

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2015-034

Approving a Lease of Real Property from City of Troutdale, Oregon for Property Located at 234 SW Kendall Court, Troutdale, Oregon and Authorizing the County Chair to Execute Appropriate Documents to Complete the Transaction.

The Multnomah County Board of Commissioners Finds:

- a. The Multnomah County Sheriff Department has identified a need for office space to facilitate an Intergovernmental Agreement for law enforcement services for the City of Troutdale.
- b. Facilities and Property Management Department ("Facilities") has negotiated a lease agreement which will provide approximately 19,214 square feet within the current facility occupied by Troutdale Police. A copy of the lease is attached and identified as Exhibit 1.
- c. It is in the best interest of the County to lease the Property on the terms and conditions set forth in the attached lease.

The Multnomah County Board of Commissioners Resolves:

1. The County Chair is authorized to execute a Lease substantially in conformance with the attached Lease identified as Exhibit 1.
2. The County Chair is authorized to execute renewals of the lease and execute amendments to the lease without further Board action.

ADOPTED this 23rd day of April, 2015.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By

Jed Tomkins, Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Director, Dept of County Assets

LEASE

Effective Date: _____, 2015 ("Effective Date")

Between: Multnomah County, Oregon ("Tenant")
Attn: Facilities and Property Management
401 N Dixon Street
Portland, OR 97227

And: City of Troutdale ("Landlord")
an Oregon municipal corporation
219 E. Historic Columbia River Hwy
Troutdale, OR 97060

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on the terms and conditions stated herein:

Approximately 19,214 square feet of space, as shown in Exhibit "A-1" and "A-2" of this Lease in the building defined as the "City Facility" in the Intergovernmental Agreement Between Multnomah County Oregon and City of Troutdale Oregon For Contract Law Enforcement Services (2015) (the "IGA") located at 234 SW Kendall Court, Troutdale, OR 97060.

Section 1. Occupancy

1.1 **Original Term.** The term of this Lease shall commence at 12:01 a.m. on July 1, 2015 (the "Effective Implementation Date"), and shall, unless sooner terminated as hereinafter provided, continue through June 30, 2025, or, if the duration of the IGA is extended beyond that date, this Lease shall continue automatically through the additional term or terms of such IGA subject to all of the provisions of this Lease ("Term").

1.2 **Delivery of Possession; Commencement.** On the Effective Implementation Date, Landlord will deliver the Premises to Tenant in good condition and repair with all improvements to be provided by the Landlord substantially completed. Tenant will owe no rent until delivery of the Premises as set forth herein, and, in the event of delayed delivery, rent shall be reduced by multiplying the monthly rent by a fraction, the numerator of which is the number of days from July 1, 2015, through the delayed delivery date, and the denominator of which is the total number of days from July 1, 2015, through the last day of the month in which the delayed delivery occurs, and subtracting that sum from the total rent that would otherwise have been due from July 1, 2015, through the last day of the month in which the delayed delivery occurs. Tenant's right to possession and obligations under this Lease commence on the Effective Implementation

Date or upon Landlord's actual delivery of the Premises as set forth herein, whichever is later.

1.3 Early Access. On or after the Effective Date and upon advance notice to Landlord, Tenant shall have the right to reasonable access to the Premises for purposes of making Landlord approved improvements and alternations on the Premises necessary or appropriate to preparing the Premises for full implementation of the Permitted Use (as defined in Subsection 3.1) upon delivery of the Premises.

1.4 Common Areas. Tenant will have the nonexclusive right to use the Common Areas. Common Areas include portions of the City Facility used in common, including, but not limited to, lobby areas, building corridors, fire vestibules, elevators, foyers, electrical and telephone closets, common restrooms, mechanical and service rooms, janitor's closets, loading docks, and other similar facilities.

1.5 Parking. During the term of this Lease, Tenant and its employees, agents and invitees shall have the non-exclusive use of parking spaces in the City Facility parking lots.

