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**INSTALLMENT FINANCING CONTRACT**

between

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*as the Bank*

and

**COUNTY OF ROWAN, NORTH CAROLINA**  
*as the County*

Dated: October \_\_, 2022

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## INSTALLMENT FINANCING CONTRACT

THIS INSTALLMENT FINANCING CONTRACT, dated as of October \_\_, 2022 (the “Contract”), by and between \_\_\_\_\_, a \_\_\_\_\_ (the “Bank”); and the COUNTY OF ROWAN, NORTH CAROLINA, a political subdivision duly organized and validly existing under the State of North Carolina (the “County”);

### WITNESSETH:

WHEREAS, the County is a duly and validly created, organized and existing political subdivision, duly created and existing under and by virtue of the Constitution and laws of the State of North Carolina; and

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina (“NCGS 160A-20”), to enter into installment contracts to finance the purchase of real or personal property; and

WHEREAS, the Bank desires to advance certain funds to enable the County to certain radio equipment, as further described on Exhibit C (the “Equipment”); and

WHEREAS, the County desires to finance the Equipment by executing and delivering a new installment financing contract, as authorized under NCGS 160A-20, and the Bank has agreed to advance funds to the County for such purpose;

WHEREAS, the County desires to obtain such advance from the Bank pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the obligation of the County to make Installment Payments, as hereinafter defined, and other payments required under Section 3 hereof shall constitute a limited obligation payable solely from currently budgeted appropriations of the County and shall not constitute a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation or as otherwise prohibited by the North Carolina Constitution; and

WHEREAS, in order to further secure the obligations of the County hereunder, the County has granted a security interest to the Bank in the Equipment; and

WHEREAS, no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Contract, and the taxing power of the County is not and may not be pledged in any way, directly or indirectly or contingently, to secure any moneys due under this Contract; and

WHEREAS, the Bank and the County each have duly authorized the execution and delivery of this Contract;

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

## SECTION 1. DEFINITIONS

For purposes of this Contract, the following definitions will apply:

1.1. “Business Day” means any day other than (i) a Saturday, (ii) a Sunday, or (iii) any other day on which banks are authorized or required to be closed in the County.

1.2. “Closing Date” means October \_\_, 2022.

1.3. “County” means the County of Rowan, North Carolina, a political subdivision of the State of North Carolina, acting through its Governing Body.

1.4. “Default Rate” means \_\_\_\_\_.

1.5. “Governing Body” means the Board of County Commissioners of the County.

1.6. “Installment Payment Date” means the 1<sup>st</sup> day of each April and October, beginning April 1, 2023.

1.7. “Installment Payments” means those payments made by the County to the Bank as described in Section 3 of this Contract.

1.8. “Loan Amount” means \$[8,650,000] as described in Exhibit A hereto, which will be advanced by the Bank to enable the County to finance the Equipment and to pay certain costs of issuance in connection therewith.

1.9. “Net Proceeds,” when used with respect to any proceeds from policies of insurance required hereunder means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

1.10. “Payment Schedule” means the document labeled “Payment Schedule” attached hereto as Exhibit A-1 and incorporated herein by reference, which describes the County’s Installment Payments.

## SECTION 2. ADVANCE OF LOAN AMOUNT

2.1. Advance of Loan Amount. The Bank agrees to advance the Loan Amount to the County to be used to pay the costs of the Equipment. The County agrees to borrow the Loan Amount from the Bank to be applied in accordance with the terms and conditions of this Contract.

The Loan Amount will be advanced by the Bank to the County on the Closing Date the Bank shall deliver a portion of the Loan Amount in the amount of \$530,000.00 to the County to be used to pay, or reimburse the County for payment of, the costs of issuance of the Contract and certain costs of the Equipment. . The County shall pay any additional sums necessary to acquire the Equipment and to pay costs of issuance of the Contract.

### SECTION 3. INSTALLMENT PAYMENTS AND OTHER PAYMENTS

3.1. Amounts and Times of Installment Payments and Other Payments. Subject to the provisions of Section 13 hereof entitled “Limited Obligation of the County,” the County shall pay the Loan Amount in installments as provided in Exhibit A to this Contract. Each installment shall be deemed to be an Installment Payment and shall be paid in the amount and at the time set forth in the Payment Schedule (each, an “Installment Payment Date”) except as provided herein. Each installment shall be deemed to be an Installment Payment and shall be paid in the amount and at the time set forth in the Payment Schedule (each, an “Installment Payment Date”) except as provided herein. Installment Payments shall be sufficient in the aggregate to repay the Loan Amount together with interest thereon at a per annum rate equal to the rate per annum described in Exhibit A hereto. A portion of each Installment Payment is interest.

