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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

July 28, 2022

Director of Council Services
Traci N. T. Fujita, Esq.
Deputy Director of Council Services
David M. Raatz, Jr., Esq.

RECEIVED
2022 JUL 29 AM 8:14
OFFICE OF THE
COUNTY CLERK

The Honorable Alice L. Lee
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: **AMENDMENT TO BILL 22 (2022)** (GREAT-51)

May I request the attached proposed amendment to Bill 22 (2022), entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII JUDICIARY FOR A FOUR-YEAR AND ELEVEN MONTH LEASE OF 2,070 SQUARE FEET OF OFFICE SPACE AT 2103 WELLS STREET, WAILUKU, MAUI, HAWAII 96793," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Molina".

MICHAEL J. MOLINA, Chair
Government Relations, Ethics, and
Transparency Committee

great:ltr:051ach01:kmatt

Enclosure

COUNTY COMMUNICATION NO. 22-185

August 5, 2022, Council Meeting

BILL 22 (2022)

MAUI COUNTY COUNCIL
Amendment Summary Form

Legislation: Bill 22 (2022).

Proposer: Mike Molina, Chair 
Government Relations, Ethics, and Transparency
Committee

Description: Amend Bill 22 (2022) to revise the rent amount the State
Judiciary would pay the County for the lease.

Motion: Move to substitute the attached proposed FD1 version for
Bill 22 (2022), incorporating the following amendments:

1. Under Section 1 on the first page of the bill, replace
“three thousand four hundred dollars (\$3,400.00)” with
“three thousand one hundred dollars (\$3,100).”
2. Replace Exhibit “1” with a revised Exhibit “1” containing
updated numbers.

Attachment: Bill 22 (2022), proposed FD1.

great:misc:051aasf01:kmatt

ORDINANCE NO. _____

BILL NO. 22 (2022)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII JUDICIARY FOR A FOUR-YEAR AND ELEVEN MONTH LEASE OF 2,070 SQUARE FEET OF OFFICE SPACE AT 2103 WELLS STREET, WAILUKU, MAUI, HAWAII 96793

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The County of Maui ("County") and State of Hawaii Judiciary ("State Judiciary") wish to enter into an Intergovernmental Agreement for lease of 2,070 square feet of office space at the County's building located at 2103 Wells Street, Wailuku, Maui, Hawaii 96793.

Under the lease, the State Judiciary would pay rent of three thousand one hundred dollars (\$3,100.00) per month to the County for a lease term of four years and eleven months upon the execution of the lease for the purpose of allowing the State Judiciary's Children's Justice Center of Maui to occupy that office space and facilitate services for child victims of sexual and physical abuse and child witnesses of domestic violence. The lease will be beneficial for the County, because, in addition to paying monthly rent to the County, the State Judiciary's Children's Justice Center of Maui provides services for child victims of sexual and physical abuse and child witnesses of domestic violence. The State Judiciary's Children's Justice Center of Maui provides programs that bring together a multidisciplinary team of professionals who coordinate activities and

investigations into child abuse and child neglect. By moving into the County's building located at 2103 Wells Street, Wailuku, Maui, Hawaii 96793, the State Judiciary's Children's Justice Center of Maui will provide its services in closer proximity to the Department of the Prosecuting Attorney and thereby better enable all parties to pursue justice for child victims and child witnesses of crimes.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Council Authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to enter into an intergovernmental agreement in the form of the lease attached hereto as Exhibit "1."

SECTION 3. Effective Date. This ordinance takes effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

DANIEL J. KUNKEL
Deputy Corporation Counsel
County of Maui
LF2020-1545
2022-01-13 Ord Auth SOH judiciary IGA.docx

EXHIBIT "1"

LEASE AGREEMENT BETWEEN THE COUNTY OF MAUI AND THE STATE OF HAWAII JUDICIARY COVERING 2,070 SQUARE FEET OF OFFICE SPACE LOCATED AT THE COUNTY OF MAUI'S BUILDING AT 2103 WELLS STREET, WAILUKU, MAUI, HAWAII 96793

This Lease, made this ____ day of _____, 2022, is entered by and between the COUNTY OF MAUI ("Maui County"), whose mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, and the STATE OF HAWAII JUDICIARY ("State Judiciary"), whose principal place of business is in care of the Administrative Director of the Courts, 417 South King Street, Suite 206, Honolulu, Hawaii, 96813,

WITNESSETH:

ARTICLE I: DEMISE

1.1 Premises.

WHEREAS, the Maui County Department of the Prosecuting Attorney is renovating the first floor (approximately 3,062 square feet) of Maui County's building that is located at 2103 Wells Street, Wailuku, Maui, Hawaii, 96793 ("the 2103 Wells Street Building" or "Property") to accommodate the Department of the Prosecuting Attorney's Children's Peace Center and provide services for child victims of sexual and physical abuse and child witnesses of domestic violence.

