

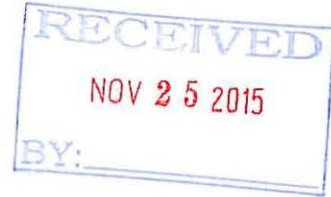
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff,

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY,
Defendants.



Case No.: 3AN-15-05969 CI

**REPLY TO PLAINTIFF'S OPPOSITION TO 716 WEST FOURTH AVENUE,
LLC'S MOTION FOR RULING OF LAW PRECLUDING ALASKA BUILDING,
INC.'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES**

Defendant 716 West Fourth Avenue LLC ("716"), by and through counsel, files this reply to Plaintiff's Opposition to 716's Motion for Ruling of Law Precluding Alaska Building, Inc.'s Claims for Qui Tam and Punitive Damages. For the reasons contained in this reply and in 716's original motion, this court should not award ABI *qui tam* or punitive damages as sought by Plaintiff under the facts alleged.

I. No law supports ABI's 10% claim.

This Court has previously held that ABI's 10% claim was inadequate to grant it interest-injury standing.¹ ABI acknowledges that there is no statutory or common law

¹ See August 21, 2015 Order at 3, n 15.

authority to support such an award.² Instead, it invites the Court to create a new remedy. In so doing, ABI asks the Court to override the Alaska Legislature's express abrogation of the public interest litigant exception to Civil Rule 82, and also asks this Court to ignore the Alaska Legislature's enactment of the Civil Rules governing the award of attorney's fees.³ This request is both inappropriate and impossible, as the creation of such legislative remedies is beyond the power of this (or any) Court.

The Agency, in its joinder of reply in support of 716's Motion for Ruling or Law Precluding ABI's Claims for *Qui Tam* damages, makes additional argument on this issue. 716 incorporates the Agency's arguments into this reply by reference.

As there is no basis in law to award ABI the 10% damages it seeks, 716 urges the Court to dismiss that damage claim from the Second Amended Complaint.

II. There Is Still No Basis for a Punitive Damages Award against 716.

In its original motion, 716 pointed out that ABI's claims—as pled in its most recent (third) complaint—were inadequate to support a punitive damages award as a matter of law, as they did not include the requisite claim for compensatory damages and failed to allege any facts going to 716's conduct. Rather than respond meaningfully to these legal arguments, ABI merely asserted (incorrectly) that it had in fact asserted a

² Under oath, Mr. Gottstein testified that although he hadn't seen any common law that would award a private plaintiff a 10% savings claim to a private litigant, it was "possible" that he would "come up with some." See Mr. Gottstein's 10/16/15 deposition at 43: 13-18, attached as Exhibit A.

³ See AS 09.60.010(b); See also *Nautilus Marine Enters. v. Exxon Mobil*, 332 P.3d 554, 559 (Alaska 2014)(articulating that "The purpose of Rule 82 is to partially compensate a prevailing party for expenses incurred in winning a case.") ABI is not asking for an award under Civil Rule 82 as a prevailing party but seeks to have the court create a new substantive right not supported either by the Rule of Civil Procedure or legislative authorization.

compensatory damages claim, then devoted most of its opposition to a detailed discussion of discovery documents allegedly supporting its substantive legal claim regarding flaws in the procurement process. As 716 filed a motion for ruling of law based on ABI's pleading, ABI's extensive factual discussion should not technically be at issue; however, to ensure that the Court is presented with a complete record, 716 responds to them below.

A. ABI's Second Amended Complaint seeks only declaratory judgment, which cannot support punitive damages.

Alaska law does not permit punitive damages in the absence of a compensatory damage award.⁴ In its original motion, 716 explained that ABI had failed to assert a viable claim for compensatory damages that could, in turn, support a punitive damages award.⁵ ABI responded by asserting that it has brought a claim for compensatory damages on behalf of the State.⁶ But this assertion is incorrect: the Second Amended Complaint is devoid of any such claim. Rather, the Second Amended Complaint seeks only a *declaratory judgment* regarding the alleged invalidity of the Lease.⁷

Indeed, even if ABI had pled a compensatory damages claim, it is not at all clear that citizen-taxpayer standing carries with it the ability to assert claims for monetary damage on behalf of a third party. Injunctive and declaratory relief are the more traditional remedies in a citizen-taxpayer suit. ABI has presented no authority that

⁴ 716's Motion at 3 and n.7.

⁵ *Id.* at 3.

⁶ Plaintiff's Opposition at 9.

⁷ Plaintiff's Opposition at 2 (quoting Second Amended Complaint).

would support an attempt to seek damages on behalf of the State and this attempt in fact appears to be beyond the bounds of its citizen-taxpayer standing.

Fundamentally, however, the problem is that ABI has pled no claim for compensatory damages. Declaratory judgment alone cannot support an award of punitive damages.⁸ Under Alaska law, ABI cannot sustain a claim for punitive damages, and that claim should be dismissed.⁹

B. Even if ABI had pled a compensatory damages claim, there would be no factual basis for a punitive damages claim.

The Second Amended Complaint makes only a single allegation regarding 716's conduct: it alleges that 716 entered into a lease ABI declares to be illegal. 716's original motion explained that this bare allegation is inadequate, as a matter of law, to support a claim for punitive damages.¹⁰ In its opposition, ABI introduced evidence far beyond the four corners of its pleading to support an array of brand-new allegations: it now alleges that 716 acted "outrageously" through e-mail communications between the Lessor's representative and the Lessee's representative during lease negotiations.

⁸ Although none of the three Complaints ABI has filed to date suggests that punitive damages should be awarded to the State, ABI now asserts that "since the conduct was against the state, [the state] should receive 100% [of any punitive damages award], possibly subject to an award to Alaska Building, Inc. of 10% of the savings achieved as a result of this litigation." See Opposition at 9. ABI asks for double the statutory amount that would be ordinarily paid to the state under AS 09.17.020 (j) and ignores that fact that the state is barred from filing "or join[ing] a civil action to recover punitive damages.

⁹ ABI grudgingly acknowledges that the Second Amended Complaint "could be more clear" and hints at an intention to amend the complaint yet again. See Opposition at 9, FN 11. As no motion to amend has been filed, this is not yet an issue; however, 716 notes that ABI has already amended the complaint *three times*. Each time, 716 has been forced to answer and engage in motion practice. ABI cannot endlessly use 716's attorneys to refine its pleading. Equity and due process demand that some limits be imposed.

¹⁰ 716's Motion at 4-5.

Though these new allegations are nowhere to be found in the Second Amended Complaint and are thus beyond the scope of this motion, they are prejudicial enough—and such gross mischaracterizations of reality—that 716 is compelled to respond to them. Through the course of discovery, 716 provided thousands of emails to ABI. The following will demonstrate that these communications were entirely ordinary in the context of negotiation between an existing landlord and tenant, that the negotiations were sanctioned and directed by the Legislative Council, that the actual lease was procured under a process that resulted from Legislative Council direction, and that the lease was the result of a legislative procurement rule process and in compliance with AS 36.30.083. The mere fact that 716 participated in this process does not relieve ABI of its obligation to follow the basic requirements of pleading, nor does it nullify 716's due process right to a complaint that clearly states the factual basis of the claims.

The LIO project came about after years of failed State efforts to locate other suitable space. It followed more than 13 separate unsuccessful public and competitive procurement initiatives by the State dating back to 2002, including: Requests for Proposals ("RFP"s) issued by the Agency in April 2002 and July 2003; Requests for Information ("RFI"s) issued in February 2006, March 2007, May 2009, June 2011, and May 2013; efforts to achieve "government-to-government" procurement of space in 2008, 2009, and twice in 2011, and efforts to purchase the Unocal Building in April 2010 and November, 2011. The original lease was originally competitively bid under RFP 391 and publicly issued on July 17, 2003. 716 had been the landlord of the LIO for

more than two decades,¹¹ with approximately 12 months remaining on the prior 10-year lease (set to expire May 31, 2014), by the time the Legislative Council approached 716 to discuss the most recent lease extension of its space.

716 presented three renewal options to the full Legislative Council in May of 2013, each at different rent levels. The Council issued an RFI on May 14, 2013 to fully assess whether any other building (existing or new) would meet the State's requirements.¹² The RFI explicitly did not require the Agency to enter into a contractual relationship with any entity that responded to the RFI, nor did it preclude the Agency from entering into contract with an entity that did not respond to the RFI.¹³

On June 7, 2013 the Legislative Council voted unanimously to authorize its Chairman and Chief Procurement Officer, Representative Mike Hawker, to negotiate material modifications to the lease, including renovation and retrofit of the expanded premises, with its existing Landlord, 716.¹⁴ In compliance with Alaska Legislative Procurement Procedure 040(d), Rep. Hawker's provided a written determination setting forth in detail the Council's basis for authorizing the lease modifications, which

¹¹ Over the years, the lease was subject to prior extensions and numerous amendments.

¹² See 5/14/13 RFI attached as Exhibit B; Mr. Gottstein has testified that ABI was never interested in serving as Landlord for the LIO.

¹³ See Exhibit B at 3.

¹⁴ See Procurement Officer's Findings under Legislative Procurement Procedure 040(d) attached as Exhibit C.

included adding 712 West Fourth Avenue – property immediately adjacent to the existing leased premises at 716 West Fourth Avenue – to the premises.¹⁵

On the same date, in a separate unanimously-passed motion, the Council authorized the Alaska Housing Finance Corporation (“AHFC”) to act as the Lessee’s representative in negotiating the lease, and to assist in managing the Lessor’s compliance with the terms and conditions of the proposed improvements. As the market rental value of the extension needed to be established “by a real estate broker’s opinion of the rental value or by an appraisal of the rental value,” pursuant to AS 36.30.083(a), AHFC was tasked with the responsibility to review and approve the appraisal. AHFC did in fact review and approve Tim Lowe’s September 18, 2013 appraisal of the renovated premises, which included the parking garage. In compliance with the lease reporting requirements of AS 36.30.083(b), on September 19, 2013, Pam Varni, Executive Director of the Agency, certified that the rent due under the lease would be 10 percent below the market rental value of the real property as established by Mr. Lowe’s appraisal and reviewed by AHFC.¹⁶ In fact, Ms. Varni concluded that the

¹⁵ By adopting Amendment No. 12, subsection (d) was added to Legislative Procurement Procedure 040, which provides: (d) a lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if (1) the reasons for the modification are legitimate; the reasons for the modification were unforeseen when the lease was entered into; (3) it is not practicable to competitively procure a new lease; the modification is in the best interests of the agency or the committee; (5) the procurement officer makes a written determination that the items in paragraphs (1)-(4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and (6) the use of this subsection is approved by the procurement officer, and in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

¹⁶ See Lease Reporting Requirement Letter dated 9/19/13, attached as Exhibit D.

annual rent payment exceeded the 10 percent reduction in market rental value¹⁷, and would save the Lessee \$528,344 annually.¹⁸ The parties executed the lease extension on September 19, 2013.

ABI claims in its Opposition that the September certification was obtained only because Rep. Hawker and Mark Pfeffer of 716 “put pressure on” Ms. Varni and the Agency’s lawyer, Doug Gardner, “to go along with the Project in spite of Ms. Varni’s and Mr. Gardner’s objections.”¹⁹ But ABI supports this claim only by cherry-picking evidence and presenting it without context. ABI relies on an email forwarded from Mr. Pfeffer to Rep. Hawker from June 20, 2013. This email came *two weeks after* the Legislative Council authorized Rep. Hawker to negotiate the lease extension with the Lessor and its representative, and contained 716’s lawyers’ dialogue concerning the pros and cons of the legal ways in which the extension could be achieved.²⁰

It was ultimately in the Agency’s purview to decide *how* it wished to approve the extension; but as a co-negotiator of the deal, Mr. Pfeffer had a legitimate and reasonable interest in ensuring that Rep. Hawker had full information when making legal decisions that affected both parties to the extension. Not only would it be contrary to the June 7, 2013 authorization for the parties to fail to negotiate the expansion and renovation

¹⁷ The annual rental payment negotiated with 716 under the terms of the lease is 86.48% of the appraised value.