3.2. Interest on the Loan Amount as set forth on Exhibit A is based upon a 360-day year, with twelve (12) thirty (30) day months. The amortization schedule is based on all payments being received by the Bank on the scheduled due date. Interest shall continue to accrue on any payment that is not paid when due until such payment is made.

3.3. Installment Payments shall be sufficient in the aggregate to pay the Loan Amount together with interest thereon at a per annum rate equal to the interest rate described on Exhibit A, (subject to adjustment as provided herein). From and after the occurrence, and during the continuance, of an Event of Default, the interest rate used to calculate Installment Payments hereunder shall be the Default Rate. From and after a Determination of Taxability, the interest rate used to calculate Installment Payments hereunder shall be calculated at the Alternative Rate of Interest as set forth in Section 14.2.

3.4. Place of Payments. All payments required to be made to the Bank hereunder shall be made at the Bank’s principal office or as may be otherwise directed by the Bank or its assignee.

3.5. Late Charges. Should the County fail to pay any Installment Payment or any other sum required to be paid to the Bank within fifteen (15) days after the due date thereof, the County shall pay a late payment charge equal to five percent (5%) of the delinquent payment.

3.6. Abatement of Installment Payments. Subject to Section 13 hereof entitled “Limited Obligation of the County,” there shall be no abatement or reduction of the Installment Payments or other payments by the County for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or contingent) arising out of or related to the Equipment. The County assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that the Installment Payments and other payments shall be made in all events unless the obligation to make such Installment Payments and other payments is terminated as otherwise provided herein.

3.7. Prepayment of Installment Payments. [Upon at least thirty (30) days prior written notice to the Bank, the County has the right to prepay the Loan Amount in whole or in in part on any Installment Payment Date upon payment of the principal of the Loan Amount plus the interest component of the Installment Payments that have accrued but not been paid.]

3.8. Prepayment Notice. At least ten (10) days but not more than sixty (60) days prior to the prepayment date of the Loan Amount, the County shall cause a notice of any such prepayment signed by the County Manager or Finance Director to be mailed, first class, postage prepaid, to the Bank.

Each such notice shall set forth the date fixed for prepayment, the Installment Payments to be prepaid, the prepayment price to be paid, the address and phone number of the County Manager and Finance Director and the date of the prepayment notice.

Any notice of prepayment may state that the prepayment to be effected is conditioned upon the receipt by the County on or prior to the prepayment date of moneys sufficient to pay the Installment Payments, and accrued interest to the prepayment date, and that if such moneys are not so received such notice shall be of no force or effect and such Installment Payments shall not be required to be prepaid. In the event that such notice contains such a condition and moneys sufficient to pay the Installment Payments, and accrued interest to the prepayment date, are not received by the County on or prior to the prepayment date, the prepayment shall not be made, and the County shall within a reasonable time thereafter give notice, in the manner in which the notice of prepayment was given, that such moneys were not so received.

#### SECTION 4. NATURE OF CONTRACT

This Contract is an installment contract pursuant to Section 160A-20 of the General Statutes of North Carolina and a security agreement pursuant to Article 9 of Chapter 25 (the "Uniform Commercial Code - Secured Transactions") of the General Statutes of North Carolina.

#### SECTION 5. RESPONSIBILITIES AND COVENANTS OF THE COUNTY

5.1. Maintenance, Care and Use. The County shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations, and shall take no action to adversely affect the Equipment, and shall take all reasonable action to preserve the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, including, without limitation, at its sole cost and expense, to repair and maintain the Equipment, and to replace any part of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use. Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Contract.

5.2. Inspection. The Bank shall have the right upon reasonable prior notice to the County to inspect the Equipment or any part thereof during normal business hours.

5.3. Encumbrances. The County shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, or the rights of the County and the Bank therein, except with the prior written consent of the Bank.

5.4. Taxes. The County shall pay, when due, any and all taxes levied by any governmental body as a result of the County's ownership, possession, or use of the Equipment or

as a direct or indirect result of the acquisition, ownership and operation of the Equipment by the County.

5.5. Risk of Loss. Subject to the provisions of Section 13 hereof entitled “Limited Obligation of the County,” the County shall bear all risk of loss to the Equipment. In the event of loss or damage to the Equipment, the County shall either (a) continue to make the Installment Payments due hereunder and repair and/or replace the applicable portion of the Equipment to the satisfaction of the Bank, or (b) prepay in full the principal components of the outstanding Installment Payments in accordance with Section 3.5 hereof.