1.6 Termination; Right to Remove Property. This Lease simultaneously and automatically terminates upon termination of the IGA, whether such termination occurs pursuant to Section 17 of the IGA or otherwise. In addition, in the event that funds are not appropriated in an amount sufficient for Tenant's continued performance under this Lease, then this Lease shall terminate as of June 30 of the last fiscal year for which funds were appropriated. Tenant shall notify Landlord in writing of any such non-allocation of funds at the earliest possible date. Notwithstanding any term or provision of this Lease or the IGA, Tenant shall have a reasonable time after termination of this Lease to remove its property from the Premises. The provisions of this Section shall survive any termination of this Lease.

Section 2. Rent

2.1 Base Rent. Tenant shall pay to Landlord as "Base Rent" the sum of \$17,992.91 per month. The parties acknowledge that this Base Rent is charged for Tenant's use of the Premises for the provision of county law enforcement services and that no rent is charged to Tenant for Tenant's use of the Premises to provide city law enforcement services. Rent shall be payable on the first day of each month following the Effective Implementation Date, in advance at the address for Landlord first above stated or at such other place as may be designated by Landlord.

2.2 Base Rent Adjustment. Effective every other July 1 commencing July 1, 2017, Landlord shall be entitled to adjust the Base Rent to reflect the percentage increase, if any, in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, "West Urban region, All Items, 1982 - 84 = 100" (the "CPI") between the date of adjustment (the "Adjustment Date") and the

date on which the Base Rent was last adjusted (the "Comparison Date"). For the purpose of adjusting Base Rent on the first Adjustment Date, the Comparison Date will be the Effective Implementation Date. On each Adjustment Date, the Base Rent then in effect will be increased, but not decreased, by multiplying the Base Rent by a fraction, the numerator of which is the CPI published most recently before the applicable Adjustment Date, and the denominator of which is the CPI published most recently before the Comparison Date. If the index cited above is revised or discontinued during the term of this Lease then the index that is designated by the Portland Metropolitan Association of Building Owners and Managers shall be used to replace it.

2.3 Additional Rent. Any other sum that Tenant is required to pay directly to Landlord shall be considered additional rent ("Additional Rent"). Base Rent and Additional Rent are referred to collectively as "rent."

2.4 Utilities and Services.

2.4.1 Landlord will furnish water and electricity to the Premises at all times and will furnish heat, ventilation, and air conditioning, at City Facility standard levels consistent with general office use, during the normal operating hours of the Permitted Use. Landlord will furnish janitorial service to the Premises in accordance with the regular schedule of the City Facility, which schedule and service Landlord may change from time to time.

2.4.2 Landlord will furnish the Premises with (1) electricity for lighting and the operation of office machines; (2) heat and air conditioning reasonably required for the comfortable occupation of the Premises during normal operating hours of the Permitted Use; (3) light bulb replacement (for City Facility standard lights); (4) restroom supplies; (5) interior and exterior window washing with reasonable frequency; (6) Common Area cleaning services, with reasonable frequency, including the parking lots and landscaped areas; and (7) trash and recycling pickup and disposal.

2.4.3 During the Term, Tenant will pay, as Additional Rent, Tenant's Proportionate Share of any water, sewer, stormwater, electricity, and gas utility expenses for the Premises. Tenant's Proportionate Share of such utility expenses is 72.5 percent of the annual total of such expenses. At the beginning of each lease year, Landlord shall provide Tenant an estimated cost for each individual utility to be reimbursed. Tenant shall pay one-twelfth (1/12) of the estimated amounts each month. Landlord will reconcile all utilities within forty-five (45) days of the end of each lease year.

