

WHEN RECORDED, RETURN TO:
Eric Todd Johnson, Esq.
Johnson & Yellowhorse
P.O. Box 831
Pleasant Grove, Utah 84062

LOCAL BUILDING AUTHORITY OF
SAN JUAN COUNTY, UTAH, AS LESSEE

A Nonprofit Corporation Organized Under the Laws
of the State of Utah

and

SAN JUAN COUNTY, UTAH, AS LESSOR

A Political Subdivision Organized
Under the Laws of the State of Utah

GROUND LEASE AGREEMENT

Dated as of _____, 2024

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this “Ground Lease”) dated as of _____, 2024, entered into by and between the LOCAL BUILDING AUTHORITY OF SAN JUAN COUNTY, UTAH (the “Authority”), as lessee hereunder, a nonprofit corporation duly organized, existing and in good standing under the laws of the State of Utah, and also acting as issuer under a certain Master Resolution of even date herewith (the “Master Resolution”), and SAN JUAN COUNTY, UTAH (the “County”), as lessor hereunder, a political subdivision duly established and existing under and by virtue of the Constitution and laws of the State of Utah.

WITNESSETH:

WHEREAS, the County is the owner in fee simple of the real property, together with existing improvements thereon, as more fully described in Exhibit A attached hereto (the “Property”); and

WHEREAS, the County and the Authority desire to finance the acquisition and construction of a Public Safety Building Remodel and Expansion and related improvements (collectively, the “Facility”), which will be located on the Property; and

WHEREAS, the Authority desires to lease, as lessee, from the County its interest in the Property upon which the Facility will be constructed; and

WHEREAS, the County desires to lease the Property, as lessor, to the Authority, as lessee, under the terms and provisions set forth in this Ground Lease; and

WHEREAS, under the provisions of a resolution dated May 21, 2024, the Board of County Commissioners of the County has authorized and approved the execution of this Ground Lease and a Lease Agreement of even date herewith (the “Lease”), between the County and the Authority, wherein the Authority, as lessor, will lease to the County, as lessee, the Facility (the “Project”) and has authorized certain actions to be taken by the Authority in connection with the financing of the Project, including the issuance by the Authority of its Lease Revenue Bonds, Series 2024 (the “Series 2024 Bonds”) under the Master Resolution; and

WHEREAS, pursuant to the provisions of a Resolution dated May 21, 2024, the Governing Board of the Authority has authorized, approved and directed the execution of this Ground Lease, has authorized and approved the execution of the Lease, the Master Resolution, and the other Security Documents (as defined in the Master Resolution) and has authorized, approved and directed certain actions to be taken by the Authority in connection with the financing of the Project, including the issuance of the Series 2024 Bonds; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

DEFINITIONS

Terms defined in the above recitals shall have the same meaning when used herein. Unless the context otherwise requires or unless otherwise specified herein, all terms defined in Article I of the Master Resolution and Article I of the Lease shall have the same meaning where used in this Ground Lease. In addition, unless the context otherwise requires, the terms defined in this ARTICLE I shall, for purposes of this Ground Lease, have the meaning herein specified.

“CIB” means the State of Utah Permanent Community Impact Fund Board, or any successor agency.

“Event of Default” means one or more events of default as defined in Section 12.1 of this Ground Lease.

“Ground Lease Term” means the duration of the leasehold estate created in the Property as provided in ARTICLE IV of this Ground Lease.

“Permitted Encumbrances” means, as of any particular time, (i) this Ground Lease, including any security interest granted herein; (ii) utility access and other easements and rights-of-way, restrictions and exceptions which the County Representative and the Authority Representative certify will not interfere with the operation of the Facility or impair the marketability of title to the Facility or the general security provided for the Bondholders; (iii) the Lease; (iv) the Security Documents (as defined in the Master Resolution); (v) the rights of the County in the Property; and (vi) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Facility and as do not, in the opinion of Independent Counsel, materially impair the operation or marketability of title to the Facility.

“Rental Payments” means the rental payments payable by the Authority hereunder.