WHEREAS, the State Judiciary Children's Justice Center provides programs that bring together a multidisciplinary team of professionals who coordinate activities and investigations of child abuse and neglect.

WHEREAS, the Maui County Department of the Prosecuting Attorney and the State Judiciary Children's Justice Center share a mutual desire to have the State Judiciary Children's Justice Center

provide its programs at the Children's Peace Center in the 2103 Wells Street Building.

NOW, THEREFORE, Maui County, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the State Judiciary to be kept, observed and performed, does lease unto the State Judiciary, and the State Judiciary does lease from Maui County, a space comprising 2,070 square feet of space on the first floor of the 2103 Wells Street Building, as shown on "Exhibit A" and "Exhibit B" attached hereto and made a part hereof (the "Premises"), together with the full right in common with other tenants of the 2103 Wells Street Building and their employees, agents and invitees to the Premises in common with others over, access, and through any alleys, common entrances and exits, lobbies, stairways, halls, corridors and parking areas in or around the 2103 Wells Street Building.

1.2 The Term.

The term of this Lease shall be no more than four years and eleven months. The State Judiciary and Maui County (the "Parties") agree that the State Judiciary will not move into and occupy the Premises until after Maui County has concluded all of its currently planned construction and renovation work on the Premises. The Effective Date of this Lease shall be the date on which the State Judiciary moves into and begins to occupy the Premises. The term of this Lease shall commence on the Effective Date of this Lease unless the Effective Date is on any day other than the first day of a month, in which case the State Judiciary may occupy the Premises on the Effective Date, but the State Judiciary's rent will not begin to accrue until the first day of the next month. Therefore, the State Judiciary's

obligation to pay rent shall commence on that first day of the first complete calendar month and shall end on June 30, 2026, unless sooner terminated as set forth in this Lease. Provided, however, that said term shall be contingent at all times upon the availability of public funds for the State Judiciary to pay such rent.

1.3 Renewal Option.

If the State Judiciary intends to renew this lease after June 30, 2026, then the State Judiciary shall notify Maui County of the State Judiciary's intent to renew this lease no later than January 31, 2026. At the expiration of the initial term of this Lease, the Parties may renew this Lease for up to three (3) subsequent terms, each of which shall not exceed four years eleven months in duration. The monthly rent payable shall be subject to a reasonable increase to commence on the first day of the next fiscal year.

1.4 Option to Terminate.

The State Judiciary shall have the right to terminate this Lease at any time after the first year of the term hereof under the following conditions:

- a. if the State Judiciary's public funding from the State or federal governments be substantially cut; or
- b. if the program and/or agency is abolished, terminated, reorganized, or substantially downsized; or
- c. if State-owned office space is vacant and available and is assigned by the appropriate authority to the program; or
- d. the State Judiciary is able to move into a co-located facility with another partner agency; and

- e. the State Judiciary provides Maui County with appropriate evidence of either a, b, c, or d above and gives Maui County a minimum of ninety (90) days prior written notice to cancel.

1.5 Availability of Contiguous Space.

If at any time during the term, additional office space becomes available that is 1) not needed by Maui County, and 2) contiguous to, or on the same floor as, the Premises, then the State Judiciary shall have the right of first refusal on any contiguous space. The State Judiciary shall have fifteen (15) days following Maui County's notice of availability to exercise the option. The State Judiciary shall lease the space on a per-square-foot basis at the State Judiciary's then existing rent, term and conditions. Tenant improvements, if needed, would be at the State Judiciary's cost.

1.6 Quiet Enjoyment.

Upon payment by the State Judiciary of the rent hereinafter reserved and upon observance and performance of the terms, covenants and conditions herein contained and to be observed and performed by the State Judiciary, the State Judiciary shall peaceably hold and enjoy the Premises for the term and any extensions thereof without hindrance or interruption by Maui County or any other person lawfully or equitably claiming by, through or under the Maui County, except as herein otherwise expressly provided.

ARTICLE II: RENT AND OTHER CHARGES

2.1 Rent.

In consideration of this Lease, the State Judiciary agrees to pay Maui County as monthly rent for the Premises the sum of three

thousand one hundred and 00/100 dollars (\$3,100.00) (\$1.49 per rentable square foot) per month.

The rent shall be paid in legal tender of the United States of America, payable monthly in advance on the first day of each month to the Director of Finance, County of Maui, Department of Finance, 200 South High Street, Wailuku, Hawaii 96793, or at any other place Maui County in writing may designate, on the days and in the manner aforesaid without any deduction and without notice or demand; and that, if any installment of rent shall not be promptly paid when due or within thirty (30) days thereafter, then the rent shall bear simple interest at the rate equivalent to the prime rate, but in no event shall exceed ten percent (10%) a year from said date until paid. "Prime rate" means the prime rate as posting in the Wall Street Journal on the first business day of the month preceding the calendar quarter.