¹⁸ See Exhibit D.

¹⁹ Plaintiff’s Opposition at 10.

²⁰ See Lease Extension at 1, attached as Exhibit E; See also Exhibit C at 2, authorizing the Chairman to negotiate amendments to the lease “by mutual agreement with the Lessor...”

project, it would be impractical—and hardly comport with good faith—for the Landlord to have no communication with the Tenant in discussing the financing, legality, and logistics of a project of this magnitude. Moreover, given the occupancy timeline required by the Tenant, it was not feasible for 716 to wait until all the ink had dried on the transaction before acting; accordingly, as the June 20 email indicates, 716 had to immediately begin making financial commitments to the LIO Project. For example, 716 had to secure a construction loan, which involved ordering a bank appraisal.²¹

Because of the necessity of making commitments prior to final execution of the lease extension, 716 bore a huge amount of risk in the transaction. Much of the risk was beyond 716's control: as noted above, the parties did not find out until September 18, 2013, the day before the lease was signed, that Mr. Lowe's appraisal would support the economics of the deal. Had it come in over 10% above the market rental value, then 716 would have borne a substantial financial loss because the parties would *not* have been able to extend the lease under AS 36.30.083. AHFC controlled the process because it ultimately had to review and validate Mr. Lowe's appraisal.

716's interest in ensuring that the transaction was properly structured to comply with all applicable legal requirements was entirely ordinary, as that was one of the few risks 716 could affirmatively help mitigate by providing the expertise of its own attorneys. From June 7, 2013 through September 19, 2013, the common theme from 716's lawyers and representatives was risk management. To ensure that the Agency

²¹ See Plaintiff's Opposition, Exhibit 10, page 2 of 2.

considered all alternatives, 716 discussed that a full legislative bill authorizing the extension would provide more certainty and alleviate risk. Ultimately, the Agency decided to pursue the AS 36.30.083(a) extension approach, and that approach was validated by Mr. Lowe's professional conclusion of value. After the months of review the Agency had conducted, 716 did not question the legality of its chosen approach or Mr. Lowe's third-party vetted appraisal.

Given this context, which was omitted from ABI's Opposition, it is disingenuous to suggest that Mr. Gardner or Ms. Varni were "pressured to go along by Mr. Pfeffer, aided and abetted by Representative Hawker."²² Ms. Varni raised some questions about the economics of the deal in early August 2013 as it related to comparable prospective Anchorage office buildings.²³ But—as the Agency and Ms. Varni herself later concluded—her initial analysis was based on inaccurate information and thus missed the mark.²⁴ At the end of the day, the statutory approach involved an assessment of monthly rental value, not an analysis of cost-per-square-foot as Ms. Varni had suggested; and the comparisons developed by Ms. Varni's analyst were neither current nor appropriate, especially considering that none of the "comparable" properties offered over 60,000 square feet with dedicated on-site parking, and that the conclusions of

²² See Plaintiff's Opposition at 8.

²³ See Plaintiff's Opposition, Exhibit 15

²⁴ Mr. Pfeffer referred to the comparable memo as "garbage" because the numbers did not make any sense given the scope of the Project discussed between the parties. See Plaintiff's Opposition, Exhibit 18.

previous RFPs had deemed certain of the “comparable” properties unacceptable for legislative space.

Fundamentally, there was no existing market space suitable to meet the Legislature’s articulated needs other than what the proposal at issue offered. (The lease extension itself specifically incorporated this fact.²⁵) The Legislative Council, *at its sole discretion*, elected to proceed with the scope of this project and declined to proceed with less costly options. As Rep. Hawker specifically noted for the record at the June 7, 2013 Council meeting, the Council previously “sought other downtown Anchorage properties suitable to legislative function and found none, leaving the option of constructing a new building. Council has **definitively said** that a new state-owned building is not a desirable outcome, leading to the decision to improve the existing location.”²⁶ The Agency, with Ms. Varni’s input, decided that it was in its best interest for its current landlord to remodel and expand the existing space. This was ultimately what was valued, in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) that govern the appraisal industry.

ABI’s argument is also misleading in that it suggests Ms. Varni and Mr. Gardner were opposed to the extension, when in fact they never ceased working on it or gave any indication that they found it problematic. Both individuals continued to negotiate

²⁵ See Exhibit E at 1, “WHEREAS, the existing Premises are not adequate to meet the needs of the Lessee, and the Lessee requires up to approximately 64,000 gross square feet of office space and appropriate off-street parking spaces in order to adequately house the offices of the legislature and legislative staff and to properly accommodate the public.”

²⁶ 6/7/13 Council Meeting Minutes at 3.(emphasis supplied.) The Council Minutes are attached as Exhibit F.

the terms of the lease extension on a near-daily basis from the time Ms. Varni issued her initial flawed memo on August 8, 2015 until the date the lease was executed on September 19, 2013. Ms. Varni's AS 36.30.083(b) cost saving calculation and report to the Legislative Budget and Audit Committee were incorporated into the lease as Exhibit D, and she signed the lease extension on behalf of the Agency the very next day. Neither Ms. Varni nor Mr. Gardner has ever asserted that they were pressured in any way to adopt the lease extension, and ABI has no evidence—and no right—to challenge their authorization to execute the lease on the Agency's behalf.

ABI's attempt to dispute that the Lowe appraisal report establishes a cost savings of at least 10 percent below the market rental value of the property is simply wrong. ABI has not shown or alleged that Mr. Lowe was statutorily unqualified to give his opinion of the appraised rental value. ABI has not shown or alleged that AHFC failed in its obligation to review the negotiation process. Instead, ABI contends that the lease extension is not statutorily compliant because Larry Norene, a retired real estate broker whom ABI hired as part of this litigation, offered a differing opinion of the maximum allowable lease rate in a cursory 3-page affidavit that is, notably, *not* USPAP-compliant. ABI attempts to use this affidavit as a basis for the Court to declare that the lease is invalid, and award it punitive damages.²⁷ But a difference in appraisal conclusions is neither outrageous nor uncommon;²⁸ nor does a later, different appraisal of value

²⁷ See Opposition at 2-3.

²⁸ If this were the case, nearly every litigated valuation dispute would end with one appraiser sanctioned for offering an outrageous opinion of value.

invalidate an earlier one as a good-faith basis for the Agency's conclusions. ABI fails to explain why Norene's non-USPAP-compliant, conclusory three-page affidavit should call into question 716's good-faith acceptance of the Lowe appraisal—which was moreover supported by third-party lender appraisers as a basis for extending financing.²⁹

It merits mention that Mr. Lowe prepared a 96-page appraisal for AHFC, which was acting as the tenant's representative for the Council (and the Agency, as an administrative agent for the Council), and in doing so certified that the report conformed to USPAP standards. Mr. Lowe is a certified Member of the Appraisal Institute ("MAI"), a fellow of the Royal Institution of Chartered Surveyors (FRICS), and he has achieved the Counsel of Real Estate ("CRE") designation as an appraiser experienced in the valuation and evaluation of commercial properties.³⁰

Yet in the world as pled by ABI's Second Amended Complaint, 716 engaged in outrageous conduct—and faces punitive damages liability—merely because it **entered into** the lease agreement. ABI does not argue that AHFC's conduct was outrageous or that it acted with reckless indifference in reviewing and approving the appraisal report. ABI also does not make these accusations against the Agency, which selected AHFC as the third party to review the appraisal. Nothing in Mr. Lowe's thorough appraisal

²⁹ The appraisals submitted under seal demonstrate this.

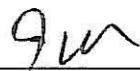
³⁰ Mr. Lowe's appraisal included market data gathered from Per Bjorn Rolli, MAI of Reliant Advisors and Steve Carlson, MAI, both of Anchorage. Mr. Lowe's appraisal was further referenced in, and relied upon, in an appraisal prepared by Theodore Jensen, MAI for EverBank on December 12, 2014. See Page 5 of 12-5-14 Appraisal, attached as Exhibit G. 716 requests that the Court put this document in the confidential portion of its file. The appraisal is 266 pages, 716 attaches page 5 which references the Lowe Appraisal.

report, or the subsequent execution of the lease, suggests any conduct committed by 716 in the lease negotiation process that would rise to the level of circumstances that would make an AS 09.17.020(b) punitive damages award available to it should this case ultimately make its way to the fact finder.³¹

ABI's sole justification for its attempt to recover punitive damages from 716 relies on its mischaracterization of emails exchanged during lease negotiations regarding the best way to structure the lease extension in compliance with applicable law. In the context of the execution of the lease, as described *supra*, this argument is hollow. Accordingly, the Court should preclude ABI from seeking a punitive damages award.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 11-24-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

³¹ The court will hear argument on December 16, 2015, on why ABI's case should be dismissed under the doctrine of laches.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐
facsimile ☒ U.S. Mail on the 24 day of November, 2015, on:

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Law Offices of James B. Gottstein
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Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
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Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

In the Matter Of:
ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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10 AGENCY,

11 Defendants.

12 Case No. 3AN-15-05969 CI

CERTIFIED
TRANSCRIPT

13 DEPOSITION OF JAMES B. GOTTSTEIN

14 VOLUME I

15 Pages 1 - 58, inclusive

16 Friday, October 16, 2015
17 2:00 P.M.

18
19 Taken by Counsel for
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25 Court Reporter:

26 Gary Brooking, RPR
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1 Q. So thank you for the answer. I'm going to
2 go back to my original question, which is: What is
3 the basis for your claim to an entitlement of
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a
7 history lesson about the public interest exception
8 for Rule 82. Is there a statute?

9 A. No.

10 Q. False Claims Act? This isn't a qui tam
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point
14 to to say that a savings of this type had been given
15 a private litigant?

16 A. No. Well, not yet anyway. So, I mean,
17 it's possible I'll come up with some, but I haven't
18 found -- I haven't seen any yet.

19 I mean, I think that the -- this is a very
20 important public issue, and the point is, is that if
21 this right of public -- the public citizens to sue
22 over illegal government action is to have any, you
23 know, reality at all, there needs to be some
24 countervailing element for the prospect of attorneys'
25 fees being awarded against a plaintiff if they're

State of Alaska

Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918



REQUEST FOR INFORMATION (RFI) ANCHORAGE PROFESSIONAL OFFICE SPACE

The Legislative Affairs Agency ("Agency") is interested in receiving information regarding the availability of new or existing professional office space for lease to serve as Legislators' personal Anchorage Offices and the Legislative Agency Support Offices in the greater Anchorage area. The space must meet the general descriptions in this request and be available for occupancy by May 1, 2014.

Respondents must include the following property identification information:

- Owner's, and, if applicable, agent's name and contact information
- Physical address of property
- Tax assessor's plat and lot numbers of property
- At least one but no more than 10 photographs of proposed property

A response to this RFI must address the following minimum requirements of the Agency:

- 30,000 to 45,000 square feet of net usable Class A or Class B office space located within the Municipality of Anchorage
- Comply with all planning and zoning ordinances and Municipal development plans for government facilities
- Contiguous office space (multiple floors acceptable)
- Identify available dedicated on-site parking and alternative parking
- Full telecommunications and broadband wiring in facility
- Two executive conference rooms suitable for general meetings (approximately 250 sq. ft.)
- Four 3-room office suites (approximately 800 sq. ft.)
- Twenty-three 2-room office suites (approximately 500 sq. ft.)
- Fifteen 1-room office suites (approximately 200 sq. ft.)
- Copier rooms on each floor occupied
- Kitchenette space on each floor occupied minimally including a sink and wash area
- Storage Area – for boxes, supplies, equipment spares (approximately 1,100 sq. ft.)
- Information Services Staff Area & Maintenance Shop – suitable for three people and work bench for maintaining equipment (approximately 300 sq. ft.)
- One network room – equipped with cooling for 200 sq. ft. of computer and telecommunications equipment.
- Network Closets – one per floor with good ventilation (approximately 50 sq. ft.) preferable in silo configuration
- Contiguous ground floor space (minimum of 3,600 sq. ft.) for the Legislative Information Office consisting of:
 - Two small enclosed offices with additional open space for four support staff

State of Alaska

Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918



- One large hearing room – suitable for legislative hearings and teleconferencing (approximately 1,500 sq. ft. adjoined by a teleconference bridge room approximately 200 sq. ft.)
- Two medium hearing rooms – suitable for legislative hearings and teleconferencing (approximately 500 sq. ft.)
- One small hearing room – suitable for legislative hearings and teleconferencing (approximately 200 sq. ft.)
- LIO Copier & Mailroom enclosed office – close proximity to LIO (approximately 250 sq. ft.)

