



Contract Number
08-1128 A-1

SAP Number

Real Estate Services Department

| | |
|---|--|
| Department Contract Representative | Terry W. Thompson, Director |
| Telephone Number | (909) 387-5252 |
| Contractor | Judicial Council of California |
| Contractor Representative | Stephen Saddler, Manager, Contracts |
| Telephone Number | (415) 865-4200 |
| Contract Term | 7/1/2020 – 6/30/2035 |
| Original Contract Amount | \$0.00 |
| Amendment Amount | \$0.00 |
| Total Contract Amount | \$0.00 |
| Cost Center | 7763001000 |
| GRC/PROJ/JOB No. | 50002561 (36-J2) |
| Internal Order No. | |

Briefly describe the general nature of the contract:

Amendment No. 1 to the Joint Occupancy Agreement, Contract No. 08-1128, 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 Juvenile Traffic Court located at 301 E. Mountain View Street in Barstow.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ SEE SIGNATURE PAGE

Agnes Cheng, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶ 
Jim Miller, Real Property Manager, RESD

Date

1-27-2020

**AMENDMENT NO. 1 TO JOINT OCCUPANCY AGREEMENT NO. 08-1128
BETWEEN THE COUNTY OF SAN BERNARDINO AND THE JUDICIAL COUNCIL OF
CALIFORNIA FOR THE TEMPORARY USE OF BARSTOW JUVENILE TRAFFIC COURT**

Amendment No. 1 to Joint Occupancy Agreement No. 08-1128 (“**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 Juvenile Traffic Court 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 the court facility located at 301 East Mountain View Street Barstow, California, commonly known as the Barstow Juvenile Traffic Court (Court Facility No. 36-J2) (“**Barstow Juvenile Traffic Court**”). Concurrently with the Barstow Juvenile Traffic Court 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 Juvenile Traffic Court (“**Barstow Juvenile Traffic Court JOA**”).

C. Under the Barstow Juvenile Traffic Court JOA, the Barstow Juvenile Traffic Court is jointly occupied by both the Judicial Council and the County. The Judicial Council has the right to exclusively occupy and use the Court Exclusive-Use Area of the Barstow Juvenile Traffic Court consisting of approximately 711 square feet of space (“**Barstow Juvenile Traffic Court’s Court EUA**”), and the non-exclusive right to occupy and use the Common Area and the Parking Area. The Barstow Juvenile Traffic Court’s Court EUA represents an 11.65% Share of the Total Exclusive-Use Area of the Barstow Juvenile Traffic Court (“**Barstow Juvenile Traffic Court’s Court Share**”). The Judicial Council is responsible for the Operation of the Barstow Juvenile Traffic Court’s Court EUA at its sole cost and expense and the Barstow Juvenile Traffic Court’s Court Share of the Operation of the Common Area.

D. The Parties desire for the Judicial Council to temporarily vacate and for the County to temporarily occupy and be responsible for the entire Barstow Juvenile Traffic Court’s Court EUA as more fully set forth herein this First Amendment (“**Barstow Juvenile Traffic Court Vacation**”). As part of said Barstow Juvenile Traffic Court Vacation, the Barstow Juvenile Traffic Court will be solely occupied by the County for the duration of this First Amendment and the County will perform certain improvements to the Barstow Juvenile Traffic Court’s Court EUA the costs of which will be reimbursed by the Judicial Council.

E. The Parties acknowledge that the Barstow Juvenile Traffic Court 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 Juvenile Traffic Court.

F. The Parties acknowledge that Judicial Council’s vacation of the Barstow Juvenile Traffic Court is contemplated to occur concurrently with the County’s vacation of the Barstow Courthouse, which is treated in the First Amendment to the Barstow Courthouse JOA. Accordingly, in the event the First Amendment to the Barstow Courthouse JOA 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 Juvenile Traffic Court JOA Incorporated.** The terms and conditions of the Barstow Juvenile Traffic Court 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 Juvenile Traffic Court 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 Juvenile Traffic Court 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 Courthouse JOA is terminated.

