

TO BE RECORDED AND WHEN RECORDED

RETURN TO:

Orrick, Herrington & Sutcliffe LLP
777 South Figueroa Street, Suite 3200
Los Angeles, California 90017
Attention: Greg Harrington

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11921 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

GROUND LEASE

by and between

CITY OF SANTA MONICA

and

**SANTA MONICA
PUBLIC FINANCING AUTHORITY**

Dated as of _____ 1, 1999

GROUND LEASE

THIS GROUND LEASE (this "Ground Lease"), executed and entered into as of _____ 1, 1999, is by and between the CITY OF SANTA MONICA (the "City"), a municipal corporation and charter city duly organized and existing under and by virtue of the Constitution and laws of the State of California and its Charter, as lessor, and the SANTA MONICA PUBLIC FINANCING AUTHORITY (the "Authority"), a joint exercise of powers entity organized and existing under and by virtue of the laws of the State of California, as lessee.

WITNESSETH:

WHEREAS, the City desires to finance a portion of the costs of the acquisition, construction and installation of certain capital improvements constituting a public safety facility and related improvements, facilities and equipment (the "Project");

WHEREAS, in order to finance the Project, the City will lease certain real property on which the Project is to be constructed (the "Site") to the Authority pursuant to this Ground Lease, and the City will sublease the Site and the Project back from the Authority pursuant to a Lease Agreement, dated as of the date hereof (the "Lease Agreement");

WHEREAS, the Site is more particularly described in Exhibit A hereto;

WHEREAS, the City and the Authority have determined that it would be in the best interests of the City and the Authority to provide the funds necessary to finance the Project through the issuance by the Authority of bonds (the "Bonds") payable from the base rental payments (the "Base Rental Payments") to be made by the City under the Lease Agreement;

WHEREAS, the City and the Authority have determined that it would be in the best interests of the City and the Authority to provide for the issuance of the Bonds payable from the Base Rental Payments pursuant to an Indenture, dated as of the date hereof, by and among the Authority, the City and BNY Western Trust Company, as Trustee (the "Trustee"); and

WHEREAS, all rights to receive the Base Rental Payments have been assigned without recourse by the Authority to the Trustee pursuant to an Assignment Agreement, dated as of the date hereof (the "Assignment Agreement");

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Ground Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Ground Lease;

ARTICLE I

DEFINITIONS

Except as otherwise defined herein, or unless the context clearly otherwise requires, words and phrases defined in Article I of the Lease Agreement shall have the same meaning in this Ground Lease.

ARTICLE II

LEASE OF THE SITE; RENTAL

Section 2.01. **Lease of Site.** The City hereby leases to the Authority, and the Authority hereby leases from the City, for the benefit of the Owners of the Bonds, the Site, subject only to Permitted Encumbrances, to have and to hold for the term of this Ground Lease.

Section 2.02. **Rental.** The Authority shall pay to the City as and for rental of the Site hereunder, the sum of \$1.00, the receipt of which is hereby acknowledged.

ARTICLE III

QUIET ENJOYMENT

The parties intend that the Site and the Project will be leased back to the City pursuant to the Lease Agreement for the term thereof. It is further intended that, to the extent provided herein and in the Lease Agreement, if an event of default occurs under the Lease Agreement, the Authority, or its assignee, will have the right, for the then remaining term of this Ground Lease to (a) take possession of the Site, (b) if it deems it appropriate, cause an appraisal of the Site and a study of the then reasonable use thereof to be undertaken, and (c) relet the Site. Subject to any rights the City may have under the Lease Agreement (in the absence of an event of default) to possession and enjoyment of the Site, the City hereby covenants and agrees that it will not take any action to prevent the Authority from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Authority and at the City's cost, to the extent that it may lawfully do so, join in any legal action in which the Authority asserts its right to such possession and enjoyment.

ARTICLE IV

SPECIAL COVENANTS AND PROVISIONS

Section 4.01. **Waste.** The Authority agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

Section 4.02. **Further Assurances and Corrective Instruments.** The City 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 Site

hereby leased or intended so to be or for carrying out the expressed intention of this Ground Lease, the Indenture and the Lease Agreement.

Section 4.03. Waiver of Personal Liability. All liabilities under this Ground Lease on the part of the Authority shall be solely liabilities of the Authority as a joint exercise of powers entity, and the City hereby releases each and every director, officer and employee of the Authority of and from any personal or individual liability under this Ground Lease. No director, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Ground Lease to the City or to any other party whomsoever for anything done or omitted to be done by the Authority hereunder.