Occupancy Date:

Occupancy is required by May 1, 2014. Any offering must be able to meet this requirement and identify a strategy and timeline to accommodate this deadline.

Cost Information:

Provide approximate cost information:

- Identify both net usable and net rentable space in square feet
- Identify full service or triple net
- Identify tenant improvement allowance
- Cost information must be provided on both net usable and net rentable space

Responses that do not include the above cost information presented in the form required will be of little assistance to the Agency. The respondent acknowledges that information provided to the Legislative Affairs Agency in response to this RFI is a public record subject to public inspection in accordance with the Alaska Public Records Law, AS 40.25.123(b).

Submission:

Provide one electronic copy of the requested information to the email address below. Submissions shall not exceed five pages of narrative and no more than 10 photographs. Responses to this RFI must be received no later than 4:00 p.m. AST, on **May 24, 2013**. Please note the State does not accept responsibility for failed emailed response deliveries.

Tina Strong, Procurement Officer
Legislative Affairs Agency
State Capitol, Room 3
Juneau, AK 99801-1182
PH: (907) 465-6705

State of Alaska

Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918



FAX: (907) 465-2918

Email: tina.strong@akleg.gov

This RFI in no manner obligates the Legislative Affairs Agency to lease space or pursue a contractual relationship with an entity that responds to this RFI or limits or restricts the Legislative Affairs Agency's right to lease space or pursue a contractual relationship with an entity that does not respond to this RFI, on such terms the Legislative Affairs Agency considers necessary or desirable.

This RFI in no manner obligates the Legislative Affairs Agency to pay any costs incurred in the preparation of any response to this RFI. A party responding to this RFI is responsible for all costs associated with their response. Responses become the property of the Agency.

PROCUREMENT OFFICER'S FINDINGS UNDER
LEGISLATIVE PROCUREMENT PROCEDURE 040(d)

Introduction

The purpose of this document is to provide a written determination, in compliance with Alaska Legislative Procurement Procedure 040(d), setting forth in detail the procurement officer's determination supporting material modifications of the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, which was previously competitively bid under RFP 391 and publicly issued on July 17, 2003, (hereinafter "Lease"). The current Lease will expire on May 31, 2014.

The material modifications to the Lease that are the subject of this written determination were authorized by Legislative Council, and by mutual agreement with the Lessor. The material modifications to the Lease are amending the existing definition of "premises" within Section 1 of the Lease, titled "RENTAL PROPERTY AND RENTAL RATE," by adding the additional property commonly known as 712 West Fourth Avenue, which is immediately adjacent to the existing leased premises at 716 West Fourth Avenue, and amending other sections of the Lease as necessary to allow for the renovation and retrofit of the expanded premises, including but not limited to, a transition to a triple net leasing structure and changes necessary to accommodate renovation of the premises as described in Exhibits A and B of the Lease.

Background

A. Legislative Council's Authorization to Materially Modify Lease

On June 7, 2013, Legislative Council passed the following motions¹ related to the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, and which will expire on May 31, 2014:

MOTION - AMEND PROCUREMENT PROCEDURE: I move that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide the limited ability for the Legislative Affairs Agency, or a Legislative Committee, to materially modify an existing lease that was previously competitively procured.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material

¹ In addition to the motions set out in the text of these findings, two additional related motions were also passed by Legislative Council on June 7, 2013:

MOTION - LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

MOTION - ENGAGE AHFC (Alaska Housing Finance Corporation) AS LESSEE'S REPRESENTATIVE: I move that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

B. Requirements of Alaska Legislative Procurement Procedure 040(d)

Legislative Procurement Procedure 040, as amended by Amendment No. 12 and authorized by Legislative Council as set forth in the motion above, added subsection (d), which provides:

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

- (1) the reasons for the modification are legitimate;
 - (2) the reasons for the modification were unforeseen when the lease was entered into;
 - (3) it is not practicable to competitively procure a new lease;
 - (4) the modification is in the best interests of the agency or the committee;
 - (5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and
-

(6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Procurement Officer's Determination Under Legislative Procurement Procedure 040(d)

040(d): Previously Competitively Bid Requirement

As previously discussed, the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, was previously competitively bid under RFP 391, which was publicly issued on July 17, 2003. Accordingly, under Legislative Procurement Procedure 040(d), the Lease may be materially modified.

040(d)(1): Reasons for the Modification are Legitimate

The decision to modify the Lease is consistent with the purpose of the present Lease, which is to provide office space for the Legislature. These amendments do not alter the essential identity or main purpose of the contract, and do not constitute a new undertaking, and therefore are a legitimate modification of the Lease.

The property at 712 West Fourth Avenue is unique, since it is the only adjacent space to 716 West Fourth Avenue available to satisfy the Legislature's need for additional space, and meets the essential requirement of keeping all the present legislative offices in one building. The addition of 712 West Fourth Avenue allows the Legislature to extend its current Lease as provided under AS 36.30.083(a). Given the uniqueness of the property, and the fact that no other bidder would be able to provide space adjacent to 716 West Fourth Avenue, it would be a waste of private sector resources and legislative procurement resources to competitively bid for the only adjacent property.

The expanded premise will be renovated to meet the needs of the Lessee. In accordance with the expansion of the leased premises, the renovation, and the Lease Extension executed under AS 36.30.083(a), it is necessary to amend material terms of the Lease. Without the modifications, the Lease would not be functional to govern the premises. Given the uniqueness of the property and the ability of the Legislature to have input in the design and function of the renovated building, a competitively bid procurement would be impractical, inefficient, and ultimately, likely unsuccessful in providing premises as suited to the needs of the Legislature.

Accordingly, modifying the Lease by adding 712 West Fourth Avenue to the "premises" and by amending other lease terms to accommodate the expanded premises and the Lease Extension under AS 36.30.083(a) does not subvert the purposes of competitive bidding, and is a legitimate exercise of the Legislature's procurement authority.

040(d)(2): Reasons for Modification Unforeseen When Lease was Entered Into

When the Lease was entered into for 716 West Fourth Avenue in 2004, it was unforeseen that the Legislature would need significant additional space, or that the infrastructure problems with the building would worsen, e.g., the exhausted service life of the HVAC system and the water system, and the elevator failing to handle the demands of staff and public use.

In 2004, based on the Executive Director's Office's best assessment, there were approximately 54 legislative staff working in the building. Today, in 2013, there are approximately 72, which is an increase during the ten-year term of the Lease of approximately one-third. The result of this unforeseen increase in staffing demands on the space in the building is that the staff for some legislators work in shared space. Shared space fails to meet standards for confidential meetings with constituents, and other intra-office privacy concerns. The space has only worked because of the patience and cooperation of Anchorage legislative staff and legislators. However, after the current

Lease term expires the limited space will no longer be acceptable. In addition to the staff of different legislators sharing space, three Anchorage area legislators are sharing space with their staff, which is also not acceptable.

The Legislature requires office space beyond the needs of the Anchorage-area legislators and staff. Once the Lease is amended, the renovated facility will provide space for the Speaker of the House, and the Senate President, who are both out-of-Anchorage legislators, and for rural legislators who require space for conducting work and attending legislative meetings in Anchorage.

Further, the existing building is in need of substantial renovation and upgrade. The condition of the premises is no longer suitable for legislative use. Physical deficiencies include lack of potable water, limited restroom facilities, ineffective HVAC system, deteriorated and leaking plumbing, an unreliable and inadequate elevator, insecure and unsafe below-ground parking facilities, leaking windows, worn window coverings and carpeting, inadequate electrical service, unpleasant odors in the elevator, inefficient lighting, and hazardous materials used in the original construction of the building. All of these will be remediated in the renovation and upgrade.

Had each of these factors been taken individually, fluctuating space demands may have been foreseen at some level. However, the pressure on space in the building from the multiple impacts discussed above was not foreseen when the Lease was entered into in 2004.

040(d)(3): Not Practicable to Competitively Procure a New Lease

The Anchorage Legislative Information Office has been located in leased space at 716 West Fourth Avenue for approximately 20 years. Occupancy was initially under a 10 year lease which terminated in 2003, that was extended month-by-month through 2004, when the current lease was established following an RFP process. The Legislature

is now in its 10th year under the current Lease, having just exercised the final of five one-year renewal options allowed under the terms of the Lease.

Over the past five years the Legislature has explored and requested proposals on numerous occasions seeking alternative space. None of those efforts has resulted in a solution that was possible, practicable or acceptable. Given that the Lease has nearly expired, the Legislature recently provided notice to the public of a Request For Information ("RFI")² from parties interested in providing legislative office space in Anchorage. Two parties provided responses detailing the space they had available. Both spaces were located in areas that were not acceptable to Legislative Council for the needs of the Legislature. The available properties in the responses to the RFI failed to provide constituent access, access to other state and local centers of government, access to public transportation, and access to lodging and meeting spaces. In summary, based on the RFI responses, there are no facilities available for lease that are suitable for the Legislature's unique needs.

Because of the limited interest shown in the RFI and the lack of suitable legislative space available for lease, Legislative Council reconsidered the existing leased space at 716 West Fourth Avenue, and made the determination that the existing building, if renovated and with the addition of a suitable amount of additional space, could continue to serve the Legislature and public. The only available property adjacent to 716 West Fourth Avenue that would facilitate the needed renovations to 716 West Fourth Avenue, and provide additional space, is 712 West Fourth Avenue.

In addition to its efforts to formally identify potential lease space through the issue of an RFI, commercial real estate brokers and others were consulted in an attempt to determine if lease space suitable to meet the Legislature's needs might be available.

² The complete RFI is available at
<http://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168321>.

These inquiries delivered the same results as the RFI; there are no existing facilities available to meet the Legislature's needs,

Based on the foregoing discussion and factors, inclusive of the lack of suitable remaining time for any additional procurement efforts, as Procurement Officer, I find that it would not be practicable to competitively bid a lease for Anchorage legislative office space because of: (1) limited interest demonstrated by the response to the RFI; (2) no available property suitable for legislative needs offered in response to the RFI; (3) the decision by Legislative Council to exercise its option under AS 36.30.083(a) and extend its lease of 716 West Fourth Avenue, subject to renovations by the Lessor and a cost saving of 10 percent less than fair market value; and (4) the uniqueness of the location of 712 West Fourth Avenue to the Legislature's existing office space at 716 West Fourth Avenue.

040 (d)(4): The Modification is in the Best Interests of the Agency or the Committee

The existing leased space at 716 West Fourth Avenue, while at the end of the service life of the building systems, and despite chronic maintenance problems, has served the Legislature and constituent needs for approximately 20 years. The location on Fourth Avenue provides central access for legislators and constituents to meeting spaces, hotels, the courts, state and local government offices, public transportation, and other support facilities. The current lease includes parking, which is essential for public access to government by constituents, legislators, and staff.

