



Contract Number
08-1131 A-1

SAP Number

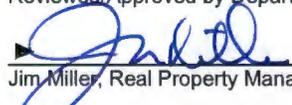
Real Estate Services Department

Department Contract Representative	<u>Terry W. Thompson, Director</u>
Telephone Number	<u>(909) 387-5252</u>
Contractor	<u>Judicial Council of California</u>
Contractor Representative	<u>Stephen Saddler, Manager, Contracts</u>
Telephone Number	<u>(415) 865-4200</u>
Contract Term	<u>7/1/2020 – 6/30/2035</u>
Original Contract Amount	<u>\$0.00</u>
Amendment Amount	<u>\$0.00</u>
Total Contract Amount	<u>\$0.00</u>
Cost Center	<u>7763501000</u>
GRC/PROJ/JOB No.	<u>50002560 (36-J1)</u>
Internal Order No.	<u></u>

Briefly describe the general nature of the contract:

Amendment No. 1 to the Joint Occupancy Agreement, Contract No. 08-1131, between the Judicial Council of California and the County of San Bernardino, for the period of July 1, 2020 through June 30, 2035, to reflect revisions to the methodology and responsible party for shared costs as calculated for utilities, operations and maintenance for the shared possession of the Court Facility known as the Barstow Courthouse located at 235 E. Mountain View Street in Barstow.

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► SEE SIGNATURE PAGE Agnes Cheng, Deputy County Counsel	► _____	 Jim Miller, Real Property Manager, RESD
Date _____	Date _____	Date <u>1-27-2020</u>

**AMENDMENT NO. 1 TO JOINT OCCUPANCY AGREEMENT NO. 08-1131
BETWEEN THE COUNTY OF SAN BERNARDINO AND THE JUDICIAL COUNCIL OF
CALIFORNIA FOR THE TEMPORARY USE OF BARSTOW COURTHOUSE**

Amendment No. 1 to Joint Occupancy Agreement No. 08-1131 ("**First Amendment**") is made and entered into as of February 11, 2020 ("**Effective Date**"), by and between the County of San Bernardino ("**County**"); the Judicial Council of California ("**Judicial Council**"). For purposes of this First Amendment, the County and the Judicial Council may be individually referred to as a "**Party**" and collectively referred to as the "**Parties.**"

RECITALS TO AND PURPOSE OF THIS FIRST AMENDMENT

A. The Trial Court Facilities Act of 2002, Government Code section 70301 *et seq.* ("**Act**"), provided for the County's transfer of responsibility for the funding and operation of all trial court facilities, as defined in the Act, located within the County of San Bernardino to the Judicial Council of California.

B. Pursuant to the Act, the County and Judicial Council entered into that certain Transfer Agreement for the Transfer of Responsibility for Court Facility, dated November 18, 2008 ("**Barstow Courthouse Transfer Agreement**"), pursuant to which the County transferred to the Judicial Council responsibility for the funding and operation of, but retained title to, the court facility located at 235 East Mountain View Street, Barstow, California, commonly known as the Barstow Courthouse (Court Facility No. 36-J1) ("**Barstow Courthouse**"). Concurrently with the Barstow Courthouse Transfer Agreement, the County and Judicial Council entered into that certain Joint Occupancy Agreement, dated November 18, 2008, setting forth the terms and conditions of the County and Judicial Council's shared possession, use, and occupancy of the Barstow Courthouse ("**Barstow Courthouse JOA**").

