

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 04-105**

Approving a Lease of Property Located at 912 NE Kelly, Suites 260 and 264, Gresham, Oregon, from 9th & Kelly LLC, for Office and Public Service Use by the District Attorney Support Enforcement Division

**The Multnomah County Board of Commissioners Finds:**

- a. Property located at 912 NE Kelly, Gresham, Oregon, (Property) has been identified as being necessary for use by the District Attorney Support Enforcement Division for offices and public service location for child support enforcement.
- b. The attached lease has been negotiated with the owner of the property.
- c. It is in the best interests of the County to lease the Property on the terms and conditions set forth in the attached lease.

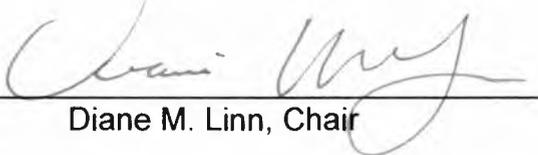
**The Multnomah County Board of Commissioners Resolves:**

1. The Board approves the attached lease. The County Chair is authorized to execute the lease substantially in the form attached to this Resolution.
2. The County Chair is authorized to execute renewals of the lease and to execute amendments to the lease without further Board action.

ADOPTED this 5th day of August, 2004.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
John S. Thomas, Assistant County Attorney

**LEASE**

Date: August 5, 2004

Between: Multnomah County, Oregon ("Tenant")  
Facilities and Property Management  
Attn: Asset Management-Leases  
401 N. Dixon Street  
Portland, OR 97227  
Phone: 503-988-3322  
FAX: 503-988-5082

And: 9<sup>th</sup> & Kelly LLC ("Landlord")  
Attn: Steve Busk  
912 NE Kelly Avenue, Suite 201  
Gresham, OR 97030  
Phone: 503-481-1999

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

Approximately 2,299 useable square feet as shown in Exhibit "A" of this Lease, commonly known as Executive Suites 260 and 264, in the building located at 912 NE Kelly Avenue, Gresham, OR.

Landlord shall operate and maintain a Common Area as shown on the attached Exhibit "A" for its intended purposes and may from time to time change the size, location, nature and use of the Common Area and make installations thereon and remove same; provided unless required by law or due to some other reason outside the control of Landlord, Landlord agrees not to materially change the size, location, nature or use of the Common Area without the prior written consent of Tenant, such consent not to be unreasonably withheld or delayed. Tenant and Tenant's employees, agents, representatives and invitees shall have the non-exclusive right to use the Common Area as designated by Landlord, subject to such reasonable rules and regulations as Landlord may impose. Landlord may at any time temporarily close the

Common Area to make repairs or changes and may do such other acts in and to the Common Area as in its judgment may be desirable.

## **Section 1. Occupancy**

**1.1 Original Term.** The term of this lease shall commence on August 1, 2004 and continue through July 31, 2007, unless sooner terminated as hereinafter provided.

**1.2 Possession.** Tenant's right to possession and obligations under the lease shall commence on August 1, 2004.

**1.3 Renewal Option.** If the lease is not in default at the time this option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this lease for an additional term of three (3) years, as follows:

(1) The renewal term shall commence on the day following expiration of the original term.

(2) The option may be exercised by written notice to Landlord given not less than ninety (90) days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties.

(3) The terms and conditions of the lease for the renewal term shall be identical with the original term except for rent. Base Rent for the renewal term shall be the greater of (a) the base rent per square foot during the initial term, or (b) the initial term base rent per square foot increased by a percentage equal to the percentage change in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor. Comparisons shall be made using the index entitled Consumer Price Index - All Urban Consumers - Portland-Salem, OR-WA (1982-84 = 100) or the nearest comparable data on changes in the cost of living if such index is no longer published.

## **Section 2. Rent**

**2.1 Rent.** Tenant shall pay to Landlord as rent the sum of \$2,466.75 per month for the initial lease term. Rent shall include the County's pro-rata share of operating, utility & maintenance expenses (O&M), excluding taxes and assessments.