Based on all factors considered above, the Legislative Council made the decision to exercise its option under AS 36.30.083(a) to enter into negotiations with the Lessor, to extend the Lease subject to the building being suitably improved with a modest addition of space, and subject to the requirements in AS 36.30.083(a) that the cost to the Legislature be at least 10 percent below the market rental value of the real property at the time of the extension. The decision to amend the Lease as provided by Alaska

Final
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Legislative Procurement Procedure 040(d), is in Legislative Council's best interest, since it will facilitate the extension of the Lease with the necessary improvements and with additional needed space, at a cost-savings to the Legislature, as provided by AS 36.30.083(a).

Lastly, in addition to the determination herein, as Chairman of Legislative Council and Procurement Officer, I have provided written notice to legislative leadership of the successful conclusion of negotiations and the intent to extend and amend the lease as provided herein.



Representative Mike Hawker
Chairman of Legislative Council and
Procurement Officer

9.16.13
Date

Alaska State Legislature

Legislative Affairs Agency

Office of the Executive Director

Terry Miller Legislative Office Building, Room 217

Mailing Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234



2013 SEP 25 PM 9:49

September 19, 2013

Senator Anna Fairclough, Chair
Representative Mike Hawker, Vice-Chair
Legislative Budget & Audit Committee
State Capitol
Juneau, AK 99801-1182

RE: AS 36.30.083(b) Lease Reporting Requirement

Dear Senator Fairclough and Representative Hawker:

In accordance with the requirements of AS 36.30.083(b), the Legislative Affairs Agency would like to report to the Legislative Budget and Audit Committee that the Agency will be entering into a 10-year real property lease extension of the Anchorage Legislative Offices and Anchorage Legislative Information Office at 716 West 4th Avenue effective June 1, 2014, during the end of fiscal year 2014.

The lease will also be amended to accommodate an expansion and renovation of the premises. As required by AS 36.30.083(a), the market rental value of the renovated premises, including the parking garage, was appraised by real estate appraiser Tim Lowe, MAI, CRE, FRICS, of Waronzof and Associates, Inc. on September 18, 2013, and reviewed by the Alaska Housing Finance Corporation, to establish that the rent due under the lease is 10 percent below the market rental value of the real property. Mr. Lowe has assessed the rental value of the property, as of the effective date of the lease extension on June 1, 2014, at \$325,667 a month or \$3,908,000 annually. The annual rental payment will be \$281,638 a month or \$3,379,656 annually, exceeding the 10 percent reduction in market rental value required by AS 36.30.083(a). Our annual savings will be \$528,344.

Sincerely,

A handwritten signature in cursive script that reads "Pamela A. Varni".

Pamela A. Varni
Executive Director

cc: Tina Strong, Contracting Officer, LAA

EXTENSION OF LEASE AND LEASE AMENDMENT NO. 3

Extension of Lease Under AS 36.30.083; Amendment of Lease; Material Modification of Lease

THIS EXTENSION OF LEASE AND THIRD AMENDMENT OF LEASE is made and entered into on the date the Legislative Affairs Executive Director or her designee signs the Lease, is by and between 716 WEST FOURTH AVENUE, LLC, an Alaska limited liability company, whose address is P.O. Box 241826, Anchorage, Alaska 99524, hereinafter referred to as "Lessor," and the LEGISLATIVE AFFAIRS AGENCY, whose address is State Capitol, Room 3, Juneau, Alaska 99801-1182, hereinafter referred to as "Lessee," and hereby amends the Lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, as previously amended, and renewed through May 31, 2014 by Renewal of Lease No. 5, recorded May 23, 2013 in Book 2013-028824-0, Anchorage Recording District, Third Judicial District, State of Alaska, hereafter referred to as the "Lease".

WITNESSETH:

WHEREAS, the Lessor is currently leasing to the Lessee the following described Premises, hereinafter "Existing Premises," described as follows:

Approximately 22,834 square feet of office space, which consists of all net usable office space on the second through sixth floors and approximately 811 square feet of storage space in the basement, at the building located at 716 West 4th Avenue in Anchorage, Alaska at Lot 3A, Block 40, of the Original Townsite of Anchorage, according to the official plat thereof, Third Judicial District, State of Alaska, and eighty-six (86) reserved off-street parking places.

WHEREAS, on June 7, 2013, the Legislative Council (Lessee) authorized its chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a), and, to seek the assistance of Alaska Housing Finance Corporation (AHFC) if needed, and to negotiate material amendments to the Lease;

WHEREAS, the existing Premises are not adequate to meet the needs of the Lessee, and the Lessee requires up to approximately 64,000 gross square feet of office space and appropriate off-street parking spaces in order to adequately house the offices of the legislature and legislative staff and to properly accommodate the public;

WHEREAS, a property directly adjacent to the existing Premises, located at 712 West 4th Avenue, when added to the existing Premises, will be adequate to meet the needs of the Lessee and, subject to successful negotiation with the property owner, the property may be made available to Lessee;

WHEREAS, subject to the provisions of AS 36.30.083 and other applicable authority, the Lessee wishes to incorporate the existing Premises along with the property located at 712 West 4th Avenue into this Extension of Lease and Lease Amendment, and further, to reference the combined real property parcels as the "Premises" for the purposes of this Extension of Lease and Lease Amendment;

WHEREAS, the Premises must be renovated in order to meet the needs of the Lessee and, subject to successful negotiation between the parties, a renovation plan and renovation schedule will be documented as Exhibit "A" and Exhibit "B" of this Extension of Lease and Lease Agreement;

WHEREAS, Alaska Legislative Procurement Procedures designate the chairman of the Legislative Council as procurement officer with respect to contracts of the Legislative Affairs Agency, and the chairman has made a written determination under Procurement Procedures Section 040(d) (Exhibit C) that the Lease may be materially modified without procurement of a new Lease to include the property known as 712 West Fourth Avenue;

WHEREAS, the current lease term expires May 31, 2014 and it is the intention of the Lessor and Lessee to extend the Lease for 10 years under AS 36.30.083(a) effective June 1, 2014 through May 31, 2024;

WHEREAS, modifications and amendments to the Lease made under Legislative Procurement Procedure Section 040(d) are required prior to the extension of the lease term to proceed with renovations of the premises and therefore amendments to the Lease, with the exception of the lease term, are effective on the date the Legislative Affairs Director signs the Lease;

NOW, THEREFORE LESSOR AND LESSEE AGREE that the Lease is hereby extended for 10 years until May 31, 2024 pursuant to AS 36.30.083; and the Lease is hereby amended pursuant to Legislative Procurement Procedure Section 040(d) as follows:

Sec. 1 of the Lease is amended to read as follows:

1.1 DESCRIPTION OF PREMISES; LEASE TERM; MONTHLY LEASE RATES:

- a. The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor the Premises described below:

All space within the office building, all space within the parking garage, and all real property located at 716 West 4th Avenue in Anchorage, Alaska further described as Lot 3A, Block 40, of the Original Townsite of Anchorage, according to the official plat thereof, Third Judicial District, State of Alaska; and all space located within the building and all real property located at 712 West 4th Avenue in Anchorage, Alaska further described as Lot 2 W 39.5' Block 40 Original Townsite of Anchorage.

On the Effective Date as defined in Section 1(b) below, the Lease shall be for the Existing Premises. On the schedule as set forth in Exhibit "B-1" the Premises will be renovated and expanded as described in Exhibit "A" ("LIO Approval Plans") (hereinafter the "Renovations"). Following completion of the Renovations, the Premises will include approximately 64,048 gross square feet of building space and approximately 86 off-street parking spaces with the spaces striped as directed by Lessee.

b. The term of the Lease is extended for ten (10) years from the termination of the original term on May 31, 2014 until May 31, 2024. The covenants and requirements set forth in this Extension of Lease and Lease Amendment are effective the date it is signed by both parties (the "Effective Date").

c. Base Monthly Rental. This Lease will have three applicable rental rates.

1. On the Effective Date the Base Monthly Rental shall be \$56,863.05 which is the lease rate under current lease for the Existing Premises.

2. The Lessor will provide the Lessee with interim office space and parking (Interim Space) as defined in Exhibit "B-1" during Lessor's work on the Renovations ("Renovation Period"). Lessee shall move to interim office space ("Interim Space") on the dates set forth in Exhibit "B-1" after 10 days written notice by Lessor.

During the Renovation Period and while the Lessee is occupying the Interim Space, the Base Monthly Rental will be reduced to the lesser of the amounts that follow:

i. To an amount equivalent to the actual costs the Lessor incurs in providing the Lessee with the Interim Space during the Renovation Period, including all costs of moving the Lessee to and from different space throughout the Renovation Period; or

ii. The Base Monthly Rental rate paid on November 1, 2013 per the provisions of Renewal of Lease Number 5.

iii. Notwithstanding Option #1 and Option #2 above; the Lessee shall not pay rent in any amount for the portion of the Premises located at either 712 W. 4th Avenue or 716 W. 4th Avenue if the Lessee is not occupying space in the respective building and the Monthly Base Rent shall be adjusted accordingly.

3. Upon final acceptance and occupancy of the renovated Premises, then the Base Monthly Rental will increase to \$281,638 per month.

d. Base Monthly Rental Adjustments

Unless otherwise amended in writing signed by both parties, the Base Monthly Rental set forth in 1.1(c)(3) above shall remain the same through May 31, 2024.

e. Monthly Lease Payments

The monthly lease payments are due and payable on the 1st day of each month. Payments will be made as agreed between the Lessee and Lessor. If the post Renovation Period occupancy date is a date other than the first day of the month, then the Base Monthly Rental shall be prorated and the increased rent paid with the payment of the first full month Base Monthly Rental payment due after the post Renovation occupancy.

1.2. **AS 36.30.083(a) COST SAVINGS:**

The Base Monthly Rental rate paid for the Premises to be paid upon final acceptance and occupancy of the renovated space has been determined to provide a minimum cost savings of at least 10 percent below the market rental value of the Premises. Supporting documentation is attached as Exhibit D (Executive Director's Cost Saving Calculation and Report to the Legislative Budget and Audit Committee per AS 36.30.083(b)).

Under AS 36.30.083(a), notwithstanding any other provision of AS 36.30.083, the Legislative Council may extend a real property lease that is entered into under AS 36.30 for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value. Timothy Lowe, MAI, CRE, FRICS of the firm of Waronzoff Associates, Inc. at 999 North Sepulveda Boulevard Suite 440 El Segundo, California has completed an independent analysis of the provisions of this lease extension and amendment and has concluded that the rent due under the terms and conditions of this lease extension and amendment is at least a 10 percent below the market rental value of the real property at the time of the extension for a ten year term.

Under AS 36.30.083(a), Legislative Council has approved the extension of this Lease as legally required. In addition to any other right of the Lessee under this Lease to terminate the Lease, if, in the judgment of the Legislative Affairs Agency Executive Director, sufficient funds are not appropriated in an amount adequate to pay the then annual lease payments and expenses, the Lease will be terminated by the Lessee as of the date appropriated funds are exhausted, or will be amended by mutual agreement of the Parties. To terminate under this section, the Lessee shall provide not less than 90 days advance written notice of the termination to the Lessor.

Sec. 2 of the Lease is amended to read as follows:

2. **ADA COMPLIANCE:** On the date of final acceptance and occupancy and throughout the entire occupancy of the Lease, the Lessor shall ensure that the Premises, and any improvements or alterations to the Premises, and all accessible routes shall meet the specifications of the ADA Accessibility Guidelines (ADAAG) for Public Buildings and Facilities per Title II of the Americans with Disabilities Act (ADA), as currently written and as they may be subsequently amended (hereafter referred to as ADA compliance).

Under the previous paragraph, the Premises, and any improvements or alterations to the Premises, and all accessible routes, must meet the ADA compliance requirements as they apply to a public entity.

The Lessee's acceptance of the Premises or of any improvements or alterations to the Premises, or any inspection of the Premises by the Lessee, do not relieve the Lessor of its responsibility for ADA compliance.