5.6. Performance by the Bank of the County’s Responsibilities. Any performance required of the County or any payments required to be made by the County may, if not timely performed or paid, be performed or paid by the Bank, and, in that event, the Bank shall be immediately reimbursed by the County for such payments and for any costs and expenses, legal or otherwise, associated with the payments or other performance by the Bank, with interest thereon at a per annum rate equal to the Prime Rate in effect on the last business day of the calendar month preceding the payment (but not exceeding the maximum rate, if any, permitted by applicable law).

5.7. Financial Statements. The County agrees that it will furnish to the Bank current audited financial statements within 210 days of the end of each fiscal year of the County, beginning with the fiscal year ended June 30, 2022, and, at the request of the Bank, the County’s annual budget as submitted or approved, and permit the Bank or its agents and representatives to inspect the County’s books and records and make extracts therefrom at its own expense during regular business hours and in a manner which will not disrupt the normal business routine of the County. The County shall furnish to the Bank current financial statements at such reasonable times as the Bank may request. The County represents and warrants to the Bank that all financial statements which have been delivered to the Bank in connection with this Contract fairly and accurately reflect the County’s financial condition and there has been no material adverse change in the County’s financial condition as reflected in the financial statements since the date thereof.

5.8. Other Responsibilities and Conditions. Simultaneously with the execution of this Contract and prior to the advancement of any funds hereunder by the Bank, the County shall cause to be provided to the Bank the following:

- (a) A Non-Arbitrage Certificate;
- (b) Internal Revenue Service Form 8038-G
- (c) An Incumbency and Authorization Certificate in the form of Exhibit B attached hereto;
- (d) An Opinion Letter of counsel for the County in the form satisfactory to the Bank;
- (e) Certificate of Liability and Property Insurance or other proof of insurance on the Equipment satisfactory to the Bank;
- (f) Certified copies of resolutions of the Governing Body authorizing the County to enter into this Contract and carry out its terms;

(g) An opinion letter from the County's bond counsel which states that the interest component of Installment Payments paid by the County under the Contract will not be included in the gross income of the Bank for Federal and North Carolina income tax purposes, and will not be an item of tax preference for purposes of the Federal alternative minimum income tax, if applicable; and

(h) Executed originals of any other documents and instruments required by Bank in connection with this Contract.

5.9. Special Tax Covenants. The County covenants that: (a) it will make no use of the monies advanced by the Bank (the "proceeds") which would cause this Contract to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or the Treasury Regulations promulgated thereunder; (b) so long as the Contract remains in effect, the County will comply with the requirements of the Code and the applicable Treasury Regulations promulgated thereunder and will not take or omit to take any action which will cause the interest paid or payable under this Contract to be includible in the gross income of the registered owner hereof; (c) the Equipment shall be used exclusively for essential governmental purposes of the County and no use shall be made of the proceeds or of the Equipment, directly or indirectly, which would cause this Contract to be a "private activity bond" within the meaning of Section 141 of the Code; (d) no part of the payment of principal or interest under this Contract is or shall be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof; (e) no portion of the proceeds shall be used, directly or indirectly, in making loans the payment of principal or interest with respect to which are to be guaranteed, in whole or in part, by the United States or any agency or any instrumentality thereof; and (f) the County shall not lease or otherwise make any of the Equipment available to any entity if such lease or other availability would cause the interest portion of the Installment Payments to be included in the gross income of the Bank under the Code for income tax purposes.

The County shall file IRS Form 8038-G on or before its due date. The County shall not take or omit to take any action that may cause a loss of the federal or state tax-exempt status of this Contract or the interest thereon.

5.10. Appropriations of Payments. (a) The County reasonably believes that funds sufficient to make all Installment Payments during the term of this Contract can be obtained. While recognizing that it is not empowered to make any binding commitment to make Installment Payments or any other payments beyond its current fiscal year, the Governing Body of the County in authorizing the execution of this Contract has stated its intent to make annual appropriations sufficient to make the Installment Payments and has recommended that future governing bodies continue to do so during the term of this Contract.