2.2 Parking.

Maui County shall provide the State Judiciary with four (4) unreserved parking stalls and four (4) reserved parking stalls.

2.3 Security Deposit.

No security deposit shall be required to be paid by the State Judiciary.

2.4 Operating Costs and Utilities.

- a. **Included in Rent.** The State Judiciary's monthly rent includes the costs of the water, electricity and sewer utilities related to the Premises, as well as common area maintenance such as building maintenance, gardening, landscaping, tree trimming, maintenance and repair of air-conditioning equipment and parking areas. The State Judiciary's monthly rent does not include janitorial services for the Premises. The

State Judiciary shall procure janitorial services for the Premises at its own expense.

- b. **Non-liability for Interruption.** Maui County shall under no circumstances be liable to the State Judiciary in damages or otherwise for any unintentional failure to furnish or unintentional interruption in service of any water, gas or electricity or for stoppage of sewers from any cause whatsoever.

2.5 Conveyance Tax.

If the State Judiciary requires recordation of this Lease, then the State Judiciary forthwith shall reimburse to Maui County, upon the State Judiciary's receipt of actual billing from Maui County therefor, any State of Hawaii conveyance tax which shall be or become payable by Maui County or the State Judiciary as a result of this lease.

ARTICLE III: USE OF THE PREMISES

3.1 Occupation of the Premises.

The Premises will be occupied and used by the State Judiciary for the purpose of the Children's Justice Center Program. The State Judiciary will not use or permit, or suffer the use of the Premises for any other business or purposes without the written consent of Maui County.

3.2 Common Areas.

The common areas shall consist of all areas designed for common use or benefit, including, without limiting the generality of the foregoing, delivery areas, curbs, drains, walkways, malls, arcades, corridors, hallways, gardens, landscaped and vacant areas and public

facilities such as washrooms, lounges, toilets, drinking fountains, shelters, escalators, elevators, stairs and ramps. The State Judiciary and its employees, agents, customers and invitees shall have the right at all times during the term, subject to applicable rules and regulations, if any, made by Maui County and as approved by the State Judiciary as herein provided, to the reasonable use of the common areas in common with Maui County and others entitled to use such areas. The State Judiciary will not at any time use the common areas for the display or storage of any merchandise or equipment without the written consent of Maui County.

3.3 Observance of Laws.

The State Judiciary agrees to abide by all federal, state, and Maui County laws, ordinances, rules and regulations at all times during the term observe and comply with all laws, ordinances, and rules and regulations now or hereinafter made by any governmental authority and applicable to the occupancy or use of the Premises or the conduct of any business therein or to the use of the common areas.

3.4 Covenant Against Discrimination.

The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations and National Guard participation.

3.5 ADA Compliance.

With respect to the the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101-12213 (2000) ("ADA"), the State Judiciary has implemented a policy of program accessibility to ensure that its

services, programs and activities are readily accessible and usable by individuals with disabilities. The State Judiciary, in its discretion, may make additional ADA improvements to the interior spaces within the leased Premises as it deems necessary and appropriate. The State Judiciary agrees that it is responsible for performing any ADA improvements to the interior spaces necessitated by an actual grievance or complaint and/or as required by law. All such improvements shall be performed at the State Judiciary's expense.

Maui County agrees that it is responsible for any ADA improvements to the common areas of the Property necessitated by an actual grievance or complaint and/or as required by law. All such improvements shall be performed at Maui County's expense.

Pursuant to Hawaii Revised Statutes § 103-50 (2012 & Supp. 2021), building construction plans, whether by the State Judiciary or Maui County, shall be submitted to the State of Hawaii's Disability and Communications Access Board.

3.6 Rules and Regulations.

Maui County may from time to time adopt or amend such reasonable rules and regulations as Maui County deems necessary or desirable for the operation or use of the Premises, such as, but not limited to, the use of the common areas and other matters which may be of benefit or protection of the Maui County and the State Judiciary; provided, however, that the rules and regulations shall not be inconsistent with the terms, covenants and conditions of this Lease. To the extent that the rules and regulations are inconsistent with the terms, conditions and covenants of this Lease, then the terms, conditions and covenants of this Lease shall control. The State Judiciary shall observe and comply with said rules and regulations.

3.7 Waste, Nuisance or Unlawful Activity.

The State Judiciary agrees that it will not commit or permit any waste on the Premises, or maintain or permit to be maintained a nuisance thereon, or use or permit the Premises to be used in an unlawful manner.

3.8 Subletting and Assignment.

The State Judiciary agrees that the State Judiciary shall not sublet, mortgage or assign the Premises or any part thereof, nor will the State Judiciary part with the possession of the whole or any part thereof without the consent in writing of Maui County first having been obtained.

