

# 31456

## FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE (this "**Amendment**") dated Oct. 29, 2009 (the "**Effective Date**") is made by and between the JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS (collectively, "**AOC**") and the CITY OF LONG BEACH, a body corporate and politic ("**City**").

### R E C I T A L S

A. COUNTY OF LOS ANGELES ("**County**") and City entered into a lease agreement dated August 3, 2004, under which the City has a leasehold interest in 162 parking spaces in the parking lot commonly known as County Auto Park 67A (the "**Premises**") located at 413 Ocean Boulevard, Long Beach, California (the "**City Lease**"). The Premises are located on the land adjacent to the Long Beach Courthouse (the Courthouse, parking lot and land upon which it is located are collectively referred to as the "**Long Beach Court Facility**").

B. County and AOC entered into that certain Transfer Agreement for the Transfer of Responsibility for and Title to the Long Beach Courthouse dated June 19, 2007, (the "**Transfer Agreement**"). Under the Transfer Agreement, the County and AOC entered into an Assignment and Assumption of Occupancy Agreement ("**Assignment**") whereby the County assigned and delegated to the AOC, and the AOC accepted and assumed from County all of the County's right and interest in and to, and all of the County's obligations and responsibilities under, the City Lease.

C. On April 15, 2008 the County transferred the title to the Long Beach Courthouse to the State of California upon recordation of the Quitclaim Deed by the Los Angeles County Recorder.

D. It is anticipated that on or before October 1, 2009, the AOC and the Redevelopment Agency of the City of Long Beach (the "**Agency**"), will enter into an Agreement for the Exchange of Real Property and Escrow Instructions (the "**Exchange Agreement**") which will provide that the AOC will exchange all of its right, title and interest in and to the Long Beach Court Facility for all of the Agency's right, title and interest in certain property consisting of approximately 5.917 acres, bounded on the north and south by Broadway and Third Street and on the east and west by Maine Avenue and Magnolia Avenue in the City of Long Beach, County of Los Angeles. Concurrently with the intended exchange of real property, the AOC will enter into a Lease with the Agency ("**AOC Lease**") whereby the Agency will lease the entire Long Beach Court Facility to the AOC.

E. The term of the City Lease expired on August 2, 2009, (the "**Expiration Date**") and the City's occupancy of the Premises is month to month.

F. City and AOC presently desire to amend the City Lease to (i) extend the Term of the City Lease for a period of approximately five (5) years (the "**Extension Term**"), (ii) set forth the monthly rent due and payable for the Premises during the Extension Term, and (iii) document certain other modifications to the City Lease, all on the terms and conditions set forth herein.

### A G R E E M E N T:

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** The capitalized terms used in this Amendment shall have the same definitions as set forth in the City Lease to the extent that such capitalized terms are defined therein and not redefined in this Amendment.

2. Section 2 of the City Lease is amended in its entirety to read as follows:

2. **Extension Term of City Lease.** The term of the City Lease is hereby extended commencing on August 3, 2009 (the "**Commencement Date**") and expiring on July 31, 2014. Notwithstanding the foregoing, if the AOC Lease expires prior to July 31, 2014, the City Lease will terminate automatically on the same date as the AOC lease. During the Extension Term, all of the terms, covenants and conditions of the City Lease shall be applicable, except as set forth herein.

2.1 **Renewal Option.** City shall have five options (each, a "**Renewal Option**") to extend the Term of the City Lease for an additional one-year term following the expiration of the Extension Term (each, a "**Renewal Term**"). Each Renewal Term shall commence on the day after the expiration of the Term set forth in section 2 of this Amendment or the preceding Renewal Term, as applicable. City may not exercise a Renewal Option if a material uncured default by City exists, either at the time of exercise of the Renewal Option or the time of commencement of the applicable Renewal Term. Each Renewal Option must be exercised, if at all, by written notice from City to AOC given not more than nine (9) months and not less than three (3) months prior to the expiration of the Term. Each Renewal Term shall be upon the same terms and conditions as the Term, except that Rent payable for each Renewal Term shall be subject to adjustment in accordance with section 4 of this Amendment from and after the exercise of the successive Renewal Option.