(b) The County Manager or Finance Director shall include in the initial proposal for each of the County's annual budgets the amount of all Installment Payments coming due during the fiscal year to which such budget is applicable. Notwithstanding that the County Manager or Finance Director includes an appropriation for Installment Payments in a proposed budget, the County may terminate all its obligations hereunder by not appropriating sufficient funds to make the scheduled Installment Payments. In the event the Governing Body determines not to appropriate in its budget an amount sufficient to pay all Installment Payments coming due in the applicable fiscal year, the



Governing Body shall adopt a resolution specifically deleting such appropriation from the proposed budget for that fiscal year. Such resolution shall state the reasons for such deletion, shall be adopted by a vote identifying those voting for and against and abstaining from the resolution, and shall be recorded in the minutes of the Governing Body. A copy of such resolution shall be promptly sent to the Bank. Such failure to appropriate shall constitute an Event of Default.

(c) If the amount equal to the Installment Payments which will be due during the next fiscal year has not been appropriated by the County in its budget, the County Manager or Finance Director shall deliver to the Bank, within ten (10) days after the adoption of the County's budget for such fiscal year, but not later than fifteen (15) days after the start of such fiscal year, a certificate from the Finance Officer of the County stating that the County did not make such appropriation.

## SECTION 6. SECURITY INTEREST

6.1. Title to the Equipment. During the Term, and so long as the County is not in default under Section 11 hereof, all right, title and interest in and to each item of the Equipment shall be vested in the County immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of this Contract. The County shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes other than the security interest granted under this Contract.

6.2. Security Interest. To secure the payment of all of the County's obligations under this Contract, the County grants to the Bank a security interest constituting a first lien on (a) the Equipment and in any and all additions, accessions, repairs, replacements, substitutions, and modifications to such Equipment, and (b) any and all proceeds of any of the foregoing, including any insurance proceeds paid because of loss or damage to the Equipment to the extent necessary to secure the County's payment obligations to the Bank under this Contract. The Bank may file, at the County's expense, financing statements and other related documents that are necessary under Article 9 of Chapter 25 (the "Uniform Commercial Code") of the General Statutes of North Carolina to perfect the Bank's first lien security interest by filing and to maintain that first lien security interest in perfected form. The Bank is authorized to (i) file financing statements as specified by the Uniform Commercial Code to perfect or maintain the Bank's security interest granted hereby and (ii) add, modify or delete any items shown on the financing statement to reflect the actual Equipment purchased by the County. The County agrees to execute and authorizes the Bank to file such other notices of assignment, chattel mortgages, financing statements and other documents in form satisfactory to the Bank, which the Bank deems necessary or appropriate to establish and maintain the Bank's security interest in the Equipment and the proceeds thereof. Upon termination of this Contract and payment and performance in full of all of the County's obligations to the Bank thereunder, the Bank's security interest or other interest in the Equipment purchased pursuant to this Contract shall terminate, and the Bank shall execute and deliver to the County such documents as the County may request to evidence the termination of the Bank's security interest in the Equipment.

6.3. Personal Property. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner

physically affixed or attached to real estate or any building thereon. Upon the request of the Bank, the County will, at the County's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any real estate or building on or in which the Equipment is or will be located.

6.4. Liens. The County shall not directly or indirectly create, incur, assume or suffer to exist any lien, charge, security interest, encumbrance or claim on or with respect to the Equipment (except the security interest granted to the Bank). The County shall promptly, at its own expense, take such action as may be necessary to duly discharge any such lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The County shall reimburse the Bank for any expense incurred by it in order to discharge or remove any such lien, security interest, encumbrance or claim.

## SECTION 7. INSURANCE AND UNFORESEEN LOSSES

7.1. Insurance. The County shall obtain and maintain, at its expense, at all times until termination of this Contract a policy of insurance covering the Equipment and providing the insurance protection described in this Section. The County shall maintain at its own expense fire, casualty, public liability, property damage and theft insurance, and such other insurance in such amounts and with such deductibles, if permitted, as required by the Bank from time to time. The Equipment shall be insured in an amount equal to the total replacement value or the Loan Amount, whichever is greater. All such insurance shall be maintained with an insurance company or companies licensed to do business in North Carolina and shall contain a clause designating the Bank as additional insured as its interest may appear. The County shall deliver to the Bank the policies of insurance or duplicates thereof or other evidence satisfactory to the Bank of such insurance coverage. Each insurer shall agree by endorsement upon the policy or policies issued by it that (i) it will give thirty (30) days prior written notice to the Bank of the cancellation or material modification of such policy; and (ii) the coverage of the Bank shall not be terminated, reduced or affected in any manner regardless of any breach or violation by the County of any warranties, declarations and conditions of such insurance. The County agrees to cooperate fully in all accident insurance investigations, claims and litigation proceedings. The County shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy described above. In no event shall the County 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 Bank.