3.9 The Children's Justice Center Medical Room.

The Parties agree that the State Judiciary Children's Justice Center will use part of the Premises as a medical room where the Maui Police Department will direct a healthcare professional to conduct forensic medical examinations of alleged child victims of sexual abuse and/or physical abuse. The Parties agree that the State Judiciary will not be liable for any tort arising out of any and all forensic examinations that occur within the Children's Justice Center's medical room. Maui County assumes all responsibility, including potential tort liability, for the forensic medical examinations that will occur within the Children's Justice Center's medical room.

ARTICLE IV: HAZARDOUS MATERIALS

4.1 The State Judiciary and Hazardous Materials.

The State Judiciary shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, the State Judiciary shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by the State Judiciary to assure the State Judiciary's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to the State Judiciary sufficient to assure the State Judiciary's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, the State Judiciary shall (a) cause all hazardous substances previously owned, stored, or used by the State Judiciary to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by the State Judiciary to store any

hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by the State Judiciary to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Maui County free of the presence or effects of any hazardous substances generated or used by the State Judiciary in, on, or about the Premises during the term of this Lease. The State Judiciary shall indemnify and hold harmless Maui County, its officers, employees, and agents from any and all claims for damage to real or personal property or injury to or death of any persons when such damage, injury or death arises out of the acts or omissions of the State Judiciary, its officers or employees in conjunction with the use or storage hazardous materials on the Premises; provided that the State Judiciary shall not be required to indemnify or hold harmless Maui County, its officers, employees, and agents for any claims of damage, injury or death arising out of the acts or omissions of Maui County, its officers, employees, agents, contractors, or invitees.

4.2 Maui County and Hazardous Materials.

To the best of its knowledge, Maui County represents that it has not violated and is presently in compliance with all laws regarding hazardous materials applicable to the Premises and Property, and that there does not now exist any condition relating to hazardous materials on the Premises and Property.

ARTICLE V: MAINTENANCE, ALTERATIONS, and REPAIRS

5.1 The State Judiciary's Maintenance and Repairs of the Premises.

During the term of this lease and any extensions thereof, the State Judiciary will at its own cost keep the Premises in a good and safe condition, reasonable use and wear and tear and unavoidable casualty excepted. The State Judiciary's obligations under this section do not include structural repairs, common areas of the Property, and natural wear, decay, or damage by the elements or other casualty (occurring without fault of the State Judiciary or other persons permitted by the State Judiciary to occupy or enter the Premises or any part thereof). Maintenance and repair of interior glass within the Premises is the sole responsibility of the State Judiciary and any glass broken during the term of this lease is to be promptly replaced by and at the expense of the State Judiciary with glass of the same size, kind and quality, unless caused by the negligent act or omission of the Maui County or its authorized representatives.

5.2 Condition of the Property and Premises.

The State Judiciary recognizes that the Property and Premises are not new and acknowledges and accepts the physical condition, use, and operation of the Property and Premises "AS IS" and "WITH ALL FAULTS." Maui County will not be required to take any action with respect to the Property or Premises, including, but not limited to, the repair or replacement of any part of the Property or Premises. The State Judiciary has decided to lease the Premises solely on the basis of its own independent investigation.

5.3 Maui County's Right of Entry.

The State Judiciary will allow Maui County and the agents of the Maui County, at reasonable times and upon prior notice, to enter upon the Premises and examine the condition thereof and to maintain and make repairs thereto as Maui County deems necessary or advisable.

5.4 Alterations.

The State Judiciary will not make any alterations or additions whatsoever to the Premises without first obtaining Maui County's written approval of the plans and specifications thereof, which shall not be unreasonably withheld. All items permanently affixed to the Premises shall become the property of Maui County upon termination of the Lease.

5.5 The Sound Masking System in the Premises.

The Parties acknowledge that the State Judiciary Children's Justice Center will have a sound masking system in the ceiling panels of the Premises. The State Judiciary shall be financially responsible for the operation and maintenance of the sound masking system.

ARTICLE VI: LIABILITY AND INSURANCE

6.1 Liability of the State Judiciary.

The State Judiciary shall, subject to the applicable provisions of Chapter 661, Hawai'i Revised Statutes (Suits By and Against the State) and Chapter 662, Hawai'i Revised Statutes (State Tort Liability Act), be liable in the same manner and to the same extent as a private individual under like circumstances, for all claims and demands for property damage, loss, personal injury or death on the Premises caused by the negligent or wrongful act or omission of any officer and

employee of the State Judiciary while acting within the scope of that person's office or employment, or persons acting for a State agency in an official capacity, temporarily, whether with or without compensation. "State agency" includes the State Judiciary but does not include any contractor with the State Judiciary.