C. Under the Barstow Courthouse JOA, the Barstow Courthouse is jointly occupied by both the Judicial Council and the County. The County has the right to exclusively occupy and use the County Exclusive-Use Area of the Barstow Courthouse consisting of approximately 5,717 square feet of space, including: (i) 3,019 square feet on the first floor (the previous District Attorney area), and (ii) 2,697 square feet on the second floor (the previous Public Defender area) ("**Barstow Courthouse's County EUA**"), and the non-exclusive right to occupy and use the Common Area. The Barstow Courthouse's County EUA represents a 22.07% Share of the Total Exclusive-Use Area of the Barstow Courthouse ("**Barstow Courthouse's County Share**"). Except as otherwise set forth in the Barstow Courthouse JOA, the County is responsible for the Operation of the Barstow Courthouse's County EUA at its sole cost and expense and the Barstow Courthouse's County Share of the Operation of the Common Area.

D. The Parties desire for the County to temporarily vacate and for the Judicial Council to temporarily occupy and be responsible for the entire Barstow Courthouse's County EUA as more fully set forth herein this First Amendment ("**Barstow Courthouse Vacation**"). As part of said Barstow Courthouse Vacation, the Barstow Courthouse will be solely occupied by the Judicial Council for the duration of this First Amendment, the Judicial Council will reimburse the County for certain specified costs incurred in the County's vacation of the Barstow Courthouse, and the Judicial Council will perform certain improvements to the Barstow Courthouse's County EUA.

E. The Parties acknowledge that the Barstow Courthouse Vacation is contemplated to be a temporary exchange of facilities, and the Parties do not intend to permanently alter any "equity," as that term is used in the Act, or that either Party may have in the Barstow Courthouse.

F. The Parties acknowledge that County's vacation of the Barstow Courthouse is contemplated to occur concurrent with the Court's vacation of the Barstow Juvenile Traffic Court, which is treated in the First Amendment to the Barstow Juvenile Traffic Court JOA. Accordingly, in the event the First Amendment to the Barstow Juvenile Traffic Court is terminated, the Judicial Council reserves the right to terminate this First Amendment as set forth herein.

G. On July 29, 2014, the Judicial Council of California amended rule 10.81 of the California Rules of Court to substitute the "Judicial Council" for the "Administrative Office of the Courts" or the "AOC" in all contracts, memoranda of understanding, and other legal agreements, documents, proceedings, and transactions, with no prejudice to the substantive rights of any Party.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants set forth herein, the Parties hereto mutually agree as follows:

1. **Incorporation of Recitals.** The Parties agree the foregoing Recitals are true and correct, and are hereby incorporated into this First Amendment by this reference.

2. **Terms and Conditions of Barstow Courthouse JOA Incorporated.** The terms and conditions of the Barstow Courthouse JOA are hereby incorporated into this First Amendment by this reference. Unless otherwise defined in this First Amendment, any capitalized term shall have the meaning ascribed to it in the Barstow Courthouse JOA as the context may so require.

3. **Amendment of "AOC" to "Judicial Council."** All references to "Administrative Office of the Courts" or "AOC" in the Barstow Courthouse JOA shall be replaced by "Judicial Council" or "Council" with no prejudice to the substantive rights of the Parties, and the Judicial Council will continue to perform all duties, responsibilities, functions, or other obligations, and bear all liabilities, and exercise all rights, powers, authorities, benefits, and other privileges attributed to the "Administrative Office of the Courts" or "AOC" in the JOA.

4. **Term & Termination.**

4.1. Initial Term. This First Amendment shall commence as of the July 1, 2020 ("Commencement Date"), and shall continue for a period of fifteen (15) years until June 30, 2035 ("**Initial Term**").

4.2. Extended Terms. The Judicial Council shall have the right to extend the term of this First Amendment beyond the Initial Term for three (3) additional successive optional extension terms of five (5)-years each (each, an "**Extended Term**") on the same terms, covenants, and conditions (except as to the number of remaining Extended Terms) as are contained in this First Amendment. The Judicial Council will exercise each Extended Term, if at all, by giving written notice of exercise to County not less than sixty (60) days prior to the expiration of the then-current term.