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the County may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

7.2. Damage or Destruction. (a) The County shall notify the Bank immediately in the event of any damage to or destruction from fire or other casualty of any portion of the Equipment if the County determines in good faith that such damage, destruction or loss will cost more than \$1,000,000 to repair, replace and restore.

(b) If any portion of the Equipment is damaged or destroyed as provided herein, to an extent that the County determines in good faith that the cost of repairing, replacing and restoring such damage or destruction will exceed \$1,000,000, then the County shall deposit the Net Proceeds with the Bank and shall, within 90 days after the date such damage or destruction occurs, elect one of the following two options by giving notice of such election to the Bank, and the Bank shall disburse such Net Proceeds in accordance with the option so elected:

(i) Option A – Repair and Restoration. The County may elect to repair and/or replace that portion of the Equipment so lost, damaged or destroyed. If the County elects this Option A, then the County shall proceed forthwith to repair and/or replace the applicable portion of the Equipment to substantially the same condition as had existed prior to the event causing such damage or destruction, with such alterations and additions as the County may determine to be necessary or desirable and as will not impair the capacity or character of the applicable portion of the Equipment for the purposes for which it had been used prior to such damage or destruction or is intended to be used. So long as no Event of Default has occurred and is continuing under this Contract, the Bank, upon receipt of a request made by the County, shall apply so much as may be necessary of such Net Proceeds to payment of the cost of such repair and replacement, either on completion thereof or as the work progresses. Any such request may provide for Net Proceeds to be paid directly to third-party vendors or to be paid to the County for reimbursement of costs incurred in such repair, replacement or restoration. If such Net Proceeds are not sufficient to pay in full the cost of such repair, replacement and restoration, the County shall, subject to Section 5.12, pay so much of the cost thereof as may be in excess of such Net Proceeds. The County shall not by reason of the payment of such excess cost be entitled to any (A) reimbursement from the Bank, or (B) abatement or diminution of the Installment Payments.

(ii) Option B – Prepayment of Installment Payments. The County may elect to have the Net Proceeds of insurance payable as a result of such loss, damage or destruction, together with other monies provided by the County, applied to the prepayment of Installment Payments in accordance with Section 3.5. Notwithstanding anything to the contrary, in the event that the County elects to make partial prepayment under this Option B, the County shall first provide to the Bank a certificate signed by the Manager to the effect that (i) the Equipment has been restored to its condition prior to the damage, or (ii) such damage will not impair the County's use of the Equipment for its intended purposes.

(c) If the County determines in good faith that such cost will not exceed \$1,000,000, the County shall (1) retain the Net Proceeds with respect to such damage or destruction, (2) forthwith repair and/or replace the Equipment so damaged or destroyed to substantially the same condition as it had existed prior to the event causing such damage or destruction, and (3) apply Net Proceeds retained by it to the payment or reimbursement of the costs of such repair, replacement and restoration. If such Net Proceeds are not sufficient to pay in full the cost of such repair, replacement and restoration, the County shall, subject to Section 5.12, pay so much thereof as is in excess of such Net Proceeds.

## SECTION 8. WARRANTIES AND REPRESENTATIONS OF THE COUNTY

The County warrants and represents to the Bank (all such representations and warranties being continuing) as follows:

(a) The County is a political subdivision duly created and existing under the laws of the State of North Carolina, and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) This Contract has been duly and validly authorized, approved, executed and delivered by the County, and the performance by the County of its obligations under such documents has been approved and authorized under all laws, regulations and procedures applicable to the County, including, but not limited to, compliance with all applicable public meeting and bidding requirements, and the transactions contemplated by this Contract constitute a public purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina;

(c) No approval or consent is required from any governmental authority with respect to the entering into or performance by the County of this Contract and the transactions contemplated hereby, or, if any such approval is required, it has been duly obtained;

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the County's knowledge, threatened, against or affecting the County challenging the validity or enforceability of this Contract, or the performance of the County's obligations hereunder, and compliance with the provisions hereof, under the circumstances contemplated hereby, does not and will not in any material respect conflict with, constitute on the part of the County a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the County (except as contemplated herein) pursuant to any agreement or other instrument to which the County is a party, or any existing law, regulation, court order or consent decree to which the County is subject;

(e) There are no liens or encumbrances on the Equipment other than the security interest granted to the Bank.