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section II.1 Representations, Covenants and Warranties of the County

. The County represents, covenants and warrants for the benefit of the Authority as follows:

(a) The County is a political subdivision duly existing within the State under the Constitution and laws of the State. Under the provisions of the Constitution and laws of the State, the County is authorized to enter into the transactions contemplated by this Ground Lease and to carry out its obligations hereunder. The County has duly authorized and approved the execution and delivery of this Ground Lease.

(b) The County warrants that it holds fee simple title in the Property free from any encumbrances other than Permitted Encumbrances.

Section II.2 Representations, Covenants and Warranties of the Authority

. The Authority represents, covenants and warrants for the benefit of the County that the Authority is a nonprofit corporation duly incorporated and in good standing in the State of Utah and is duly qualified to transact business in the State of Utah, is not in violation of any provision of its Articles of Incorporation or its Bylaws, has the corporate power and authority to enter into this Ground Lease and has duly authorized and approved the execution and delivery of this Ground Lease by proper corporate action.

DEMISING CLAUSE

The County hereby demises and leases the Property to the Authority, and the Authority leases the Property from the County, subject only to Permitted Encumbrances, in accordance with the provisions of this Ground Lease, to have and to hold for the Ground Lease Term unless sooner terminated as expressly provided herein.

GROUND LEASE TERM

Section IV.1 Commencement of Ground Lease Term

. The Ground Lease Term shall commence as of the date of issuance of the Series 2024 Bonds, and shall terminate on October 1, 2055, unless sooner terminated in accordance with the provisions of Section 4.2 hereof.

Section IV.2 Termination of Ground Lease Term

. The Ground Lease Term shall terminate upon the first to occur of any of the following events:

(a) The expiration of the Ground Lease Term as provided in Section 4.1 hereof; or

(b) The discharge of the lien of the Master Resolution under Article IX thereof.

Section IV.3 Option to Renew Ground Lease

. Notwithstanding anything contained elsewhere herein to the contrary, in the event the capital actually invested (as defined in the Utah Local Building Authority Act, Title 17D, Chapter 2, Utah Code Annotated 1953, as amended) by the Authority in improvements constructed upon the Property has not been fully repaid by the County at the expiration of the term of this Ground Lease, the Authority shall have the option to renew this Ground Lease, on the same terms and conditions as set forth herein, for an additional term sufficient to repay said capital, which term, when added to the number of years for which this Ground Lease has theretofore been in effect, shall not exceed (a) the useful life of the Facility, or (b) until forty years after the date hereof.

ENJOYMENT OF PROPERTY

Subject to the provisions of the Lease, the County hereby covenants to provide the Authority during the Ground Lease Term with quiet use and enjoyment of the Property, and the Authority shall during the Ground Lease Term peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the County, except as expressly set forth herein. The County shall not interfere with such quiet use and enjoyment during the Ground Lease Term so long as no Event of Default shall have occurred. The County shall, at the request of the Authority, join in any legal action in which the Authority asserts its right to such possession and enjoyment, to the extent that the County may lawfully do so. In addition, the Authority may at its own expense join in any legal action affecting its possession and enjoyment of the Property and shall be joined in any action affecting its liabilities hereunder.

The County shall have the right at all reasonable times during business hours to enter into and upon the Property for the purpose of inspecting the same.

PAYMENTS BY THE AUTHORITY

The Authority shall pay Rental Payments to the County in the sum of \$32.00, that being \$1.00 per year for a maximum of 32 years, which amount represents the total Rental Payments due hereunder during the Ground Lease Term (including all renewal option periods). The parties hereto hereby acknowledge that said Rental Payments have been paid in full on the date hereof in lawful money of the United States of America at the principal office of the County. The County and the Authority hereby determine and agree that the Rental Payments payable hereunder during the Ground Lease Term, together with other good and valuable consideration received by the County under and pursuant to a Sublease, if any, represent reasonable rental for the use of the Property. In making such determination, the County and the Authority have given consideration to the current value of the Property, the execution by the County and the Authority of the Lease and the rentals payable thereunder, the financing by the Authority of the Facility, the uses and purposes for which the Facility will be employed by the County, the benefit to the citizens of the County by reason of the improvement of the Facility and the use and occupancy of such Facility.

