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Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan  
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC and  
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

The Legislative Affairs Agency ("LAA") extended a real property lease for the Legislative Information Office building ("LIO") pursuant to AS 36.30.083(a). It is undisputed that LAA has had a real property lease with its landlord ("716 West") for the LIO at this location for more than a decade and that, on September 19, 2013, LAA entered into the Extension of Lease and Lease Amendment No. 3 (the "Lease Extension") with the same landlord for the same location to continue its tenancy there. Consistent

with the parties' intent, this was a lease extension that concerned the same basic space being rented from the same landlord, albeit with extensive renovations and some expansion. Plaintiff ("ABI") argues that any modifications to the terms and conditions of the original lease – aside from a simple change in the end date of the lease – compels a finding that this is not an "extension" under the statute. The law is otherwise. Accordingly, the Court should deny ABI's motion for partial summary judgment.

As the Court is aware, the Legislature's Second Regular Session is presently underway. The pendency of this litigation and ABI's ongoing challenges to the validity of these procurement procedures have created uncertainty concerning the application of AS 36.30.083(a) for this lease, which has the potential to impact budgeting and other decisions that will be made during the session. LAA respectfully requests that the Court provide a ruling on the potentially dispositive<sup>1</sup> legal issue of the proper interpretation of AS 36.30.083(a) as soon as practicable.

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<sup>1</sup> If ABI's motion is denied, the parties will litigate whether or not LAA satisfied that portion of AS 36.30.083(a) which requires that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of extension would be achieved on the rent due under the lease. If ABI's motion is granted because the lease is found not to be an "extension" and the lease is voided as a result, then the "cost savings" issue will be moot.

## I. STATEMENT OF UNDISPUTED FACTS<sup>2</sup>

LAA entered into a lease for the LIO premises at 716 West 4th Avenue pursuant to the lease dated April 6, 2004, which included five one-year renewal options.<sup>3</sup> This lease was competitively procured. In 2006, the lease was amended to modify the amount of property being rented: the number of reserved parking spaces was decreased from 98 to 86.<sup>4</sup> The parties also agreed to a reduction in the rent to account for the change in the amount of rented property.<sup>5</sup> In 2009, the lease was amended again to modify the amount of property that was available exclusively to LAA. LAA assigned to the Anchorage Community Development Authority the right to manage roughly 58% of the reserved parking spaces for “off hours parking.”<sup>6</sup> The lease term was also extended for another year by exercising a renewal, and the rent was modified to reflect changes in 716 West’s variable costs.<sup>7</sup> Following the exercise of all renewals, the lease was set to expire on May 31, 2014, unless extended.

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<sup>2</sup> LAA’s description of the facts differs from and expands upon those in the Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) (the “Motion”) (filed June 12, 2015). LAA believes that these differences are not material and should not deter the Court from issuing a legal ruling on the proper interpretation of AS 36.30.083(a) as a matter of law.

<sup>3</sup> See Exh. A at 1.

<sup>4</sup> See Exh. B at 1 ¶ 1.

<sup>5</sup> See *id.* at 2 ¶ 2.

<sup>6</sup> See Exh. C at 2-3 ¶ 2 [sic] (amending paragraph 39 of the original lease).

<sup>7</sup> See *id.* at 1-2 ¶¶ 1-2.



The Alaska Legislative Council (“Legislative Council”) is a permanent interim committee and service agency of the Legislature.<sup>8</sup> The Legislative Council has control and direction over all legislative office space.<sup>9</sup> LAA notified the Legislative Budget and Audit Committee Legislature on September 19, 2013, that it would be entering into the Lease Extension and described the relevant terms.<sup>10</sup> LAA described the rental payments, the renovation of the premises, and the amendment to accommodate an expansion of the premises. The Lease Extension was openly and promptly disclosed to the Legislature and the public.

The Legislative Council has the authority to adopt and publish procedures that govern the procurement of various supplies and services by the Legislature.<sup>11</sup> These procedures must be based on the competitive principles in the State Procurement Code, but must also “be adapted to the special needs of the legislative branch as determined by the legislative council.”<sup>12</sup> The Legislative Council adopted and published the Alaska Legislative Procurement Procedures to address these procurements.<sup>13</sup> Section 40 of the Alaska Legislative Procurement Procedures exempts certain contracts from competitive solicitation requirements. In particular, a contract (including a lease) is exempt if the

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<sup>8</sup> AS 24.20.010.

<sup>9</sup> AS 24.20.060(5).

<sup>10</sup> See Exh. D (Sept. 19, 2013 letter from Pamela Varni to Sen. Anna Fairclough and Rep. Mike Hawker); AS 36.30.083(b).

<sup>11</sup> AS 36.30.020.

<sup>12</sup> *Id.*

<sup>13</sup> The Alaska Legislative Procurement Procedures are publicly available at: <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=97814>



procurement officer determines in writing that it is not practicable to award the contract by competitive sealed bidding, competitive sealed proposals, or another competitive method, and an award of the contract in this fashion is in the LAA's best interest.<sup>14</sup> This written determination is a public record.<sup>15</sup> A lease that was originally procured competitively may be materially modified by an amendment – without the need for 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 to a lease concerning a legislative committee, by a majority of the committee members.<sup>16</sup>

On September 16, 2013, the procurement officer (Rep. Mike Hawker) made a written determination that the 2004 lease between LAA and 716 West could be materially modified to incorporate the immediately adjacent property without procurement of a new lease.<sup>17</sup> This written determination was appended to the Lease Extension and complied

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<sup>14</sup> See Exh. E, Alaska Legislative Procurement Procedures § 040.

<sup>15</sup> See *id.*

<sup>16</sup> *Id.* § 040(d).

<sup>17</sup> See Exh. F at 2 (the expanded footprint now included 712 West Fourth Avenue as well).

with all of the requirements of Section 40 of the Alaska Legislative Procurement Procedures. In a nine-page document, the procurement officer detailed his findings as to why the Lease Extension complied with the requirements of Alaska Legislative Procurement Procedures. ABI does not assert that the Lease Extension violated AS 36.30.020 or the Alaska Legislative Procurement Procedures.<sup>18</sup>

LAA entered into the Lease Extension with 716 West on September 19, 2013.<sup>19</sup> The Lease Extension extended the existing lease for 10 years from June 1, 2014, to May 31, 2024.<sup>20</sup> The Lease Extension provided for demolishing the former restaurant/bar known as the Anchor Bar, aside from its east wall, and remodeling, renovating, and expanding the existing LIO so that it now covered both lots on the combined site from the old LIO building and the Anchor Bar.<sup>21</sup> It provides for site demolition of the existing structures and nearby sidewalk, excavation and backfill on top of the existing foundation, abandonment of existing water services and installation of a new water service to connect to the main, installation of new sanitary sewer service, and construction of the current structure based on new plumbing, heating, fuel system, ventilation, electrical, and

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<sup>18</sup> To be clear, ABI does dispute that the Lease Extension is appropriate, but its complaint is that the Lease Extension purportedly does not “extend” a real property lease nor was it at least 10% below the market rental value of the real property at the time of the extension. *See* Response to Interrogatory No. 5, attached as Exh. G. Aside from those issues, which hinge on the interpretation of AS 36.30.083(a), ABI does not dispute that the Lease Extension complies with AS 36.30.020 and the Alaska Legislative Procurement Procedures.

<sup>19</sup> *See* Exh. 1 (attached to Affidavit in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) (filed June 12, 2015)).

<sup>20</sup> *See id.* at 2.

<sup>21</sup> *See id.* at 49.

insulation designs.<sup>22</sup> The Alaska State Legislature vacated the premises for over 13 months during the demolition and reconstruction process.

## II. ARGUMENT

### A. The Lease Extension Relates to a Real Property Lease.

ABI claims that the Lease Extension did not “extend a real property lease” under AS 36.30.081.<sup>23</sup> ABI does not dispute, nor could it, that the subject of the Lease Extension is a “real property lease.” The Lease Extension amends the original 2004 lease (recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, as previously amended). It relates to the leasing of certain real property rights from 716 West.

### B. Under the Broad Terms of AS 36.30.083(a) the Lease Extension is an Extension of the Same Contract for a Real Property Lease.

Given that the subject of the Lease Extension is real property rights – i.e., the leasing of a building – the core issue presented by ABI’s Motion is whether or not the Lease Extension qualifies as an “extension” under AS 36.30.083(a). ABI’s argument that it does not confuses the plain language of the statute and imposes constrictions absent from Alaska law. Alaska Statute 36.30.083(a) is broadly written to permit the Legislative

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<sup>22</sup> See *id.* at 49-70; *id.* at 70 (“The proposed renovation consists of removing the Anchor Bar from the east side of the building, removing the east and west concrete walls from the existing building, and removing the existing north elevator and stair core (along with the northern penthouse).”). Certain features of the old building remained, as ABI concedes. See Motion at 3 (acknowledging that the foundation and steel frame of the original LIO building remained intact).

<sup>23</sup> See Motion at 7.



Council to extend a real property lease if certain cost savings are achieved;<sup>24</sup> the statute contains no restrictions suggesting that substantial renovations are impermissible for a lease extension.<sup>25</sup>

ABI argues that LAA did not “extend” the lease when it lengthened the duration of that lease because there were also changes to some lease terms.<sup>26</sup> This overly restrictive approach defies logic and is contrary to the history of this lease; leases are not the static documents that ABI claims. As reflected in the history of the lease at issue, the parties permissibly changed the lease rates and the amount of property being rented pursuant to the terms of that lease numerous times since 2004. The fact that the landlord completed extensive renovations, or that other changes were made to the terms of the lease, does not alter the fundamental character of the Lease Extension as an extension of a lease.

**1. The Plain Language of the Statute Does Not Limit the Scope of Lease Extensions to Exclude Substantial Lease Modifications.**

ABI appears to argue that the extension of a lease’s term is not an “extension” under AS 36.30.083(a) if either the lease’s terms or the structure of the building changes “too much.”<sup>27</sup> It is entirely unclear how much change ABI deems to be “too much” so

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<sup>24</sup> Alaska Statute 36.30.083(a) permits a lease extension 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.”

<sup>25</sup> The statute’s only requirement beyond a 10 percent cost savings is that “[t]he 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.” AS 36.30.083(a).

<sup>26</sup> See Motion at 6-7.

<sup>27</sup> See Motion at 6 (noting that the Lease Extension “contains drastically different terms than the lease it purports to extend, including adding space”); *id.* at 5 (arguing that

that the statute governing lease extensions no longer applies. More pointedly, there is nothing in the statute to support ABI's argument. In order to meet the needs of the LIO, substantial renovations were required if LAA was to remain in the same space.<sup>28</sup> Renovations are common when extending commercial leases, as are changes to various lease terms. LAA obtained these extensive renovations and modifications to the lease terms in order to extend the lease for the same basic space with the same landlord for the same purpose. Nothing in AS 36.30.083(a) imposes some arbitrary limitation on the extent of any modifications either to the original lease arrangement or the physical structure. All that is required is the extension of the lease itself, which is what was achieved here.

ABI points to no authority to affirmatively suggest that substantial modifications must be rendered outside the scope of lease extensions. ABI does insist, however, that an extension must exclusively lengthen the duration of the lease arrangement. But this interpretation of the term "extension" is at odds with the plain language of the statute since it expressly contemplates that there will be changes in the terms and conditions when the lease is extended. In particular, the extension must include a minimum cost savings of at least 10 percent below the market value of the real property at the time of the extension.<sup>29</sup> The lease rate is therefore expected to change from the original lease to

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there can be no lease extension when the renovations entail the demolition of two buildings and constructing a new building in their place while the tenant is displaced).

<sup>28</sup> See Exh. D.

<sup>29</sup> AS 36.30.083.



the extended lease. As embodied in the statute's use of the word "extension," this change to a lease term does not alter the character of the resulting agreement.

ABI relies on two Georgia cases for the proposition that an "extension" only occurs when there is a stipulation to lengthen the contract timespan on the same terms and conditions as stated in the original lease.<sup>30</sup> This Georgia case law is inapposite. That case law generally involves whether an old broker is entitled to additional commissions for an extension of the original lease it procured, as opposed a contract renewal for which any new broker would be entitled to the commissions.<sup>31</sup> But AS 36.30.083 has nothing to do with a broker's entitlement to commissions or the triggering of certain rights by a lessee. On its face, the statute relates to the ability of the LAA, the court system, and other public entities to continue a leasing relationship with the existing lessor by extending the term of the existing relationship, subject to certain conditions. There is no requirement that the terms remain exactly the same as the original lease. The lease cost may be less than the original lease if certain upfront costs no longer apply during the extended term, as emphasized by Plaintiff.<sup>32</sup> Or it may be more than the original lease if market rents in the area have increased and the original lease rent is uneconomic and unrealistic. In either case, the lease term concerning rent may be different and Alaska

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<sup>30</sup> See *id.* at 6 (citing *Crystal Blue Granite Quarries, Inc. v. McLanahan*, 261 Ga. 267, 268 (Ga. 1991) and *Brannen/Goddard Co. v. Sheffield, Inc.*, 524 S.E.2d 534 (Ga. App. 1999)).