(f) A resolution authorizing the execution, delivery and performance of the Contract has been duly adopted, is in full force and effect, and has not been in any respect amended, modified, revoked or rescinded;

(g) The Equipment is essential to the proper, efficient and economical operation of the County and the delivery of its service and the Equipment will provide an essential use and permit the County to carry out public functions that it is authorized by law to perform; and

(h) The security interest granted by the County to the Bank in the Equipment shall have been duly perfected and shall constitute a first lien security interest in the Equipment.

## SECTION 9. INDEMNIFICATION

To the extent permitted by applicable law, the County hereby agrees to indemnify protect and save the Bank and the LGC and the members and employees of each of the foregoing harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the possession, condition or use thereof. The indemnification arising under this section shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract.

## SECTION 10. DISCLAIMER OF WARRANTIES

10.1. No Representations by the Bank. The County acknowledges that it has inspected the Equipment and found the Equipment to be satisfactory and acknowledges and agrees that it has acquired the Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by the Bank with respect thereto.

10.2. Disclaimer By the Bank. THE BANK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

## SECTION 11. DEFAULT AND REMEDIES

11.1. Definition of Event of Default. The County shall be deemed to be in default hereunder upon the happening of any of the following events of default (each, an "Event of Default"):

(a) The County (i) shall fail to make any Installment Payment when due or (ii) shall fail to pay any other sum hereunder within ten (10) days after receipt of written notice of such failure; or

(b) The County fails to budget and appropriate money sufficient to pay all Installment Payments coming due in any fiscal year; or

(c) The County shall fail to perform or observe any term, condition or covenant of this Contract or shall breach any warranty by the County herein or therein contained; or

(d) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the County, or a receiver, custodian or similar officer shall be appointed for the County or any of its property, and such proceedings or appointments shall not be vacated or fully stayed after the institution or occurrence thereof; or

(e) Any warranty, representation or statement made by the County herein or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made;

11.2. Remedies on Default. Subject to Section 13 hereof entitled “Limited Obligation of the County,” upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank in its sole discretion shall elect:

(a) Declare the entire principal amount of the Installment Payments and all accrued interest and other charges immediately due and payable without notice or demand to the County;

(b) Proceed by appropriate court action to enforce performance by the County of the applicable covenants of this Contract or to recover for the breach thereof;

(c) Exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code and the general laws of the State of North Carolina with respect to the enforcement of the security interest granted or reserved hereunder, including, without limitation, to the extent permitted by law, take possession of any collateral without any court order or other process of law and without liability for entering the Equipment and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the County, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys’ fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to the County;

(d) Take possession of any proceeds of the Equipment, including Net Proceeds; or

(e) Pursue any other remedy available at law or equity to the Bank.

In addition to the foregoing, from and after the occurrence and during the continuance of an Event of Default, the Interest Rate used to calculate Installment Payments hereunder shall be the Default Rate.

11.3. Further Remedies. All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. The County agrees to pay to the Bank all court costs and reasonable attorney fees incurred by Bank in enforcing the Bank’s rights and remedies under this Contract.

Upon the occurrence, and during the continuance, of an Event of Default, the interest component of the Installment Payments will be calculated at the Default Rate.

## SECTION 12. ASSIGNMENT

12.1. Assignment by the County. The County agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Contract or the Equipment (except for the lien and security interest of the Bank or as permitted by Section 5.3) without the Bank’s prior written consent.

12.2. Assignment by the Bank. (a) The Bank may, at any time and from time to time, assign all or any part of its interest in the Equipment or this Contract, including, without limitation, Bank's rights to receive Installment Payments payable to Bank hereunder or thereunder, in

accordance with this Section 12.2. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract. The Bank or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract, or making this Contract part of a pool of obligations without the consent of the LGC, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the LGC; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Contract, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the LGC. Notwithstanding the foregoing, unless to an affiliate controlling, controlled by or under common control with Bank, no assignment or reassignment of the Bank's interest in the Contract shall be effective unless and until the County shall receive notice of such assignment or reassignment disclosing the name and address of each such assignee.

(b) The County further agrees that the Bank's interest in this Contract may be assigned in whole or in part (subject to the limitations on assignment contained in Section 12.2(a)) upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the County receives notice of such assignment and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

(c) The County agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the County and the County shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the County 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 acknowledgment shall in no way be deemed necessary to make the assignment effective.

(d) The Bank represents and warrants that it is familiar with federal and North Carolina legislation, rules and regulations as to limitations upon the public distribution of securities that have not been registered under the Securities Act of 1933, as amended, and that it is entering into this Contract for its own account and has no present intention of making any sale or other distribution of this Contract in violation of such legislation, rules or regulations. The Bank represents that it is familiar with the operations and financial condition of the County, based upon information furnished to the Bank by the County, and has made such inquiries as it deems appropriate in connection with the Loan Amount.