2.4.4 Tenant will cause telephone and customary law enforcement data and communications services to be furnished to the Premises and shall be responsible for any Landlord approved additional security measures and access controls related to the Premises. However, Tenant may not alter or remove the existing Premises electronic card access system or video surveillance system without prior Landlord approval. Further Tenant may make full use of, but make no changes, modifications or additions to, the Premises internal Information Technology (IT) wiring/cable plant distribution systems, without prior Landlord approval. Nor under any circumstances shall Tenant displace, disrupt, or otherwise negatively impact the City of Troutdale IT equipment and systems housed in the shared server data/telecom room.

2.4.5 Landlord shall provide the furniture, furnishings and fixtures currently in the Premises as viewed during the Tenant's Premises inspections in February 2015. Tenant shall not remove or alter the furniture, furnishings and fixtures, without Landlord approval. Landlord and Tenant acknowledge and expect the furniture, furnishings and fixtures incur ordinary wear and tear over the term of the lease.

2.5 Rent Reduction. Should Tenant elect to continue this Lease during a period of repair or construction as provided in Subsection 8.2, Tenant shall be entitled to a temporary reduction in rent during any period of time longer than 72 hours in which the Premises, in whole or in part, are not reasonably able to be occupied by Tenant for the Permitted Use under this Lease. Further, should Tenant elect to continue to occupy the Premises as provided in Subsection 9.3, the rent and the other charges due under this Lease shall be amended as provided in Subsection 9.3.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for operation of a facility providing law enforcement services ("Permitted Use"). Tenant's use for a different purpose than as provided herein shall not be allowed without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

3.2 Equipment. Tenant will install only such equipment in the Premises as is customary for the Permitted Use and will not overload the floors or electrical circuits of the Premises or change the wiring or plumbing of the Premises. All such equipment shall be installed, maintained, and operated at Tenant's sole expense, in accordance with Tenant's requirements.

3.3 Compliance with Laws. Landlord warrants that, as of the Effective Implementation Date, the Premises comply with all applicable laws, statutes, ordinances, rules, and regulations of any public authority (the "Laws").

3.4 Hazardous Materials. Tenant shall not cause or permit any Hazardous Substance (as that term is defined at ORS 466.005(7)(e)) to be released on the Premises. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used in the operation of the Permitted Use specified in Subsection 3.1.

Section 4. Repairs and Maintenance

4.1 Maintenance and Repair of Premises. Responsibilities for repair and maintenance of the Premises shall be as follows:

4.1.1 Landlord Obligations. Landlord shall perform all necessary maintenance and repairs to the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, fire extinguishers, sidewalks and parking area, which are located in, on or around the Premises or the City Facility. Landlord shall maintain the Premises and the City Facility in a hazard free condition and shall repair or replace, as necessary and at Landlord's sole expense, the heating, air conditioning, plumbing, electrical, and lighting systems in the Premises, obtaining required permits and inspections from Code enforcement authorities. Landlord shall keep the Premises, Common Areas, City Facility and site improvements, including landscaping and signage, in good repair and appearance. Landlord shall be given a reasonable time period to complete repairs necessitated under this Subsection. Landlord shall conduct periodic inspections, maintenance and repairs, as reasonably necessary to keep the Premises in first class condition and suitable for Tenant's Permitted Use.

4.1.2 Wear and Tear. Tenant shall take good care of the interior of the Premises and furniture, furnishings and fixtures and, at the expiration of the Term, surrender the Premises broom clean and in as good condition as at the commencement of this Lease, excepting only reasonable wear and tear, permitted alterations, and damage by fire or other casualty.

4.2 Tenant's Obligations. Tenant shall be responsible for any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Subsection 6.2 dealing with waiver of subrogation.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with Tenant's Permitted Use of the Premises. Except as provided in Subsection 2.5, Tenant shall have neither right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in

conformance with the requirement of this Subsection and Subsections 8.2 and 13.3.

4.4 Recycling Area. Landlord shall provide adequate collection areas, access and storage facilities for recycling of materials in compliance with ORS 227.450 or when recycling services are otherwise available to the Premises.

