

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 99-164**

Authorizing Execution of Agreement for Lease of Certain Real Property for the Operation of the District Attorney's Support Enforcement Division.

The Multnomah County Board of Commissioners Finds:

- a) The Multnomah County Support Enforcement Division provides services in coordination with the court system, and its function requires being located close to the Portland downtown area, within a reasonable distance from court services.
- b) The County owns no space that will accommodate the immediate space needs of the Support Enforcement Division, and will be unable to meet these needs on County owned premises for at least two years.
- c) Real property suited to the function of the Support Enforcement Division has been leased for the past five years, and is available for an additional two years.
- d) The premises described in the attached Lease Agreement before the Board this date are those leased for the past five years, and have been determined to be available at a reasonable rental for the additional two years needed, from the owner, EOP Northwest Properties, LLC.
- e) It appears that the lease of the premises described in the Lease Agreement before the Board this date will benefit Multnomah County.

The Multnomah County Board of Commissioners Resolves:

- 1. The Chair of the Multnomah County Board of Commissioners is authorized and directed to execute the attached Lease Agreement before the Board this date and any other documents required for the completion of this lease on behalf of Multnomah County.

Adopted this 19th day of August 1999.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

By   
Matthew O. Ryan, Assistant County Counsel

## SECOND AMENDMENT

This Second Amendment (the "Amendment") is made and entered into as of \_\_\_\_\_, 1999, by and between EOP-NORTHWEST PROPERTIES, LLC, a Delaware limited liability company ("Landlord"), and MULTNOMAH COUNTY, a political subdivision of the State of Oregon ("Tenant").

### WITNESSETH

- A. WHEREAS, Landlord (as successor in interest to The Equitable-Wright Portland Company) and Tenant are parties to that certain lease dated the 1<sup>st</sup> day of March, 1994 for space currently containing approximately 7,067 rentable square feet (the "Premises") described as Suite No. 1075 on the 10<sup>th</sup> floor of the building commonly known as 1001 Fifth Avenue and the address of which is 1001 SW 5<sup>th</sup> Avenue, Portland, Oregon (the "Building"), which lease has been previously amended or assigned by an instrument dated May 6, 1996 (collectively, the "Lease"); and
- B. WHEREAS, the Lease by its terms expired on May 31, 1999 ("Prior Termination Date"), and the parties desire to extend the term of the Lease, all on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

- I. Extension. The lease term is hereby (retroactively) extended for a period of **twenty-four (24)** months and shall expire on **May 31, 2001** ("Extended Termination Date"), unless sooner terminated in accordance with the terms of the Lease. That portion of the lease term commencing the day immediately following the Prior Termination Date ("Extension Date") and ending on the Extended Termination Date shall be referred to herein as the "Extended Term".

- II. Rent. As of the Extension Date, the schedule of monthly installments of Rent with respect to the Premises during the Extended Term is the following:

Tenant shall pay Landlord the sum of **Three Hundred Thirty-six Thousand Three Hundred Eighty-nine and 28/100 Dollars (\$336,389.28)** as Rent for the Premises during the Extended Term in twenty-four (24) monthly installments as follows:

- A. **twenty-four (24)** equal installments of **Fourteen Thousand Sixteen and 22/100 Dollars (\$14,016.22)** each payable on or before the first day of each month during the period beginning (retroactively) June 1, 1999 and ending **May 31, 2001**.
- B. [Intentionally omitted.]

All such Rent shall be payable by Tenant in accordance with the terms of Section 4 of the Lease.

- III. Real Estate Taxes and Operating Expenses. For the period commencing on the Extension Date and ending on the Extended Termination Date, Tenant shall pay for Tenant's Share of the increase or decrease in Real Estate Taxes and Tenant's Share of the increase or decrease in Operating Expenses in accordance with the terms of the Lease, provided, however, during such period, the Base Year for the computation of Tenant's Share of Operating Expenses is amended from 1993 to 1999, and the Base Year for the computation of Tenant's Share of Real Estate Taxes is amended from 1993/94 to 1998/99.

IV. Improvements to Premises.

- A. Condition of Premises. Tenant is in possession of the Premises and accepts the same "as is" without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements, except as may be expressly provided otherwise in this Amendment.
- B. Cost of Improvements to Premises. Provided Tenant is not in default, Tenant shall be entitled to receive an improvement allowance (the "Extension Improvement Allowance") in an amount not to exceed Twenty-two Thousand Six Hundred Fourteen and 40/100 Dollars (\$22,614.40) to be applied toward the cost of performing construction, alteration or improvement of the Premises, including but not limited to the cost of space planning, design and related architectural and engineering services. In the event the total cost of the improvements to the Premises exceeds the Extension Improvement Allowance, Tenant shall pay for such excess upon demand. The entire unused balance of the Extension Improvement Allowance, if any, shall accrue to the sole benefit of Landlord. Landlord shall pay such Extension Improvement Allowance directly to the contractors retained to perform the construction, design or related improvement work to the Premises.
- C. Responsibility for Improvements to Premises. Landlord shall enter into a direct contract for the improvements to the Premises with a general contractor selected by Landlord. Tenant shall devote such time in consultation with Landlord or Landlord's architect as may be required to provide all information Landlord deems necessary in order to enable Landlord to complete, and obtain Tenant's written approval of, the plans for the improvements to the Premises in a timely manner. All plans for the improvements to the Premises shall be subject to Landlord's consent, which consent shall not be unreasonably withheld. If the cost of such improvements exceeds the Expansion Improvement Allowance, then prior to commencing any construction of improvements to the Premises, Landlord shall submit to Tenant a written estimate setting forth the anticipated cost, including but not limited to the cost of space planning, design and related architectural and engineering services, labor and materials, contractor's fees, and permit fees. Within a reasonable time thereafter, Tenant shall either notify Landlord in writing of its approval of the cost estimate or specify its objections thereto and any desired changes to the proposed improvements. In the event Tenant notifies Landlord of such objections and desired changes, Tenant shall work with Landlord to reach a mutually acceptable alternative cost estimate.