NONSUBORDINATION OF THE COUNTY'S INTEREST

The Authority intends to finance the Facility by the issuance of the Series 2024 Bonds in accordance with the provisions of the Lease and Master Resolution; however, it is understood and agreed that only the Authority's leasehold interest in the Property will be used as security for the payment of the principal, premium, if any, and interest, if any, on such Bonds. Consequently, it is understood and agreed by and between the County and the Authority that the County has not subordinated, and shall not be required to subordinate, its interest in and to the Property to secure such financing. However, it is acknowledged that improvements constructed on the Property will or may be used as security for the Series 2024 Bonds.

TITLE; LIMITATIONS ON ENCUMBRANCES

Section VIII.1 Title to the Real Property and the Facility

. Subject to the leasehold interest created hereby, title to the Property shall at all times be held in the name of the County. Except personal property purchased by the County at its own expense, title to the Facility and any and all additions and modifications thereto and replacements thereof shall be held in the name of the Authority. The County shall have no right, title or interest in the Facility or any additions and modifications thereto or replacements thereof, except its reversionary rights by law as lessor and except as expressly set forth herein. On termination of this Ground Lease, the County shall become the title owner of all improvements affixed to the Property. The Authority agrees to execute such documents on termination of this Ground Lease as are required to convey said improvements to the County as herein provided.

Section VIII.2 No Encumbrance, Mortgage or Pledge

. Neither the Authority nor the County shall directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Facility, except (i) encumbrances of the leasehold estate pursuant to the Master Resolution and in accordance with Section 8.3 hereof; (ii) liens for taxes and assessments not then delinquent, or which the County may, pursuant to the provisions of Section 9.3 of the Lease, permit to remain unpaid; (iii) this Ground Lease, the Lease; (iv) utility access and other easements and rights-of-way, restrictions and exceptions which the County Representative and the Authority Representative certify, will not interfere with or impair the Facility; (v) the Security Documents as defined in the Master Resolution; and (vi) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Facility and do not, in the opinion of Independent Counsel, materially impair title to the Facility.

Section VIII.3 Encumbrance of Leasehold Interest

. The Authority may encumber by mortgage or deed of trust, and may convey, assign or sublease, its leasehold interest and estate in the Property, alone or together with its interests in the Facility as a whole, for the benefit of the holders of the Series 2024 Bonds. The execution of any such mortgage, deed of trust, assignment or other instrument or the foreclosure thereof or any sale thereunder, either by judicial proceeding or by virtue of any power reserved in such mortgage, deed of trust, assignment or conveyance by the Authority for the benefit of the holders of the Series 2024 Bonds, or the exercising of any right, power or privilege set forth therein, shall not be held as a violation of any of the terms or conditions hereof. The assignee or grantee of any conveyance or assignment of the Authority may, at its option, at any time before the rights of the Authority have been terminated as provided herein, pay any of the Rental Payments due hereunder or pay any taxes and assessments, or do any other act or thing required of the Authority by the terms hereof, or do any act or thing which may be necessary or proper to be done in the observance of the covenants and conditions thereof, or to prevent the termination hereof; all payments so made, and all things so done and

performed by such party or entity shall be effective to prevent a forfeiture of the rights of the Authority hereunder as the same would have been if done and performed by said Authority.

MAINTENANCE, TAXES AND OTHER CHARGES

Section IX.1 Maintenance of the Property by the Authority

. In the event that the Ground Lease Term extends beyond the date of termination of the Lease, the Authority agrees that at all times during the Ground Lease Term the Authority will maintain, preserve and keep the Property or cause the Property to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition and that the Authority will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals with respect to the Property, so that it will continue to be suitable for use as contemplated by the Lease.

Section IX.2 Taxes, Other Governmental Charges and Utility Charges

. In the event that the Ground Lease Term extends beyond the date of termination of the Lease and in the event that the Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body which may be secured by a lien against the Property, the Authority shall pay an amount equal to the amount of all such taxes, assessments and governmental charges then due. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Authority shall be obligated to pay such amounts only for such installments as are required to be paid during the Ground Lease Term. In the event that the Ground Lease Term extends beyond the date of termination of the Lease, the Authority shall also pay as the same respectively become due, all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property.