Section 5. Alterations

5.1 Alterations by Landlord. As long as the modification, alteration, or change does not materially interfere with the operation by Tenant of its business in the Premises, Landlord may modify, alter, or change any improvements in the Building, the parking area, and other Common Areas.

5.2 Alterations by Tenant. Except for the improvements and alterations identified in Section 1.3 of this Lease, Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent, which shall not be unreasonably withheld or delayed. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. Requests for alterations shall be made to Landlord in writing from Tenant. Landlord will perform such alterations at Tenant's expense.

5.3 Removal of Alterations. Upon termination of this Lease for any reason, Tenant shall have the right but not the obligation to remove any Tenant improvements or alterations from the Premises. All such removals shall be accomplished in a good and workmanlike manner so as not to damage the structural integrity or utility components of the Premises. Any damage to the Premises caused by the removals authorized under this Subsection shall be repaired by the Tenant at its sole cost and expense.

Section 6. Insurance

6.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall bear the expense of any insurance insuring the property of Tenant on the Premises against such risks but shall not be required to insure. Tenant is self-insured for the risks for which insurance is required under this paragraph. So long as Tenant remains self-insured, Tenant shall not be required to provide the insurance required by this paragraph. If requested, Tenant shall provide to Landlord a certificate of self-insurance.

6.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage applicable to the Premises or the personal property, fixtures, and equipment located therein or thereon, caused by any of the risks

covered under an appropriate clause in, or an endorsement to, a property insurance policy. Under such policy, the subject insurance company shall also waive any right of subrogation, and in the event of insured loss, no insurance company shall have a subrogated claim against another insurance carrier or the other party with respect to the insured loss or damage.

Section 7. Taxes

7.1 Taxes. Tenant is entitled to and shall apply for tax exemption under the provisions of ORS 307.112. To the extent Tenant obtains such an exemption, Tenant shall not be liable for payment to Landlord of any additional sum for real property taxes, but shall remain liable for payment of any special assessments against the Premises for which Tenant does not receive an exemption. The total compensation paid by Tenant under this Lease has been established to reflect the savings of below market rent resulting from the exemption from taxation.

Section 8. Damage and Destruction

8.1 Partial Damage. If the Premises are partly damaged and Subsection 8.3 does not apply, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Subsection 4.3.

8.2 Occupancy During Partial Damage Repair. If only a portion of the Premises is damaged and Tenant elects to remain in possession of the remainder of the Premises under this Lease, the parties shall mutually agree in writing to a proportionate reduction in the rent and other charges under this Lease for the reduced area of the Premises for the duration of the repair work as provided in Subsection 2.3.

8.3 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds twenty-five percent (25%) of the value of the Premises before the damage, either party may elect to terminate this Lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated Term. If neither party elects to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption, except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control in accordance with the provisions of Subsection 4.3.

Section 9. Eminent Domain

9.1 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises, the Lease shall terminate as of the date the condemnor takes possession. Such termination shall have the same effect as termination by Landlord under Subsection 9.2. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

9.2 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 9 as a taking by condemnation.

9.3 Less Than Total Taking. If a condemning authority takes only a portion of the Premises and Tenant remains in possession of the remainder of the Premises under this Lease, the parties shall mutually agree in writing to a proportionate reduction in the rent and other charges under this Lease for the reduced area of the Premises as provided in Subsection 2.3. Further the Lease shall be amended to reflect the new rental rates and other charges and the new description of the Premises post condemnation.

Section 10. Liens, Liability and Indemnity

10.1 Liens. Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

10.2 Reciprocal Indemnification: Each party will indemnify, defend, and hold harmless the other party and its respective partners, directors, officers, agents, and employees from and against any and all third-party claims for bodily injury and/or property damage arising from or in connection with any accident, injury, or damage, even if caused in part by the negligence of the indemnitee or its partners, directors, officers, agents, and employees occurring in, at, or on an area under the care, custody, and control of the indemnitor, together with all costs, expenses, and liabilities incurred or in connection with each such claim, action, or proceeding brought thereon, including, without limitation, all attorney fees and expenses at trial and on appeal.