6.2 Liability of Maui County.

Maui County shall be liable to the State Judiciary for damage to the State Judiciary's person or property that Maui County proximately causes, but only to the extent that Maui County's liability for such damage, loss or injury has been determined by a court of competent jurisdiction or otherwise agreed to by Maui County, and further, only to the extent that the payment for such damage, loss or injury is permitted by law and approved by the Maui County Council, pursuant to Chapter 3.16, Maui County Code, as amended.

6.3 Insurance as to the State Judiciary.

The State Judiciary, as a sovereignty, is self-insured and therefore insurance, including, but not limited to, public liability and property damage, fire, plate glass, and business interruption insurance, is not required.

6.4 Insurance as to Maui County.

Maui County is a self-insured municipal corporation, and, therefore, insurance, including, but not limited to, public liability and property damage, fire, plate glass, and business interruption insurance, is not required.

ARTICLE VII: PROPERTY OF THE STATE JUDICIARY

7.1 Property of the State Judiciary.

All personal property of any kind or description whatsoever on the Premises shall be at the State Judiciary's sole risk, and Maui County shall not be liable for any damage done to or loss of such personal property or damage or loss suffered by the business or occupation of the State Judiciary arising from any act or neglect of co-tenants or other occupants of the building or of other persons, from bursting, overflowing, or leaking of water, gas, sewer, or steam pipes or from any fixtures, appliances or devices connected to same, or from electric conduit, wires, fixtures, appliances or devices, or from chemicals or bacteria or odors, or caused in any other manner whatsoever.

ARTICLE VIII: CONDEMNATION

8.1 Condemnation.

If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, then the State Judiciary shall be entitled to receive from the condemning authority the proportionate value of the State Judiciary=s permanent improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that the State Judiciary may, in the alternative, remove and relocate the State Judiciary=s improvements to the remainder of the Premises occupied by the State Judiciary. The State Judiciary shall not by reason of the condemnation be entitled to any claim against Maui County for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to the State

Judiciary's improvements, shall be payable to and be the sole property of Maui County. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, the State Judiciary shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that the State Judiciary may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Maui County. The foregoing right of Maui County shall not be exclusive of any other to which Maui County may be entitled by law.

8.2 Partial Taking.

In case only part of the Premises shall be so taken or condemned, the rent thereafter payable for the unexpired remainder of the term shall be reduced in the same proportion that the area of the Premises so taken or condemned bears to the total area of the Premises hereby demised; provided, however, that either party has the right to terminate this Lease at its option in the event of a partial taking of at least 25% of the Premises without further obligation under this Lease.

ARTICLE IX: CASUALTY

9.1 Fire. In case of fire, the State Judiciary shall give immediate notice thereof to Maui County.

- a. In the event that the Premises or the building and other improvements in which the Premises are located are totally or partially destroyed or damaged by fire or other cause so as to render the Premises or the building and other improvements in which the Premises are located totally or

partially inaccessible or unusable or untenable for a period exceeding one hundred twenty (120) days, this Lease may be terminated at the option of either party hereto.

- b. In the event that the Premises or the building and other improvements in which the Premises are located are damaged as aforesaid so as to render the Premises or the building and other improvements in which the Premises are located totally or partially inaccessible or unusable or untenable for a period of more than sixty (60) days but not exceeding one hundred twenty (120) days, there shall be an abatement of fifty percent (50%) of the monthly rent specified in Section 2.1 hereof during the period the Premises are untenable.
- c. There shall be no abatement in rent in the event that the Premises are rendered untenable as aforesaid for a period of less than sixty (60) days.
- d. If twenty-five percent (25%) or more of the rentable area of the building of which the Premises form a part is rendered untenable by fire or other casualty or if Maui County is unable to obtain a building permit to repair any portion of the Premises which have been damaged by fire or other casualty or which have been declared unsanitary or unsafe by any governmental agency or authority, then Maui County may cancel this lease, although the Premises itself may not be damaged. Written notice of cancellation shall be given to the State Judiciary within thirty (30) days after such damage or declaration by civil authority and thereafter, the State Judiciary shall immediately surrender possession.

ARTICLE X: DEFAULT

10.1 Remedies on the State Judiciary's Breach.

This Lease is upon the express condition that, if the State Judiciary shall fail to pay the rent herein reserved or any part thereof as the same becomes due, or shall fail to faithfully observe and perform any other term, covenant or condition of this Lease, or shall abandon the Premises, or shall suffer this Lease or any estate or interest hereunder to be taken on execution, or shall suffer any mechanic's or materialmen's lien to attach to said Premises, and shall fail to secure the discharge or release thereof within a reasonable time after the entry of any judgment or order of a court of competent jurisdiction for the foreclosure or other endorsement of the lien, and the breach or default shall continue for a period of thirty (30) days after the delivery of a written notice of any such breach or default by personal service, registered mail or certified mail, then in that event, Maui County may at once re-enter the Premises and, upon or without the entry, at its option, terminate this Lease without any further service or notice or legal process, and may expel and remove from the premises the State Judiciary and those claiming under it and its effects. Maui County may store, remove and dispose of any of the State Judiciary's improvements or personal property at the State Judiciary's expense, and may then or at any time before or thereafter bring an action for summary possession of said Premises, all without prejudice to any other remedy or right of action which Maui County may have for arrears of rent or other breach of contract; provided, however, that if the nature of the default, other than non-payment of rent is such that the same cannot be reasonably cured within a thirty-day

period, the State Judiciary shall not be deemed to be in default if the State Judiciary diligently prosecutes the same to completion.

