

**FIRST AMENDMENT TO
JOINT OCCUPANCY AGREEMENT
BETWEEN
THE JUDICIAL COUNCIL OF CALIFORNIA
AND
THE COUNTY OF MONTEREY**

FIRST AMENDMENT TO JOINT OCCUPANCY AGREEMENT

This First Amendment to Joint Occupancy Agreement (“**Amendment**”) dated _____, 2017, is made by and between the Judicial Council of California, (the “**Judicial Council**”), and the County of Monterey (the “**County**”). The County and Judicial Council may hereinafter be collectively referred to as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. Responsibility for the existing Court facility located in the Monterey Courthouse Building transferred from the County to the Judicial Council pursuant to the Transfer Agreement March 30, 2009, and management of the Parties’ joint use of the Monterey Real Property is controlled by that certain “Joint Occupancy Agreement between the Judicial Council of California, Administrative Office of the Courts and the County of Monterey” dated March 30, 2009 (the “**JOA**”).

B. The Judicial Council and County wish to amend the JOA to (1) clarify and broaden the Judicial Council’s ability to respond to Emergencies at the Monterey Real Property and (2) cause the Judicial Council to act as Managing Party and the County as Contributing Party with respect to Operation of the elevators at the Monterey Courthouse Building, each effective as of _____ 1, 2017 (the “**Effective Date**”).

C. 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 “Judicial Council” 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, for good and valuable consideration, the receipt of which is hereby acknowledged, Judicial Council and County agree as follows:

AGREEMENT

1. Incorporation of Recitals; Defined Terms; Substitution of Judicial Council for AOC. The foregoing provisions of the Recitals are true and correct and are incorporated into this Amendment by this reference. Any defined terms not defined herein will have the definition meaning given those terms in the JOA. Pursuant to the amended rule 10.81 of the California Rules of Court, all references to the “Administrative Office of the Courts” or “AOC” in the JOA should be deemed replaced by “Judicial Council.”

2. Emergencies at Monterey Real Property. The Parties agree to modify certain provisions of the JOA regarding Emergencies at the Monterey Real Property to clarify and broaden the Judicial Council’s ability to respond to Emergencies at the Monterey Real Property. Accordingly, with respect to the Monterey Real Property only, as of the Effective Date, sections 3.2.3.6, 3.2.4, and 4.3 and the definition of “Shared Costs” of section 2 of the JOA are hereby deleted in their entirety and replaced by the new provisions set forth below:

(a) Section 3.2.3.6:

3.2.3.6 Not Applicable to Emergencies. This section 3.2.3 will not apply to any Deficiency that: (a) arises from an Emergency, or (b) poses or results in an Imminent Threat. Rather, such Deficiencies will be governed by section 3.2.4 of this JOA.

(b) Section 3.2.4:

3.2.4 Emergencies. If any Emergency occurs, the Parties must immediately notify one another of the Emergency by telephone or any other means reasonable under the circumstances, and the Parties shall thereafter coordinate with one another, reasonably and in good faith, concerning their respective efforts to respond to the Emergency. The Managing Party must promptly take steps to respond to and abate any Deficiency that arises from the Emergency. If the Managing Party does not promptly respond to any such Deficiency arising from an Emergency, and take reasonable steps to abate any Imminent Threat arising from the Emergency within two hours after receipt of notice of such Emergency, the Contributing Party may (but will not be obligated to), without commencing any cure period under section 10 of this JOA, respond to that Deficiency and take steps to abate any Imminent Threat posed by or arising from the Emergency, without making demand on the Managing Party. If the Contributing Party responds to an Emergency or takes steps to abate any Imminent Threat posed by or arising from an Emergency, the Contributing Party shall notify the Managing Party of the steps taken, or being taken, as promptly as is reasonably possible under the circumstances. Such notice from the Contributing Party shall be sent to the Managing Party at the contact information set forth in section 4.7 of this JOA, but may be given by telephone, facsimile, e-mail, or other means reasonable under the circumstances. The Party that responds to an Emergency and/or takes steps to abate the Imminent Threat arising from an Emergency under this section 3.2.4 is entitled to reimbursement from the other Party of the non-correcting Party’s applicable Share of the

actual costs of responding to the Emergency and/or abating the Imminent Threat arising from the Emergency within 45 days after the correcting Party provides the non-correcting Party with an invoice and reasonable supporting documents evidencing the actual costs of responding to the Emergency arising therefrom.