Base rent will be calculated upon 2,574 rentable square feet of leased premises at a rate of \$8.50 per square foot base rent, plus \$3.00 per square foot (total of \$7722.00 per year) for estimated operating, utility & maintenance costs, more particularly described in Section 2.2. Rent shall be payable on the first day of each month in advance at the address for Landlord first above stated or at such place as may be designated by Landlord.

**2.2 Annual Reconciliation of Expenses.** Prior to August 31<sup>st</sup> of each year, Landlord will provide Tenant with an unaudited detailed statement of Landlord's operating, utility & maintenance costs and a statement of Tenant's prorata share of such costs. As used in this lease, "tenant's prorata share" means the fraction of the total expenses determined by dividing the area of tenant's rentable space by the total rentable space in the building. As used in this Lease, the term "operating, utility and maintenance costs" means the actual reasonable costs incurred by Landlord during the period August 1 through July 31 of each lease year for utilities and for operation and maintenance of the building. If the operating, utility and maintenance costs exceed \$7,722.00 Tenant shall pay Landlord the difference within 30 days of receipt of the reconciliation. If such costs are less than \$7,722.00, Landlord shall pay tenant the difference within 30 days of the date the reconciliation is to be provided to Tenant but not later than September 30.

**2.3 Audit** At any time after Landlord's statement of operating, utility and maintenance costs is due, whether or not it has been submitted and whether or not Tenant has accepted a refund or paid an increase, Tenant may request an audit of Landlord's expenses to be performed by Tenant at Tenant's expense. Landlord shall keep proper books of account and other records pertaining to operating, utility and maintenance costs and make them available at a location reasonably accessible to Tenant, who may inspect and copy all such books and records at all reasonable times to verify actual expenses.

**2.4 Additional Rent.** Any other sum that Tenant is required to pay to Landlord shall be considered additional rent.

**2.5 Rent Commencement.** The rent shall commence on August 1, 2004, and continue through June 30, 2007, unless sooner terminated as hereinafter provided.

### **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for office and public service use by the District Attorney Support Enforcement and for no other purpose without the consent of Landlord, which consent shall not be unreasonably withheld or delayed.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord, which shall not be unreasonably withheld.

**3.3 Hazardous Substances.** Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the Permitted Use specified in Section 3.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous

Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

**3.4 Parking.** Lease of the Premises does not include on-site parking. Tenant, its employees and clientele will refrain from using parking spaces in the building parking lot which are reserved for the existing State office tenant. Tenant shall not be responsible for unauthorized use of the parking spaces by Tenant's clients.

#### **Section 4. Repairs and Maintenance**

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

(1) Landlord shall perform all necessary maintenance and repairs to the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, and Lessor-provided fire extinguishers, sidewalks and parking area, which are located on the Premises or the structure in which the Premises are located. Landlord shall maintain the Premises in a hazard free condition and shall repair or replace, if 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 Codes enforcement authorities. Landlord shall keep the Premises, improvements, grounds, and landscaping in good repair and appearance, replacing dead, damaged or diseased plant materials when Landlord determines the necessity to do so. Carpets shall be repaired and replaced as determined necessary by Landlord. Landlord shall furnish, install and replace all exterior and interior lighting bulbs, ballasts and fluorescent tubes. Landlord shall be given a reasonable time period to complete repairs necessitated under this section. Landlord shall have no liability for failure to perform required maintenance and repair unless written notice of such maintenance or repair is given by tenant or if landlord fails to commence efforts to remedy the problem in a reasonable time and manner.

(2) Tenant shall take good care of the interior of the Premises 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, permitted alterations, and damage by fire or other casualty.

**4.2 Tenant's Obligations.** The following shall be the responsibility of Tenant:

(1) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 6.2 dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 4.1.

(2) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 3.2(1).

**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 use of the Premises by Tenant. 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 provision.

**4.4 Inspection of Premises.** Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required.

## **Section 5. Alterations**

**5.1 Alterations Prohibited.** Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent, which consent 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.