10.3 Statutory Limit on Indemnity Obligation. Both Landlord's and Tenant's obligations under this Section 10 and specifically Subsection

10.2, are subject to and limited under the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), and specifically subject to and within the financial limits set forth at ORS 30.272 for local public bodies.

Section 11. Default - The following are events of default:

11.1 **Default in Rent.** Failure of Tenant to pay rent within twenty (20) days after written notice that it is due.

11.2 **Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the payment of rent) within twenty (20) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if Tenant begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11.3 **Remedies on Default.** In the event of default by Tenant, this Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not this Lease is terminated by the election of Landlord, Landlord shall be entitled to pursue any remedies available to Landlord under applicable law.

11.4 **Landlord's Default.** Landlord will not be deemed to be in default of the performance of any obligation required to be performed by Landlord hereunder unless and until Landlord fails to perform the obligation within twenty (20) days after written notice by Tenant to Landlord specifying the nature of Landlord's alleged default; however, if the nature of Landlord's alleged default is such that more than twenty (20) days are required for its cure, then Landlord will not be deemed to be in default if Landlord commences performance within the twenty (20)-day period and thereafter diligently prosecutes the same to completion. In the event of any default by Landlord, Tenant may exercise any and all rights and remedies available at law or in equity

Section 12. Surrender at Termination of Lease

12.1 **Condition of Premises.** Upon termination of this Lease, Tenant shall deliver all keys to Landlord and surrender the Premises in broom clean condition, excepting wear and tear.

12.2 **Removal of Personal Property.** Upon termination of this Lease for any reason, County shall remove all of its personal property from the Premises, including but not limited to appliances, furniture, signs, equipment, or similar items. Tenant shall have a reasonable time to remove its property from the Premises as provided in Subsection 1.6 of this Lease.

Section 13. Miscellaneous

13.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

13.2 Notices. Any written notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposit in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

13.3 Landlord Entry for Inspection, Repair or Showing. Landlord shall have the right upon the provision of notice, to enter upon the Premises at any reasonable time to determine Tenant's compliance with this Lease, to make necessary repairs as provided at Section 4 to the Premises, or to show the Premises to any prospective tenant or purchaser, and, in addition, Landlord shall have the right, at any time during the last two months of the Term of this Lease, to place and maintain upon the Premises notices for leasing or sale of the Premises. Excluding routine facilities maintenance access, or access to the server data/telecom room, Landlord shall provide Tenant no less than twenty-four (24) hours notice of its intent to enter the Premises for all non-emergency circumstances.

13.4 Time of Essence. Time is of the essence of each and every provision hereof. If the final date of any period of time set forth herein occurs on a Saturday, Sunday, or legal holiday, then the expiration of the period of time will be postponed to the next day that is not a Saturday, Sunday, or legal holiday.

13.5 Holding Over. Should Tenant hold over after termination, such holding over shall be deemed to alter this Lease to a "month to month" tenancy, subject to all the terms and conditions of this Lease, except that Landlord may terminate such month to month tenancy on thirty (30) days notice to Tenant.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Lease as of the day and year first written above.