The Authority may, at the expense and in the name of the Authority, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. In the event that the Authority shall fail to pay any of the foregoing items required by this Section 9.2 to be paid by the Authority, the County may (but shall be under no obligation to) pay the same, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum, the Authority agrees to pay.

CONDEMNATION; DESTRUCTION

If during the Ground Lease Term, title to, or the temporary or permanent use of the Facility or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Authority and the County shall cooperate in the collection and disposition of the proceeds of condemnation such that the net proceeds of such condemnation allocable to the Facility and to the Authority's leasehold interest in the Property created hereunder shall be deposited and utilized by the Authority and the County in accordance with the provisions of the Lease and the Master Resolution and the net proceeds of such condemnation allocable solely to the County's reversionary interest in the Property will be payable to the County. Except as otherwise provided in the Lease, if during the Ground Lease Term, the Facility or any material portion thereof, shall be destroyed (in whole or in part), or damaged by fire or other casualty, the Net Proceeds of any insurance policy shall be deposited and utilized by the Authority and the County in accordance with the provisions of the Lease and the Master Resolution.

DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS
AND RULES; OTHER COVENANTS

Section XI.1 Further Assurances and Corrective Instruments

. The County and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be, or for carrying out the intention hereof.

Section XI.2 County and Authority Representatives

. Whenever under the provisions hereof the approval of the County or the Authority is required, or the County or the Authority is required to take some action at the request of the other, such approval or such request shall be given for the County by the County Representative and for the Authority by the Authority Representative, and any party hereto and the CIB shall be authorized to act on any such approval or request.

Section XI.3 Requirements of Law

. During the Ground Lease Term, the County and the Authority shall observe and comply promptly with all laws, ordinances, orders, rules and regulations of the federal, state, and County governments and of all courts or other governmental authorities having jurisdiction over the Facility or any portion thereof and of all their respective departments, bureaus and officials, and of the insurance regulatory agencies having jurisdiction over the Facility, or any portion thereof, or any other body exercising similar functions, and of all insurance companies writing policies covering the Facility or any portion thereof, whether the same are in force at the commencement of the Ground Lease Term or may in the future be passed, enacted or directed.

EVENTS OF DEFAULT AND REMEDIES

Section XII.1 Events of Default Defined

. The following shall be an “Event of Default” under this Ground Lease: Failure by the Authority to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, for a period of ninety (90) days after written notice, specifying such failure and requesting that it be remedied, given to the Authority by the County, unless the County shall agree in writing to an extension of time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the County shall not unreasonably withhold its consent to an extension of such time if corrective action shall be instituted by the Authority within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section are subject to the following limitations:
(i) if, by reason of force majeure, the Authority shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the Authority contained in ARTICLE VI hereof, the Authority shall not be deemed in default during the continuance of such inability. The Authority agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Authority from carrying out its agreement; provided, however, that the settlement of strikes, lockout and other industrial disturbances shall be entirely within the discretion of the Authority, and the Authority shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Authority unfavorable to the Authority. A copy of any Notice required by this Section shall also be provided to the County and the CIB.

Section XII.2 Remedies on Default

. Whenever any Event of Default referred to in Section 12.1 of this Ground Lease shall have happened and be continuing, the County shall have the right, at its option without any further demand or notice to take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Ground Lease.

Section XII.3 No Remedy Exclusive

. No remedy herein conferred upon or reserved to the County is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County to exercise any remedy reserved in this ARTICLE XII, it shall not be necessary to give any notice, other than such notice as may be required in this ARTICLE XII.

Section XII.4 Agreement to Pay Attorneys' Fees and Expenses

. In the event that either party hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall on demand therefor pay to the nondefaulting party the fees of such attorneys and such other expenses so incurred by the nondefaulting party, to the extent that such attorney's fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the County under this Section 12.4 be subject to the availability of County Funds.

Section XII.5 No Additional Waiver Implied by One Waiver

. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section XII.6 No Termination of Ground Lease Term

. Notwithstanding the remedies provided above, the Ground Lease Term of this Ground Lease may not be terminated prior to the end of the Term described in ARTICLE IV hereof by reason of an Event of Default hereunder.