<sup>31</sup> See *Brannen/Goddard Co.*, 524 S.E.2d at 535-36. *Crystal Blue Granite Quarries, Inc.* related to a lessee's desire to compel the lessor to continue a leasing arrangement under existing favorable terms.

<sup>32</sup> See Motion at 7.



law contemplates that an “extension” will still exist. Contrary to ABI’s interpretation, a lease remains an “extension” even when there are changes to lease terms other than the lease end date.

## **2. Changes to Lease Terms Do Not Render the Lease a Different Contract.**

ABI’s main contention is that the Lease Extension is not a continuation of “the same contract” because it does not merely lengthen the time upon the original lease terms and conditions.<sup>33</sup> But this is incorrect. By its terms, the Lease Extension extended the May 23, 2013 Renewal of Lease No. 5, which in turn amended the Lease dated April 6, 2004.<sup>34</sup> The Lease Extension amends, extends, and modifies the original lease, as did earlier amendments, yet it is still a continuation of the same contract. The same parties (LAA and 716 West) continued their longstanding contractual arrangement to lease office space and parking spaces on the corner of 4th Avenue and H Streets in Anchorage. Renting the same space from the same landlord under a modified version of the same contract qualifies as a lease extension.

Changes to lease terms are completely routine over time in a commercial lease. Indeed, there have been fluctuations in lease specifics under those general terms over the past decade: the number of allotted parking spaces has changed,<sup>35</sup> the rent has changed (sometimes up, sometimes down),<sup>36</sup> and the facilities have undergone renovations,

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<sup>33</sup> *See id.* at 6.

<sup>34</sup> *See* Exh. 1 at 1.

<sup>35</sup> *See* Exh. B.

<sup>36</sup> *See id.* (decrease of rent); Exh. C (increase of rent).

including relocation of staff, tearing down walls, and creating offices.<sup>37</sup> But none of these changes to the leased space or the applicable rent means that these prior amendments did not concern “the same contract.” Modifications to leases are routine and do not render each modification a different contract.<sup>38</sup>

While ABI states repeatedly that the Lease Extension is not an extension, it does not propose any alternative characterization of the transaction, such as a lease renewal. LAA was in the space before, expressed a desire to remain in the same leased space (albeit with considerable renovations), and proceeded to remain in that space for an extended term after the renovations were completed. This is an extension. Some courts draw a distinction between an “extension” and a “renewal” of a lease – usually for purposes of determining whether the statute of limitations applies to the new lease timeframe.<sup>39</sup> The original 2004 lease agreement contains an “Extension” provision:

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<sup>37</sup> See Exh. A at 3. LAA was already the tenant when the 2004 lease was entered into, and prior to the start of the 2004 lease term the parties agreed to tear down various walls and construct other walls to change the office configuration, construct new offices, enlarge other offices, relocate the Legislative Ethics Office and Data Processing Staff, among other changes. *See id.*

<sup>38</sup> See, e.g., *In re S.E. Nichols Inc.*, 120 B.R. 745, 748 (Bankr. S.D.N.Y. 1990) (“In determining whether a new agreement constitutes a new lease or the modification of an existing lease, substance, rather than form, controls. Typically, legitimate lease modifications will include provisions reducing rent, or surrendering unexpired terms.” (internal citations omitted)); *Mission Hosps., Inc. v. N. Carolina Dep’t of Health & Human Servs., Div. of Health Serv. Regulation*, 696 S.E.2d 163, 169 (2010) (“Under contract law, a modification to a lease does not necessarily create a new contract, and rather, the intention of the parties governs.”).

<sup>39</sup> See 49 Am. Jur. 2d Landlord and Tenant § 141, at 154 (1995). Because an extension is the continuation of the old tenancy, the existing lease terms are deemed to cover the full extended period for purposes of the statute of frauds. A renewal requires the creation of a new tenancy that is separate from the initial one. *See id.* It does not



“Any holding over after the expiration of this Lease or of a renewal of this Lease shall be construed to be a tenancy from month-to-month at the same monthly rental rate, and on the same terms and conditions as specified in this Lease.”<sup>40</sup> As the leading treatise recognizes, the question of whether a lease creates a renewal or an extension “is one of the intent of the parties.”<sup>41</sup> If any distinction between renewals and extensions is even recognized, courts typically look to the language of the transaction and, if necessary, the surrounding circumstances.<sup>42</sup> The language of the transaction here – starting with the very title of the Lease Extension – is unambiguous. The surrounding circumstances also confirm that the parties intended for this to be an extension, as reflected in LAA’s express satisfaction of the various requirements of AS 36.30.083 and the original lease’s “EXTENSION” clause.<sup>43</sup>

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appear that Alaska courts have recognized a bright-line distinction between a renewal and an extension. “The distinction may not be recognized on the ground that the difference between the meanings of the terms ‘renewal’ and ‘extension’ of a lease is too refined and theoretical to be applied.” *Id.* The statute’s text provides some guidance on the issue, suggesting that a “renewal” comes into play when there are “renewal options that are defined in the lease” or “optional renewal periods provided for in the lease.” AS 36.30.080(c), (c)(2). An “extension,” on the other hand, does not reflect the triggering of some renewal period or option already contained in the lease. *See* AS 36.30.083(a). There were no remaining renewal options in the 2004 Lease.

<sup>40</sup> Exh. A at 15 ¶ 37.

<sup>41</sup> 2 POWELL ON REAL PROPERTY § 16B.05[4][a], at 16B-102 (Michael Allan Wolf ed., LexisNexis Matthew Bender 2015).

<sup>42</sup> *See id.* Those courts rejecting the technicality of the common law distinction between extensions and renewals generally treat all lease provisions that allow the tenant to retain the premises beyond the initial term as extensions. *See id.* § 16B.05[4][b], at 16B-103.

<sup>43</sup> *See* Exh. A at 15 ¶ 37.



ABI also fails to consider the Agency's adherence to the Alaska Legislative Procurement Procedures provided by AS 36.30.020, which undergird the definition of "extension" in AS 36.30.083(a). Consistent with those procedures, the Procurement Officer made a written determination that material modifications were appropriate as part of the Lease Extension for a host of reasons.<sup>44</sup> The scope and rationale for these modifications, including an expansion of the LIO's physical footprint, are decisions vested with the Legislature pursuant to AS 36.30.020 and the Alaska Legislative Procurement Procedures, which authorize and empower the Legislative Council to make modifications to existing leases that are in the best interests of LAA. The Alaska Constitution expressly commits to the Legislature the authority to adopt its own rules of procedure and to the Legislative Council the ability to perform the duties assigned by the Legislature, including property procurement.<sup>45</sup>

### III. CONCLUSION

LAA complied with AS 36.30.083(a). LAA was a tenant of the LIO at the corner of 4th Avenue and H Streets in Anchorage both before and after the Lease Extension. 716 West was the landlord both before and after the Lease Extension. By renting the same space from the same landlord, irrespective of renovations and modifications to the

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<sup>44</sup> See Exh. F.

<sup>45</sup> See ALASKA CONST. Art. II, §§ 11-12; *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 338 (Alaska 1987) (holding that claims are not justiciable when the judiciary is placed in direct conflict with the Legislature's constitutionally authorized rulemaking prerogative); see also *Green Party of Alaska v. State, Div. of Elections*, 147 P.3d 728, 735 (Alaska 2006) (recognizing that deference is owed to the Legislature when that body is making policy determinations that require balancing various considerations); *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 981 (Alaska 2005) (same).


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lease terms, the Lease Extension qualifies as a lease extension pursuant to LAA's statutory authority and the Alaska Legislative Procurement Procedures. For the foregoing reasons, the Court should deny Plaintiff's motion for partial summary judgment and rule as a matter of law that the Lease Extension qualifies as an "extension" under AS 36.30.083.

LAA respectfully requests that the Court issue a ruling as promptly as practicable while the Legislature is still in session.

DATED: February 3, 2016.

STOEL RIVES LLP

By:   
KEVIN CUDDY  
(Alaska Bar #0810062)  
Attorney for Defendant  
LEGISLATIVE AFFAIRS AGENCY

**CERTIFICATE OF SERVICE**

This certifies that on February 3, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
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(Attorney for Plaintiff)

Jeffrey W. Robinson  
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(Attorneys for Defendant 716 West Fourth Avenue, LLC)

  
Linda Rustigan, Practice Assistant

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

Plaintiff,

v.

Defendants.

Case No. 3AN-15-05969 CI

**(Re: LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION))**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, KEVIN M. CUDDY, being sworn on oath, say as follows:

1. I am over the age of eighteen and have personal knowledge of the statements contained in this declaration.



2. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency (“Agency”) in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (Not Extension).

3. Attached hereto as **Exhibit A** is a true and correct copy of the Lease between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on April 9, 2004 at 2004-024411-0.

4. Attached hereto as **Exhibit B** is a true and correct copy of Lease Amendment No. 1 between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on September 18, 2006.

5. Attached hereto as **Exhibit C** is a true and correct copy of Lease Amendment No. 2 and Renewal of Lease between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on March 18, 2009.

6. Attached hereto as **Exhibit D** is a true and correct copy of a letter dated September 19, 2013, from Pamela Varni to Senator Anna Fairclough and Representative Mike Hawker.

7. Attached hereto as **Exhibit E** is a true and correct copy of the Alaska Legislative Procurement Procedures, which are located at <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=97814>.

8. Attached hereto as **Exhibit F** is a true and correct copy of the Procurement Officer's Findings Under Legislative Procurement Procedure 040(d). This document was appended to the Extension of Lease and Lease Amendment No. 3.

9. Attached hereto as **Exhibit G** is a true and correct excerpt of the Response to Defendant's (Legislative Affairs Agency) First Discovery Requests to Plaintiff Alaska Building, Inc. (Interrogatory # 5) (dated Oct. 5, 2015).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 3rd day of February, 2016.

  
KEVIN M. CUDDY

SUBSCRIBED AND SWORN to before me this 3rd day of February 2016

in Anchorage, Alaska.



  
Notary in and for the State of Alaska  
My Commission expires: 3-6-19

**CERTIFICATE OF SERVICE**

This certifies that on February 2, 2016, a true and correct copy of the foregoing was served by first class mail as follows on:

James B. Gottstein, Esq.  
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406 G Street, Suite 206  
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(Attorney for Plaintiff)

Jeffrey W. Robinson  
Ashburn & Mason  
1227 West Ninth Avenue, Suite 200  
Anchorage, AK 99501  
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

  
Linda Rustigan, Practice Assistant

2004-024411-0

Recording List: 301 - Anchorage  
4/9/2004 3:31 PM Pages: 1 of 18

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### LEASE

LEASE AMOUNT FOR FIRST YEAR: \$597,000.00  
(excluding CPI-U adjustment amount)

**THIS LEASE**, made and entered into on the date the Legislative Affairs Agency 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 241828, 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".

### WITNESSETH:

1. **RENTAL PROPERTY AND RENTAL RATE:** The Lessor leases to the Lessee and the Lessee leases from the Lessor the premises, hereinafter "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 4<sup>th</sup> 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 Ninety-Eight (98) reserved off-street parking places, for a term of five (5) years beginning June 1, 2004, and terminating at 11:59 p.m. on May 31, 2009, with the Lessee having five (5) one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term. The Base Monthly Rental is Fifty-Two Thousand and No/100 Dollars (\$52,000.00) each month; however for the period June 1, 2004, through May 31, 2005, the Base Monthly Rental will be reduced by \$2,250.00 each month by the Lessor to partially offset the costs incurred by the Lessee in purchasing and installing security camera equipment and any HVAC work that will have to be done as part of the Lessee's renovation.

The rent shall be adjusted the first of July of each year beginning in 2005 to reflect changes in the Lessor's variable costs. Variable costs are defined as all operational costs other than debt service and profit and further defined for the purpose of the Lease as thirty-five percent (35%) of the Base Monthly Rental Rate. The adjustment will be based on the percentage of change, between ~~2004~~ and the calendar year before the calendar year of the adjustment, in the U.S.