2.2 **Termination Right.** Either Party shall have the right to terminate the City Lease at any time during the Extension Term or any Renewal Term upon one hundred and eighty (180) days prior written notice to the Other Party.

2.3 **Holdover.** In case City holds over beyond the end of the Term provided with the consent, expressed or implied of the AOC, such tenancy shall be from month-to-month only, subject to the terms and conditions of the City Lease. If the holdover continues beyond six months, then commencing at the beginning of the seventh month, the monthly rental shall be subject to a fair market value adjustment. In no event shall any adjustment be made which will result in a reduction of the monthly rent.

3. Section 3 of the City Lease is amended in its entirety to read as follows:

3. **Payment.** During the Extension Term, in accordance with section 3 of the City Lease, City shall pay the AOC Ten Thousand, Nine Hundred, Seventy-Six Dollars and Five Cents (\$10,976.05) per month in consideration for the parking spaces it leases. The rental payment is Sixty-Seven Dollars and Seventy-Five Cents (\$67.75) per month per space. Rental payment for any partial month shall be prorated based on the actual number of days for the month. For purposes of this City Lease, the term "Month" shall mean each calendar month during the Extension Term, with the first Month commencing on the Commencement Date; however, if the Commencement Date falls on a day other than the first calendar day of a month, the first month shall be paid as a partial month and the second and each succeeding Month shall commence on the first calendar day of the next month. Rental payments shall be payable on the first day of each and every month of the term hereof and shall be made by check or draft issued and payable to the **State of California, Administrative Office of the Courts** and the check should reference the Premises address and mailed to:

Administrative Office of the Courts  
Attn: Accounts Receivable  
455 Golden Gate Avenue, 7th Floor  
San Francisco, CA 94102-3688

4. Section 4 of the City Lease is amended in its entirety to read as follows:

4. **Rental Adjustment.** The Rent shall be subject to adjustment on August 1, 2012 and at the beginning of the each successive Renewal Term, as applicable, by comparison of the cost of living for March 2012 as compared to March 2009 for the first adjustment starting August 1, 2012 and then for each successive renewal by increasing the rent by the cost of living in the recent available twelve (12) month period from March of the preceding year to March of the current year as reflected by the Consumer Price Index ("CPI") for All Urban Consumers (Current Series), Los Angeles, Riverside, Orange County (All Items) (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics hereinafter referred to as the "**Index**". Should the publication of this Index be discontinued, then the comparison will be to CPI for All Urban Consumers (Current Series) U.S. (All Items) Not Seasonally Adjusted. The Rent shall be adjusted upward in proportion to the change, if any, in the

CPI. In no event shall any decrease be made which will result in a reduction of the monthly rent.

4.1 The City shall cause the Premises to be improved with a new slurry coating, patching, crack sealing, and striping (the “**Work**”). In lieu of the City paying Rent for the month immediately following the completion of the Work (a credit of \$10,976.05) and the first 11 days of the subsequent month (a credit of \$4,024.50), the AOC shall credit the City for the Work as well as construction supervision fees in an amount not to exceed \$15,000. Said Work shall be completed within six (6) months of the mutual execution of this Amendment. The City shall furnish the AOC with a copy of the contract and of the invoice for the Work. In addition, City shall assure that any and all contractors, subcontractors and consultants engaged or employed by contractor carry and maintain, at each contractor’s and subcontractor’s sole cost and expense, insurance with reasonably prudent limits and coverages in light of the services to be rendered by such contractors and subcontractors or such other insurance with limits and coverages as required by AOC. In performing the foregoing Work, City shall assure that its contractor comply and stay current with all applicable building codes and laws as amended from time to time, including but not limited to, the Americans with Disabilities Act. City shall cause the Work to be done by well-trained, adequately supervised workers, in a good and workmanlike manner, free from design, material and workmanship defects. City agrees to indemnify, defend and hold the AOC harmless from and against any and all liability, penalties, losses, damages, costs, expenses, causes of action, claims, or judgments (including reasonable attorneys’ fees and costs) which arise out of the Work on the Premises. This indemnity does not apply to any claims arising from the negligence or intentional misconduct of the AOC. The indemnity obligations under this paragraph will survive termination of this Lease.