**5.2 Tenant Improvements.** Landlord shall construct the tenant improvements described on the attached **Exhibit B** ("Tenant  
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Improvements 912 NE Kelly Ave, Suites 260 & 264"). Tenant shall pay Landlord \$42,348 within 30 days upon completion of construction, and acceptance of the work by Tenant. The tenant improvements shall be done in a good and workmanlike manner and shall be to 9<sup>th</sup> & Kelly Building tenant finish standards.

The Landlord will commence construction and complete all tenant improvements by July 31, 2004 as provided in the construction schedule attached as **Exhibit C**.

Tenant shall provide Landlord with a copy of its authorized work order for the tenant improvements, attached as **Exhibit D**.

**5.3 Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise, or by other agreement between Landlord and Tenant. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant and the premises restored unless the applicable Landlord's consent or work sheet specifically provides otherwise.

## **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.

**6.2 Liability Insurance.** Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Tenant's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$1,000,000 and a per occurrence limit of not less than \$1,000,000. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under Section 10.2, and shall name Landlord as an additional insured.

**6.3 Insurance Documentation; Self-insurance.** Certificates evidencing such insurance and bearing endorsements requiring 30 days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property. If Tenant is self-insured for liability, in lieu of providing the insurance required by paragraph 6.2, Tenant shall provide a letter to Landlord stating that fact.

**6.4 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

## **Section 7. Taxes**

**7.1 Property Taxes.** Tenant shall pay as due all taxes on its personal property located on the Premises. Tenant shall, upon invoice from landlord, reimburse Landlord for all real property taxes levied against the Premises.

**7.2 Special Assessments.** If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in the maximum number of installments allowed by law, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

**7.3 Contest of Taxes.** Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment. Landlord shall cooperate in any reasonable manner with such contest by Tenant.

**7.4 Proration of Taxes.** Tenant's share of real property taxes and assessments for the years in which this lease commences or terminates shall be prorated based on the portion of the tax year that this lease is in effect.

**7.5 Exemption from Real Property Taxes.** Tenant is a public Body and is eligible for real property tax exemption as provided for by ORS 307.112, and will apply for said exemption. The rent payable by Tenant under terms of the lease agreement has been established to reflect the savings resulting from the exemption from taxation.

**Section 8. Services and Utilities.**

**8.1 Landlord and Tenant Responsibilities.** Landlord will cause the following utilities and services to be furnished to the Premises: Water, sewer, electricity, gas, garbage service, janitorial service and supplies, interior and exterior window washing and snow and ice removal.

**8.2 Recycling Materials.** Landlord shall support the policy for recycling materials as provided in ORS 279.560 to the extent possible by providing adequate collection areas and storage facilities for office recycling programs when recycling services are available.

**Section 9. Damage and Destruction**

**9.1 Partial Damage.** If the Premises are partly damaged and Section 9.2 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 Section 4.3.

**9.2 Destruction.** If the Premises or the structure are destroyed or damaged such that the cost of repair exceeds twenty-five percent (25%) of the value of the structure before the damage, either party may elect to terminate the 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.

**9.3 Rent Abatement.** Rent shall be abated during the repair of any damage to the extent the premises are untenable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

**9.4 Damage Late in Term.** If damage or destruction to which Section 9.2 would apply occurs within one year before the end of the then-current lease term, Tenant may elect to terminate the lease by written notice to Landlord given within 30 days after the date of the damage. Such termination shall have the same effect as termination by Landlord under Section 9.2.

## **Section 10. Liability and Indemnity**

### **10.1 Liens**

(1) 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. Any amount so added shall bear interest at the rate of 10% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**10.2 Indemnification.** Tenant shall indemnify, defend, and hold harmless Landlord from any claim, loss, or liability arising out of or related to any negligent activity of Tenant on the Premises or any condition of the Premises in the possession or

under the control of Tenant. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Landlord's negligence or breach of duty under this lease.