2003



Department of Labor Consumer Price Index for All Urban Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

**PERCENTAGE OF CHANGE IN CPI-U**

(Annual average CPI-U for the calendar year preceding the year of adjustment) - (Annual average CPI-U for the calendar year XX (XX)) = x

x/Annual average CPI-U for the calendar year XX (XX)% = y%

**ADJUSTED MONTHLY RENTAL RATE**

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

Retroactive adjustments will not be allowed.

The monthly rental payments shall be due and payable on the first day of each month of the Lease and shall be sent by first class mail to the office of the Lessor whose address is listed above.

2. **ADA COMPLIANCE:** On the date of occupancy and throughout the entire occupancy of the Lessee, the Lessor shall ensure that the premises (including, but not limited to, restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and any subsequent alterations to the premises shall meet the specifications of the ADA Accessibility Guidelines for Buildings and Facilities per the Americans with Disabilities Act (ADA) Appendix A to 28 CFR 36, as currently written and as they may be subsequently amended (hereafter referred to as ADA compliance).

Under the previous paragraph, the premises (including, but not limited to restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and subsequent alterations must meet the ADA compliance requirements as they apply to a public entity. The Lessor must provide space that meets the same level of ADA compliance as if the leased space were in a newly constructed State-owned facility from which all program services are directly delivered to the public.

The Lessee's acceptance of the Lessor's space and alterations and any inspection by the Lessee do not relieve the Lessor of responsibility for ADA compliance. The Lessor further agrees to perform and pay the costs of any alterations needed to meet the above-prescribed ADA compliance.

The Lessor must furnish an ADA Facility Audit Report from an architect registered to practice in the State of Alaska, at no cost to the Lessee, after the completion of any new construction or any alteration, except for Lessee's and Lessor's improvements under section 3 of this Lease, of the existing space undertaken during the Lease. The ADA Facility Audit Report must indicate



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that the offered space complies with all the requirements of the ADA compliance and this section.

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

3. **DELIVERY OF PREMISES; RENOVATIONS:** The Lessee is currently occupying the premises under the current lease, which terminates May 31, 2004. Except for Lessor's carpeting obligations in this section 3, the Lessor will not be reconfiguring or making other improvements to prepare the premises for this Lease, unless the improvements are required by another section of this Lease. The Lessor has agreed to allow the Lessee to perform renovations to the current premises before the Lease term begins on June 1, 2004. Although Lessor and Lessee are currently leasing most of the premises under the current lease, this Lease will apply to the renovations allowed under this section 3, and the current lease is amended to that extent. These renovations will be paid for by the Lessee and will include, but are not limited to, the following:

- 1) re-locating the Data Processing Staff to what is currently Suite 240A, constructing a separate entrance to the room to split up the suite from what is currently 240B, and installing appropriate electrical, data, and phone jacks;
- 2) re-locating the Network Room from the basement area to what is currently the Supply Room on the second floor of the premises, and installing appropriate electrical, data and phone jacks;
- 3) re-wiring all offices located on floors 2 – 6 with Cat 5e or Cat 6 wiring;
- 4) re-locating the Legislative Ethics Office to what is currently Suite 240B, constructing a separate entrance to the room to split up the suite from what is currently 240A, and installing appropriate electrical, data, and phone jacks if required;
- 5) expanding the current large teleconference room by taking down a wall of what is currently Suite 230 and making Suite 230 part of the large teleconference room;
- 6) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 380 and the Storage Room;
- 7) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 470 and 2 Storage Rooms;
- 8) constructing a new office in what is currently open space in the hallway by the Senate Conference Room and installing appropriate electrical, data, and phone jacks;
- 9) enlarging what is currently a Storage Room, Suite 680, into a larger House office by constructing walls, tearing down a wall in House Conference Room, Suite 670, adding a door, and installing appropriate electrical, data, and phone jacks;
- 10) re-balancing the HVAC system due to the above remodel.

The Lessor has agreed to provide, at no cost to the Lessee, up to an additional 540 square yards of new high quality commercial quality carpet that matches the existing carpet in the amount necessary to patch any carpet that had been re-carpeted in the fall of 2002 in the offices affected by the above renovations. In addition, the Lessor has also agreed to provide and install new carpeting and cove base in all offices that were not re-carpeted in the fall of 2002, at no cost to the Lessee. The Lessee will notify the Lessor when these offices will be

  
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ready to be carpeted, and the Lessor will complete the installation within one month after Lessee's notification.

4. **UTILITIES AND SERVICES:** The Lessor will provide at no additional cost beyond the rental payments all utilities, including heat, electricity, sewage, potable water, and trash removal from the premises, and janitorial services, except that the Lessee will pay its own telephone utility bills. The Lessor will also provide, at no additional cost beyond the rental payments, its building maintenance staff to promptly lower and raise the Alaska State Flag and the United States Flag, that are installed outside the building, whenever requested by the Lessee to do so.
5. **ELECTRICAL REQUIREMENTS:** The Lessor shall ensure that the requirements in this section 5 are met.
- A. **ELECTRICAL WIRING STANDARDS:** All electrical work performed and electrical systems shall comply with the current applicable editions of:
1. the National Electrical Code of National Board of Fire Underwriters;
  2. the rules, regulations, and codes of the State and applicable municipality;
  3. the standardized rules of the National Electrical Manufacturer's Association.

The above minimum requirements shall not preclude the use of higher-grade materials or better workmanship.

- B. **MAIN SERVICE FACILITIES:** The main service facilities and meter panel shall be adequate to provide the electrical load that will be required. This service shall be enclosed in a suitable enclosure which is readily accessible for inspection. Single phase, 60 cycle, 120/240 V service shall be supplied.
- C. **LIGHTING:** Lighting fixtures shall be provided which are capable of producing well diffused illumination at working levels of no less than 75 FT-C in office and clerical areas; and no less than 50 FT-C in lobbies, restrooms, parking areas and similar areas. Fixtures shall be provided with louvers or plastic diffusers. Bare lamp fixtures will not be acceptable.

Specified illumination levels must be at task surface height (generally 30 inches above floor) unless noted otherwise in this section 5. For types of spaces not listed in the previous paragraph, illumination levels must be in accordance with current IES recommendations.

All lamps shall be consistent throughout space with regard to color, temperature, quality, and type. A maintenance program shall be conducted throughout the duration of the Lease to maintain this consistency.

- D. **SWITCHING:** Individual switching shall be provided for each room or area. Switches shall be located inside the lighted space, adjacent to the entry, accessible with doors open or closed. In lieu of or in addition to the previous sentence, lighting may be controlled by a building control system. Motion detectors are acceptable in lieu of switches for all spaces except open offices. Three- or four-way switching, as



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appropriate, shall be provided in corridors and large rooms with more than one entry.

- E. **ELECTRICAL OUTLETS:** Existing outlets in the premises currently occupied by the Lessee are sufficient. If additional outlets are required, the Lessee shall be responsible for these costs; however, the Lessor shall be responsible for maintaining all outlets in good working order.

Legislative Information Office: A 120V, 20 amp dedicated outlet shall be provided in the copy room for the LIO copier.

Senate Space: A 120V, 60hz, 20 amp dedicated shall be provided in each of the two (2) copy rooms.

House Space: A 120V 20 amp dedicated shall be provided in each of the two (2) copy rooms.

In toilet rooms a minimum of one duplex receptacle (with ground fault protection) shall be provided above the counter (adjacent to sink or mirror) and a minimum of one general use receptacle shall be provided.

- F. **DOCUMENTATION:** The Lessor shall post a floor plan at each circuit breaker panel with labeling to correspond to individual circuit breaker labels, and keep the posted floor plan up to date.

6. **DRINKING WATER AND RESTROOM REQUIREMENTS:** The Lessor shall ensure that the drinking water and restroom facilities meet the requirements in this section 6.

- A. **DRINKING WATER:** Water suitable for drinking purposes shall be provided through drinking fountains or water coolers located at a central location in the main hallways on each floor. If water coolers are provided, the delivered bottled water with disposable paper cups shall be supplied by the Lessor at no additional cost to the Lessee.

- B. **RESTROOMS:** The Lessor shall provide separate adequate toilet and lavatory facilities for men and women in compliance with all applicable codes and the state's safety regulations, and section 2 of this Lease. Each toilet room shall have single entrance doors, with automatic door closers or other approved entrance arrangement. They shall be equipped or provided with stall partitions with doors. They shall also be provided with adequate mirrors, soap, tissue and paper towel dispensers, sanitary napkin dispensers in the women's restrooms, deodorizers, sanitary tissue seat cover dispensers, and ventilation. Each restroom shall have hot and cold running water. Public restrooms shall not be located within the Lessee's leased space. Access to the public restrooms may not be through the Lessee's leased space.

7. **HEATING, COOLING, AND VENTILATION REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 7 are met.

- A. **HEATING AND COOLING:** Facilities shall be provided to maintain a temperature in all the offices and similar type space uniformly within 68 degrees F to 78 degrees F

The existing configuration of the thermostat control units and heating zones in the premises currently occupied by the Lessee are sufficient, however, the Lessor shall be responsible for maintaining such in good working order.

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range. The temperature to be maintained in this zone is the area two (2) feet above the floor to a height of five (5) feet above the floor.

If the temperature is not maintained within the 68 degrees F to 78 degrees F range, as required by the previous paragraph, for a period of more than one (1) working day, 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.

B. **VENTILATION:** All occupied areas of the building shall be provided with at least the minimum amount of outside (ventilation) air prescribed by ASHRAE Standard 62-89: "Ventilation for Acceptable Indoor Air Quality". This ventilation air shall be introduced by mechanical means. A minimum of six air changes per hour shall be provided in occupied spaces. Exhaust air systems serving toilet rooms and janitor's closets shall be sized to provide a minimum of 10 air changes per hour.

8. **WINDOW COVERING REQUIREMENTS:** The Lessor shall comply with this section 8. All outside windows shall be equipped with blinds, or other approved material and shall be installed, ready for use with all necessary hardware when the Lessee occupies the rental premises. Window coverings shall be of good quality and appearance matching the decor of the space and shall adequately reduce incoming heat and light to a comfortable level. The Lessee reserves the right to select the color of the window coverings, if new window coverings are to be installed.
9. **FLOOR COVERING REQUIREMENTS:** The Lessor shall comply with this section 9. Office floors shall be covered with a good quality of commercial grade carpeting. Other floors shall be covered with carpet, suitable linoleum, or tile of standard size which is free of defects. The Lessee reserves the right to select the color of the floor covering, if a new floor covering is to be installed. Carpeting shall be of a good quality commercial grade and shall not generate more than a minimal amount of static electricity under normal use. New floor coverings shall be installed in a skilled manner common to the trade.
10. **ACOUSTICAL REQUIREMENTS:** All offices and similar type space shall be equipped with acoustical ceiling tiles, panels, or other sound absorption material. The overall noise factor shall not exceed 90 decibel (dba) for an eight-hour workday at level A reading. Acoustical control must be sufficient to permit conferences, waiting room noise, and office work to progress simultaneously. It is the Lessor's responsibility to furnish the proper combination of sound



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absorptive material on ceilings, walls, and floors to achieve the specified preferred notice criteria level.

11. **PARTITION REQUIREMENTS:** Unless otherwise specified by Lessee, the Lessor shall ensure that all partitions are floor to ceiling, flush type, and of drywall construction, and that the finish is paint, paneling, or other Lessee-approved material.
12. **PAINTING REQUIREMENTS:** The Lessor shall ensure that all surfaces which normally would be painted are 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 (a) select the colors for areas to be newly painted; or (b) determine whether existing painted surfaces are satisfactory, if the Lessor wants to use the existing painted surfaces without painting them for the Lease.
13. **DOOR HARDWARE REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 13 are met. All doors shall be equipped with all necessary hardware. Cylinder locks and door checks shall be furnished and installed on all doors which open into public corridors or space otherwise accessible to other than those persons to be employed in the premises. All locks shall be masterkeyed and duplicate individual keys shall be supplied as required. Outside door keys shall be supplied as required by the Lessee.
14. **VOICE AND DATA REQUIREMENTS:** The Lessor shall ensure that adequate telephone service is be available and that all necessary conduit and other features necessary to satisfy the telephone company's requirements are included in the building. The Lessee will be responsible for the actual connection of telephone and communications equipment required by the Lessee and as stated in section 3 ("Delivery of Premises; Renovations"). Under section 3 of this Lease, the Lessee will be responsible for the re-wiring at the start of this Lease of all offices on floors 2 through 6 in the premises with Category 5e or Category 6 compliant wiring, including, but not limited to, the installation of any necessary conduit.
15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.