All liabilities under this Ground Lease on the part of the City shall be solely liabilities of the City as a public corporation, and the Authority hereby releases each and every member, officer and employee of the City of and from any personal or individual liability under this Ground Lease. No member, officer or employee of the City shall at any time or under any circumstances be individually or personally liable under this Ground Lease to the Authority or to any other party whomsoever for anything done or omitted to be done by the City hereunder.

Section 4.04. Taxes. The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Site.

Section 4.05. Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

Section 4.06. Representations of the City. The City represents and warrants to the Authority and the Trustee as follows:

(a) the City has the full power and authority to enter into, to execute and to deliver this Ground Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Ground Lease;

(b) except for Permitted Encumbrances, the Site is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Site for governmental purposes as contemplated by the City;

(c) all taxes, assessments or impositions of any kind with respect to the Site, except current taxes, have been paid in full; and

(d) the Site is necessary to the City in order for the City to perform its governmental functions.

Section 4.07. Representations of the Authority. The Authority represents and warrants to the City and the Trustee that the Authority has the full power and authority to enter into, to

execute and to deliver this Ground Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Ground Lease.

ARTICLE V

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 5.01. **Assignment and Subleasing.** This Ground Lease may be sold or assigned and the Site subleased, as a whole or in part, by the Authority without the necessity of obtaining the consent of the City, if an event of default occurs under the Lease Agreement. The Authority shall, within 30 days after such an assignment, sale or sublease, furnish or cause to be furnished to the City a true and correct copy of such assignment, sale or sublease, as the case may be.

Section 5.02. **Restrictions on City.** The City agrees that, except with respect to Permitted Encumbrances, it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Ground Lease.

ARTICLE VI

TERM; TERMINATION

Section 6.01. **Term.** The term of this Ground Lease shall commence as of the date of commencement of the term of the Lease Agreement and shall remain in full force and effect from such date to and including July 1, 2021, unless such term is extended or sooner terminated as hereinafter provided.

Section 6.02. **Extension; Early Termination.** If, on July 1, 2021, the Bonds shall not be fully paid, or provision therefor made in accordance with Article X of the Indenture, or the Indenture shall not be discharged by its terms, or if the Rental Payments payable under the Lease Agreement shall have been abated at any time, then the term of this Ground Lease shall be automatically extended until the date upon which all Bonds shall be fully paid, or provision therefor made in accordance with Article X of the Indenture, and the Indenture shall be discharged by its terms, except that the term of this Ground Lease shall in no event be extended more than ten years. If, prior to July 1, 2021, all Bonds shall be fully paid, or provisions therefor made in accordance with Article X of the Indenture, and the Indenture shall be discharged by its terms, the term of this Ground Lease shall end simultaneously therewith.

ARTICLE VII

MISCELLANEOUS

Section 7.01. **Binding Effect.** This Ground Lease shall inure to the benefit of and shall be binding upon the City, the Authority and their respective successors and assigns.

Section 7.02. **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 7.03. **Amendments, Changes and Modifications.** This Ground Lease may be amended, changed, modified, altered or terminated only in accordance with the provisions of the Lease Agreement.

Section 7.04. **Assignment to Trustee.** The Authority and City acknowledge that the Authority has assigned its right, title and interest in and to this Ground Lease to the Trustee pursuant to certain provisions of the Assignment Agreement. The City consents to such assignment.

Section 7.05. **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 7.06. **Applicable Law.** This Ground Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 7.07. **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.

IN WITNESS WHEREOF, the Authority and the City have caused this Ground Lease to be executed by their respective officers hereunto duly authorized, all as of the day and year first above written.

CITY OF SANTA MONICA

By: _____

APPROVED AS TO FORM:

Marsha Jones Moutrie, City Attorney

**SANTA MONICA PUBLIC FINANCING
AUTHORITY**

By: _____

APPROVED AS TO FORM:

Marsha Jones Moutrie, Authority Counsel

EXHIBIT A
DESCRIPTION OF THE SITE

All that real property situated in the County of Los Angeles, State of California, described as follows, together with any improvements thereto:

[illegible]

On _____, 1999 before me, _____, Notary Public, personally appeared _____ and _____ personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledge to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

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