

## 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 ~~Policy~~ 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

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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 ~~30~~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 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

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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.

apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

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

Legislative Procurement ~~Policy 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. ~~Nothing in these amendments alters the essential identity or main purposes of the contract, or constitute a new undertaking, and is therefore a legitimate modification of the Lease.~~ 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 ~~a~~ 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-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 ~~needs~~requires office space beyond the needs of the Anchorage-area legislators and staff. Once the Lease is amended, the renovated facility will provide ~~The building provides~~ space for the Speaker of the House, and the Senate President, who are both out-of-Anchorage legislators, and for rural legislators who ~~need~~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 ~~not longer~~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 ~~initially~~ under an original 10 year lease which terminated in 2003, that was extended month-by-month through 2004, when the current lease was negotiated. The Legislature is currently 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 and 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 Rrequest Ffor 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, ~~the agency informally consulted with~~ 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. These inquiries delivered the same results as the RFI; there are no existing facilities available to meet the Legislature's needs.

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

Based on the foregoing discussion and factors, inclusive of the lack of suitable remaining time for any additional procurement efforts, the Procurement Officer finds 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 ~~less than fair market value~~ 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 Legislative Procurement Procedure 040(d), is in Legislative Council's

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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 ~~said~~the lease as provided herein.

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Representative Mike Hawker  
Chairman of Legislative Council and  
Procurement Officer

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Date

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