Reserved off-street parking shall be of sufficient size to allow proper and easy parking, and have a hard and well-drained surface. The area shall be marked "Reserved" to identify the private parking nature of each reserved space, and each space reserved by the Lessee within the area shall be at least 8-1/2 feet wide by 17 feet long and shall be marked to provide for proper parking and otherwise identified as private parking.

Ninety-Eight (98) reserved parking spaces shall be provided for the exclusive use of the Lessee. These ninety-eight (98) parking spaces must be provided at no additional cost to the Lessee.

Ninety (90) of the reserved ninety-eight (98) parking spaces provided for the exclusive use of the Lessee must be located in the parking lot adjacent to the west side of the 718 West 4<sup>th</sup> Avenue building. All parking locations must be well lit and have good accessibility in and out of the parking area.



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An additional eight (8) reserved public parking spaces must be provided for the exclusive use of the Lessee for the Lessee's invitees to the building. This parking must be located no more than two blocks walking distance from the office location and have good accessibility in and out of the parking area.

16. **FIRE PREVENTION:** The Lessor shall maintain the premises in keeping with good fire prevention practices. The Lessee reserves the right at reasonable times to enter and make fire prevention and fire protection inspections of the building and space occupied.
17. **HAZARDS:** The Lessor shall maintain the building free of structural or mechanical hazards.
18. **JANITORIAL SERVICES:** The Lessor shall be responsible for janitorial services as outlined below for the entire premises, common areas, and private parking areas. Janitorial services must be performed by competent employees of the Lessor or by a competent janitorial company and the Lessor must notify the Lessee of all names of who will be performing these janitorial services. The Lessor must give the janitorial employees or company a copy of the actual janitorial duties that are stated in the Lease. The Lessor must notify the Lessee of all janitorial employee or company changes relating to who will be performing the janitorial services. When the janitorial work is being performed, a person not performing the janitorial work may not enter or remain on the leased premises, except as otherwise authorized by Lessee.

Janitorial services shall be performed after office hours unless otherwise specified or as conveniently as possible to the occupying entities. The premises generally are occupied Monday through Friday except State holidays. In the event that various areas are occupied at times other than specified herein, the janitorial services shall be performed at other times as convenient. The Lessee prefers the following:

**A. DAILY SERVICES:**

1. Empty wastebaskets. Empty and wipe ashtrays and place contents in a metal container separate from other waste material. Collect all wastepaper and trash and dispose of it away from the premises.
2. Sweep halls and floors in the interior of the building. Tile floors are to be swept with a yarn broom or a dust mop treated with polyethylene glycol or similar non-injurious material. (If lobby area is tiled, B-1 will become a daily service.)
3. Vacuum all carpets in offices, conference rooms, workstations, hallways, aisles used for circulation within said premises, common areas, entryways, elevator lobbies and corridors.
4. Dust all visible surfaces of furniture, fixtures, and equipment to a height of six (6) feet.
5. Mop or scrub toilet room floors, wash all plumbing fixtures with warm water and soap. Disinfect urinals and water closets. Damp wipes all dispensers, tiled portion of toilet room walls and stall partitions.

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6. Provide and maintain adequate supplies of toilet paper, seat covers, deodorizers, sanitary napkins, towels and soap in toilet rooms. These supplies are to be of standard or better quality and are to be furnished by the Lessor. The Lessor shall also provide a closed disposal container for waste sanitary napkins.
7. Clean and disinfect any drinking fountains.
8. Police sidewalks by collecting and removing all trash and other discarded materials.
9. At the end of each workday, the Janitorial supervisor must inspect the entire building to ensure that all work is complete and all necessary doors are locked.

**B. WEEKLY SERVICES:**

1. Damp mop all waxed floors and machine buff to remove traffic marks and restore luster of wax.
2. Remove all fingermarks and smudges from walls, woodwork, and glass surfaces.

**C. MONTHLY SERVICES: Vacuum fabric furniture.**

**D. EVERY SIX MONTHS SERVICES:**

1. Dust or vacuum window coverings such as blinds, etc., as may be the case, overhead pipes, ventilation vents, or molding, etc., that must be reached by ladder.
2. Dust or wash light fixtures as appropriate for greatest light efficiency.
3. Wash windows and glass wind deflectors inside and out leaving no streaks or unwashed places. Wipe water spots from sills and frames. Use drop cloth as required to protect adjacent surfaces, fixtures, and furniture. Wash windows at equal intervals of time, weather and conditions permitting.
4. Wash all wastebaskets.
5. Wash walls in public halls and stairwells where wall covering permits. Wash pipes and rails in stairwells. Clean and wax all paneling.
6. Shampoo carpets in high traffic areas of the premises.

**E. AS REQUIRED:**

1. Replace burned out lamps (to be furnished by the Lessor).
2. Remove snow and ice from sidewalks, entrances, outside storage areas, parking areas, and other areas as applicable to an extent which will render the areas safe to pedestrian traffic and automobile operation.
3. Shampoo ALL carpeted areas of the premises.



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4. Remove spots and stains from carpets, tile and linoleum. Remove all foreign matter (gum, smudges, etc.) from floors, handrails and furniture.
5. Remove all wax from all floors by mopping or scrubbing with a synthetic detergent or wax remover, rinse thoroughly and apply good skid resistant wax of a type recommended by floor tile manufacturers. When wax is dry, machine buff to smooth sheen.
6. Clean or replace all entry rugs. Rugs are to be furnished by the Lessor at each building entrance and will be of sufficient size to preclude the tracking of dirt and mud into the building.

19. **COMPLIANCE WITH LAWS:** The Lessor shall comply with the requirements of this section 19.

- A. Except as otherwise provided elsewhere in this Lease, all improvements and new construction of existing structures, and all appurtenances, improvements, new construction, and existing structures shall conform to all applicable state, Federal and local laws, ordinances, codes, and regulations pertaining to them. In the absence of local or state regulations, national codes shall apply. Minimum requirements of the Lease shall not be construed as lowering the standard established by local regulations, and when local regulations and codes contain more stringent provisions, they shall govern. The Lessor shall be responsible for obtaining all required permits. The premises and the common areas must comply with Federal and state law relative to occupational health and safety regulations. The Lessor shall be responsible for the accomplishment and cost of any building alterations necessary to comply with these requirements.
- B. The Lessor must comply with all other applicable federal and state labor, wage/hour, safety and associated laws that have a bearing on this Lease and must have all licenses and permits required by the state and/or municipality for the performance of the work required by this Lease.

20. **MAINTENANCE AND REPAIR:** The Lessor shall at all times maintain the premises and common areas in a safe condition and in a good state of general repair, maintenance, and tenantable condition, including, but not limited to, the roof and the heating, electrical, ventilation, plumbing, sanitary, and any elevator or escalator facilities. The Lessor shall keep the roof free from roof leaks. The Lessor shall keep the common areas in a clean condition. The Lessor shall keep the building and the areas immediately surrounding and belonging to the building free from objectionable tenancy, odors, vermin, rodents, and other features that will in the opinion of the Lessee be detrimental to Lessee's operation. The term "repair" includes repairs of any type, including, but not limited to, exterior and interior, structural and nonstructural, routine or periodic, except in the case of damage arising from the negligence of the Lessee's agents or employees.

21. **SIGNS:** The Lessor shall provide and erect/affix adequate signage to identify the Lessee's presence and to easily direct the public to the Lessee's space. The Lessor shall provide and erect, at no cost to the Lessee, signage as follows: In all buildings, entrances, and common lobbies, hallways and elevators, and on all doors or walls at entrances to the Lessee's leased spaces.



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The Lessee reserves the right to erect or affix additional door or wall signs, at the Lessee's cost, within its leased space to further identify room names and/or numbers. The size and character of the signs shall be at the Lessee's discretion and shall not unreasonably detract from the aesthetics of the building.

22. **ELEVATORS:** The Lessor shall ensure that the premises under this Lease which are on the second floor and above are served by an elevator that, in addition to complying with section 2 of this Lease, complies with the current applicable editions of the rules, regulations, and codes of the State, and the applicable municipality. Documentation from a licensed elevator repairperson stating that the elevator is in good working order and meets all the minimum standards shall be provided by the Lessor, at no cost to Lessee, if requested by the Lessee.
23. **RENOVATION:** At least every five (5) years of occupancy or at the reasonable written request of the Lessee, the Lessor shall renovate the premises by refinishing all damaged or worn walls, ceilings, floors, or built-in fixtures or replacing damaged or worn wall, floor or window coverings or paint. If the Lessor does not respond to such reasonable renovation requests by the Lessee, the Lessee reserves the right to hire competent workers to accomplish such renovation(s) at the Lessor's expense, and may deduct the costs from the rent payments. 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 select the color(s) of the floor covering, If a new floor covering is to be installed, window coverings, If new window coverings are to be installed, and paint for areas to be newly painted.
24. **WAGE-RELATED REQUIREMENTS:** If the Lessor performs construction, alteration, repair, renovation, or redecoration work while the Lessee is occupying the premises, and if this work amounts to 20 percent or more of the entire term of this Lease (excluding optional renewals), 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 subcontractors 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 subcontractors 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 Wage and Hour Administration of the Department of Labor for more information.
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, but not limited to, elevators, lobbies, stairwells, and restrooms. The Lessor shall provide seven day a week security patrolling for the building and parking area at no cost to the Lessee. The Lessee will be responsible for purchasing and installing security cameras in the lower parking area, and for their operation and maintenance, including any monitoring.

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26. **ACCESS BY LESSOR:** The Lessor and its agents will have the right to enter the premises at any time during business hours and after reasonable notice to Lessee (in case of emergency, at any time and without notice) to examine and make the repairs, alterations, improvements, or additions that Lessor determines to be necessary or desirable, or to show the premises to actual or potential Lessees, purchasers, workers, or contractors. If the Lessee is not personally present to permit entry and an entry is necessary to make repairs, Lessor may enter the same by master key (or force if an emergency) without rendering the Lessor liable for the actual entry. The Lessor may not enter the premises for other reasons without the permission of the Lessee. Nothing contained in this section shall be construed to impose on the Lessor a duty of repair of the building except as provided for elsewhere in the Lease.
27. **USE OF PREMISES:** The Lessee will use the premises only for an office and in a careful and proper manner. Use for an office includes use for public meetings. The Lessee will not use or permit all or part of the premises to be used for another purpose without the prior written consent of the Lessor, which shall not be unreasonably withheld. The Lessee will not use or occupy the premises or permit them to be used or occupied for a purpose or business considered extra-hazardous on account of fire or other hazard, or in a manner which violates federal, state, or local laws or regulations.
28. **QUIET ENJOYMENT:** If the Lessee pays the rent as provided by the Lease and keeps, observes, and performs all of the other covenants of the Lease by it to be kept, performed and observed, the Lessee shall and may peaceably and quietly have, hold, and enjoy the premises for the term of such Lease.
29. **LESSEE ALTERATIONS:** Except as provided for in section 3 ("Delivery of Premises; Renovations") and section 33 ("Remedies on Default"), the Lessee may not make, or allow to be made, alterations of the premises without the written consent of Lessor, which shall not be unreasonably withheld. Alterations shall be performed in a professional and skilled manner. Lessee will not allow or permit a lien or other encumbrance to be placed against the premises.
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.
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, 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 current lease or before Lessee or Lessor made the improvements under section 3 of this Lease.
32. **UNTENANTABILITY:** During the term of this Lease, if the premises or any part is rendered untenable by public authority, or by fire, the elements, or other casualty, a proportionate part of the rent according to the extent of such untenability shall be abated and suspended until the premises are again made tenantable and restored to their former condition by the Lessor;



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and if the premises or a substantial part of the premises is rendered untenable by public authority or casualty and remain untenable for a period of thirty (30) days, the Lessee may, at its option, terminate this Lease by written notice to the Lessor. The Lessee's decision shall be controlling as to whether or not the premises are fit or unfit for occupancy. This 30-day period shall not be so restrictively construed that the Lessee is bound to remain in the leased facility if the Lessee's business cannot be safely executed. If warranted due to unsafe conditions, the Lessee is free to move elsewhere. If the premises are made tenable again within this 30-day period, the Lessee will return to the facility for occupancy. The Lessee may also choose to recover from Lessor any excess costs, over the abated Lease payments, occasioned by relocation due to untenability.