FOR LANDLORD:
City of Troutdale, an Oregon
municipal corporation

FOR TENANT:
Multnomah County, an Oregon
political subdivision


By: Craig Ward, City Manager

By: Deborah Kafoury, Chair

Date: 4/2/15

Date: _____

Approved as to Form, Legal
Counsel for City of Troutdale



Ed Trompke

City Attorney

Date: 4-7-15

Reviewed By: JENNY M. MADKOUR,
MULTNOMAH COUNTY ATTORNEY

Jed Tomkins
Assistant County Attorney
Date: _____

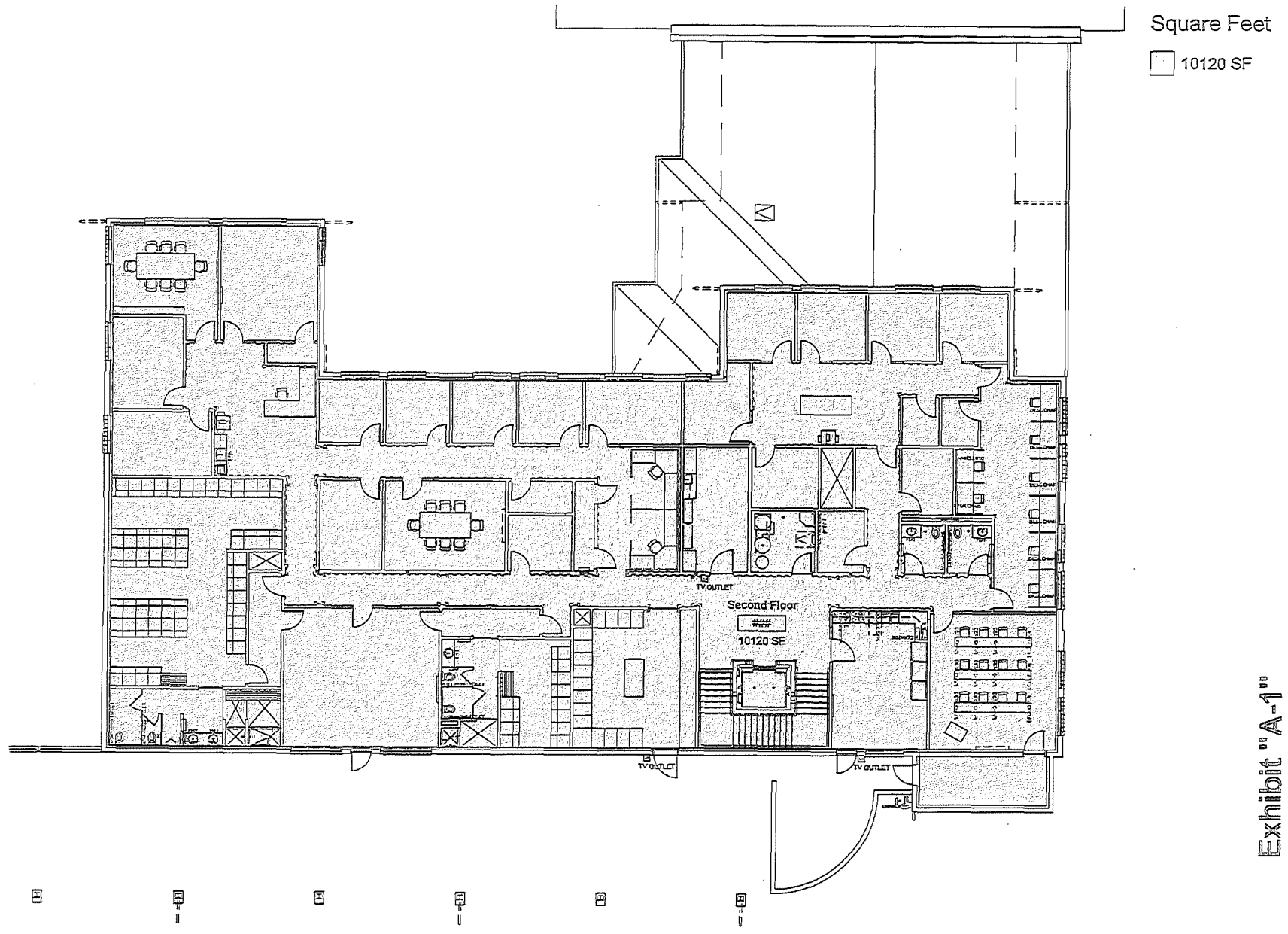


Exhibit "A-1"