**10.3 Oregon Tort Claims Act.** Any covenant herein by the Tenant to defend, indemnify or hold harmless the Landlord, or to assume liability for damages of any kind whatsoever, shall be subject to the provisions of the Oregon Tort Claims Act, ORS 30.260-30.300, and the monetary limits in ORS 30.270.

## **Section 11. Quiet Enjoyment; Mortgage Priority**

### **11.1 Landlord's Warranties.**

(1) Landlord warrants that it is the owner of the Premises and has the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

(2) Landlord affirms that the Premises, including any common areas within the real property in which the Premises are situated, comply with all applicable regulatory and building codes requirements at the date of execution of the Lease for occupancy by Tenant, for the permitted uses under this Lease, and to the extent enforceable at the date of execution of this lease, meet the requirements of the Americans With Disabilities Act (ADA) for accessibility in accordance with the standards provided in the ADA Accessibility Guidelines for Buildings and Facilities, including accessible parking for the disabled in compliance with ORS 447.233.

(3) Landlord warrants that there are no asbestos containing materials (ACM) within the Premises, including common areas within the real property in which the Premises are situated, or that any such ACM in the Premises have been removed or abated and the Premises have been inspected by a competent inspector, qualified to perform such inspection under applicable law and regulations, and certified as safe from all friable ACM.

## **Section 12. Assignment and Subletting**

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord which consent shall not be

unreasonably withheld or delayed. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent the provision from applying to a subsequent instance. In determining whether to consent to assignment Landlord may consider the following factors: financial ability of assignee; use of Premises to be similar to the Use permitted under Section 3.1 of this Lease.

**Section 13. Default**

The following shall be events of default:

**13.1 Default in Rent.** Failure of Tenant to pay any rent or other charge within 10 days after written notice that it is due.

**13.2 Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 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 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**13.3 Insolvency.** Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

**Section 14. Remedies on Default.** In the event of default by tenant, the Lease maybe terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord, Landlord shall be entitled to pursue any remedies available to Landlord under applicable law.

**Section 15. Surrender at Expiration**

**15.1 Condition of Premises.** Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

### **15.2 Fixtures**

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

### **15.3 Holdover**

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and rental rate, which Landlord may increase commensurate with increases in operating and maintenance expenses for the Premises. Failure of

Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

## **Section 16. Miscellaneous**

**16.1 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.

**16.2 Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited 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.

**16.4 Succession.** Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**16.5 Entry for Inspection.** Landlord shall, subject to the provisions of paragraph 4.3, have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition 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 selling of the Premises. Landlord agrees to give 24 hour written notice to tenant before entry for inspection under this clause.

**16.6 Interest on Rent and Other Charges.** Any rent or other payment required of Tenant by this lease shall, if not paid within 10 days after it is due, bear interest at the rate of ten

percent (10%) per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid. In addition, if Tenant fails to make any rent or other payment required by this lease to be paid to Landlord within five days after it is due, Landlord may elect to impose a late charge of five cents per dollar of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

**16.7 Proration of Rent.** In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

**16.8 Time of Essence.** Time is of the essence of the performance of each of Tenant's obligations under this lease.

**16.9 Early Termination.** Landlord or Tenant may terminate this Lease for any reason with minimum one hundred twenty (120) day written notice to the other prior to the date of termination.

For Landlord:

Steve Busk  
Steve Busk, Owner

Date: 7/14/2004

For Tenant:  
Multnomah County, Oregon

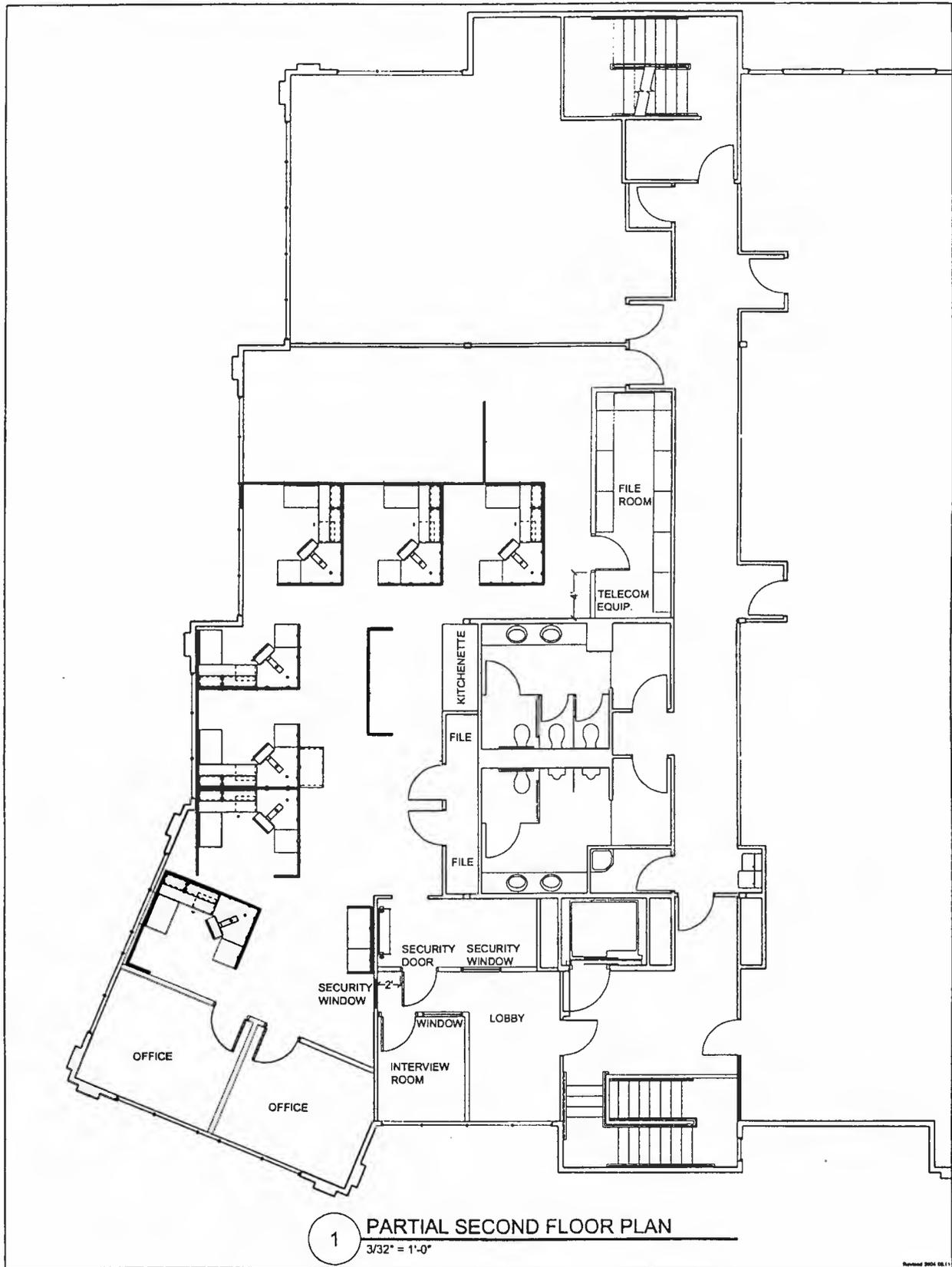
By: Diane M. Linn  
Date: 08.05.04  
By: Diane M. Linn, County Chair

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-2 DATE 08.05.04  
DEBORAH L. BOGSTAD, BOARD CLERK

Reviewed By:

John S. Thomas Date 7/14/04  
John S. Thomas  
Assistant County Attorney for Multnomah County

EXHIBIT A



**EXHIBIT B**  
**TENANT IMPROVEMENTS**  
**912 NE KELLY AVE.**  
**SUITES 260 & 264**

The following are specifications for the tenant improvements as per the Multnomah County notification:

**Demo and prep:**

Remove and dispose of the demising wall between 260 & 264 suites. Modify the ceiling grid at that intersection to comply with seismic requirements. Supply and install matching carpet where the void will occur.