If these provisions on ADA compliance conflict with another provision in the Lease, the provisions of this section shall govern.

Prior to the date of final acceptance and occupancy, the Lessor, at its own expense, must furnish the Lessee with an ADA Facility Audit Report prepared by an architect registered to practice in the State of Alaska certifying that the Premises comply with all requirements of the current version of the ADA and this section.

Sec. 3 of the Lease is amended to read as follows:

3. **RENOVATION AND DELIVERY OF PREMISES:** The Lessor agrees to renovate the Premises consistent with the specifications as set forth in Exhibit "A", on the schedule as set forth in Exhibit "B", and in accordance with applicable law.

Exhibit "A" describes all terms and conditions of the renovations to be completed by the Lessor and incorporates the drawings, schematics, and deliverables for the same. Exhibit "B" sets forth the milestones for the renovation of the Premises as well as the final completion date. Exhibit B-1 sets forth the schedule for the interim occupancy during the renovation period.

The Lessee shall pay up to \$7,500,000 in direct reimbursement payments to Lessor toward the cost of that portion of the renovation work that represents the tenant improvements to the Premises. All invoices submitted to Lessee by Lessor must be accompanied by appropriate documentation and in addition, must be approved by the Procurement Officer prior to payment. Invoices, unless disapproved, shall be due within 30 days of submission. An invoice may be disapproved by the Procurement Officer for lack of appropriate documentation or any other legitimate reason. In the event that it is disapproved by the Procurement Officer, the Lessor may challenge the decision of the Procurement Officer under the Legislative Procurement Procedures. The balance of the tenant improvement costs at occupancy, if any, shall be added to the Lessor's renovation costs and amortized over the term of the Lease.

The Lessee is responsible for the acquisition of and installation of its own furniture, fixtures and equipment and shall schedule the same in a manner that does not conflict with the progress of the renovation work.

Sec. 4 of the Lease is amended to read as follows:

4. The Lease shall be what is described as a "modified triple net lease"

a. **LESSOR'S RESPONSIBILITY AND COSTS:**

1. The installation and maintenance of all structural components, core components, roof membrane/surface, and building systems that are incorporated into the Premises, including but not limited to: HVAC, elevators, plumbing, electrical, and fire suppression systems.
2. Providing connections to city water and sewer, electric service, and other public utility service to the Premises.

3. Parking lot repair, striping, work required to maintain conformance with ADA or other accessibility issues.
4. Any/all work required to maintain conformance with ADA or other accessibility issues.
5. Extraordinary maintenance – replacing worn carpeting, painting interior walls, replacing damaged casework, every 10 years, or sooner if reasonably required.
6. Exterior light fixture repair/replacement.
7. Interior light fixture repair/replacement.
8. Plumbing fixture repair/replacement.
9. Elevator inspection/repair/replacement.
10. HVAC inspection/maintenance/repair/replacement.
11. Fire suppression system inspection/maintenance/replacement.
12. The payment of any/all pending or levied assessments.
13. Other services or maintenance as may be agreed by the parties.

b. **LESSEE'S RESPONSIBILITY AND COSTS:**

1. Building janitorial service and supplies.
2. Landscaping and grounds maintenance.
3. Interior and exterior window washing.
4. Parking lot sweeping, sanding and snow removal.
5. Interior and exterior light bulb replacement.
6. Hallway and entrance walk-off mats.
7. Carpet cleaning on a commercially reasonable regular schedule.
8. Professional property management services.
9. Real property taxes (reimburse Lessor).
10. Downtown business district assessments (reimburse Lessor).
11. Monthly utility service: water, gas, electric, sewer (either established in Lessee's name or reimburse Lessor).

12. Post renovation/following final acceptance and occupancy installation and maintenance of all data cables and systems. Initial installation is described in Exhibit "A" .
13. Post Renovation and following the final acceptance and occupancy installation and maintenance of internet service to the Premises. Initial installation is described in Exhibit "A".
14. Property casualty insurance coverage only (reimburse Lessor). All other insurance required under the Lease shall be at the sole expense of Lessor.
15. Security guards or other security services.
16. Post Renovation and following final acceptance and occupancy, the installation and maintenance of key-card or other access system. Initial installation is described in Exhibit "A".
17. Installation, maintenance, and use of a flagpole.

Sec. 5 of the Lease is amended to read as follows:

5. ELECTRICAL REQUIREMENTS:

- a. The electrical requirements of the Premises are described in Exhibit "A".
- b. The Lessor shall post a schematic at each circuit breaker panel with labeling to correspond to individual circuit breaker labels and shall keep the posted plan up to date.

Sec. 6 of the Lease is amended to read as follows:

6. PLUMBING REQUIREMENTS:

- a. The plumbing requirements of the Premises are described in Exhibit "A" .

Sec. 7 of the Lease is amended to read as follows:

7. HEATING, COOLING AND VENTILATION (HVAC) REQUIREMENTS:

- a. The HVAC installation requirements of the Premises are described in Exhibit "A" .
- b. Facilities shall be provided to maintain the temperature in all the offices and similar type space uniformly within 68 degrees F to 78 degrees F range.

If the temperature is not maintained within the 68 degrees F to 78 degrees F range for a period of more than two consecutive working days, the Lessor shall, upon receipt of a written complaint from the Lessee, provide suitable temporary auxiliary heating or cooling equipment, as appropriate, to maintain the temperature in the specified range. If such temporary auxiliary equipment is necessary to meet normal weather contingencies for more than 21 consecutive working days, the Lessor shall, not later than the 21st working day, initiate a continuing and diligently

applied effort to rectify the deficiency causing the failure in order to uniformly maintain the temperature range required. If after 42 consecutive working days the temporary auxiliary equipment is still necessary to meet normal weather contingencies, the Lessee shall be free to hold the Lessor in default, it being considered that the Lessee has proffered a reasonable amount of time for the Lessor to effect suitable modification or repair to the building in order to maintain the specified temperature range without resort to temporary auxiliary devices. "Working days" for the purpose of this section shall be defined as days normally scheduled by the Lessee as open for the conduct of its normal operations.

- c. Adequate ventilation shall be provided in accordance with the mechanical code adopted by the Department of Public Safety for the State or ventilation may be provided by windows with screens that open.

Sec. 8 of the Lease is amended to read as follows:

8. **WINDOW COVERING REQUIREMENTS:** Window covering requirements are described in Exhibit "A".

Sec. 9 of the Lease is amended to read as follows:

9. **FLOOR COVERING REQUIREMENTS:** Floor covering requirements are described in Exhibit "A". In addition, the Lessor is responsible for replacing floor coverings at least once every ten (10) years or sooner if reasonably required, provided the sooner replacement is not required due to extraordinary wear and tear or other fault of Lessee.

The Lessee shall use grating, runners, rubber finger mats or other aggressive methods at the front entrance to the building and the Premises to minimize tracking dirt, snow or ice into the space.

Sec. 10 of the Lease is amended to read as follows:

10. **ACOUSTICAL REQUIREMENTS:** Acoustical requirements are described in Exhibit "A".

Sec. 11 of the Lease is amended to read as follows:

11. **PARTITION REQUIREMENTS:** Partition requirements are described in Exhibit "A".

Sec. 12 of the Lease is amended to read as follows:

12. **PAINTING REQUIREMENTS:** Painting requirements related to the renovation are described in Exhibit "A". In addition, the Lessor is responsible for repainting at least once every ten (10) years or sooner if reasonably required, provided the sooner repaint is not required due to extraordinary wear and tear or other fault of Lessee. All surfaces which normally would be painted shall be finished with a minimum of two coats of interior latex paint on walls and suitable semi-gloss enamel on woodwork and bare metal. The Lessee reserves the right to select the colors for areas to be newly painted.

Sec. 13 of the Lease is amended to read as follows:

13. **DOOR HARDWARE REQUIREMENTS:** Door hardware requirements related to the renovation are described in Exhibit "A". The Lessee is responsible for any subsequent (post-renovation - after final acceptance and occupancy) modification to door hardware that may be necessary to install additional components of a key card or other security system. The Lessee is responsible for the security and safekeeping of all keys to the Premises.

Sec. 14 of the Lease is amended to read as follows:

14. **VOICE AND DATA REQUIREMENTS:** Voice and data requirements are described in Exhibit "A". The Lessee is responsible for the installation and maintenance of all voice, data, and internet service to the Premises post-renovation; following final acceptance and occupancy.

Sec. 15 of the Lease is amended to read as follows:

15. **PARKING REQUIREMENTS:** Parking requirements are described in Exhibit "A".

If additional parking is constructed, it shall be of sufficient size to allow proper and easy parking, and have a hard and well-drained surface. All parking locations must be well lit and have good accessibility in and out of the parking area.

Lessee shall be responsible to maintain the parking areas and to provide that the above grade/surface parking lot is available to the public between the hours of 5:00pm and 6:00am Monday thru Friday and full time on Saturdays and Sundays. Any revenue rates for public parking shall be as determined by Lessee and any collected revenue for public parking shall be the property of the Lessee or its vendors as Lessee may so choose. Lessee shall direct the initial signage installation requirements for the parking areas which Lessor shall install as provided in Exhibit "A". Thereafter the Lessee shall be responsible for signage installation, maintenance and changes.

Sec. 16 of the Lease is amended to read as follows:

16. **FIRE PREVENTION:** The Lessor shall ensure that the Premises are at all times compliant with local fire code or other authority and shall inspect and maintain all fire suppression equipment and systems as necessary. The Lessee shall maintain the premises in keeping with good housekeeping and fire prevention practices. The Lessor reserves the right at reasonable times to enter and make fire prevention and fire protection inspections of the Premises.

Sec. 17 of the Lease is amended to read as follows:

17. **HAZARDS:** Both the Lessor and Lessee shall endeavor to keep the Premises free from environmental and other hazards.

Sec. 18 of the Lease is amended to read as follows:

18. **JANITORIAL SERVICES:** The Lessee shall be responsible for janitorial services for the entire Premises including common areas, parking areas and exterior areas.

Sec. 19 of the Lease is NOT amended except for the addition of the following provisions:

The last sentence of section 19 A is amended to read:

The Lessor shall be responsible for completing the Renovations described in Exhibit "A" prior to the Lessee accepting and taking occupancy of the Premises. After the Renovations have been completed and the Lessee has accepted and taken occupancy of the Premises, any subsequent alterations to the Premises agreed by the parties will be documented by separate agreement.

Sec. 20 of the Lease is deleted in its entirety.

Sec. 21 of the Lease is amended to read as follows:

21. **SIGNS:** The installation of signage as part of the renovation is described in Exhibit "A". After renovation is complete, Lessee reserves the right to erect or affix signs at the Premises, including the parking areas, so long as such installation does not cause damage to the roof, elevators or structural components of the buildings. The placement of signs at or upon the Premises shall be coordinated with the Lessor to avoid injury to the Premises and to comply with applicable law.

Sec. 22 of the Lease is amended to read as follows:

22. **ELEVATORS:** The Lessor shall ensure that all floors of the Premises under this Lease are served by elevators that comply with the current applicable editions of the rules, regulations and codes of the State and the Municipality of Anchorage. Prior to occupancy by the Lessee, the Lessor shall provide the Lessee with documentation from a licensed elevator maintenance organization stating that the elevator is in good working order and meets all the minimum standards.

Sec. 23 of the Lease is amended to read as follows:

23. **RENOVATION AFTER FINAL ACCEPTANCE OF PREMISES BY LESSEE:** After final acceptance and occupancy, at the reasonable request of the Lessee, the Lessor shall renovate the Premises at Lessee's expense by refinishing all damaged or worn walls, ceilings, floors, or built-in fixtures or replacing damaged or worn wall, floor, or window coverings and paint that are not the responsibility of Lessor. For any renovation, the Lessee reserves the right to make on-site inspections and to determine if and when the renovation is complete and satisfactory. The Lessee reserves the right to work with the Lessor on selecting colors and finishes. If the Lessor does not perform a renovation requested by the Lessee that is allowed by this Section 23 ("Renovation"), the failure to respond is a default under Section 32 ("Remedies on Default").