4.3. Termination. This First Amendment may be terminated at any time upon mutual, written agreement of the Parties. The Judicial Council may terminate this First Amendment with or without cause at each five (5)-year anniversary of the Commencement Date of this First Amendment (i.e., at Year-5, Year-10, etc.) by providing one hundred eighty (180) days' prior written notice of termination to the County in accordance with this First Amendment. The Judicial Council may terminate this First Amendment upon sixty (60) days' prior written notice of termination to the County in the event there is insufficient funding for the Judicial Council to

fulfill its obligations under this First Amendment or in the event the First Amendment to the Barstow Juvenile Traffic Court JOA is terminated.

5. **Barstow Courthouse Vacation.**

5.1. Barstow Courthouse Vacation Date. The County agrees to vacate the Barstow Courthouse no later than July 1, 2020 (“**Barstow Courthouse Vacation Date**”) in accordance with the terms of this First Amendment. On or before the Barstow Courthouse Vacation Date, the County shall fully vacate the Barstow Courthouse’s County EUA, in a broom-clean condition and free of debris (e.g., the County will empty the space of all removable items including County personal property, unaffixed furniture, books, files, etc., dispose of all garbage, and sweep or vacuum). The County shall not remove any fixtures from the Building without the prior written consent of the Judicial Council which shall not be unreasonably withheld, conditioned, or delayed. The Parties acknowledge that, upon the Barstow Courthouse Vacation Date, the County will have surrendered all exclusive and non-exclusive rights to occupy and use the Building including both the Barstow Courthouse’s County EUA and the Common Area (but excluding the County’s use of the Parking Area) for the duration of this First Amendment.

5.2. Costs of Vacation and Relocation. The Parties acknowledge and agree that the Judicial Council shall be responsible for such costs actually incurred by the County for the Barstow Courthouse Vacation including professional moving services, documented furniture removal, and telecommunications relocation expenses upon receipt of an invoice from the County therefor accompanied by supporting and substantiating documentation satisfactory to the Judicial Council; provided, however, that the Judicial Council’s obligation under this provision shall not exceed **Thirty-Five Thousand Dollars (\$35,000)**.

5.3. Judicial Council Occupancy of Barstow Courthouse’s County EUA. Upon the Barstow Courthouse Vacation Date, the Parties acknowledge and agree that the Judicial Council will have the exclusive right to occupy and use the entire Barstow Courthouse’s County EUA for the duration of this First Amendment under the same terms and conditions the County would be entitled to under the Barstow Courthouse JOA. Except as otherwise set forth herein this First Amendment or agreed to in writing by the Parties, the Judicial Council shall be responsible for the administration, management, maintenance, and repair (the “**Operation**”) of the Barstow Courthouse’s County EUA. The Judicial Council shall be responsible for all costs and expenses associated with the Operation of (i) the Barstow Courthouse County EUA and (ii) the Barstow Courthouse’s County Share of the Common Area, which the Parties acknowledge and agree that the County shall be relieved from as of the Barstow Courthouse Vacation Date for the duration of this First Amendment. This First Amendment is not intended to, and shall not, otherwise alter the rights, respective responsibilities, and obligations of the Court and the Judicial Council in regard to Operation, as that term is defined in the JOA.

5.4. County Contribution to Correction of Deficiencies over \$5,000.

5.4.1. Notwithstanding the foregoing or anything to the contrary in this First Amendment, the Parties acknowledge and agree that the County shall be responsible for the Barstow Courthouse’s County Share (e.g., 22.07%) for the cost of the correction of any Deficiency or Major Deficiency in excess of the Deficiency Cost Threshold (\$5,000) which arises during the Initial Term or any Extended Term of this First Amendment.

5.4.2. The Judicial Council shall correct any Deficiency or Major Deficiency in normal course pursuant to section 3.2.3 of the Barstow Courthouse JOA (Correction

of Deficiencies).