**Hard wall office separation:**

Supply and install steel studding, insulation and 5/8" sheet rock to create two private office spaces, one interview room, and a secured separation wall at the reception area and a secured file room area as per Sam Lasko's plan. (See Revisions from the original). Insulation will be S&I in the walls and in the ceiling to minimize noise. The file room walls are to extend above the ceiling grid to the roof deck. Both the reception secured wall and the new file wall are to be reinforced on one side with plywood as requested. The wall finish is to be smooth wall with paint to match the existing wall surfaces. All new wall bases to have rubber base to match existing. The two new offices will have doors with 6" by 2' glass fixed in them. The interview room will have a 3' by 4' fixed window on the new north wall. New spaces will be equipped with switches to individually operate the ceiling lights. Lights will be relocated and added for adequate and uniform lighting. (6) New light fixtures will be supplied and installed.

**Kitchenette:**

Owner will supply and install base cabinets and plastic countertop to conform to ADA requirements in the space as per drawing. A 5" deep stainless single sink with single handle valve will be installed as per code. GFCI outlet will be supplied and installed at counter. Microwave and Refrigerator will have outlets and circuits. Tenant will provide appliances. No exhaust venting was requested. Cabinets to have one bank of drawers and the remaining to be doors. Note ADA requires the sink compartment to be exposed. Owner to S&I white tile back splash.

**Electrical and fire alarm:**

Owner to S&I (14) dedicated 20 amp 120 volt branch circuits & receptacles for the following: Computer UPS system, Computer Main Frame, Microwave, under counter Refrigerator, coffee maker, copier, Herman Miller office furniture, file room voice and data and new hard wall space as required. Owner to add (4) new

fire alarm smoke detectors to bring the new space to compliance. (3) New strobes and horns will be S&I to comply. Plenum wiring will be used as required.

**Doors and Locking Hardware:**

New 7'x3' solid core birch doors will be installed where diagramed on the drawing with the addition of another in the reception closet. Two entry area doors will be replaced to conform to the hinging requirement and no glass requirement. The entry / egress doors and the file room will have dead bolt locks. Locking and entry hardware to be levered Falcon series with Schalge C keyways. The keying will be adopted into the master system with the exception of the secured file room key. The file room doors will have metal vents to allow air circulation but disallow unauthorized entry. The secured wall door will have a dedicated circuit ran to it to accommodate a mag lock system provided by the tenant.

**Security Pass thru Window:**

Owner will S&I in the security wall and the adjacent existing wall two Bullet resisting transaction windows using GE Lexgard level 3 material that will meet the Federal regulations. The reception wall window will be four foot in width and three feet high and the adjacent wall to be two foot by three foot. .

**HVAC:**

Return air and conditioned air ductwork and grills will be reconfigured to adapt to the new space as designed.

**Closet Shelving:**

The two existing closet spaces will have shelving installed for the tenant's use. The doors on the closets will be equipped with passage hardware to access smoke dampers.

Herman Miller and other furniture to be supplied by tenant.

Owner to purchase permits and obtains final inspections.

The total of the labor and materials as specified in the above description and the attached drawing is \$42,348.00.

Owner requests a pre-construction conference prior to authorization of the contracted work. Any alterations of the contracted work will require an authorized change order.

Thank you,

Steve Busk,  
Owner / Operator

## EXHIBIT C- CONSTRUCTION SCHEDULE

From: Steve Busk To: Debra Crawford

Date: 6/4/04 Time: 1:32:50 PM

Page 3 of 5

### **912 NE KELLY AVE. SUITES 260 & 264 TENANT IMPROVEMENT CONSTRUCTION SCHEDULE**

6-2-2004

Attention: Sam Lasco

I made the revisions as we discussed on site last week. The changes are as follows: Delete one interview room and seven additional ceiling lights above the Herman Miller spaces. Add a second level 3 secured transaction window (4 foot by 3 foot), add a 3 foot by 4 foot fixed window in the remaining interview room, add a dedicated electrical circuit for the secured door at the reception desk to power the mag lock by the County and add two door widows in the new private office spaces.