INSURANCE AND INDEMNIFICATION

Section XIII.1 Insurance. The Authority hereby covenants and agrees to at all times provide, maintain and keep in force or cause to be kept in force or cause to be kept in force such insurance as set forth in Article IX of the Lease (as defined in the Master Resolution) with respect to the Facilities.

Section XIII.2 Indemnification Covenants. To the extent of the net proceeds of the insurance coverage of the Authority and contractor's performance and payment bonds for the Facilities, the Authority shall and hereby agrees to indemnify and save the County harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the conduct or management of, or from any work or thing done on, the Facilities during the Lease Term from: (i) any condition of the Facilities; and (ii) any act or negligence of the Authority or of any of its agents, contractors or employees or any violation of law or the breach of any covenant or warranty hereunder. To the extent of available moneys as set forth above, or in the event the Authority is self insured, or the insurance coverage has a deductible amount, then from moneys to be appropriated under budget proceedings for future years, if such appropriations are then made, the Authority shall indemnify and save the County harmless, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the County, shall defend it in any action or proceeding.

In exchange for the Authority's agreement to indemnify the County as provided in this Section 13.2, the County hereby agrees to assert any cause of action that it might individually have against any third parties for the benefit of the Authority. Furthermore, in no event will the County voluntarily settle or consent to the settlement of any proceeding arising out of any claim applicable to the Facilities without the written consent of the Authority.

MISCELLANEOUS

Section XIV.1 Notices

. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed as follows: if to the Authority, the Local Building Authority of San Juan County, 117 S. Main, Monticello, Utah 84535, Attention: Chair; of to the County, San Juan County, 117 S. Main, Monticello, Utah 84535, Attention: Chair. A duplicate copy of each notice, certificate or other communications given hereunder by the Authority or the County shall also be given to the CIB. The Authority and the County may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section XIV.2 Binding Effect

. This Ground Lease shall inure to the benefit of and shall be binding upon the Authority, the County and their respective successors and assigns.

Section XIV.3 Severability

. In the event any provision of this Ground Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section XIV.4 Amendments, Changes and Modifications

. Subsequent to the issuance of the Series 2024 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Master Resolution), and except as otherwise herein expressly provided, this Ground Lease may not be effectively amended, changed, modified, altered or terminated without the written consent of the CIB.

Section XIV.5 Execution in Counterparts

. This Ground Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section XIV.6 Applicable Law

. This Ground Lease shall be governed by and construed in accordance with the laws of the State.

Section XIV.7 Captions

. The captions or headings in this Ground Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ground Lease.

Section XIV.8 Assignment

. This Ground Lease may be assigned and reassigned by the Authority and the Authority's interest in the Property transferred in accordance with the terms hereof and of the Lease. This Ground Lease may not be assigned by the County for any reason.

IN WITNESS WHEREOF, the Authority has caused this Ground Lease to be executed with its corporate seal hereunto affixed and attested by its duly authorized officer. The County has executed this Ground Lease in its name with its seal hereunto affixed and attested by its duly authorized officers. All of the above occurred as of the date first above written.

LOCAL BUILDING AUTHORITY OF
SAN JUAN COUNTY, UTAH

By: _____
Chair

Attest:

By: _____
Secretary

(LBA SEAL)

SAN JUAN COUNTY, UTAH

By: _____
Chair

Attest:

By: _____
County Clerk

(COUNTY SEAL)

STATE OF UTAH)
 :SS
COUNTY OF SAN JUAN)

In the County of San Juan, State of Utah, on this ____ day of _____, 2024, before me, the undersigned notary, personally appeared Jamie Harvey and Lyman W. Duncan, the Chair and the Secretary, respectively, of the Local Building Authority of San Juan County, Utah, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

Notary signature and seal

STATE OF UTAH)
 :SS
COUNTY OF SAN JUAN)

In the County of San Juan, State of Utah, on this ____ day of _____, 2024, before me, the undersigned notary, personally appeared Jamie Harvey and Lyman W. Duncan, the Chair and County Clerk/Auditor, respectively, of San Juan County, Utah, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

EXHIBIT A

DESCRIPTION OF PROPERTY

Real property located in San Juan County, Utah, to-wit:

Public Safety Building Remodel and Expansion and related improvements