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 sixty (60) 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, but not limited to, administrative costs, from the rent, if the Lessor fails to fix the problem within a reasonable time after Lessee notifies the Lessor in writing of the 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, but not limited to, 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 a reasonable time after receiving written notification of the default from the Lessee, the Lessee may terminate the Lease by giving 10 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 32 ("Untenability").~~ 34

34. **INDEMNIFICATION:** The Lessor shall indemnify, hold harmless, and defend the Lessee from and against any claim of, or liability for, error, omission, or negligent act of the Lessor under this Lease. The Lessor will not be required to indemnify the Lessee for a claim of, or liability for, the independent negligence of the Lessee. If there is a claim of, or liability for, the joint negligent error or omission of the Lessor and the independent negligence of the Lessee, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. In this section 34, "Lessor" and "Lessee" include the employees, agents, and other contractors who are directly responsible, respectively, to each. In this section 34, "independent negligence" means negligence other than in the Lessee's selection, administration, monitoring, or controlling of the Lessor and in approving or accepting the Lessor's work.

35. **INSURANCE:** Without limiting the Lessor's indemnification responsibilities under section 34 ("Indemnification"), it is agreed that the Lessor shall purchase at its own expense and maintain



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In force at all times during the Lease the following insurance, except as provided elsewhere in this section 35:

- A. workers' compensation insurance as required by AS 23.30.045(d) for all employees engaged in work under the contract and as required by any other applicable law;
- B. comprehensive general liability insurance covering all business premises of, and operations by or on behalf of, the Lessor in the performance of the contract, including, but not limited to, blanket contractual coverage, products coverage, premises and operations coverage, independent contractors coverage, broad form property damage endorsement, and personal injury endorsement; the policy must have minimum coverage limits of \$1,000,000 combined single limit per occurrence; unless waived by the Lessee, the insurance policy shall name the Lessee as an additional insured;
- C. commercial automobile liability insurance covering all vehicles used by the Lessor in the performance of the contract, with minimum coverage limits of \$500,000 combined single limit per occurrence.

The Lessor is an entity without employees and does not have the workers' compensation insurance required above. If at any time during the term of the Lease, including any renewals, the Lessor hires one or more employees, the Lessor will purchase at its own expense and maintain in force at all times workers' compensation insurance under A. of this section 35 for the employee or employees and submit proof of the workers' compensation insurance to the Lessee.

Upon request, the Lessor shall provide the Lessee with evidence satisfactory to the Lessee of the insurance identified in B. - C. above. Each of the required insurance policies must provide for the Lessee to receive a 30-day prior notice of any cancellation. Where specific limits are shown above, it is understood that they are the minimum acceptable limits. If a policy contains higher limits, the Lessee will be entitled to coverage to the extent of the higher limits. All insurance policies must comply with, and be issued by, insurers licensed to transact the business of insurance in Alaska or in another state.

In addition, the Lessor shall require any contractor or subcontractor to provide and maintain for its employees workers' compensation insurance.

36. **DELAYS IN PERFORMANCE:** Delays in performance by the Lessor due to unforeseeable causes beyond the control and without fault or neglect of the Lessor may be excused. 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 Supply Officer in writing within ten (10) days of the commencement of the unforeseeable cause. The Supply Officer shall ascertain the facts and the extent of delay and the extent of the time for completing the project. The Supply Officer may approve an extension when, in the Supply Officer's judgment, the findings of fact justify an extension. Pending final decision on an extension of time under this section, the Lessor shall proceed diligently with the



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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.

37. **EXTENSION:** Any holding over after the expiration date of this Lease or of a renewal of this Lease shall be construed to be a tenancy from month-to-month at the same monthly rental rate, and on the same terms and conditions as specified in this Lease.
38. **TIME:** Time is of the essence.
39. **ASSIGNMENT OR TRANSFER:** Assignment or other transfer of this Lease is subject to Section 160 of the Procurement Procedures of the Alaska State Legislature. The Lessee's interest in this Lease may not be assigned without Lessor's prior written consent and Lessor's consent will not be unreasonably withheld.
40. **BINDING ON SUCCESSORS:** Subject to section 39, this Lease and all the covenants, provisions and conditions contained in the Lease shall inure to the benefit of and be binding upon the successors and assigns of the Lessor and the Lessee.
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 during the Lease, the Lessor must use, wherever practical, timber, lumber, and manufactured lumber products originating in this state from local forests.
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 and if the amendment does not amount to a material modification of the Lease.
43. **AUTHORIZATION; CERTIFICATION:** Execution of this Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on January 15, 2004.
- Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2005. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2005, 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, 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.
44. **VENUE AND CHOICE OF LAW:** In the event that the parties of the Lease find it necessary to litigate the terms of the Lease, venue shall be the State of Alaska, First Judicial District, at Juneau and the Lease shall be interpreted according to the laws of Alaska.



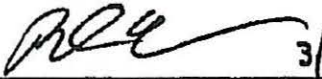
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2004-024411-0



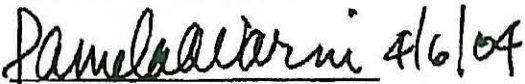
45. **ENTIRE AGREEMENT:** This Lease sets forth the entire understanding of Lessor and Lessee, and no modification may be made to this Lease except by written addendum signed by all parties.

**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

 3/30/04  
Robert B. Acree Date  
Member  
Tax Identification No.: 03-0443569  
Business License No.: 423463

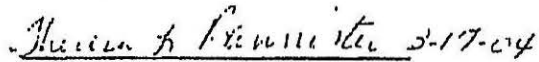
CERTIFYING AUTHORITY

 4/6/04  
Pamela A. Varni Date  
Executive Director  
Legislative Affairs Agency

LESSEE:  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

 4/2/04  
Senator Gene Therriault Date  
Chair  
Alaska Legislative Council  
Procurement Officer

APPROVED AS TO FORM:

 3-17-04  
Heidi K. Pennington Date  
Legal Counsel



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2004-024411-0

~~OREGON~~  
STATE OF ALASKA  
*County of Matanuska* } ss.  
THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that on this 30 day of March, 2004, 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 company, 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.

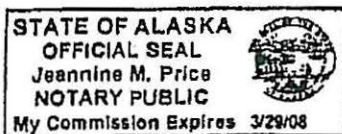


*Donna Lemaster*  
Notary Public in and for ~~Alaska~~ Oregon  
My commission expires: July 10, 2005

STATE OF ALASKA )  
FIRST JUDICIAL DISTRICT ) ss.

THIS IS TO CERTIFY that on the 2nd day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared SENATOR GENE THERRIault, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

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



*Jeannine M. Price*  
Notary Public in and for Alaska  
My commission expires: 3/29/08





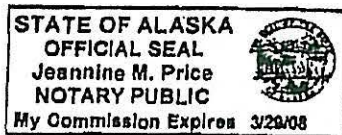
STATE OF ALASKA

FIRST JUDICIAL DISTRICT

} ss.  
}

THIS IS TO CERTIFY that on the 6th day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

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



Jeannine M. Price  
Notary Public in and for Alaska  
My commission expires: 3/29/08

**FOR RECORDING DISTRICT OFFICE USE ONLY:**

No Charge - State Business

After recording return to:  
Jan Price, Supply Officer  
Legislative Affairs Agency  
State Capitol  
Juneau, AK 99801-1182



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2004-024411-0

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2006-063569-0

Recording Dist: 301 - Anchorage  
9/18/2006 4:02 PM Pages: 1 of 5



**LEASE AMENDMENT NO. 1**

**THIS LEASE AMENDMENT**, made and entered into on the date the Legislative Affairs Agency Executive Director or her designee signs the lease amendment, 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", hereby amends the lease dated April 6, 2004, recorded in Book 2004-024411-O, Pages 1 - 18, Anchorage Recording District, Third Judicial District, State of Alaska,

**WITNESSETH**

**WHEREAS**, Lessor is leasing to Lessee the following described premises, hereinafter "premises",

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 4<sup>th</sup> 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;

**WHEREAS**, there has been a dispute between Lessee and Lessor as to the size and number of the reserved parking spaces provided to Lessee under the Lease;

**WHEREAS**, during the dispute described in the previous whereas clause, Lessee has rented additional parking spaces from another person and deducted the rental amount for these spaces from the rent paid by Lessee under this Lease; and

**WHEREAS**, this Lease Amendment represents a settlement of the dispute described in the previous two whereas clauses.

**NOW, THEREFORE, LESSOR AND LESSEE AMEND THE LEASE AS FOLLOWS:**

1. Section 1, "Rental Property and Rental Rate," of the Lease is amended by amending the phrase, "and Ninety-Eight (98) reserved off-street parking places," to now read "and Eighty-Six (86) reserved off-street parking places,"



2. Beginning on June 1, 2006, the monthly rental rate will be decreased by \$1,000.00 each month to reflect the reduced number of parking spaces that the Lessor will be providing to the Lessee.
3. The Lessor will permit the Lessee's security guard to occupy space in the first floor lobby common area space across from the elevators at no additional cost to the Lessee until the first floor lobby common area space is needed by the Lessor to fulfill space requirements of other tenants in the building.
4. Section 15, "Parking Requirements," of the Lease is deleted and replaced with the following section:
  15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.
    - A. Lessor will provide at no additional cost to the Lessee 86 off-street parking spaces in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building for the use of the Lessee and Lessee's invitees to the building. These 86 spaces must be available to Lessee and Lessee's invitees 24 hours a day 7 days a week.
    - B. Each parking space provided under A. of this sec. 15 shall be marked "Reserved" to identify the private parking nature of the space. The current striping of each parking space located in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building will remain in effect for the duration of the lease. In this subsection B, "current" means in existence on the date this lease amendment is entered into.
    - C. Parking spaces provided under A. of this sec. 15 must be of sufficient size to allow proper and easy parking and must have a hard and well-drained surface. Each parking space must be marked to provide for proper parking. All parking locations must be well lit and have good accessibility in and out of the parking area.
5. Notwithstanding any other provision in the Lease, Lessor waives any and all claims that Lessor may have or allege against the Lessee for or arising out of the Lessee's withholding of rent from the Lessor during the dispute between the Lessor and the Lessee over the size and number of the reserved parking spaces provided by Lessor under the Lease.
6. **AUTHORIZATION; CERTIFICATION:**

Execution of this lease amendment was authorized by a majority of the members of the Alaska Legislative Council at a meeting on May 22, 2006.

Execution of this lease amendment by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an



appropriation to pay for Lessee's monetary obligations under the Lease through June 30, 2006. Availability of funds to pay for Lessee's monetary obligations under the Lease after June 30, 2006, is contingent upon the 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, the Lease will be terminated by the Lessee or amended. To terminate under this section, the Lessee shall provide notice of the termination to the Lessor.

7. All other provisions of the Lease will remain the same.

**IN WITNESS WHEREOF**, the Lessor and Lessee have executed this lease amendment and renewal on the day, month, and year indicated below.


LESSOR:

716 WEST FOURTH AVENUE, LLC

 8/23/06

Robert B. Acree                      Date  
Member  
Tax Identification No.: 03-0443569  
Business License No.: 423463


CERTIFYING AUTHORITY

 9/12/06

Pamela A. Varni                      Date  
Executive Director  
Legislative Affairs Agency


LESSEE:

STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

  
Representative Pete Kott  
Chair  
Alaska Legislative Council  
Procurement Officer

9-11-06  
Date

APPROVED AS TO FORM:

 6-14-2006  
Legal Counsel                      Date



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2006-063569-0

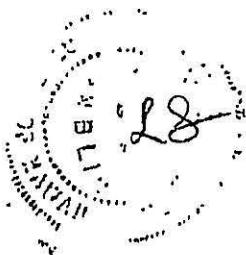


STATE OF ALASKA  
COUNTY OF HAWAII  
THIRD JUDICIAL DISTRICT

)  
) ss.  
)

THIS IS TO CERTIFY that on this 23<sup>rd</sup> day of August, 2006, before me the undersigned Notary Public in and for the State of ~~Alaska~~ Hawaii, 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 amendment 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 amendment as his free and voluntary act and deed of said company, 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 Hawaii  
My commission expires: \_\_\_\_\_



STATE OF ALASKA  
FIRST JUDICIAL DISTRICT

)  
) ss.  
)

THIS IS TO CERTIFY that on the 11<sup>th</sup> day of September, 2006, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE PETE KOTT, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment and renewal as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

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

STATE OF ALASKA  
OFFICIAL SEAL  
Wen C. Ibesate  
NOTARY PUBLIC



Notary Public in and for Alaska  
My commission expires: 9/3/07



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2006-063569-0

STATE OF ALASKA

)  
) ss.  
)

FIRST JUDICIAL DISTRICT

THIS IS TO CERTIFY that on the 12<sup>th</sup> day of September 2006, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

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

STATE OF ALASKA  
OFFICIAL SEAL  
Wen C. Ibesato  
NOTARY PUBLIC



Wen C. Ibesato  
Notary Public in and for Alaska  
My commission expires: 9/3/07

**FOR RECORDING DISTRICT OFFICE USE ONLY:**

No Charge - State Business

After recording return to:  
Jan Price, Supply Officer  
Legislative Affairs Agency  
State Capitol  
Juneau, AK 99801-1182



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2006-063569-0



**AMENDMENT NO. 2 AND RENEWAL OF LEASE**

LEASE AMOUNT FOR FIRST YEAR OF RENEWAL: \$637,137.72  
(excluding CPI-U adjustment amount)

**THIS AMENDMENT AND RENEWAL OF LEASE**, made and entered into on the date the Legislative Affairs Agency 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", hereby amends and renews the lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, and amended September 12, 2006.