The tenant improvements will begin upon the Counties execution of an authorized work order and will be completed on or before August 1<sup>st</sup> 2004. The work schedule will commence as follows: Demo, framing and seismic revisions will be completed in the first week. Rough in plumbing and electrical will be complete during the second week. During the third week the wall surfaces will be sheeted and mudded. Finish coats and rubber base will be complete on week four. Cabinetry, windows and doors will be installed the following week. Ceiling tiles and top out of the plumbing and electrical will be done week six with final inspections approved the final week making the move in and operations ready for August 1, 2004.

Thank you,  
Steve Busk, owner

**EXHIBIT D- WORK ORDER**



**F & PM SERVICE REQUEST TEMPLATE**

[FOR ROUTINE MAINTENANCE / REPAIRS CALL 503 988-3779]

Required Fields Are Highlighted In **BOLD Text**

<b>DATE:</b> 05/26/04	<b>ORIGINATOR</b> DA'S OFFICE	<b>BLDG/FLOOR</b> 106 / 15	<b>Phone:</b> 988-3610 Mobile #	<b>New W/O #</b> (LEAVE BLANK) 2008859
<b>DEPT/DIV</b> DA	<b>SEND BILLING TO:</b> DA'S OFFICE	<b>BLDG/FLOOR</b> 106 / 15	<b>CONTACT ON-SITE:</b> JODI ERICKSON	<b>PHONE:</b> 988-3610
<b>BUILDING NAME:</b> NE 9 <sup>TH</sup> & KELLY-CITY OF GRESHAM			<b>ROOM #</b> 2 <sup>ND</sup> FLR	
<b>BRIEF DESCRIPTION OF WORK REQUESTED:</b> TENANT IMPROVEMENT			<b>REQUESTED COMPLETION DATE:</b> JULY 31, 04	
<b>COST CENTER, WBS ELEMENT, OR ORDER</b> DA SED.66			<b>ADD TO EXISTING ORDER #:</b>	

**WORK REQUESTED: (PLEASE USE ALL CAPS, & NUMBER EACH SEPARATE ITEM)**  
 RELOCATION AND TENANT IMPROVEMENTS COST FROM GRESHAM PUPLIC SAFETY & SCHOOLS BUILDING IN CITY OF GRESHAM TO NEW SITE AT NE 9<sup>TH</sup> & KELLY IN CITY OF GRESHAM. PLEASE SEE ATTACHMENT OF TENANT SPECIFICATIONS. TWO PAGES OF SPECIFICATIONS AND COST, ONE PAGE FLOOR PLAN LAYOUT AND ONE PAGE ON AVT BULLET RESISTING TRANSACTION WINDOW SPECIFICATION.

APPROVED BY: *Jodi Erickson*  
*Operations Administrator 988-3610*

**E-MAIL (AS ATTACHMENT) TO FMDISPATCH**  
 SEND ANY DRAWINGS WITH COMPLETED FORM TO BLDG 274/DISPATCH  
 Optional: FAX TO 503 988-6159 (OR X86159)

**FACILITIES & PROPERTY MANAGEMENT USE ONLY:**

<b>REVIEWED BY FSM:</b> SAM LASKO		<b>DATE:</b> 05/26/04	
<b>SVRQ</b> <input checked="" type="checkbox"/>	<b>BASE</b> <input type="checkbox"/>	<b>ESTIMATE ONLY</b> <input type="checkbox"/>	<b>CIP</b> <input type="checkbox"/>
<b>ASSIGN TO TRADE:</b>	<b>FSM:</b> <input checked="" type="checkbox"/>	<b>PROJECT MGR</b> <input type="checkbox"/>	<b>PLANNING</b> <input type="checkbox"/> <b>CIP:</b> <input type="checkbox"/>

**COMMENTS:** OWNER TO PROVIDE TENANT IMPROVEMENTS AT CLIENT'S REQUEST.  
 WORK TO BE COMPLETED BY OR BEFORE JULY 31, 2004