(c) Section 4.3:

4.3 Notice of Anticipated Excess Costs. Prior to (a) incurring any Shared Cost that the Managing Party, in either case, reasonably believes will result in Actual Shared Costs that are in an amount greater than 110 percent of the Estimated Shared Costs for the applicable fiscal year (“**Excess Cost**”), the Managing Party must give prior written notice to the Contributing Party describing the estimated amount and reason for the anticipated Excess Costs; except that no notice must be given to the Contributing Party if the Excess Costs will be incurred to respond to an Emergency under section 3.2.4 of this JOA. If the Contributing Party objects in writing to the estimated amount of the anticipated Excess Costs within 30 calendar days after receiving the Managing Party’s notice, the Parties must meet and confer, in person or by telephone, within 10 calendar days, to resolve their dispute concerning the proposed Excess Costs. If the Parties do not reach agreement concerning the estimated amount of the proposed Excess Costs during that meet and confer process, the Parties will promptly seek to resolve their dispute concerning the estimated amount of the proposed Excess Costs under the terms of section 11 of the Transfer Agreement. If the Contributing Party neither approves nor objects to the Managing Party’s notice of proposed Excess Costs within 30 calendar days of receiving the notice, the Managing Party may proceed with expenditure of the Excess Cost in the amount and for the purpose described in the notice, and the Contributing Party must pay its applicable Share of those Excess Costs based on the type of Shares described in that notice. For the sake of clarity, the Parties agree that Shared Costs that exceed the Estimated Shared Costs for any fiscal year by less than 10 percent of such Estimated Shared Costs are not Excess Costs, and this section 4.3 will not apply to such Shared Costs.

(d) Definition of “Shared Costs”:

“**Shared Costs**” means, with respect to all of the Real Property: (a) the cost of owned or rented capital replacement items, improvements, Building Equipment, and repairs in or benefiting the Common Area, as determined by reference to generally accepted accounting

principles; (b) the cost of normal, day-to-day Operation of the Common Area including the cost of Utilities provided to the Common Area, and the cost of maintaining Equipment Permits (but excluding any late fees, interest, penalties, or other charges arising from the Managing Party's failure to timely pay those costs or keep the Equipment Permits in effect); (c) the cost of Utilities provided to the Exclusive-Use Areas, if Utilities are not separately metered for the Exclusive-Use Areas; and (d) Property Insurance Costs, subject to section 4.6 below. Notwithstanding the foregoing, Shared Costs do not include: (1) any cost that is primarily for the purpose of benefiting a Party's Exclusive-Use Area; (2) overtime charges or late fees related to any item that would otherwise be a Shared Cost, unless those overtime expenses or late fees are pre-approved by both Parties, or are necessary to remedy an Emergency pursuant to section 3.2.4 of this JOA; (3) any fees, fines, penalties, interest, or other charges arising from the Managing Party's Operation of the Real Property in a negligent manner or a manner that does not comply with Law; (4) the costs of Operation of the Parking Area; or (5) the costs of Operation of the Juvenile Grounds Area.

3. Monterey Courthouse Building Elevators. Notwithstanding any other provision of the JOA to the contrary, as of the Effective Date, the Judicial Council will assume full responsibility as Managing Party, and the County as Contributing Party, for Operation of all elevators in the Monterey Courthouse Building in all respects under the JOA including the cost sharing provisions of Section 4 of the JOA. The County will assist in all respects in this transition including the transfer or termination of any service agreements, and any necessary transfer or modification of any permits or licenses.

4. Notices. The Parties agree to update certain provisions of the JOA regarding Shared Cost Notifications in Section 4.7. Accordingly, section 4.7 of the JOA is hereby deleted in its entirety and replaced with the following provision:

4.7 Shared Cost Notifications. Notwithstanding section 12 of this JOA, all communications and notices between the Parties relating to (a) Shared Costs including, without limitation, Estimate Statements, Quarterly Invoices, or any other communication or notice required by this section 4, and (b) Emergencies, after the initial notification of an Emergency has been given under section 3.2.5 of this JOA, will be made between the following County and Judicial Council representatives.

If to the Judicial Council:

Judicial Council of California
Branch Accounting and Procurement
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Attention: Manager, Contracts
Voice: 415-865-7989
Fax: 415-865-4326

If to the County:

County of Monterey
County Administrative Office
Attn: Assistant County Administrative Officer
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
Voice: 831-755-5515
Fax: 831-755-5081

With copies to:

County of Monterey
Attn: County Counsel
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
Voice: 831-755-5045
Fax: 831-755-5283

County of Monterey
Resource Management Agency Finance
Attn: Finance Manager
168 West Alisal Street, 2nd Floor
Salinas, CA 93901
Voice: 831-755-5184
Electronic Mail: Stoffey-SaidB@co.monterey.ca.us

5. No Further Modifications. Except as specifically modified herein, the JOA remains unmodified and in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the dates specified below their respective signature.

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

JUDICIAL COUNCIL OF CALIFORNIA

By: _____
Name: Charles R. Martel
Title: Supervising Attorney
Date: _____

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

ATTEST:

_____,
Clerk of the Board

**COUNTY OF MONTEREY, a political
subdivision of the State of California**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO LEGAL FORM:
County of Monterey, Office of the
County Counsel

By: _____
Name: _____
Title: _____
Date: _____