**WITNESSETH**

**WHEREAS**, the Lessor is currently leasing to the Lessee the following described premises, hereinafter "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 4<sup>th</sup> 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.

**NOW, THEREFORE, LESSOR AND LESSEE, AGREE AS FOLLOWS:**

1. That the Lease is renewed for a term of one (1) year beginning June 1, 2009, and terminating at 11:59 p.m. on May 31, 2010, with the Lessee having four (4) remaining one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term.
2. The monthly rental rate for this renewal term is Fifty-Three Thousand, Ninety Four, and 81/100 dollars (\$53,094.81). The rent will be adjusted the first of July in 2009 to reflect changes in the Lessor's variable costs. The adjustment will be based on the percentage of change, between 2003 and the calendar year before the calendar year of the adjustment, in the U.S. Department of Labor Consumer Price Index for All Urban

Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

**PERCENTAGE OF CHANGE IN CPI-U**

$$\frac{(\text{Annual average CPI-U for the calendar year preceding the year of adjustment}) - (\text{Annual average CPI-U for the calendar year 2003 (162.50)})}{162.50} = x$$

$$X / 162.50\% = y\%$$

**ADJUSTED MONTHLY RENTAL RATE**

$$[(35\% \times \text{Base Monthly Rental Rate}) \times \% \text{ of change in CPI-U}] + \text{Base Monthly Rental Rate} = \text{Adjusted Monthly Rental Rate.}$$

$$[(35\% \times \text{Base Monthly Rental Rate}) \times y\%] + \text{Base Monthly Rental Rate} = \text{Adjusted Monthly Rental Rate.}$$

2. Section 39, "Assignment or Transfer", of the Lease is amended to read:

**39. ASSIGNMENT OR TRANSFER:**

Assignment or other transfer of this Lease is subject to Section 160 of the Procurement Procedures of the Alaska State Legislature. The Lessee's interest in this Lease may not be assigned without Lessor's prior written consent and Lessor's consent will not be unreasonable withheld.

The Lessor consents to the Lessee's assignment to the Anchorage Community Development Authority (ACDA), an instrument of the Municipality of Anchorage, of a limited right to manage the Fifty-Two (52) parking spaces of the upper parking lot for off hours public parking based on the following terms:

- (1) Legislative Affairs Agency (LAA) will assign to ACDA the limited right to manage the Fifty-Two (52) parking spaces of the upper parking lot located at 716 West Fourth Avenue for off hours public parking at the following times:
  1. Twenty-four hours per day on weekends; and
  2. On weekdays, between the hours of 5:30 p.m. through 7:00 a.m.

However, upon prior written notice from LAA, ACDA will suspend public parking during these off-hour periods should LAA need these parking spaces for special events, such as legislative hearings.



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2009-017284-0



- (2) At all times Thirty-Four (34) parking spaces on the lower level of the parking lot located at 716 West Fourth Avenue will be reserved for exclusive use of LAA.
- (3) At all times during which ACDA has the right to manage the parking on the upper level parking portion of the property for public parking, ACDA will maintain supervision of the property and all responsibility associated with it including, but not limited to, snow and ice removal. ACDA may provide for public parking upon such terms and conditions as it considers appropriate, in its sole judgement, including the use of signage, on-site or off-site patrons' security measures, and collection of any and all fees.
- (4) 716 West Fourth Avenue, LLC, will pay ACDA the costs it currently pays for maintaining the parking lots in a safe condition and good state of general repair including, but not limited to, snow and ice removal, at all times.
- (5) ACDA will select and install all revenue control equipment for the public parking spaces. The first \$25,000 in parking revenue shall be retained by ACDA to cover purchase of the revenue control equipment and for operations and maintenance costs.
- (6) Any parking revenue received by ACDA from operations above \$25,000 shall be split equally between LAA and ACDA.
- (7) ACDA shall provide enforcement for both the upper and lower levels of parking lots located at 716 West Fourth Avenue 24 hours per day / 7 days per week.
- (8) ACDA shall not issue citations to or remove any vehicles that park on the upper and lower levels of parking lots located at 716 West Fourth Avenue if the vehicles are displaying an LIO or LAA approved legislative parking sticker.
- (9) ACDA will hold LAA and 716 West Fourth Avenue, LLC harmless to the full extent provided by the law with respect to any claims arising out of the use of the parking areas during any period which ACDA has the right to manage and operate under this Agreement.
3. **AUTHORIZATION; CERTIFICATION:** Execution of this Lease Amendment and Renewal was authorized by a majority of the members of the Alaska Legislative Council at a meeting on January 27, 2009.



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2009-017284-0

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2009. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2009, 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, 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.

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

*Robert B. Acree* 2/25/09  
Robert B. Acree Date  
Member  
Tax Identification No.: 03-0443569  
Business License No.: 423463

CERTIFYING AUTHORITY:

*Pamela A. Varni* 3/11/09  
Pamela A. Varni Date  
Executive Director  
Legislative Affairs Agency

LESSEE:  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

*John Harris* 3-3-09  
Representative John Harris Date  
Chair  
Alaska Legislative Council  
Procurement Officer

APPROVED AS TO FORM:

*B. J. Kane* 2/17/09  
Legal Counsel Date



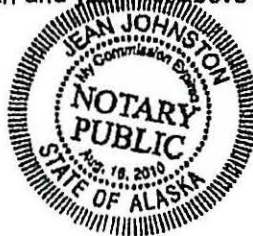
4 of 6  
2009-017284-0



STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 25<sup>th</sup> day of February, 2009, 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 company, 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.

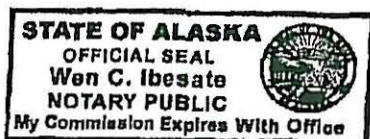


Jean Johnston  
Notary Public in and for Alaska  
My commission expires: 8/18/10

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 3<sup>rd</sup> day of March, 2009, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared Representative John Harris, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

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



Wen C. Ibesate  
Notary Public in and for Alaska  
My commission expires: "With Office"



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2009-017284-0

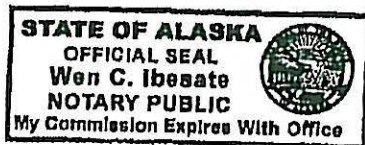
STATE OF ALASKA

FIRST JUDICIAL DISTRICT

)  
) ss.  
)

THIS IS TO CERTIFY that on the 11<sup>th</sup> day of March, 2009, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

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



Wen C. Ibesate  
Notary Public in and for Alaska  
My commission expires: "With Office"

**FOR RECORDING DISTRICT OFFICE USE ONLY:**  
No Charge - State Business

After recording return to:  
Tina Strong, Supply Officer  
Legislative Affairs Agency  
State Capitol, Rm 3  
Juneau, AK 99801-1182



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2009-017284-0



EXHIBIT D

# 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 AM 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

**ALASKA LEGISLATIVE PROCUREMENT PROCEDURES**  
(revised 11/21/13)

\* Section 1. The Administrative Services Policy and Procedures Manual is amended by adding new sections to read:

Sec. 010. PURPOSE.

The purpose of these procurement procedures is to adopt competitive procurement principles applicable to the Legislature that ensure the fair and equitable treatment of all persons who deal with the procurement system of the Legislature.

Sec. 020. APPLICATION.

(a) These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

- (1) employment contracts;
- (2) contracts that do not exceed \$35,000 each year;
- (3) contracts for utilities; in this paragraph, "utilities" includes water, heat, sewer, telephone services and garbage;
- (4) contracts with a state agency, including a department, the University of Alaska, and a public corporation;
- (5) contracts to purchase memberships in professional and legislative organizations;
- (6) contracts to handle an emergency situation, including a situation that arises because of fire, flood, equipment failure, or other compelling reason; to qualify for this exemption, the procurement officer shall make a written determination that there is an emergency, and the determination must recite the facts on which the determination is based;
- (7) contracts for the purchase of maintenance services for equipment, software, or both;
- (8) contracts for hospitality or government protocol; and
- (9) contracts for artifacts or art.

(b) Only section 150(b) of these procedures applies to contracts with a municipality in the state.

Sec. 030. NOTICE OF SOLICITATIONS.

(a) A solicitation to procure services, professional services, supplies, or construction under a contract must be extended to a sufficient number of firms or persons to insure that public interest in competition is adequately served. Bids or proposals from at least six firms or persons listed on



the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts equal to or greater than \$100,000. Bids or proposals from at least three firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts of less than \$100,000. Lists of contractors maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be used in soliciting bids or proposals under this section.

(b) Advertising in a medium that will reasonably bring the invitation or proposal to the attention of persons able to provide the required services, professional services, supplies, or construction may be substituted for direct solicitation or used jointly with direct solicitation of bids or proposals.

(c) The procurement officer shall give notice of the solicitation at least 21 days before the date for the opening of bids or proposals unless the officer makes a determination in writing that a shorter notice period is necessary for a particular solicitation.

(d) If an insufficient number of firms or persons have the expertise required to enable an agency to solicit the number of bids or proposals required under (a) of this section, the agency shall solicit bids or proposals

- (1) from each person or firm listed on the appropriate contractor list that appears to possess the required expertise;
- (2) from any person or firm with the required expertise of which the contracting agency or committee may be aware.

(e) A legislator or the procurement officer for a legislative committee may request the Legislative Affairs Agency to carry out the solicitation responsibilities under this section.

#### Sec. 033. LIMITED COMPETITION PROCUREMENTS.

(a) A procurement may be made without using competitive sealed bidding or competitive sealed proposals if the procurement is

- (1) for supplies and does not exceed \$100,000; this paragraph includes a space lease that does not exceed
  - (A) \$100,000, even if the lease exceeds 7,000 square feet; or
  - (B) 7,000 square feet, even if the lease exceeds \$100,000;
- (2) for services and does not exceed \$100,000; or
- (3) for construction and does not exceed \$200,000.

(b) A procurement made under this section shall be made by contacting at least three firms or persons for written bids or proposals and is not subject to the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 035. PRACTICAL COMPETITION PROCUREMENT.

A construction contract that does not exceed \$100,000, or a contract for supplies, services, or professional services may be awarded without using competitive sealed bidding or competitive sealed proposals, if the procurement officer determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements made under this section shall be made with competition that is practical under the circumstances and without complying with the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 040. EXEMPTIONS.

(a) A contract is exempt from the solicitation requirements of sec. 030 and from sec. 145, if

(1) the procurement officer determines in writing that

(A) it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or other competitive method; and

(B) award of the contract under this paragraph is in the agency's or committee's best interest;

(2) the contract is with a contractor that the Department of Administration has selected by competitive bidding to provide to state agencies the service, product, leased space, or construction that is the subject of the contract; or

(3) the contract is for legal services.

(b) An exemption in (a)(1) of this section applies only if it is approved by the procurement officer, and in the case of a contract for a legislative committee, by a majority of the committee members. A written justification that details the reasons for the exemption in (a)(1) of this section shall be attached to the contract and filed under sec. 200 of these procedures as a public record. A contract proposed for award under the exemption in (a)(1) of this section is not valid unless the required approval is received.

(c) Sections 142, 147, and 210 of these procedures do not apply to a contract that is exempt under (a)(2) of this section.

(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.

Sec. 045. SMALL PROCUREMENTS.

(a) Professional services contracts that do not exceed \$100,000 may be made as small procurements under this section. Procurements made under this section are not subject to sec. 145 or to the solicitation requirements set forth in sec. 030 of these procedures. Small procurements are subject to the provisions of sec. 147 of these procedures. A small procurement that is made by a solicitation of bids is subject to the Alaska bidder preference set out in sec. 145(c) of these procedures.

(b) A contract awarded as a small procurement under this section may be amended so that the contract amount exceeds the amounts set out in (a) of this section, without complying with the solicitation requirements set forth in sec. 030 of these procedures. However, a contract may not be artificially divided to avoid the solicitation requirements set forth in sec. 030 of these procedures.

Sec. 050. ONLY ONE BID OR PROPOSAL RECEIVED.