5. Section 5.05 of the City Lease is amended in its entirety to read as follows:

**5.05 Maintenance.** The City shall be responsible for maintaining the Premises in a clean and sanitary condition, including, but not limited to, the maintenance of all trees and landscaping. The City shall also be responsible for any structural maintenance.

6. Section 16 of the City Lease is amended in its entirety to read as follows:

**16. Notice.** All notices required under the City Lease shall be in writing and delivered by: (a) Certified Mail, postage prepaid, return receipt requested, in the United States mail; or (b) an overnight courier that provides written evidence of delivery and addressed as set forth below. A Party hereto may from time to time change its mailing address by written notice to the other Party.

If to AOC: Administrative Office of the Courts

Office of Court Construction and Management  
Attn: Portfolio Administration Analyst  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Telephone: 415-865-4053  
Fax: 415-865-8885

With a copy to: Administrative Office of the Courts  
Office of Court Construction and Management  
Manager, Real Estate  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Telephone: 415-865-4048  
Fax: 415-865-8885

If to City: City Manager  
City of Long Beach  
333 West Ocean Boulevard  
Long Beach, CA 90802

With a copy to: Property Services Bureau Manager  
City of Long Beach  
333 West Ocean Boulevard, 3<sup>rd</sup> Floor  
Long Beach, CA 90802  
Fax: 562-570-6380

In addition, all notices relating to termination of the City Lease or an alleged breach or default by AOC must also be sent to:

Administrative Office of the Courts  
Office of Court Construction and Management  
Attn: Senior Manager, Business Services  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Telephone: 415-865-4090  
Fax: 415-865-4326

If to City: City Manager  
City of Long Beach  
333 West Ocean Boulevard  
Long Beach, CA 90802


With a copy to: Property Services Bureau Manager  
City of Long Beach  
333 West Ocean Boulevard, 3<sup>rd</sup> Floor  
Long Beach, CA 90802  
Fax: 562-570-6380


6. **Conflict; No Further Modification.** In the event of any conflict between the City Lease and this Amendment, the terms of this Amendment shall prevail. Except as specifically set forth in this Amendment, all of the terms and provisions of the City Lease shall remain unmodified and in full force and effect. There are no other modifications, express or implied.

IN WITNESS WHEREOF, the parties have executed this Amendment upon the date first written above.

APPROVED AS TO FORM:  
Administrative Office of the Courts,  
Office of the General Counsel

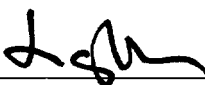
**JUDICIAL COUNCIL OF CALIFORNIA,  
ADMINISTRATIVE OFFICE OF THE  
COURTS**


By:   
Name: Rachel J. Dragolovich  
Title: Attorney  
Date: Oct. 28, 2009

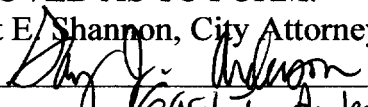
By:   
Name: Grant Walker  
Title: Senior Manager, Business Services  
Date: 10/29/09

ATTEST:

**CITY OF LONG BEACH**

By:   
Name: Larry Herrera  
Title: City Clerk  
Dated: October 26, 2009

By:  Assistant City Manager  
Name: Patrick H. West  
Title: City Manager  
Date: 10.22.09  
**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

APPROVED AS TO FORM:  
Robert E. Shannon, City Attorney  
By:   
Name: Gary J. Anderson  
Title: Deputy City Attorney  
Date: October 9, 2009