## SECTION 13. LIMITED OBLIGATION OF THE COUNTY

NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT 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 COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS, WHICH RESULTS IN THE FAILURE BY THE COUNTY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS CONTRACT.

To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

#### SECTION 14. TAX-EXEMPT INTEREST

14.1. Intent of Parties. It is the intention of the parties hereto that the interest portion of the Installment Payments paid by the County to the Bank under this Contract shall be tax-exempt under Section 103 of the United States Internal Revenue Code.

14.2. Determination or Event of Taxability. If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the principal portion of the indebtedness of the County to the Bank which is represented by the Installment Payments shall, from and after the Date of Taxability, as hereinafter defined, bear interest at the rate which will provide to the Bank the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Bank (the "Alternative Rate of Interest"), payable from the Date of Taxability to such time. In such event, the County also shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Bank by reason of the Bank's failure to include the interest portion of the Installment Payments (hereinafter called "Interest") in its gross income for income tax purposes. Installment Payment amounts under this Contract shall be increased as a result of the increased interest rate and additional interest as a result of said rate increase on all previous payments shall be paid to the Bank upon demand therefor. The County shall pay to the Bank the Interest calculated at the above-mentioned Alternative Rate of Interest notwithstanding any transfer by the Bank or payment or prepayment by the County prior to the date such Determination of Taxability was made.

An Event of Taxability shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the County, the effect of which is to cause the interest portion of the Installment Payments to be includible in the gross income of the Bank for federal income tax purposes. A Determination of Taxability shall mean a determination that the Interest is included in gross income of the Bank for federal income tax purposes, which determination shall be deemed to have been made



upon the occurrence of the first to occur of the following: (a) the date on which the Bank is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an action, or failure to act, by the County, the Interest is included in the gross income of the Bank for federal income tax purposes; (b) the date on which the County receives notice from the Bank that the Bank has been advised (i) in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Bank which asserts, in effect, that Interest received by the Bank is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the County, or (ii) by an opinion of counsel received by the Bank which concludes, in effect, that Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the County; (c) the day on which the County is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the County; or (d) the day on which the County is advised in writing by counsel to the Bank that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the County has been given written notice and an opportunity to participate and defend that the Interest is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the County.

The Date of Taxability shall mean the first date upon which Interest is included in the gross income of the Bank for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

14.3. Duty to Notify the Bank. The County agrees to give prompt written notice to the Bank upon the County's receipt of any oral or written notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability or Change in Deductibility has occurred.

## SECTION 15. MISCELLANEOUS

15.1. Waiver. No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the County or any waiver by the Bank of any terms, covenants or conditions herein shall not be construed as a waiver of any other breach of the same or any other term, covenant or condition herein.

15.2. Severability. In the event any portion of this Contract shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

15.3. Governing Law. This Contract shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

15.4. Notices. Any and all notices, requests, demands, and other communications given under or in connection with this Contract shall be effective only if in writing and either personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the address of the recipient as described below, and shall be deemed to be

received on the third day after the day it was deposited in the United States mail or on the day it was actually received, whichever is earlier.

County: County of Rowan  
130 W. Innes Street  
Salisbury, North Carolina 28144  
Attn: Finance Director

Bank's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

15.6. Entire Contract. This Contract, together with the Exhibits and attachments hereto, constitutes the entire Contract between the parties and this Contract shall not be modified, amended, altered or changed except by written agreement signed by the parties.

15.7. Binding Effect. Subject to the specific provisions of this Contract, this Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15.8. Time. Time is of the essence of this Contract and each and all of its provisions.

15.9. Execution in Counterparts. This Contract 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.

15.10. No Advisory Services. The County acknowledges and agrees that: (i) the transaction contemplated by this Contract is an arm's length, commercial transaction between the County and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the County; (ii) Bank has not assumed any advisory or fiduciary responsibility to the County with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Bank has provided other services or is currently providing other services to the County on other matters); (iii) the only obligations Bank has to the County with respect to the transaction contemplated hereby expressly are set forth in this Contract; and (iv) the County has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

15.11. E-Verify. The Bank 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 Bank 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 Bank will not use any subcontractor in connection with the transactions contemplated by this Contract.