(a) If only one responsive bid is received in response to an invitation for bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected and:

- (1) new bids or offers may be solicited;
- (2) the proposed procurement may be cancelled; or
- (3) if the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is not time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under sec. 040 of these procedures.

(b) If only one proposal is received in response to a request for proposals, the procurement officer may, as the officer deems appropriate, make an award, cancel the procurement, or if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

Sec. 070. BID AND PERFORMANCE BONDS FOR SUPPLY CONTRACTS OR SERVICE CONTRACTS.

In addition to any other bond required by law, bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interest of the agency. These requirements shall be set forth in the solicitation. Bid or performance bonds may not be used as a substitute for a determination of bidder or offeror responsibility.

Sec. 080. CONDITIONING BIDS OR PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE.

A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another legislative contract is nonresponsive and not acceptable.

Sec. 090. DETERMINATION OF TERMS AND CONDITIONS.

The procurement officer is authorized to determine the provisions, terms and conditions of solicitations and contracts, provided the provisions, terms and conditions are not contrary to statutory or other requirements governing the procurement.

Sec. 095. HUMAN TRAFFICKING.

(a) A procurement may not be made from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

(b) The procurement officer may set restrictions on procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

Sec. 100. UNSOLICITED OFFERS.

(a) An unsolicited offer is an offer other than one submitted in response to a solicitation.

(b) The procurement officer shall consider an unsolicited offer as provided in this section. To be considered for evaluation an unsolicited offer:

- (1) must be in writing;
- (2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the agency;
- (3) must be unique or innovative;
- (4) must demonstrate that the proprietary character of the offering warrants consideration of the use of a noncompetitive procurement; and
- (5) may be subject to testing under terms and conditions specified by the agency.



(c) The unsolicited offer must be evaluated to determine its use to the agency and whether it would be to the agency's advantage to enter into a contract based on the offer.

(d) A written request for confidentiality of technical data and trade secrets contained in an unsolicited offer that is made in writing shall be honored. If an award is made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. Confidential data not contained in the contract are not open to public inspection under sec. 200 of these procedures. If agreement cannot be reached on confidentiality, the agency may reject the unsolicited offer.

#### Sec. 110. POLICY FOR CANCELLATION OF SOLICITATIONS.

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation must give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses also incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the agency's best interest.

#### Sec. 120. CANCELLATION OF SOLICITATION: REJECTION OF ALL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency must state that the solicitation may be cancelled as provided in this section.

(b) Before opening, a solicitation may be cancelled in whole or in part when the procurement officer determines in writing that cancellation is in the agency's best interest. Reasons for cancellation include:

- (1) the agency no longer requires the supplies, services, or construction;
- (2) the agency no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled before opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation must:

- (1) identify the solicitation;
- (2) briefly explain the reason for cancellation; and
- (3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, professional services, or construction.

(d) After opening but before award, all bids or proposals may be rejected in whole or in part when the procurement officer determines in writing that rejection is in the agency's best interest. Reasons for rejection include:

- (1) the supplies, services, professional services, or construction being procured are no longer required;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) the solicitation did not provide for consideration of all factors of significance to the agency;
- (4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (5) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- (6) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(e) A notice of rejection that includes the information required under (c) of this section shall be sent to all businesses that submitted bids or proposals.

(f) In this section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

(g) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

#### Sec. 125. BID OR PROPOSAL PREPARATION COSTS.

If for any reason a contract is not awarded after a solicitation, an agency of the legislature may not be held liable for bid or proposal preparation costs.

#### Sec. 130. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency shall provide that a bid or proposal may be rejected in whole or in part when in the best interest of the agency as provided in this section.

(b) Reasons for rejecting a bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding include:

- (1) the business that submitted the bid is nonresponsible as determined under sec. 210 of these procedures;



- (2) the bid is not responsive, that is, it does not conform in all material respects to the invitation for bids;
- (3) the supply, service, professional service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids.

(c) In this section, "proposal" means an offer submitted in response to a solicitation other than a bid. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the stated requirement in the solicitation may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or part of a proposal. Reasons for rejecting proposals include:

- (1) the business that submitted the proposal is nonresponsive as determined under sec. 210 of these procedures;
- (2) the proposal ultimately fails to meet the announced requirements of the agency in a material respect; or
- (3) the proposed price is clearly unreasonable.

(d) Upon request, unsuccessful bidders or offerors shall be advised of the reasons for the rejection.

#### Sec. 140. ALL-OR-NONE BIDS OR PROPOSALS.

Unless a solicitation permits a bid or proposal to limit acceptance to the entire bid or proposal offering, a bid or proposal so limited is nonresponsive. If the solicitation permits such a limitation, the agency may not reject part of the bid or proposal and award on the remainder.

#### Sec. 142. ALASKA PRODUCT PREFERENCE.

In a contract involving the purchase of supplies, including a construction contract, 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. 145. CONTRACT AWARD.

(a) Except as provided in (c) of this section, the procurement officer shall award a contract based on a solicitation of bids with reasonable promptness to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the solicitation.

(b) In this section, "Alaska bidder" means a person who

- (1) holds a current Alaska business license;

- (2) submits a bid or proposal for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the person or an employee of the person for a period of six months immediately preceding the date of the bid or proposal;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection.

(c) Except as provided in (e) of this section, the procurement officer shall award a contract based on a solicitation of bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's.

(d) The procurement officer shall award a contract based on a solicitation of proposals with reasonable promptness to the responsible and responsive offeror whose proposal is determined in writing by the procurement officer to be the most advantageous to the state after taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. When determining whether a proposal is advantageous to the state, the procurement officer shall consider whether the offeror qualifies as an Alaska bidder under (b) of this section.

(e) Notwithstanding sec. 142, if the procurement is done by competitive sealed bidding, the procurement officer shall award the contract to the lowest responsible and responsive bidder after application of an Alaska bidder preference of five percent, an Alaska products preference under AS 36.30.322 - 36.30.338, and a recycled products preference under AS 36.30.337, an Alaska veterans' preference under AS 36.30.321(f), and preferences under AS 36.20.321(b), (d), (g), (i), and (k) relating to persons with disabilities, including employment programs. In this subsection, "employment program" has the meaning given in AS 36.30.990.

#### Sec. 147. DETERMINATION TO AWARD A CONTRACT TO A NONRESIDENT.

If the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file.

#### Sec. 150. PREPARATION AND AWARD OF CONTRACTS.

- (a) A contract must be self-contained and written with care and thoroughness.

(b) Contracts and amendments to contracts must be authorized as follows:

- (1) contracts involving House operating funds must be authorized by the Speaker of the House and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the Speaker only;
- (2) contracts involving Senate operating funds must be authorized by the President of the Senate and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the President only;
- (3) contracts of a legislative committee must be authorized by a majority of the members of the committee in a meeting;
- (4) contracts of the Legislative Affairs Agency must be authorized by a majority of the members of the Legislative Council in a meeting of the Legislative Council;
- (5) contracts of the Legislative Finance Division and the Legislative Audit Division must be authorized by a majority of the members of the Legislative Budget and Audit Committee in a meeting of the committee;
- (6) contracts of a research agency established by the legislature must be authorized by a majority of the members of the Legislative Council in a meeting.

(c) A contract must be executed by the provider of the service, professional service, supply, or construction, and the procurement officer and shall be approved as to form by legislative legal counsel.

(d) A contract must contain:

- (1) the amount of the contract stated on its first page;
- (2) the date for the work to begin or the supplies to be delivered;
- (3) the date by which the work must be completed;
- (4) a description of the services to be performed or the supplies to be procured under the contract; and
- (5) a statement of the status of the funding for the contract.

(e) Subsections (a), (c), and (d) of this section do not apply when a State of Alaska delivery order form is used.

(f) Notwithstanding (b) of this section, the procurement officer for a construction contract may, without obtaining committee authorization otherwise required by (b) of this section, authorize an



increase in the amount to be paid a contractor under the construction contract if the increase results from a change to the construction contract that is within the general scope of the original construction contract. The cumulative amount of all increases that may be authorized for one construction contract by a procurement officer under this subsection may not exceed \$25,000, or 10 percent of the original amount of the construction contract, whichever is more. In this subsection, "construction contract" means a contract in which the work includes construction services, even if supplies or other services are also provided under the contract.

The procurement officer will notify members of the appropriate committee of any authorized change orders.

#### Sec. 160. NOVATION OR CHANGE OF NAME.

(a) A legislative contract for the lease of legislative space that does not include a subordination agreement, may be assigned with the consent of the procurement officer. Any other legislative contract is not transferable, or otherwise assignable, without the consent of the procurement officer, and in the case of a contract for a committee, a majority of the members of that committee. However, a contractor may assign money receivable under a contract after due notice to the procurement officer.

(b) When it is in the best interest of the agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee must agree that:

- (1) the transferee assume all of the transferor's obligations;
- (2) the transferor waives all rights under the contract as against the agency; and
- (3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) When a contractor requests to change the name in which it holds a contract with an agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are thereby changed.

#### Sec. 170. CONTRACTING FOR INSTALLMENT PURCHASE PAYMENTS, INCLUDING INTEREST.

Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints and must be justified in writing by the procurement officer. The justification shall be attached to the contract and filed under sec. 200 of these procedures. An installment payment agreement may not be used unless a provision for installment payments is included in the solicitation document.

Sec. 180. STANDARD OVERHEAD RATE.

(a) If the University of Alaska or any other state agency has established an applicable standard overhead rate, the standard overhead rate shall be included in a proposal for a contract submitted by the University of Alaska or the state agency.

(b) In this section, "standard overhead rate" means a charge established by the University of Alaska or a state agency that is designed to compensate the University of Alaska or the state agency for administration and support services incidentally provided with the services.

Sec. 195. DISCLOSURE OF PROPOSALS.

Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the selection process. A register of proposals containing the name and address of each offeror shall be prepared. The register and the proposals are open for public inspection after the notice of intent to award a contract is issued. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.

Sec. 200. PROCUREMENT FILES.

(a) A copy of each solicitation or unsolicited offer that does not result in a contract together with relevant documents shall be filed, as is appropriate, with the Legislative Affairs Agency, the legislative finance division, or the legislative audit division. The invitation to bid or request for proposals and each bid or proposal submitted shall be filed with the filed contract copy unless the contract is one in which an invitation to bid or a request for proposals is not required. Except as otherwise provided in secs. 100 and 195 of these procedures, procurement files are open for public inspection.

(b) A contract for services provided to the legislative audit division in the preparation of an audit report or a performance review report does not have to be filed under (a) of this section until the report is released under AS 24.20.311.

Sec. 210. RESPONSIBILITY OF PROSPECTIVE CONTRACTORS.

Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination must be made part of the procurement file.

Sec. 220. STANDARDS OF RESPONSIBILITY.

(a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

- (1) the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;



- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the agency; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that the contractor possesses the necessary items;
- (2) acceptable plans to subcontract for the necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

#### Sec. 230. FILING OF A PROTEST.

An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested.

#### Sec. 240. TIME FOR FILING A PROTEST.

(a) A protest based upon alleged improprieties in a solicitation involving competitive sealed bidding that are apparent before the bid opening shall be filed before the bid opening. A protest



based on alleged improprieties in a solicitation involving competitive sealed proposals that are apparent

- (1) before the due date for receipt of initial proposals shall be filed before that due date;
  - (2) after the due date for receipt of initial proposals shall be filed before the next due date for receipt of adjusted proposals that occurs after the improprieties are apparent.
- (b) In situations not covered under (a) of this section, protests shall be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.
- (c) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely.

#### Sec. 250. NOTICE OF A PROTEST.

The procurement officer shall immediately give notice of a protest filed under sec. 240 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

#### Sec. 260. STAY OF AWARD.

If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a:

- (1) reasonable probability exists that the protest will be sustained; or
- (2) stay of the award is not contrary to the best interests of the state.

#### Sec. 270. DECISION BY THE PROCUREMENT OFFICER.

- (a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 14 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.
- (b) The time for a decision may be extended up to 26 days for good cause by the Legislative Council. If an extension is granted, the procurement officer shall notify the protester in writing of the date the decision is due.
- (c) If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

#### Sec. 280. PROTEST REMEDIES.

- (a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.
- (b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the

procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state.

(c) Notwithstanding (a) and (b) of this section, if a protest is sustained in whole or part, the protestor's damages are limited to reasonable bid or proposal preparation costs.

#### Sec. 290. APPEAL ON A PROTEST.

(a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the Legislative Council. An appeal shall be filed within seven days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under sec. 230 of these procedures. In addition, the appeal must include

- (1) a copy of the decision being appealed; and
- (2) identification of the factual or legal errors in the decision that form the basis for the appeal.