10.2 Nonwaiver.

The acceptance of rent by Maui County or its agent shall not be deemed to be a waiver by it of any breach by the State Judiciary of any covenant contained herein or of Maui County's right to re-enter for breach of condition.

ARTICLE XI: SURRENDER AND HOLDING OVER

11.1 Surrender of Premises.

At the end of the term of this Lease or other earlier termination of this Lease, the State Judiciary will peaceably deliver up to Maui County possession of the demised Premises together with all improvements thereon by whomsoever made, except those improvements that can be reasonably removed by the State Judiciary, in good repair, order and condition, reasonable wear and tear and unavoidable casualty excepted. During the last month of the term hereof, the State Judiciary will allow Maui County during the last month to advertise or keep on the Premises a "For Rent" notice, and will allow Maui County to show the Premises during business hours to prospective lessees upon advance notice. If the State Judiciary fails to remove any and all of the State Judiciary's improvements and/or personal property from the Premises, after thirty (30) days written notice by Maui County, then Maui County may remove any and all improvements and/or personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of the State Judiciary, and the State Judiciary agrees to pay all costs and expenses for

disposal, removal, or storage of the improvement and/or personal property.

11.2 Holding Over.

If the State Judiciary shall remain in possession of the Premises after the expiration of the lease term without executing or intending to execute a document extending or renewing this Lease, then the State Judiciary shall be deemed to occupy the Premises as a tenant from month to month at the rent herein reserved, subject to all other terms, covenants, and conditions herein contained insofar as the same are applicable to a month-to-month tenancy.

ARTICLE XII: NOTICE

12.1 Notice.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

To Maui County at:

Director of Finance
200 South High Street
Wailuku, Maui, Hawaii 96793

To the State Judiciary at: Administrative Director of the Courts
417 South King Street, Room 206
Honolulu, Hawaii 96813

ARTICLE XIII: GENERAL

13.1 Time Is of the Essence.

Time is of the essence in all provisions of this Lease.

13.2 Hawaii Law; Venue; Jurisdiction.

This Lease shall be construed, interpreted, and governed by the laws of the State of Hawai'i. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Hawaii, County of Maui, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Hawaii, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

13.3 Disputes Subject to Mediation.

If a dispute arises out of or relates to this lease, or the breach thereof, and if the dispute cannot be settled through negotiation, then the parties agree first to try in good faith to settle the dispute by mediation, before resorting to litigation or some other dispute resolution procedure. During this period, there will be no interruption in the payment of rent by the State Judiciary to Maui County.

13.4 Exhibits – Incorporation in Lease.

All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

“EXHIBIT A” Floor Plan

“EXHIBIT B” Floor Plan

13.5 Singular and Plural.

When required by the context of this lease, the singular shall include the plural.

13.6 Headings.

The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Lease.

13.7 Successors and Assigns.

The term "Maui County" as used herein shall include the Maui County, its successors and assigns, and the term "State Judiciary" as used herein shall include the State Judiciary and its successors and assigns.

13.8 Partial Invalidity.

If any term, provision, covenant or condition of this Lease should be held by a court of competent jurisdiction to be invalid, void or unenforceable, then the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13.9 Consents.

When consent shall be required by either Maui County or the State Judiciary, it is understood that neither party shall unreasonably withhold or delay such consent.

13.10 Compliance with All Laws.

Maui County agrees to abide by all federal, state, and Maui County laws, ordinances, rules and regulations.

13.11 Days.

Days shall mean calendar days unless otherwise specified.

13.12 Entire Agreement; Modification.

This Lease contains all the agreements of the parties and cannot be amended or modified except by a written agreement.