15.12. Iran Divestment List. As of the date of this Contract, the Bank is not included on a list of persons engaged in investment activities in Iran created and maintained by the North Carolina Department of State Treasurer pursuant to Section 147-86.58 of the Iran Divestment Act of 2015, Article 6E, as amended, of Chapter 147 of the General Statutes of North Carolina. The Bank will not utilize any subcontractor in connection with the transactions contemplated by this Contract.

15.13. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above written.

COUNTY OF ROWAN, NORTH CAROLINA

By: \_\_\_\_\_  
Aaron Church, County Manager

(SEAL)

Attest: \_\_\_\_\_  
Carolyn Barger, Clerk

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

PAYMENT SCHEDULE

Installment Financing Contract Date: October \_\_, 2022

County: County of Rowan, North Carolina

Loan Amount: \$[8,650,000]

Interest Rate/Payment Terms

Fixed Rate is \_\_\_\_%

The interest rate is \_\_\_\_% per annum fixed. Interest is calculated and imposed on the unpaid balance of the Loan Amount based on the payment schedule described herein. The Loan Amount plus interest shall be repaid by County to the Bank as shown on Exhibit A-1. All remaining principal and accrued but unpaid interest shall be due and payable on October 1, [2027].

An amortization schedule is attached hereto as Exhibit A-1.

COUNTY OF ROWAN, NORTH CAROLINA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: October \_\_, 2022

EXHIBIT A-1  
AMORTIZATION SCHEDULE

EXHIBIT B

INCUMBENCY AND AUTHORIZATION CERTIFICATE

In connection with the execution and delivery by the County of Rowan, North Carolina (the "County") of an Installment Financing Contract dated October \_\_, 2022 (the "Contract") with \_\_\_\_\_, the undersigned officers of the County hereby certify as follows:

(1) They are duly appointed, qualified and acting incumbents of their respective offices of the County and as such are familiar with its books and corporate records. As of the date of this certificate, the persons named below are duly elected, qualified and acting incumbents of their respective offices of the County and as such are familiar with its books and corporate records.

(2) Aaron Church is presently the duly appointed County Manager. Anna Bumgarner is presently the duly appointed County Finance Director. Carolina Barger is presently the duly appointed Clerk to the County Board of Commissioners. Such appointments are in full force and effect on the date hereof.

(3) The persons named below were on the date or dates of the execution of the Contract and are on the date hereof the duly appointed and qualified incumbents of the offices of the County appearing at the left of their respective names and the signatures appearing at the right of their respective names are their genuine signatures:

<u>Title</u>	<u>Name</u>	<u>Signature</u>
Aaron Church	County Manager	_____
Anna Bumgarner	Finance Director	_____
Carolyn Barger	Clerk to the Board of Commissioners	_____

(4) The persons named below were authorized, together and individually, by a resolution of the governing body of County passed in a regular meeting held on October 17, 2022 to execute and deliver on behalf of the County the Contract to evidence the obligation of the County in connection with the financing of the Equipment (all as defined in the Contract), and all other documents and instruments required and contemplated by the Contract, and to carry out the terms of all of the foregoing, all under and pursuant to the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended. Such resolution was adopted at a meeting duly called and held on such date, at which meeting a quorum was present and acting throughout. Such resolution has not been amended, rescinded, terminated or otherwise revoked and is in full force and effect.

(5) No litigation of any kind is now pending or, to the best of my information, knowledge and belief, threatened to restrain or enjoin the execution or delivery of the Contract, or in any manner

questioning the proceedings and authority under which the Contract have been executed and delivered, or affecting the validity of such documents.

(6) The County has obtained the proper authorization to execute and deliver the Contract and all related documents necessary to complete the transaction contemplated thereby.

(7) The Contract has been duly authorized, executed and delivered by the County. Assuming the due authorization, execution and delivery thereof by the Bank, such agreement constitutes a legal, valid and binding agreement of the County enforceable against the County in accordance with its terms. Such obligation does not constitute a pledge of the faith and credit of the State of North Carolina or of any county, city or other political subdivision of the State, including the County. The rights and enforceability of the obligations of the County under such agreement may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity.

(8) There has been no material adverse change in the financial condition of the County since the date of the last annual financial statement of the County provided to the Bank.

IN WITNESS WHEREOF, we have duly executed this certificate and have affixed to it the official seal of the County of Rowan, North Carolina on this 20th day of September, 2017.

\_\_\_\_\_  
County Manager

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
Clerk to the Board of Commissioners

(SEAL)



## EXHIBIT C

### DESCRIPTION OF THE EQUIPMENT

The Equipment consists of [description of radios] used by the County's public safety departments and services.