5.4.3. When the cost to correct such a Deficiency or Major Deficiency meets the Deficiency Cost Threshold, the Judicial Council shall invoice the County for the Barstow Courthouse's County Share thereof in accordance with the terms of section 4 of the Barstow Courthouse JOA (Shared Costs). When the cost to correct such a Deficiency or Major Deficiency is less than the Deficiency Cost Threshold, the Judicial Council shall be responsible for the Barstow Courthouse's County Share.

5.4.4. By way of example, if a Deficiency to any of the items listed in sections 1 (All Building Structural Components), 2 (HVAC), or 3 (Generators) of the Common Space/Systems in Attachment "7" to the JOA (Common Area Space/Systems and Exclusive-Use Area Space/Systems) require a correction costing \$100,000, the Judicial Council will perform the correction pursuant to the Barstow Courthouse JOA and the County will reimburse the Judicial Council \$22,070 therefor as a Shared Cost; and, if the same correction cost \$4,000, then the County will not be responsible for making any contribution to the costs for the correction.

5.5. Improvements to Barstow Courthouse's County EUA.

5.5.1. Improvements. After the Barstow Courthouse Vacation Date and throughout the duration of this First Amendment, the County hereby acknowledges and agrees that the Judicial Council may, but is not obligated to, make reasonable alterations and additions to the Barstow Courthouse's County EUA deemed necessary by the Judicial Council for the Judicial Council's occupancy and use thereof in accordance with section 3.2 of the Barstow Courthouse JOA (Responsibility for Exclusive-Use Areas and Common Area) and as set forth herein this First Amendment without subsequent review or approval by the County. The County shall not be responsible for the cost of any such improvements except as otherwise agreed to in writing by the Parties.

5.5.2. Performance. The Judicial Council will cause any such improvements to the Barstow Courthouse's County EUA to be constructed by well-trained, adequately-supervised workers, in a good and workmanlike manner, free from design, material, and workmanship defects, and in compliance with all applicable laws and regulations including, without limitation, the Americans with Disabilities Act, the Prevailing Wage Law (California Labor Code section 1720 et seq.), and all relevant building codes.

5.5.3. Parking Areas. During the Initial Term and any Extended Term of this First Amendment, the Parties acknowledge and agree that the County shall continue to have the right to use and be responsible for the Barstow Courthouse's County Share of the County's portion (e.g., 16 first-come, first-serve parking spaces) of the 71 parking spaces of the Transferred Parking Area as set forth in the Barstow Courthouse JOA. The Parties further acknowledge and agree that the Parties' respective use of the Provided Parking Area shall remain as-is and the Barstow Courthouse JOA's provisions therefor are not altered by this First Amendment.

5.5.4. Removal. Upon the expiration or earlier termination of this First Amendment, the Parties acknowledge and agree that the Judicial Council may, but is not obligated to, remove any improvements or alterations made to the Barstow Courthouse's County EUA at its sole cost. Any such improvements or alterations which are not so removed by the Judicial Council upon the expiration or earlier termination of this First Amendment shall become the property of the County.

5.6. Temporary Exchange; County Re-Occupancy. The Parties intend the Barstow Courthouse Vacation to be temporary for the duration of this First Amendment and do not intend to permanently alter any Equity either Party may have in the Barstow Courthouse, except as may be subsequently agreed to in writing by the Judicial Council and County. The County accordingly reserves the right to reoccupy the vacated Barstow Courthouse's County EUA and reassume its rights thereto under the Barstow Courthouse JOA upon the expiration or earlier termination of this First Amendment.

6. **County Facilities Payment.** The Parties acknowledge and agree that the County's obligation to pay the combined County Facilities Payment for the Barstow Courthouse, as defined in and pursuant to the Barstow Courthouse Transfer Agreement, and the Act, is in no way affected, impaired, or invalidated by the terms of this First Amendment or the Barstow Courthouse Vacation, and said obligation shall remain in full force and effect as provided for in the Act throughout the duration of this First Amendment.