Sec. 24 of the Lease is amended to read as follows:

24. **WAGE-RELATED REQUIREMENTS:** If construction, alteration, repair, renovation, or redecorating work by the Lessor that is over \$25,000 is required in order for the Premises to be ready for occupancy or if work that is over \$25,000 is performed by Lessor, that directly relates to the Lessee's Premises, while the Lessee is occupying the Premises, the Lessor is advised that the Lease will be considered by the Lessee to be subject to the minimum wage and other requirements of AS 36.05.010 - 36.05.110; the current minimum wages for various classes of laborers, mechanics, and field surveyors (as these terms are defined in AS 36.95.010) and the rate of wages paid during the contract must be adjusted to the wage rate indicated under AS 36.05.010; the Lessor and Lessor's contractors must pay all employees unconditionally and not less than once a week; the scale of wages must be posted in a prominent and easily accessible place at the site of the work; the Lessee shall withhold as much of its payments under this Lease as necessary to pay to laborers, mechanics, and field surveyors employed by the Lessor or the Lessor's contractors the difference between (A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and (B) the rates of wages in fact received by the laborers, mechanics, or field surveyors that are less than the required wages. The Lessor is encouraged to contact the Department of Labor and Workforce Development for more information about these and other related requirements.

If it is found that a laborer, mechanic, or field surveyor employed by the Lessor or the Lessor's contractor has been or is being paid a rate of wages less than the rate of wages required by the Lease to be paid, the Lessee may, by written notice to the Lessor, terminate the Lessor's right to proceed with the work or the part of the work for which there is a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Lessor and the Lessor's sureties are liable to the Lessee for excess costs for completing the work.

Sec. 25 of the Lease is amended to read as follows:

25. **INGRESS AND EGRESS:** All space shall be available on a 24-hour day, seven days a week basis to the Lessee and its invitees. The Lessee shall have full access to and use of all common areas of the building including elevators, lobbies, stairwells, and restrooms. The Lessor shall install and the Lessee shall maintain a security camera system which covers all of the common areas of the building but not limited to hallways, stairwells, and elevators and the upper and lower parking areas, and provide monitors for the Lessee to operate and monitor.

Sec. 30 of the Lease is amended to read as follows:

30. **LESSEE-INSTALLED ITEMS:** All fixtures and/or equipment of whatever nature that are installed in the Premises by the Lessee, whether permanently affixed or otherwise, shall continue to be the property of the Lessee and may be removed by the Lessee at any time, provided however, that the Lessee shall, at its own expense, repair any injury to the Premises resulting from such removal. However any conduit or wiring installed by the Lessee shall remain. Notwithstanding the foregoing, Lessee may not raze and replace the improvements or make any alterations whose cost exceeds \$5,000 without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed.

Sec. 31 of the Lease is amended to read as follows:

31. **RESTORATION LIABILITIES:** Lessee agrees to leave the Premises at the expiration or termination of this Lease in as good a condition as when first occupied under this Lease, except for reasonable wear and tear and loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty. At the termination of the Lease, the Lessee is not required to restore the Premises to their condition before the Lessor or Lessee made the improvements required for the Lessee to occupy the Premises under the Lease.

Sec. 33 of the Lease is amended to read as follows:

33. **REMEDIES ON DEFAULT:** If the Lessee shall at any time be in default in the payment of rent, or in the performance of any of the terms of the Lease and shall fail to remedy such default within thirty (30) days after written notice of the default from the Lessor, the Lessor may retake possession of the Premises by an unlawful detainer action or other lawful means, and the Lease will terminate, without prejudice, however, to the right of the Lessor to recover from the Lessee all rent due up to the time of such entry. In case of any default and entry by the Lessor, the Lessor shall relet the Premises for the remainder of the term for the highest rent obtainable and may recover from the Lessee any deficiency between the amount obtained by reletting and the rent specified by the Lease.

If the Lessor shall at any time be in default in the performance of any of the terms or obligations of the Lessor under this Lease, the Lessee may fix the problem involved and deduct the cost, including administrative costs, from the rent, if the Lessor fails to fix the problem after Lessee notifies the Lessor in writing of the default. Upon such notice, Lessor shall cure the default within a reasonable time as defined in Section 49, or if the default cannot reasonably be cured within a reasonable time, then Lessor shall commence the cure within such reasonable time and prosecute it diligently until completion. If Lessor fails to so act, then it shall be in default and Lessee may elect its remedies for default. If the Lessee chooses not to fix the problem or cannot fix the problem, the Lessee may deduct from the rent the Lessee's damages, which are to be determined by the Lessee's Supply Officer. When deducting damages under this sentence, "damages" means either (1) the costs (including administrative costs) of alleviating or adjusting to the problem, or (2) the diminution of the value of the Lease to the Lessee caused by the Lessor's default. Instead of pursuing the other remedies provided by this paragraph, if the Lessor fails to correct a default within the time set forth herein after receiving written notification of the default from the Lessee, the Lessee may terminate the Lease by giving 30 days written notice of the termination to the Lessor and may recover damages from the Lessor. This paragraph does not apply to a situation covered by Section 28 ("Untenantability") or to the termination allowed under Section 20 ("Wage-Related Requirements").

Sec. 34 of the Lease is amended to read as follows:

34. **INDEMNIFICATION:** The Lessor shall indemnify, save harmless, and defend the Lessee, and its officers, agents and employees from liability of any nature or kind, including costs, attorney fees, and other expenses, for or on account of any and all legal actions or claims of any character whatsoever resulting from injuries or damages sustained by any person or persons or property as a result of any error, omission, or negligence, of the Lessor that occurs on or about the rental Premises or that relates to the Lessor's performance of its lease obligations.

Sec. 35 of the Lease is amended to read as follows:

Without limiting Lessor's indemnification, it is agreed that Lessor will purchase at its own expense and maintain in force at all times during the Lease the following policies of insurance:

The requirements contained herein, as well as Lessee's review or acceptance of insurance maintained by Lessor is not intended to, and shall not in any manner, limit or qualify the liabilities or obligations assumed by Lessor under this Lease.

Insurance policies required to be maintained by Lessor will name Lessee as additional insured for all coverage except Workers' Compensation and Professional Liability/E&O insurance.

Lessor and its subcontractors agree to obtain a waiver, where applicable, of all subrogation rights against Lessee, its officers, officials, employees and volunteers for losses arising from work performed by the Lessor and its subcontractors for Lessee. However, this waiver shall be inoperative if its effect is to invalidate in any way the insurance coverage of either party.

Where specific limits are shown, it is understood that they will be the minimum acceptable limits. If the Lessor's policy contains higher limits, Lessee will be entitled to coverage to the extent of such higher limits. The coverages and/or limits required are intended to protect the primary interests of Lessee, and the Lessor agrees that in no way will the required coverages and/or limits be relied upon as a reflection of the appropriate types and limits of coverage to protect Lessor against any loss exposure whether a result of this Agreement or otherwise.

Failure to furnish satisfactory evidence of insurance or lapse of any required insurance policy is a material breach and grounds for termination of the Lease.

- a. **Property Insurance:** The Lessor will provide and maintain (with Lessee reimbursement as per Section 4(b)(14):
1. Property insurance in an amount of not less than 100% of the replacement cost of the building(s) and contents, including improvements made on behalf of Lessee. Coverage shall be written on an "all risk" replacement cost basis and include an endorsement for ordinance and law coverage.

2. If the property is located in a floodplain, flood insurance in an amount of not less than 100% of the replacement cost of the building(s) and contents, including improvements made on behalf of Lessee; or the maximum amount available from the National Flood Insurance Program, whichever is less.
- b. Workers' Compensation Insurance: The Lessor will provide and maintain, for all employees of the Lessor engaged in work under the Contract, Workers' Compensation Insurance as required by AS 23.30.045. The Lessor shall be responsible for ensuring that any subcontractor that directly or indirectly provides services under this Lease has Workers' Compensation Insurance for its employees. This coverage must include statutory coverage for all States in which employees are engaging in work and employer's liability protection for not less than \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e., USL & H and Jones Acts) must also be included.
- c. Commercial General Liability Insurance: The Lessor will provide and maintain Commercial General Liability Insurance with not less than \$1,000,000 per occurrence limit, and will include premises-operation, products/completed operation, broad form property damage, blanket contractual and personal injury coverage. Coverage shall not contain any endorsement(s) excluding or limiting contractual liability nor providing for cross liability.
- d. Automobile Liability Insurance: The Lessor will provide and maintain Automobile Liability Insurance covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 per occurrence bodily injury and property damages. In the event Lessor does not own automobiles, Lessor agrees to maintain coverage for hired and non-owned liability which may be satisfied by endorsement to the CGL policy or by separate Business Auto Liability policy.
- e. Umbrella or Excess Liability: Lessor may satisfy the minimum liability limits required above for CGL and Business Auto under an umbrella or excess Liability policy. There is no minimum per occurrence limit under the umbrella or excess policy; however the annual aggregate limit shall not be less than the highest per occurrence limit stated above. Lessor agrees to endorse Lessee as an additional insured on the umbrella or excess policy unless the certificate of insurance states that the umbrella or excess policy provides coverage on a pure "true follow form" basis above the CGL and Business Auto policy.
- f. Professional Liability Insurance: The Lessor will provide and maintain Professional Liability Insurance covering all errors, omissions or negligent acts of the Lessor, its property managers, subcontractors or anyone directly or indirectly employed by them, made in the performance of this Lease which results in financial loss to the State. Limits required are \$500,000.
- g. Fidelity Bond: The Lessor will provide and maintain a Fidelity Bond in the amount of \$250,000 covering all acts of the Lessor, its property managers, or subcontractors who shall have access or perform work upon the Premises.

- h. Certificates of Insurance Lessor agrees to provide Lessee with certificates of insurance evidencing that all coverages, limits and endorsements as described above are in full force and effect and will remain in full force and effect as required by this Lease. Certificates shall include a minimum thirty (30) day notice to Lessee cancellation or non-renewal. The Certificate Holder address shall read:

Legislative Affairs Agency
State Capitol, Room 3
Juneau, Alaska 99801-1182
Fax (907) 465-2918

Sec. 36 of the Lease is amended to read as follows:

36. **DELAYS IN PERFORMANCE:** If the Lessor delays in providing the Premises to the Lessee in a condition the Lessee determines satisfactorily meets the descriptions provided in the attached Exhibit "A", by the deadline set forth in section 3 and Exhibit "B", the Lessor shall provide a written explanation for the delay in performance. The Lessor may be excused from performance due to unforeseeable causes beyond the control and without fault or neglect of the Lessor. Unforeseeable causes may include, but are not limited to: (1) acts of God, (2) public enemy, (3) acts of the state in its sovereign capacity, (4) acts of another contractor in the performance of a contract with the Lessee, (5) fires, (6) floods, (7) quarantine restrictions for epidemics, (8) strikes, (9) freight embargoes, (10) unusually severe weather conditions, and (11) delays unusual in nature by subcontractors or suppliers. Notification of such delays must be made to the Lessee's Procurement Officer in writing within ten (10) days of the commencement of the unforeseeable cause. The Procurement Officer shall ascertain the facts and the extent of delay and the extent of the time for completing the project. The Procurement Officer may approve up to four (4) thirty (30) day extensions if, in the Procurement Officer's judgement, the findings of fact justify an extension. The cause of the extension need not be unforeseeable to justify an extension. The Lessor shall provide written explanation for the delay in performance after the exhaustion of each extension. The Procurement Officer may terminate the Lease at any time after the four (4) thirty (30) day extensions if the Lessor has not provided the Premises to the Lessee in a condition the Lessee determines satisfactorily meets the descriptions provided in the attached Exhibit "A" by the deadline set in Exhibit "B". Pending final decision on an extension of time under this section, the Lessor shall proceed diligently with the performance of the Lease. Inability to comply with state or municipal construction or zoning laws or ordinances or restrictive covenants shall not be regarded as an unforeseeable cause. To terminate the Lease under this section, the Procurement Officer shall provide notice by e-mail or delivery of hard copy to the Lessor, whichever method is selected in the sole discretion of the Procurement Officer. The Procurement Officer shall provide thirty (30) days notice before terminating this Lease.