V. Other Pertinent Provisions. Landlord and Tenant agree that, effective as of the date hereof (unless different effective date(s) is/are specifically referenced in this Section), the Lease shall be amended in the following additional respects:

- A. Address for Notices. The address for notices for Landlord set forth in Section 1(i) of the Lease is hereby revised to:

EOP Northwest Properties, L.L.C.  
c/o Wright Runstad & Company  
1001 Fifth Avenue Building  
1001 SW Fifth Avenue, Suite 1511  
Portland, OR 97204  
Attention: Building Manager

With a copy to:

Equity Office Properties Trust  
Two North Riverside Plaza  
Suite 2200  
Chicago, Illinois 60606  
Attention: Regional Counsel – West Region

Payments of Rent only shall be made payable to the order of:  
Equity Office Properties

at the following address:

EOP Northwest Properties, L.L.C.  
1001 Fifth Avenue Building  
P.O. Box 3834  
Seattle, WA 98124-3834

- B. Limitation of Liability. Section 30 of the Lease is hereby deleted and replaced with the following:

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD HEREUNDER) TO TENANT SHALL BE LIMITED TO THE INTEREST OF LANDLORD IN THE BUILDING, AND TENANT AGREES TO LOOK SOLELY TO LANDLORD'S INTEREST IN THE BUILDING FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST THE LANDLORD, IT BEING INTENDED THAT NEITHER LANDLORD NOR ANY MEMBER, PRINCIPAL, PARTNER, SHAREHOLDER, OFFICER, DIRECTOR OR BENEFICIARY OF LANDLORD SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY. TENANT HEREBY COVENANTS THAT, PRIOR TO THE FILING OF ANY SUIT FOR AN ALLEGED DEFAULT BY LANDLORD HEREUNDER, IT SHALL GIVE LANDLORD AND ALL MORTGAGEES WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES OR DEED OF TRUST LIENS ON THE PROPERTY, BUILDING OR PREMISES NOTICE AND REASONABLE TIME TO CURE SUCH ALLEGED DEFAULT BY LANDLORD. IN ADDITION, TENANT ACKNOWLEDGES THAT ANY ENTITY MANAGING THE BUILDING ON BEHALF OF LANDLORD, OR WHICH EXECUTES THIS LEASE AS AGENT FOR LANDLORD, IS ACTING SOLELY IN ITS CAPACITY AS AGENT FOR LANDLORD AND SHALL NOT BE LIABLE FOR ANY OBLIGATIONS, LIABILITIES, LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, ALL OF WHICH ARE EXPRESSLY WAIVED BY TENANT.

- C. Renewal Option. A new Section 36, Renewal Option, is hereby added to the Lease as follows:

1. Tenant shall have the right to extend the lease term (the "Renewal Option") for one additional period of **two (2) years** commencing on the day following the Extended Termination Date and ending on the 1<sup>st</sup> anniversary of the Extended Termination Date (the "Renewal Term"), if:
  - a. Landlord receives notice of exercise of the Renewal Option ("Initial Renewal Notice") not less than one hundred eighty (180) days prior to the expiration of the Extended Term and not more than two hundred seventy (270) days prior to the expiration of the Extended Lease Term; and
  - b. Tenant is not in default under the Lease beyond any applicable cure periods at the time that Tenant delivers its Initial Renewal Notice or at the time Tenant delivers its Binding Notice; and
  - c. No part of the Premises is sublet at the time that Tenant delivers its Initial Renewal Notice or at the time Tenant delivers its Binding Notice other than in connection with a Permitted Transfer; and