13.13 Compliance with Hawaii Revised Statutes Chapter 104.

Maui County confirms that the 2,070 square feet of space in the first floor of the 2103 Wells Street Building that Maui County is hereby leasing to the State Judiciary comprises 32.63 percent of the overall 6,345 square feet of assignable space in the entire 2103 Wells Street Building. Maui County confirms that Maui County has not leased or assigned any other part of the assignable square feet of the 2103 Wells Street Building to another agency of the State of Hawaii. Nevertheless, Maui County confirms that Maui County is assigning the remaining 67.37 percent of the overall assignable square feet of the 2103 Wells Street Building to the Maui County Department of the Prosecuting Attorney. Consequently, pursuant to Hawaii Revised Statutes § 104-2.5 (2012), all construction work to which the State Judiciary and Maui County have agreed under this Lease is subject to Hawaii Revised

Statutes Chapter 104, including the payment of prevailing wages and submission of weekly certified payrolls. For any and all construction or renovation work that commences after the State Judiciary's Children's Justice Center begins to occupy the Premises on the Effective Date of this lease, Maui County shall submit weekly certified payrolls of construction work to which the State Judiciary and Maui County have agreed under this Lease to the State Judiciary.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the day, month, and year first above written.

LESSOR:

COUNTY OF MAUI

By: _____

MICHAEL P. VICTORINO

County of Maui Mayor

Date: _____

APPROVED:

ANDREW H. MARTIN

County of Maui Prosecuting Attorney

APPROVED AS TO FORM
AND LEGALITY:

DANIEL J. KUNKEL

County of Maui Deputy Corporation Counsel

LESSEE:

JUDICIARY, STATE OF HAWAII

APPROVED AS TO FORM:

Judiciary Staff Attorney

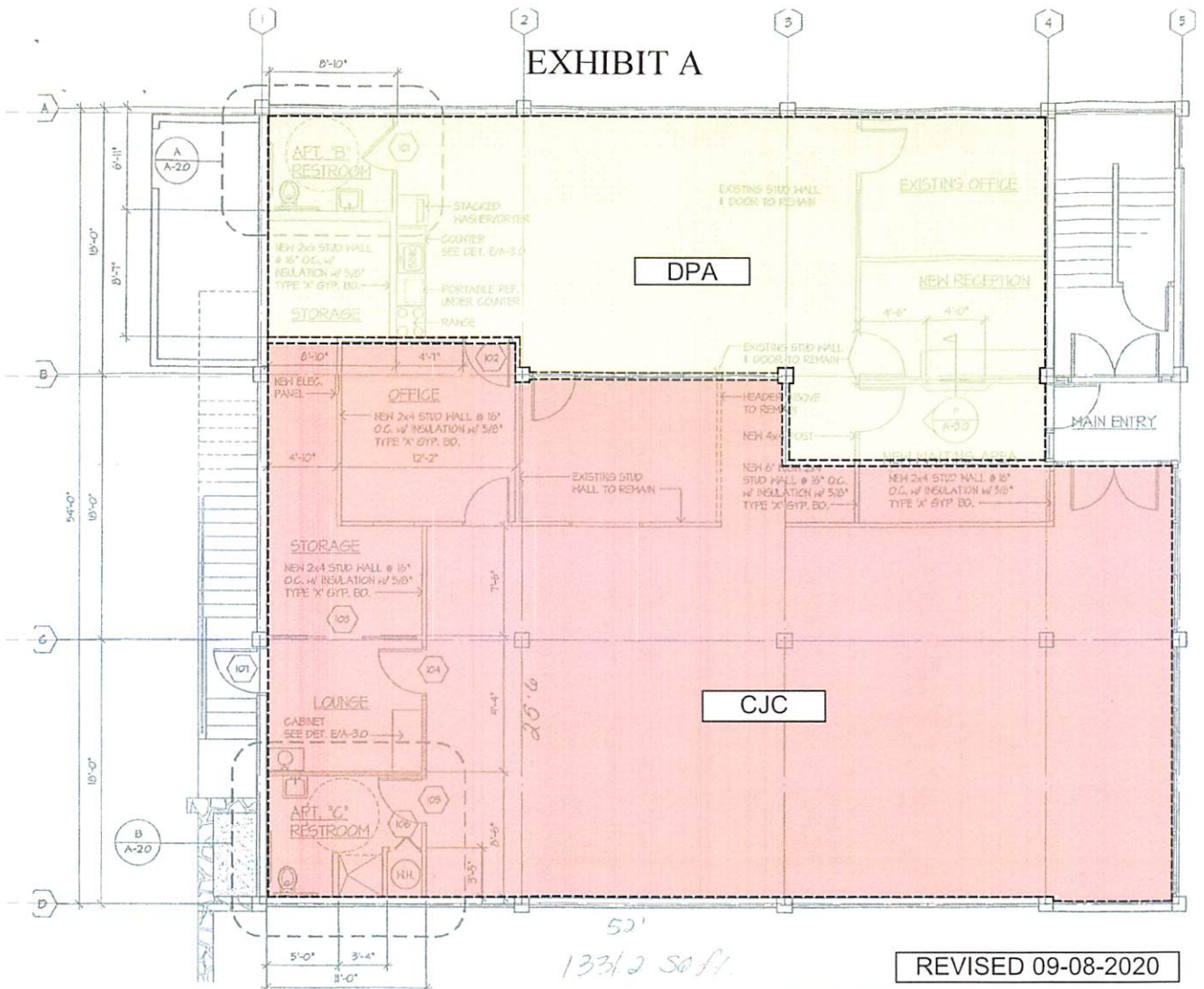
By: _____

RODNEY MAILE

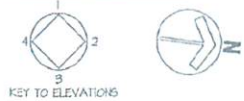
Administrative Director of the Courts

Date: _____

EXHIBIT A



NEW FIRST FLOOR PLAN
SCALE: 1/4"=1'-0"