5. **Barstow Juvenile Traffic Court Vacation.**

5.1. Barstow Juvenile Traffic Court Vacation Date. The Judicial Council agrees to vacate the Barstow Juvenile Traffic Court no later than July 1, 2020 ("**Barstow Juvenile Traffic Court Vacation Date**") in accordance with the terms of this First Amendment. On or before the Barstow Juvenile Traffic Court Vacation Date, the Judicial Council shall fully vacate the Barstow Juvenile Traffic Court's Court EUA, in a broom-clean condition and free of debris (e.g., the Judicial Council will empty the space of all removable items including Judicial Council personal property, unaffixed furniture, books, files, etc., dispose of all garbage, and sweep or vacuum). The Judicial Council shall not remove any fixtures from the Building without the prior written consent of the County which shall not be unreasonably withheld, conditioned, or delayed. The Parties acknowledge that, upon the Barstow Juvenile Traffic Court Vacation Date, the Judicial Council will have surrendered all exclusive and non-exclusive rights to occupy and use the Building including both the Barstow Juvenile Traffic Court's Court EUA and the Common Area (but excluding the Judicial Council'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 County and Judicial Council shall be responsible for such costs actually incurred by the County for the Barstow Juvenile Traffic Court 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 **Fifteen Thousand Dollars (\$15,000)**..

5.3. County Occupancy of Barstow Juvenile Traffic Court's Court EUA. Upon the Barstow Juvenile Traffic Court Vacation Date, the Parties acknowledge and agree that the County will have the exclusive right to occupy and use the entire Barstow Juvenile Traffic Court's Court EUA for the duration of this First Amendment under the same terms and conditions the Judicial Council would be entitled to under the Barstow Juvenile Traffic Court JOA. Except as otherwise set forth herein this First Amendment or agreed to in writing by the Parties, the County shall be responsible for the administration, management, maintenance, and repair (the "**Operation**") of the Barstow Juvenile Traffic Court's Court EUA. The County shall be responsible for all costs and expenses associated with the Operation of (i) the Barstow Juvenile Traffic Court EUA and (ii) the Barstow Juvenile Traffic Court Share of the Common Area, which the Parties acknowledge and agree that the Judicial Council shall be relieved from as of the Barstow Juvenile Traffic Court 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. Judicial Council 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 Judicial Council shall be responsible for the Barstow Juvenile Traffic Court Judicial Council Share (e.g., 11.65%) 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 County shall correct any Deficiency or Major Deficiency in the normal course pursuant to section 3.2.3 of the Barstow Juvenile Traffic Court JOA (Correction of Deficiencies).

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

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 County will perform the correction pursuant to the Barstow Juvenile Traffic Court JOA and the Judicial Council will reimburse the Judicial Council \$11,650 therefor as a Shared Cost; and, if the same correction cost \$4,000, then the Judicial Council will not be responsible for making any contribution to the costs for the correction.

5.5. Improvements to Barstow Juvenile Traffic Court's Court EUA.

5.5.1. Improvements. After the Barstow Juvenile Traffic Court Vacation Date and throughout the duration of this First Amendment, the Judicial Council hereby acknowledges and agrees that the County may, but is not obligated to, make reasonable alterations and additions to the Barstow Juvenile Traffic Court's Court EUA deemed necessary by the County for the County's occupancy and use thereof in accordance with section 3.2 of the Barstow Juvenile Traffic Court JOA (Responsibility for Exclusive-Use Areas and Common Area) and as set forth herein this First Amendment without subsequent review or approval by the Judicial Council. The Judicial Council 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 County will cause any such improvements to the Barstow Juvenile Traffic Court's Court 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. Removal. Upon the expiration or earlier termination of this First Amendment, the Parties acknowledge and agree that the County may, but is not obligated to, remove any improvements or alterations made to the Barstow Juvenile Traffic Court's Court EUA at its sole cost. Any such improvements or alterations which are not so removed by the County upon the expiration or earlier termination of this First Amendment shall become the property of the Judicial Council.

5.6. Temporary Exchange; Judicial Council Re-Occupancy. The Parties intend the Barstow Juvenile Traffic Court 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 Juvenile Traffic Court, except as may be subsequently agreed to in writing by the Judicial Council and County. The Judicial Council accordingly reserves the right to reoccupy the vacated Barstow Juvenile Traffic Court's Court EUA and reassume its rights thereto under the Barstow Juvenile Traffic Court 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 Juvenile Traffic Court, as defined in and pursuant to the Barstow Juvenile Traffic Court Transfer Agreement, and the Act, is in no way affected, impaired, or invalidated by the terms of this First Amendment or the Barstow Juvenile Traffic Court 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: 916-2663-1956

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 Juvenile Traffic Court 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 Juvenile Traffic Court 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: _____

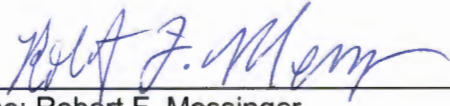
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD

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: 4/27/20

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