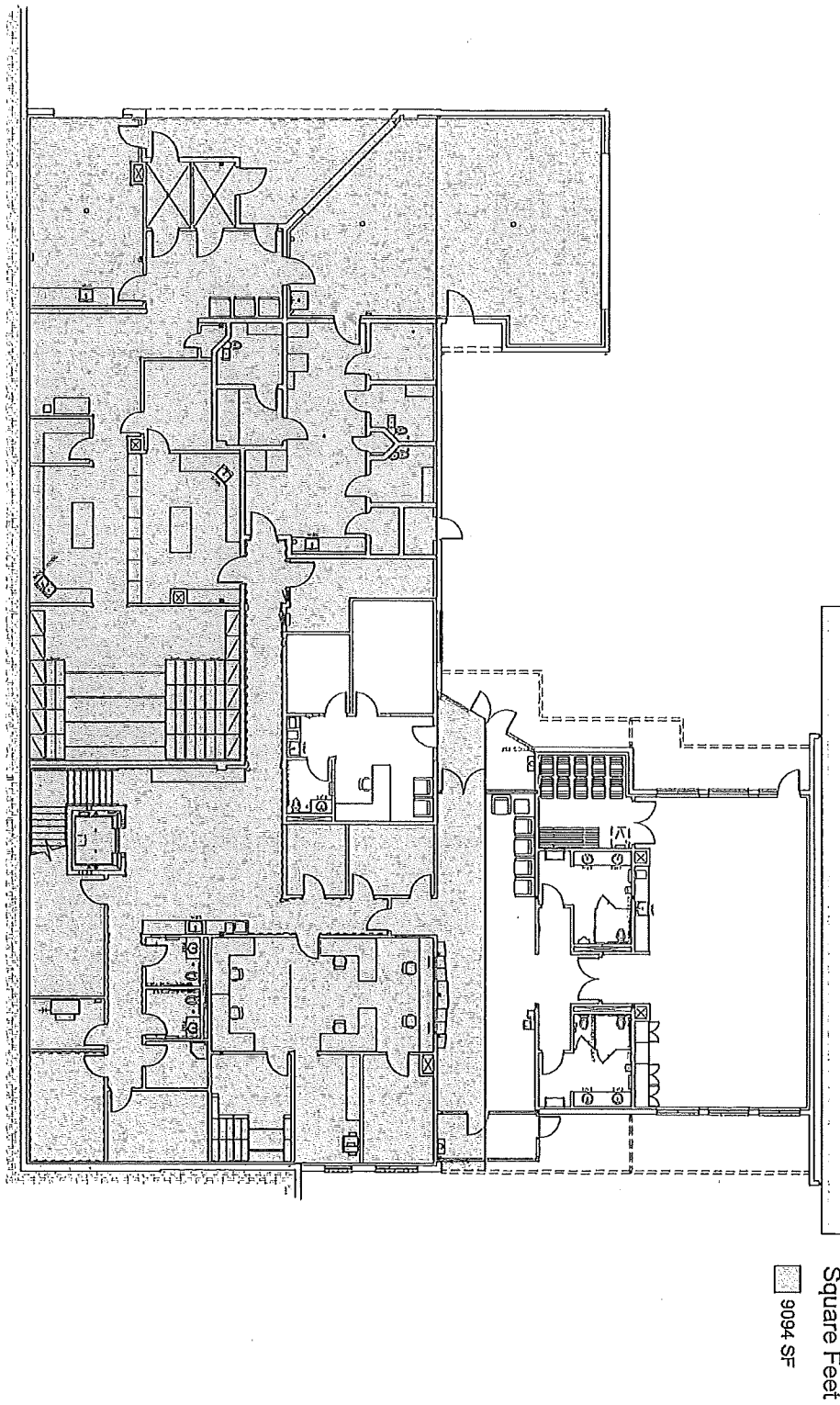


Exhibit "A-2"