7. **Shared Cost Notifications.** Section 4.8 of the JOA is hereby deleted in its entirety and replaced with the following language:

Shared Cost Notifications. Notwithstanding section 12 of this JOA, all communications and notices between the Parties relating to Shared Costs including, without limitation, Estimate Statements, Quarterly Invoices, or any other communication or notice required by this section 4, will be made between the following County and Judicial Council representatives:

If to the Judicial Council:

Judicial Council of California
Facilities Services
2860 Gateway Oaks Drive, Suite 400
Sacramento, CA 95833
Attention: Principal Manager
Facilities Operations
Phone: 916-263-1956

If to the County:

County of San Bernardino
Real Estate Services Department
Attention: Director
385 N. Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180
Phone: 909-387-5252

With a copy to:

County of San Bernardino
Real Estate Services Department
Attention: Real Property Agent III (Courts)
385 N. Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180
Phone: 909-387-5252

8. **Notice.** Section 12 of the JOA is hereby deleted in its entirety and replaced with the following language:

Any notices required or permitted to be given under the terms of this First Amendment or the JOA must be in writing and may be: (i) personally delivered; (ii) mailed by depositing such notice in the

United States mail, first class postage prepaid; or (iii) sent by reputable overnight delivery service, addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

- If to the County: County of San Bernardino
Real Estate Services Department
Attention: Director
385 N. Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180
Phone: 909-387-5252
- With a copy to: County of San Bernardino
Real Estate Services Department
Attention: Real Property Agent III (Courts)
385 N. Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180
Phone: 909-387-5252
- If to the Judicial Council: Judicial Council of California
Facilities Services
Attention: Associate Facilities Analyst
2860 Gateway Oaks Dr., Suite 400
Sacramento, CA 95833
Phone: 916-643-7074
- With a copy to: Judicial Council of California
Facilities Services
Attention: Manager, Real Estate
2860 Gateway Oaks Dr., Suite 400
Sacramento, CA 95833
Phone: 916-263-7999

In addition, all notices by the County relating to the termination of this First Amendment or the JOA, or an alleged breach or default by the Judicial Council or Court of this First Amendment or the JOA, must also be sent to:

Judicial Council of California
Branch Accounting & Procurement
Attention: Manager, Contracts
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102
Phone: 415-865-7989

9. **No Other Changes.** In all respects, except as specifically provided for in this First Amendment for the Initial Term and any Extended Term thereof, the Barstow Courthouse JOA shall remain in full force and effect, and shall continue to govern the rights and responsibilities of the Parties as set forth therein. In the event of any conflict between the Barstow Courthouse JOA and this First Amendment, the terms of this First Amendment shall prevail.

10. **General Provisions.**

10.1. Authority; Binding Effect. The Judicial Council and County each represents and warrants that the individual signing this First Amendment on behalf of such Party is duly authorized to execute and deliver this First Amendment on behalf of such Party. This First Amendment shall apply to, bind, and inure to the benefit of the Parties, and their respective governing boards, officers, members, legal representatives, successors, and assigns.

10.2. Counterparts. This First Amendment may be executed in counterparts, and all counterparts together shall be construed as one document.

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IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the dates below their respective signatures.

ACCEPTED AND AGREED TO:

COUNTY OF SAN BERNARDINO

JUDICIAL COUNCIL OF CALIFORNIA

By: _____
Name: Curt Hagman
Title: Chairman, Board of Supervisors
Date: _____

By: _____
Name: Stephen Saddler
Title: Manager, Contracts
Date: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD

LYNNA MONELL, Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO LEGAL FORM:
MICHELLE D. BLAKEMORE,
County Counsel
San Bernardino County, California

APPROVED AS TO FORM:
Judicial Council of California, Legal Services

By: 
Name: Robert F. Messinger
Title: Principal Assistant
County Counsel
Date: 1/27/20

By: _____
Name: Maggie W. Stern
Title: Attorney
Date: _____