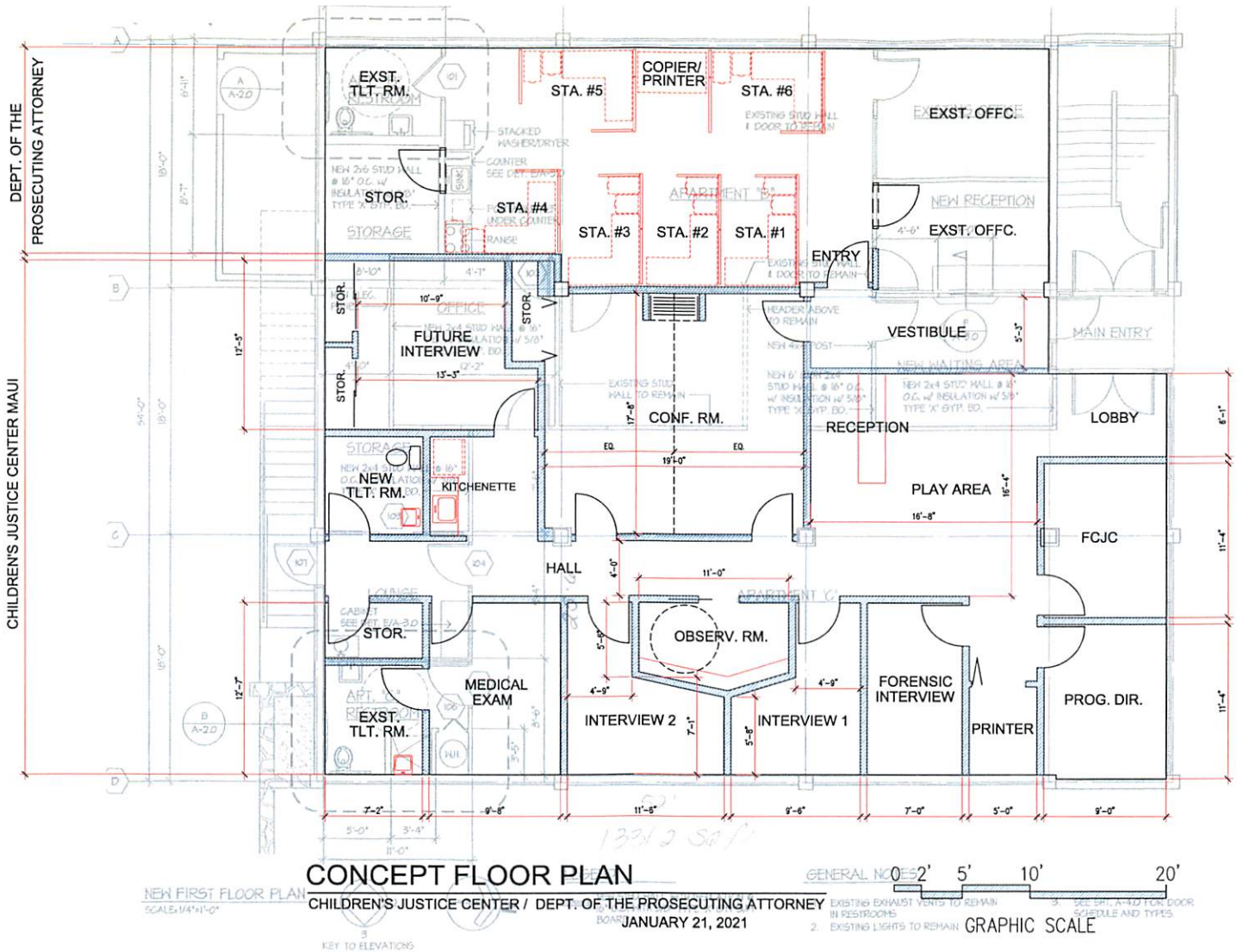
LEGEND

NEW STUD HALL WITH INSULATION @ 15" O.C. WITH 5/8" TYPE 'X' GYP. BOARD.

GENERAL NOTES

- EXISTING EXHAUST VENTS TO REMAIN IN RESTROOMS
- EXISTING LIGHTS TO REMAIN
- SEE SHT. A-4.0 FOR DOOR SCHEDULE AND TYPES.

EXHIBIT B



INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris Lee", is written over a horizontal line.

Upon the request of the Mayor.