Sec. 37 of the Lease is amended to read as follows:

37. **HOLDING OVER:** At the Lessee's sole discretion, prior to the Lease expiration, the Lessee may provide a one hundred eighty (180) day written notice to the Lessor informing the Lessor that the Lessee wishes to hold over following the end of the Lease Term. Such election for a holdover shall be not less than six months in duration and not more than one year in duration following the end of the Lease Term. Base Monthly Rental for the Holdover Period shall be as was in effect at the end of the Lease Term plus the applicable Base Monthly Rental adjustment set forth in Section 1(d). Only one holdover election shall be allowed. All other terms and conditions specified by the Lease remain the same.

Sec. 39 of the lease (as amended by Lease Amendment #2 and Renewal # 1 (2009-2010) signed 3/11/2009) is amended as follows:

Delete all content beginning with the second paragraph which begins "The Lessor consents to the Lessee's assignment..."

Sec. 41 of the Lease is amended to read as follows:

41. **USE OF LOCAL FOREST PRODUCTS:** AS 36.15.010 requires that in a project financed by State money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber, and manufactured lumber products originating in this State from local forests shall be used wherever practicable. Therefore, if construction, repair, renovation, redecoration, or other alteration is to be performed by the Lessor to satisfy this Lease, the Lessor must use, wherever practical, timber, lumber, and manufactured lumber products originating in the State from local forests and only products manufactured, produced, or harvested in the state may be purchased if the supplies are competitively priced, available, and of like quality compared with products manufactured, produced, or harvested outside the state.

Sec. 42 of the Lease is amended to read as follows:

42. **LEASE AMENDMENTS:** In addition to any other amendment the parties may be allowed to make under the Lease, the terms of the Lease entered into may be amended by mutual agreement of the parties, if the Lessee determines that the amendment is in the best interests of the Lessee.

Sec. 43 of the Lease is amended to read as follows:

43. **AUTHORIZATION; CERTIFICATION:** Authority for the Chairman of Legislative Council to execute this Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on June 7, 2013.

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the Lease through June 30, 2015. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2015, is contingent upon appropriation of funds for the particular fiscal year involved. In addition to any other right of the Lessee under this Lease to terminate the Lease, if, in the judgment of the Legislative Affairs Agency Executive Director, sufficient funds are not appropriated by the

Legislature, the Lease will be terminated by the Lessee or amended. To terminate under this section, the Lessee shall provide written notice of the termination to the Lessor. The Executive Director will include a budget request to cover the obligations of Lessee in the proposed budget as presented to the Legislative Council for each lease year as a component of Lessee's normal annual budget request and approval process.

The Lease is amended by adding new sections to read as follows:

46. **HUMAN TRAFFICKING:** By the Lessor's signature on this Lease, the Lessor certifies that the Lessor is not headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

In addition, if the Lessor conducts business in, but is not headquartered in, a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report, a certified copy of the Lessor's policy against human trafficking must be submitted to the Agency prior to contract award.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/rls/tiprpt>.

If the Lessor is or becomes headquartered in a Tier 3 country, or fails to comply with this Section 46 ("Human Trafficking"), the Lessee may terminate the Lease.

47. **OPTION TO EXTEND LEASE:** The Lessee may exercise an option under this section 47 to extend, as provided by AS 36.30.083, the Lease for up to 10 years following the end of the expiring lease term. To exercise this option, the Lessee shall give notice to the Lessor at least six (6) months before the end of the Lease of the Lessee's intent to negotiate with the Lessor to extend the Lease under AS 36.30.083. The Lessor shall respond within thirty (30) days to the Lessee stating whether the Lessor intends to negotiate an extension under AS 36.30.083 with the Lessee.

48. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT (SNDA):**

- a. **Mortgages.** This Lease is subordinate to prior or subsequent mortgages covering the Premises. Lessor shall obtain from Lessor's mortgage lender for the Premises an agreement that in the event of a foreclosure by Lessor's lender, this Lease shall stay in effect and Lessee's quiet enjoyment shall not be disturbed so long as it is not in default.
- b. **Foreclosures.** If any mortgage is foreclosed, then:
 1. This Lease shall continue; and Lessee's quiet possession shall not be disturbed if Lessee is not in default;
 2. Lessee will attorn to and recognize the mortgagee or purchaser at a foreclosure sale ("Successor Lessor") as Lessee's lessor for the remaining Term; and

3. The Successor Lessor shall not be bound by:

- i. any payment of Rent or Additional Rent for more than one month in advance, except as specified in the Lease;
 - ii. any amendment, modification, or ending of this Lease without Successor Lessor's consent after the Successor Lessor's name is given to Lessee unless the amendment, modification, or ending is specifically authorized by the original Lease and does not require Lessor's prior agreement or consent; and
 - iii. any liability for any act or omission of a prior Lessor.
- c. **Notice.** Lessee shall give notice to mortgagee of any claim of default under the Lease and allow mortgagee at least thirty (30) days to cure the default prior to terminating the Lease. Lessor and such mortgagee shall provide Lessee with a notice address for this purpose.
- d. **Self-Operating.** These provisions are self-operating. However, Lessee shall promptly execute and deliver any documents needed to confirm this arrangement and such other commercially reasonable terms as required by a mortgagee provided such document also confirms Lessee's right of non-disturbance so long as it is not in default.
- e. **Estoppel Certificate.**
- 1. **Obligation.** Either party ("**Answering Party**") shall from time to time, within ten (10) business days after receiving a written request by the other party (Asking Party), execute and deliver to the Asking Party a written statement. This written statement, which may be relied upon by the Asking Party and any third party with whom the Asking Party is dealing shall certify: (i) the accuracy of the Lease document; (ii) the Beginning and Ending Dates of the Lease; (iii) that the Lease is unmodified and in full effect or in full effect as modified, stating the date and nature of the modification; (iv) whether to the answering Party's knowledge the Asking Party is in default or whether the Answering Party has any claims or demands against the Asking Party and, if so, specifying the default, claim, or demand; and (v) to other correct and reasonably ascertainable facts that are covered by the Lease terms.
 - 2. **Remedy.** The Answering Party's failure to comply with its obligation shall be a default. The cure period for this Default shall be ten (10) business days after the Answering Party receives notice of the default.

49. **DEFINITIONS:**

"commercially reasonable regular schedule" per Section 4 (a) 7 is defined as professional carpet cleaning performed at least once every six (6) months or sooner if the carpeting and walk-off mats show excessive soiling or staining.

"final acceptance and occupancy" is defined as the date that the Lessee takes occupancy of the renovated Premises. This date is related to the lease agreement only and shall not be confused with terms such as substantial completion, partial completion, or other terminology that is directly related to Exhibit "A" and Exhibit "B".

"reasonable time" per Section 33 is defined as follows with respect to the Lessor's obligations as described under Section 4 and more specifically, to the Lessor's responsibility to ensure uninterrupted service to the Premises:

- a. any interruption in a critical building service that immediately and substantially interferes with the Lessee's ability to use the Premises and that is under the control of Lessor including but not limited to items in Section 4 (a) 1 and 2 or any failure or interruption in HVAC, plumbing, water, sewer, electricity, elevators, or fire safety; the Lessor shall commence repairs/restoration as soon as notified and shall endeavor to restore services or temporary substitute services within a "reasonable time" of 24 hours.
- b. ordinary maintenance requests per Sections 4 (a) 3, 4, 6, 7, 8, 9, 10, and 11; the Lessor shall commence work as soon as possible and shall complete the work within a "reasonable time" of thirty (30) days.
- c. extraordinary maintenance requests per Section 4 (a) 5; the Lessor shall commence work within ninety (90) days and shall diligently pursue the work to completion.

"reasonably required" per Section 4 (a) 5, Section 9, and Section 12 – is defined as the time the carpeting or other floor coverings, paint, or casework is no longer in good condition or repair and in the Lessee's opinion is in need of repair or replacement.

50. **INCORPORATION:**

The following documents are incorporated by reference and form a material part of this into this Extension of Lease and Lease Amendment No. 3:

Exhibit "A" LIO Approval Plans (plans, drawings, technical specifications).

Exhibit "B" Project Schedule

Exhibit B-1 Interim Occupancy Schedule

Exhibit "C" Written determination by the Procurement Officer regarding the procurement process leading to this Extension of Lease and Lease Amendment No. 3.

Exhibit "D" Executive Director's Cost Saving Calculation and Report to the Legislative Budget and Audit Committee per AS 36.30.083(b).

51. **AGREEMENT IN ITS ENTIRETY:**

The Lease represents the entire understanding between the parties. No prior oral or written understandings shall have any force or effect with respect to any matter covered in the Lease or in interpreting the Lease. The Lease shall only be modified or amended in writing.

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The Lease represents the entire understanding between the parties. No prior oral or written understandings shall have any force or effect with respect to any matter covered in the Lease or in interpreting the Lease. The Lease shall only be modified or amended in writing.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:

Mark E. Pfeffer Date
Manager
Tax Identification No.: 46-3682212
Business License No.: 423463

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Robert B. Acree Date
Member

9/19/13

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Mark E. Pfeffer Alaska Trust UTAD 12/28/07

Alana Williams date
Its: Trustee


LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day, month, and year indicated below.

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By its Manager:

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LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Robert B. Acree Date
Member

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:
Mark E. Pfeffer Alaska Trust UTAD 12/28/07

 9/19/13

Alana Williams Date
Its: Trustee

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

Pamela A. Vami Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:

Legal Counsel Date

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day, month, and year indicated below.

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Tax Identification No.: 46-3682212
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Robert B. Acree Date
Member

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:
Mark E. Pfeffer Alaska Trust UTAD 12/28/07

Alana Williams Date
Its: Trustee

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

 9.19.13
Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:

Legal Counsel Date

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:

Mark E. Pfeffer Date
Manager
Tax Identification No.: 46-3682212
Business License No.: 423463

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Robert B. Acree Date
Member

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:
Mark E. Pfeffer Alaska Trust UTAD 12/28/07

Alana Williams Date
Its: Trustee

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

Pamela A. Varni 9/19/13
Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:

Legal Counsel Date

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By its Member:

Robert B. Acree Date
Member

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Mark E. Pfeffer Alaska Trust UTAD 12/28/07

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Its: Trustee

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

Pamela A. Vami Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:

P. J. Anderson 9-19-13
Legal Counsel Date

CERTIFYING AUTHORITY

APPROVED AS TO FORM:

Pamela A. Varni
Executive Director
Legislative Affairs Agency

Date

Legal Counsel

Date

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

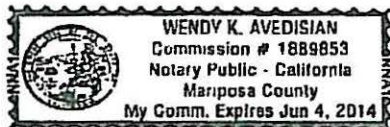
Notary Public in and for Alaska
My commission expires: _____

California
STATE OF ~~ALASKA~~)
) ss.
~~THIRD JUDICIAL DISTRICT~~)
County of Mariposa

THIS IS TO CERTIFY that on this 19 day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

[Signature]
Notary Public in and for Alaska
My commission expires: 6/4/14



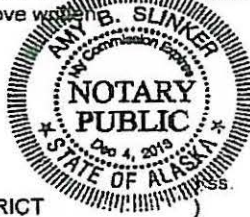
STATE OF ALASKA

)
) ss.
)

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

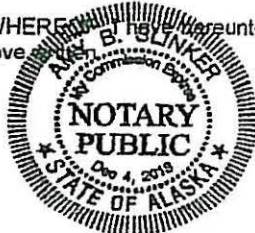
STATE OF ALASKA

)
) ss.
)

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

10:04:42 AM

- I. **CHAIR MIKE HAWKER** called the Legislative Council meeting to order at 10:00 a.m. in room 670 of the Anchorage Legislative Office Building. Chair Hawker noted that the meeting would start with the executive session first and then Council would proceed to routine motions and business activities. Due to a technical issue with the recorder's microphone, Chair Hawker recited the roll call for purposes of establishing a quorum. Present at the call were Representatives Hawker, Johnson, Stoltze and P. Wilson (via teleconference); and Senators Coghill (via teleconference), Egan, and Micciche (via teleconference), and Hoffman (alternate member).

