | Description |
|------------------------|------|-------|---------|--------|----------|------------|--------------------------|
| 20110 | 16 | 80010 | 408070 | 000000 | 00000 | \$ 146,866 | Lease Proceeds for Parks |
| 20120 | 16 | 80010 | 408070 | 000000 | 00000 | 239,543 | Lease Proceeds for Parks |
| 20130 | 16 | 80010 | 408070 | 000000 | 00000 | 66,343 | Lease Proceeds for Parks |
| 57010 | 16 | 25010 | 408070 | 000000 | 00000 | 98,248 | Lease Proceeds for Parks |
| Net Revenue Adjustment | | | | | | \$ 551,000 | |

Expenditures:


| Fund | Dept | Org | Account | P&G | Location | Amount | Description |
|----------------------------|------|-------|---------|--------|----------|------------|----------------------------|
| 20110 | 16 | 80570 | 508170 | 000000 | 00000 | \$ 145,000 | Zamboni Machine |
| 20110 | 16 | 80010 | 509350 | 000000 | 00000 | 1,866 | Cost of Issuance |
| 20120 | 16 | 80510 | 508170 | 000000 | 00000 | 33,500 | Skid Loader |
| 20120 | 16 | 80510 | 508170 | 000000 | 00000 | 33,500 | Work Truck |
| 20120 | 16 | 80510 | 508170 | 000000 | 00000 | 75,000 | (5) Zero Turn Mowers |
| 20120 | 16 | 80510 | 508170 | 000000 | 00000 | 46,000 | Wide Area Mower |
| 20120 | 16 | 82550 | 501190 | 000000 | 10065 | 31,500 | CFC Fitness Equipment |
| 20120 | 16 | 82550 | 501190 | 000000 | 10101 | 17,000 | DFC Fitness Equipment |
| 20120 | 16 | 80010 | 509350 | 000000 | 00000 | 3,043 | Cost of Issuance |
| 20130 | 16 | 80040 | 508170 | 000000 | 00000 | 46,000 | Radio Equipment |
| 20130 | 16 | 82550 | 501190 | 000000 | 10092 | 19,500 | DKFC Fitness Equipment |
| 20130 | 16 | 80010 | 509350 | 000000 | 00000 | 843 | Cost of Issuance |
| 57010 | 16 | 25010 | 508170 | 000000 | 00000 | 12,500 | Tow Behind Rotary Spreader |
| 57010 | 16 | 25010 | 508170 | 000000 | 00000 | 17,000 | Rough Area Mower |
| 57010 | 16 | 25010 | 508170 | 000000 | 00000 | 31,500 | Workman Utility Vehicle |
| 57010 | 16 | 25010 | 508170 | 000000 | 00000 | 36,000 | Bank Mower |
| 57010 | 16 | 25010 | 509350 | 000000 | 00000 | 1,248 | Cost of Issuance |
| Net Expenditure Adjustment | | | | | | \$ 551,000 | |

Fund Balance Appropriation:


| Fund | Title | Amount |
|------|-------|--------|
| | | |

Explanation: Parks equipment lease for FY2019 operating needs.

Requested By:


Department Head 7/24/18
Date

Approved By:


Director of Finance 7/24/2018
Date

Authorization:

Council Bill No. 2018-200
Ordinance No. _____
1st Reading _____
2nd Reading _____
Journal Imp No. _____

City Manager Date