#### Sec. 300. NOTICE OF A PROTEST APPEAL.

(a) The procurement officer shall immediately give notice of an appeal filed under sec. 290 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The Legislative Council shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

#### Sec. 310. STAY OF AWARD DURING PROTEST APPEAL.

If a protest appeal is filed before a contract is awarded and the award was stayed under sec. 260 of these procedures, the filing of the appeal automatically continues the stay until the Legislative Council makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

#### Sec. 320. PROTEST REPORT.

(a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the Legislative Council within 10 days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(b) The procurement officer may request the Legislative Council chair for an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date



the protest report is due. The Legislative Council chair shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

(c) The protester may file comments on the protest report with the Legislative Council within 10 days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(d) The protester may request the Legislative Council chair for an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date the comments are due. The Legislative Council chair shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

#### Sec. 330. DECISION WITHOUT HEARING.

(a) The Legislative Council shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under sec. 290 of these procedures.

(b) The Legislative Council may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

(c) Within 30 days after the period for filing comments under sec. 320(c) or (d) has expired the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

#### Sec. 340. HEARING ON PROTEST APPEAL.

A hearing on a protest appeal shall be conducted in accordance with sec. 450 of these procedures.

#### Sec. 350. CONTRACT CONTROVERSIES.

(a) A contractor shall file a claim concerning a contract awarded under this chapter with the procurement officer. The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the state is liable.

(b) If a controversy asserted by a contractor concerning a contract awarded under these procedures cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision. The decision shall be made no more than 90 days after receipt by the procurement officer of all necessary information from the contractor. Failure of the contractor to furnish necessary information to the procurement officer constitutes a waiver of the claim. Before issuing the decision the procurement officer shall review the facts relating to the controversy and obtain necessary assistance from legal, fiscal, and other advisors.



(c) The time for issuing a decision under (b) of this section may be extended for good cause by the Legislative Council chair if the controversy concerns an amount in excess of \$50,000. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued.

(d) The procurement officer shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. The decision shall include a:

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and
- (5) statement substantially as follows:

"This is the final decision of the procurement officer. This decision may be appealed to the Legislative Council. If you appeal, you must file a written notice of appeal with the Legislative Council within 14 days after you receive this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

(f) If a controversy asserted by the Legislature concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the Legislative Council.

#### Sec. 360. APPEAL ON A CONTRACT CONTROVERSY.

(a) An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the Legislative Council. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

#### Sec. 370. HEARING ON A CONTRACT CONTROVERSY.

(a) Except as provided in (b) of this section, a hearing shall be conducted according to sec. 450 of these procedures on a contract controversy appealed to the Legislative Council or referred to the Legislative Council under sec. 350(f) of these procedures.

(b) Within 30 days after receipt of an appeal on a contract controversy the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 380. AUTHORITY TO DEBAR OR SUSPEND.

(a) After consultation with the using agency and the attorney general and after a hearing conducted according to sec. 450 of these procedures the Legislative Council may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

(b) The Legislative Council, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.

Sec. 390. CAUSES FOR DEBARMENT OR SUSPENSION.

The causes for debarment or suspension include the following:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;
- (3) conviction or civil judgment finding a violation under state or federal antitrust statutes;
- (4) violation of contract provisions of a character that is regarded by the Legislative Council to be so serious as to justify debarment action, such as
  - (A) knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;
- (5) for violation of the ethical standards set out in law or regulation; and
- (6) any violation of these procedures or other cause determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.



Sec. 400. WRITTEN DETERMINATIONS.

(a) The Legislative Council shall issue a written decision to debar or suspend. The decision must:

- (1) state the reasons for the action taken; and
- (2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.

(b) A copy of the decision under (a) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other intervening party.

Sec. 410. HEARING ON A SUSPENSION.

(a) A person suspended under sec. 380 of these procedures is entitled to a hearing conducted according to sec. 450 of these procedures if the person files a written request for a hearing with the Legislative Council within seven days after receipt of the notice of suspension under sec. 400 of these procedures.

(b) If a suspended person requests a hearing the Legislative Council shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under sec. 400 of these procedures.

Sec. 420. LIST OF PERSONS DEBARRED OR SUSPENDED.

The chairman of the Legislative Council shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 430. REINSTATEMENT.

(a) The Legislative Council may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

(b) A debarred person may request reinstatement by submitting a petition to the Legislative Council supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

(c) The Legislative Council may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision shall specify the factors on which it is based.

Sec. 440. LIMITED PARTICIPATION.

The Legislative Council may permit a debarred person to participate in a contract on a limited basis during the debarment period if the Legislative Council determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

Sec. 450. HEARING PROCEDURES.

(a) The chairman of the Legislative Council shall act as a hearing officer or appoint a hearing officer for a hearing conducted under these procedures. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner.

(b) The hearing officer may:

- (1) hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (2) require parties to state their positions concerning the various issues in the proceeding;
- (3) require parties to produce for examination those relevant witnesses and documents under their control;
- (4) rule on motions and other procedural matters;
- (5) regulate the course of the hearing and conduct of the participants;
- (6) establish time limits for submission of motions or memoranda;
- (7) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
  - (A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
  - (B) excluding all testimony of an unresponsive or evasive witness; and
  - (C) excluding a person from further participation in the hearing;
- (8) take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
- (9) administer oaths or affirmations.

(c) A transcribed record of the hearing shall be made available at cost to a party that requests it.

Sec. 460. RECOMMENDATION BY THE HEARING OFFICER.

(a) The hearing officer shall recommend a decision to the Legislative Council based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.



(b) The Legislative Council may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

Sec. 470. FINAL DECISION BY LEGISLATIVE COUNCIL.

A final decision by the Legislative Council after a hearing under these procedures shall be sent within 20 days after the hearing to all parties by personal service or certified mail.

Sec. 480. APPEAL.

The decision of the Legislative Council under sec. 470 may be appealed to the Superior Court in accordance with the procedures established in AS 44.62.560 - 44.62.570 for appeals from decisions of executive branch agencies. A claimant may also bring an action under AS 09.50.250 - 09.50.300 at any time after one year has elapsed since the presentation of the claim under sec. 360, if no decision has been made by the Legislative Council.

Sec. 900. DEFINITIONS.

In these procedures, unless the context in which a term is used clearly requires a different meaning,

- (1) "agency" means any subdivision of the legislative branch that conducts procurements, including legislative committees;
- (2) "days" means calendar days and includes weekends and holidays; if a due date falls on a weekend or a legal holiday then the due date is the next working day;
- (3) "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances;
- (4) "procurement officer" means:
  - (A) the chairman of the Finance Committee with respect to contracts of that committee and the chairman of the Rules Committee with respect to contracts of that committee;
  - (B) the chairman of a legislative committee, other than the Finance Committees and the Rules Committees, with respect to a contract of that committee;
  - (C) the Speaker of the House with respect to House leadership contracts;
  - (D) the President of the Senate with respect to Senate leadership contracts;

- (E) the chairman of the Legislative Council with respect to contracts of the Legislative Affairs Agency and contracts of a research agency established by the legislature;
  - (F) the chairman of the Legislative Budget and Audit Committee with respect to contracts of the Legislative Finance Division and the Legislative Audit Division;
- (5) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that
- (A) include analysis, evaluation, prediction, planning, or recommendation; and
  - (B) result in the production of a report or the completion of a task;
- (6) "solicitation" means an invitation for bids, a request for proposals, or any other document issued by the legislature for the purpose of soliciting bids or proposals to perform a contract.
- (7) "supplies" has the meaning given in AS 36.30.990.

\* Sec. 2. The following sections of the Administrative Services Policy and Procedures Manual are repealed:

- (1) the section headed "Contracts" on page 1.13;
- (2) the section headed "Purchasing" on page 3.1.

\* Sec. 3. These procedures take effect January 1, 1988.

## EXHIBIT C

### 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 motions<sup>1</sup> 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

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<sup>1</sup> 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")<sup>2</sup> 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.

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<sup>2</sup> 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

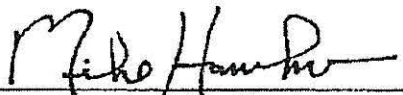
The existing leased space at 716 West Fourth Avenue, while at the end of the service life of the building systems, and despite chronic maintenance problems, has served the Legislature and constituent needs for approximately 20 years. The location on Fourth Avenue provides central access for legislators 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

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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

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, *et al.*

Defendants.

**FILE**

81022-3

**RECEIVED**

**OCT 06 2015**

**Stoel Rives LLP**

Case No. 3AN-15-05969CI

**RESPONSE TO DEENDANT'S (LEGISLATIVE AFFAIRS  
AGENCY) FIRST DISCOVERY REQUESTS TO PLAINTIFF  
ALASKA BUILDING, INC.**

Admissions and Responses to Interrogatories herein do not constitute agreement that the requests and interrogatories, and responses thereto are relevant. Object to characterizations of the agreement as a lease extension and the project as a renovation.

**REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Please admit that YOU were aware as of June 9, 2013 that the Legislative Council was negotiating a deal with Mark Pfeffer to revamp and expand the Legislative Information Office building, as publicly reported.

**RESPONSE:** Deny inasmuch as I don't remember. I don't think so.

**REQUEST FOR ADMISSION NO. 2:** Please admit that on September 19, 2013, 716 West Fourth Avenue, LLC entered into an agreement with the Legislative Affairs Agency to renovate and expand the Legislative Information Office (the "LIO Project").



- Section 34 was replaced with a new section.
- Section 35 was replaced with a new section.
- Section 36 was replaced with a new section.
- Section 37 was replaced with a new section.
- Section 39, as amended, was amended by deleting all content after the first paragraph.
- Section 41 was replaced with a new section.
- Section 42 was replaced with a new section.
- Section 43 was replaced with a new section.
- Section 46 was added.
- Section 47 was added.
- Section 48 was added.
- Section 49 was added.
- Section 50 was added.
- Section 51 was added.
- Section 52 was added.

The rent was drastically increased as was the per square foot rent.

The premises changed drastically, including the legal description with the inclusion of the adjoining property; the leased space going from 22,834 square feet net to 64,000 square feet gross.

The operating costs were drastically increased.

**INTERROGATORY NO. 5:** If you contend that the Lease Extension did not comply with either AS 36.30.020 or the Alaska Legislative Procurement Procedures, please describe WITH PARTICULARITY all facts supporting your contention.

**RESPONSE:** AS 36.30.020, requires that the procedures comply with AS 36.30.083(a) and the agreement does not in that it neither extends a real property lease nor


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JAMES B. GOTTSTEIN  
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*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

is it 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.


Dated October 5, 2015.

  
James B. Gottstein, ABA # 7811100

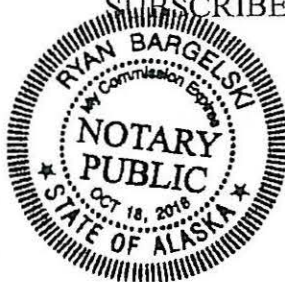
### VERIFICATION

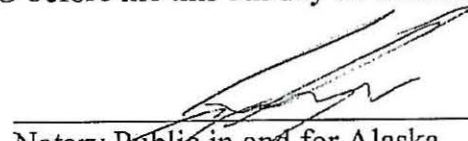
James B. Gottstein, being first duly sworn, deposes and states that I am the president of Alaska Building, Inc., the plaintiff in the above captioned litigation, I have read the above Responses to Interrogatories and believe to be true and complete based on the information available to Alaska Building, Inc., to the best of my knowledge and belief.

Dated October 5, 2015.

  
James B. Gottstein,  
President, Alaska Building, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of October 2015.




  
Notary Public in and for Alaska  
My Commission Expires: 10-18-18

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated October 5, 2015.

  
Jim Gottstein

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*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

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Kevin Cuddy (Alaska Bar #0810062)  
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Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan  
corporation,

Plaintiff,

v.

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

Defendants.

Case No. 3AN-15-05969 CI

**ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT (NOT EXTENSION)**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's ("LAA")  
Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension), and/or  
responses thereto, and being duly advised in the premises, this Court finds and ORDERS  
as follows:



IT IS HEREBY ORDERED that the Plaintiff's Motion for Partial Summary Judgment (Not Extension) IS DENIED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Honorable Patrick McKay  
Superior Court Judge

**CERTIFICATE OF SERVICE**

This certifies that on February 3, 2016, I caused a true and correct copy of the foregoing to be served on:

James B. Gottstein, Esq.  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
(Attorney for Plaintiff)

Jeffrey W. Robinson  
Ashburn & Mason  
1227 West Ninth Avenue, Suite 200  
Anchorage, AK 99501  
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

  
Practice Assistant

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