- d. The Lease has not been assigned prior to the date that Tenant delivers its Initial Renewal Notice or prior to the date Tenant delivers its Binding Notice; and
  - e. Tenant executes and returns the Renewal Amendment (hereinafter defined) within fifteen (15) days after its submission to Tenant.
- 2. The initial Rent rate per rentable square foot for the Premises during the Renewal Term shall equal the Prevailing Market (hereinafter defined) rate per rentable square foot for the Premises.
  - 3. Tenant shall pay Additional Rent (i.e. Tenant's Share of Real Estate Taxes and Operating Expenses) for the Premises during the Renewal Term in accordance with Section 8 of the Lease.
  - 4. Within thirty (30) days after receipt of Tenant's Initial Renewal Notice, Landlord shall advise Tenant of the applicable Rent rate for the Premises for the Renewal Term. Tenant, within fifteen (15) days after the date on which Landlord advises Tenant of the applicable Rent rate for the Renewal Term, shall either (i) give Landlord final binding written notice ("Binding Notice") of Tenant's exercise of its option, or (ii) if Tenant disagrees with Landlord's determination, provide Landlord with written notice of rejection (the "Rejection Notice"). If Tenant fails to provide Landlord with either a Binding Notice or Rejection Notice within such fifteen (15) day period, Tenant's Renewal Option shall be null and void and of no further force and effect. If Tenant provides Landlord with a Binding Notice, Landlord and Tenant shall enter into the Renewal Amendment upon the terms and conditions set forth herein. If Tenant provides Landlord with a Rejection Notice, Landlord and Tenant shall work together in good faith to agree upon the Prevailing Market Rent rate for the Premises during the Renewal Term. Upon agreement Tenant shall provide Landlord with Binding Notice and Landlord and Tenant shall enter into the Renewal Amendment in accordance with the terms and conditions hereof. Notwithstanding the foregoing, if Landlord and Tenant are unable to agree upon the Prevailing Market Rent rate for the Premises within thirty (30) days after the date on which Tenant provides Landlord with a Rejection Notice, Tenant's Renewal Option shall be null and void.
  - 5. If Tenant is entitled to and properly exercises its Renewal Option, Landlord shall prepare an amendment (the "Renewal Amendment") to reflect changes in the Rent, lease term, Expiration Date and other appropriate terms. The Renewal Amendment shall be:
    - a. sent to Tenant within a reasonable time after receipt of the Binding Notice; and
    - b. executed by Tenant and returned to Landlord in accordance with paragraph 1(e) above.

An otherwise valid exercise of the Renewal Option shall, at Landlord's option, be fully effective whether or not the Renewal Amendment is executed.

- 6. For purpose hereof, "Prevailing Market" shall mean the arms length fair market annual rental rate per rentable square foot under renewal leases and amendments entered into on or about the date on which the Prevailing Market is being determined hereunder for space comparable to the Premises in the Building and office buildings comparable to the Building in Portland, Oregon. The determination of Prevailing Market shall take into account any material economic differences between the terms of this Lease and any comparison lease, such as rent abatements, construction costs and other concessions and the manner, if any, in which the Landlord

under any such lease is reimbursed for operating expenses and taxes. The determination of Prevailing Market shall also take into consideration any reasonably anticipated changes in the Prevailing Market rate from the time such Prevailing Market rate is being determined and the time such Prevailing Market rate will become effective under this Lease.

7. Notwithstanding anything herein to the contrary, Tenant's Renewal Option is subject and subordinate to the expansion rights (whether such rights are designated as a right of first offer, right of first renewal, expansion option or otherwise) of any tenant of the Building existing on the date hereof.

VI. Miscellaneous.

- A. This Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Under no circumstances shall Tenant be entitled to any Rent abatement, improvement allowance, leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided Tenant in connection with entering into the Lease, unless specifically set forth in this Amendment.
- B. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect.
- C. In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control.
- D. Submission of this Amendment by Landlord is not an offer to enter into this Amendment but rather is a solicitation for such an offer by Tenant. Landlord shall not be bound by this Amendment until Landlord has executed and delivered the same to Tenant.
- E. The capitalized terms used in this Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this Amendment.
- F. Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Amendment. Tenant agrees to indemnify and hold Landlord, its members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents, and the respective principals and members of any such agents (collectively, the "Landlord Related Parties") harmless from all claims of any brokers claiming to have represented Tenant in connection with this Amendment. Landlord hereby represents to Tenant that Landlord has dealt with no broker in connection with this Amendment. Landlord agrees to indemnify and hold Tenant, its members, principals, beneficiaries, partners, officers, directors, employees, and agents, and the respective principals and members of any such agents (collectively, the "Tenant Related Parties") harmless from all claims of any brokers claiming to have represented Landlord in connection with this Amendment.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment as of the day and year first above written.

LANDLORD: EOP-NORTHWEST PROPERTIES, L.L.C., a  
Delaware limited liability company

By: EOP Operating Limited Partnership, a Delaware  
limited partnership, its sole member

By: Equity Office Properties Trust, a Maryland  
real estate investment trust, its managing  
general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

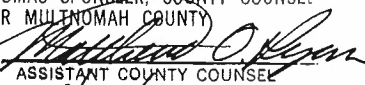
TENANT: MULTNOMAH COUNTY, a political subdivision  
of the State of Oregon

By:  \_\_\_\_\_

Name: Beverly Stein

Title: Multnomah County Chair

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REVIEWED:  
THOMAS SPONSLER, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY  
BY:  \_\_\_\_\_  
ASSISTANT COUNTY COUNSEL  
DATE: 8/10/99

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-3 DATE 8/19/99  
DEB BOGSTAD  
BOARD CLERK