REPRESENTATIVE JOHNSON moved that that Legislative Council go into executive session under Uniform Rule 22 (b) for the discussion of matters the immediate knowledge of which would adversely affect the finances of a government unit.

10:06:50 AM

Legislative Council went into executive session.

1:02:43 PM

Legislative Council came out of executive session.

CHAIR HAWKER called the roll. Present at the call were Representatives Hawker, Johnson, Pruitt, Stoltze and P. Wilson (via teleconference); and Senators Egan, McGuire, Meyer and Hoffman (alternate member).

II. ANCHORAGE LIO LEASE

Chair Hawker noted that the first order of business is a series of four motions related to the extension of the Anchorage LIO lease.

MOTION - LEASE EXTENSION

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

REPRESENTATIVE STOLTZE objected to ask for a brief description of the thought process for this item for the public record.

CHAIR HAWKER said this suite of motions allows the Legislature to extend our current lease under AS 36.30.083(a), which provides for lease extension on a sole source basis as long as certain financial conditions are met; amends the Legislature's

procurement procedures to allow material amendments to existing leases; empowers the Chairman to negotiate material amendments to the existing lease - amending paragraph 42 to comply with the amended procurement procedures and incorporating the leasehold improvements proposed by the landlord to modernize the existing LIO facility, limited in cost to be less than similarly sized, located, and apportioned newly constructed facilities in downtown Anchorage as determined by the Alaska Housing Finance Corporation (AHFC); and allows AHFC to be engaged as the Legislature's tenant representative for lease negotiation with the landlord and project oversight. He further noted for the record that Council sought other downtown Anchorage properties suitable to legislative function and found none, leaving the option of constructing a new building. Council has definitively said that a new state-owned building is not a desirable outcome, leading to the decision to improve the existing location.

Representative Gruenberg joined the meeting at this time.

REPRESENTATIVE STOLTZE spoke to the suite of motions. He said he was inclined to support these motions noting the lack of suitable alternative space. He said that the current option of improving the existing space would allow for the possibility of 40 members and 20 members having the ability to meet on some basis. He said he was not talking about a capital move, but under certain circumstances where the public would be served, and he thinks the Legislature would be well-served by the opportunity to meet in Anchorage in possible special sessions. The opportunity to have larger meeting spaces for the public and for the entire Legislature for short-term meetings is something his district would support. He said he has some reservations about parts of the process, is a little bit hesitant about sole-source procurement, but under the circumstances and with the meeting space accommodations being offered, this option has his support.

SENATOR MCGUIRE said for the record that considering the controversy generated when previous Legislative Councils have considered the option of purchasing a building, the current members felt that purchasing a new building at this stage is simply not something this Legislative Council wants to go through. She said they think it is more in the public benefit to keep this particular building on the municipal tax rolls; that keeping with the existing leaseholder is in the public interest; and allowing this leaseholder to make the tenant improvements that are necessary is in the public interest. She said that there are significant health and safety issues with this building that have been brought up time and time again to the Legislative Affairs Agency Executive Director that will need to be covered in those improvements.

CHAIR HAWKER added that pursuing the sole source option within Alaska statute was deemed to be the most practicable method forward as the lease on the current building expires in 11 months with no renewal options left; there is no other option at this point as the Request for Information (RFI) that was issued regarding real estate across the Municipality of Anchorage received only two responses, neither of which was able to accommodate the Legislature downtown at all and both had limited utility regardless of location. He said Council has done adequate due diligence and they are working within the parameters of the time frame in which they find it necessary to work. For these reasons and the substantive reasons stated by Senator McGuire, Council has chosen to pursue a sole sourcing option.

The motion allowing the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a) passed with no objections.

MOTION - AMEND PROCUREMENT PROCEDURE

1:13:32 PM

SENATOR MCGUIRE moved that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide a limited ability for the Legislative Affairs Agency, or a legislative committee, to materially modify an existing lease that was previously competitively procured.

CHAIR HAWKER, in response to a question for clarification by Representative Stoltze regarding the motion made by Senator McGuire, confirmed that Senator McGuire was mistaken when she said, in part, "...Legislative Affairs Council..." and that the motion reads "Legislative Affairs Agency...".

REPRESENTATIVE GRUENBERG asked about paragraph four, specifically that one of the factors is that the modification must be in the best interest of the Agency or the committee and he wondered if there was a difference between saying that and saying "in the public interest." He said he could foresee something where a narrow Agency might have a particular interest but it might not necessarily be in the public interest and he wondered legally about that.

DOUG GARDNER, Legal Services Director, said some contracts are entered into by the Agency at the direction of Legislative Council and those would be approved by Legislative Council; some contracts are entered into by committee. He said he could not think of any committee leases at the moment, but in order to accommodate the traditional type of leasing, it is broken down into those two categories.

REPRESENTATIVE GRUENBERG interrupted to say that he was drawing a distinction between local interests as opposed to broad public interest or if this amendment considers them to be the same.

MR. GARDNER responded that this Council would be approving those items and because of the composition of Legislative Council which has statewide representation, there wasn't a local interest that wouldn't also be a public interest as a consideration. Representative Gruenberg was satisfied with that response and simply wanted it on the record.

Senator Coghill joined the meeting at this time via teleconference.

CHAIR HAWKER repeated the motion and asked if there were further objections.

The motion to amend Legislative Procurement Procedure 040 passed with no objections.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE

1:17:19 PM

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

CHAIR HAWKER said this motion authorizes material amendments to be made to the extended lease and would allow the chair to negotiate material modifications and renovations for the facility currently occupied.

SENATOR EGAN asked for a copy of the motions.

CHAIR HAWKER said a copy of the motions for this meeting should have been emailed to each member. In response to a question posed by Senator Coghill, he said that the quorum is on record so there is no need for a roll call vote.

The motion to authorize material amendments to the lease passed with no objections.

REPRESENTATIVE STOLTZE said he has not talked to Mr. Pfeffer about this project but he had in the past received political contributions from him. He was not asking to be excused from the vote, simply noting it for the record.

CHAIR HAWKER noted as a point of reference that Mr. Pfeffer is a landlord for the building currently occupied by the Legislature in Anchorage. He further noted that he also has received contributions from Mr. Pfeffer over the course of his political career.

REPRESENTATIVE GRUENBERG stated that he also has received political contributions from Mr. Pfeffer.

CHAIR HAWKER stated for the record that the following members indicated that they too had received political contributions from Mr. Pfeffer: Representatives Pruitt and Johnson and Senators Egan, Meyer, Hoffman, Coghill, and McGuire. Representative Peggy Wilson said she has not received a contribution from Mr. Pfeffer that she knows of.

MOTION - ENGAGE AHFC AS LESSEE'S REPRESENTATIVE

CHAIR HAWKER said that there was a benchmark number of \$50,000 in this motion. He said he spoke with Mr. Fauske at AHFC and depending on the amount of work done; the final amount could be anything from gratis to the full amount authorized in this motion. He said he will continue to work with AHFC to accommodate this on as much of a gratis basis as possible.

1:21:58 PM

SENATOR MCGUIRE moved that that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

The motion to engage AHFC as Lessee's representative passed with no objections.

CHAIR HAWKER said that with the passage of the fourth and final motion, that takes care of the beginning of a fabulous project to establish legislative facilities that will accommodate legislative needs for the next 10 or more years.

SENATOR MEYER commented that, for the record, he appreciated as an Anchorage legislator that Council has opted to extend and

renovate rather than buy or build a new building. He remembered being upset as an Anchorage Assembly member in the '90s when the State bought the Atwood Building and took it off the tax rolls. He said every time that happens it is essentially a property tax increase for the rest of Anchorage. He said he also appreciates that Council is keeping its obligation to the downtown area and staying in the downtown area even when it's sometimes difficult.

SENATOR HOFFMAN asked about the time frame and transition of the project.

CHAIR HAWKER said that although it is subject to final determination as there will need to be a design process for scope of improvement, he hopes the project will be concluded in approximately a nine month period - commencing sometime between October and December, with completion timed to permit reoccupation as soon as possible after the 2014 legislative session is concluded.

III. APPROVAL OF MINUTES

1:25:18 PM

SENATOR MCGUIRE moved that the minutes from the Legislative Council meeting on May 13, 2013 be approved.

The minutes were approved with no objections.

IV. RATIFICATION OF CHARITABLE EVENT

1:25:53 PM

SENATOR MCGUIRE moved that Legislative Council ratify the following charity event, which was previously sanctioned by the Legislative Council Chair in accordance with AS 24.60.080(a) (2) (b):

a. 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc.

CHAIR HAWKER noted for the record that the 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc., met all the qualifications in statute of being a 501(c) (3) organization.

The event was ratified with no objections.

Appraisal Assignment
Format: Appraisal Report

Reliant



Legislative Affairs Building

716 West 4th Avenue
Anchorage, Alaska 99501

Latitude: 61°13'5.85"N, Longitude: 149°53'47.36"W

Client Reference Number: RIMS #14-000472-03-01

Reliant Reference Number: 14-0900



as of December 5, 2014

Prepared For:
Mr. Jim StJohn
EverBank

9330 Vanguard Drive, Suite 201
Anchorage, Alaska 99507
Phone: (907) 929-2226
Fax: (907) 929-2260
Email: admin@reliantadvisory.com
www.reliantadvisory.com

716-000279

follows:

- Plat map
- Conceptual drawings and floor plans
- Geotechnical report
- Construction costs and remaining cost to complete
- Purchase and Sale Agreement (for Anchor Pub at 712 West 4th Avenue prior to renovation/expansion project)
- Complete lease documentation
- Market rent appraisal report by Timothy Lowe, MAI, CRE, FRICS
- Pro-forma operating expense information

The following information was not available to the appraiser:

- Three years of historic operating data
- Full architectural plans
- As built
- Title report
- Environmental study

Market Analysis

Extensive research on macro and micro economic conditions within the subject's market has been conducted. Extensive research on current market conditions within the subject's sector of the real estate market has been conducted. The Appraisal Institute recognizes two categories of market analysis: inferred and fundamental. Inferred analyses (Level A and B) are basic methods by which future supply and demand conditions are inferred by current and general market conditions (secondary data). In fundamental analyses (Level C and D), general information is supplemented by detailed data in order to forecast supply and demand, as well as subject-specific absorption and capture (primary data). The market analysis performed in this assignment is based on inferred demand.

Approaches to Value

LAND VALUATION	This approach was developed because it is necessary to develop a credible and reliable estimate of market value for this property type.
COST APPROACH	This approach was developed because it is necessary to develop a credible and reliable estimate of market value for this property type.
SALES COMPARISON APPROACH	This approach was not developed because there is inadequate market data to develop a credible value estimate through this approach. That said, the most relevant available sales data was gathered and analyzed primarily as a test of reasonableness for the value developed in the other approaches. The available sales data also aided in the selection of an appropriate rate of return for the subject.
INCOME CAPITALIZATION APPROACH	This approach was developed because it is necessary to develop a credible and reliable estimate of market value for this property type.