

ALASKA BUILDING, INC.,  
Appellant,  
  
vs.  
  
LEGISLATIVE AFFAIRS AGENCY,  
and 716 WEST FOURTH  
AVENUE, LLC,  
Appellees

---

Superior Court Case No. 3AN-15-5969CI

**APPELLANT'S EXCERPT OF RECORD**  
**VOLUME 1 OF 1**

James B. Gottstein (7811100)  
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Attorney for Appellant,  
Alaska Building, Inc.

Filed in the Supreme Court of  
the State of Alaska, this 26  
day of September, 2016.

Marilyn May, Clerk

By:

Deputy Clerk

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**S-16371**  
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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,  
KOONCE PFEFFER BETTIS, INC., d/ba/  
KPB ARCHITECTS, PFEFFER  
DEVELOPMENT, LLC, LEGISLATIVE  
AFFAIRS AGENCY, and CRITERION  
GENERAL, INC.,

Defendants.

**COPY**  
Original Received

MAR 3 1 2015

Clerk of the Trial Courts

Case No. 3AN-15- 05969CI

**COMPLAINT**

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney,  
Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC,  
Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska  
Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

**I. Parties**

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building),  
has filed its biennial report and paid its corporate taxes last due, is in good standing, and  
is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability  
Company, located in Anchorage, Alaska (716 LLC).

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3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

## **II. Alaska Building Background**

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40), of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska.

(Alaska Building).

8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

9. The Alaska Building and the Empress Theatre Building were constructed with a party wall for the north 50 feet of the Empress Theatre Building's east wall, meaning that both buildings shared the wall.

10. The Alaska Building has historical significance.

11. J.B. (Jake) Gottstein purchased the Alaska Building in 1926.

12. Jake's son, Barnard Jacob (B.J.) Gottstein acquired the Alaska Building from Anna J. Gottstein, his mother and Jake Gottstein's widow, in 1972.

13. Plaintiff, which is 100% owned by James B. (Jim ) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

### **III. Legislative Information Office Project**

14. On September 19, 2013, 716 LLC entered into an agreement with the Legislative Affairs Agency to (a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building and (b) lease a newly constructed office building to the Legislative Affairs Agency for the Anchorage Legislative Information Office (LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Bar).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless [Alaska Building, Inc. (ABI)] . . . from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

#### **IV. Count One—Illegality of LIO Project**

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

#### **V. Count Two--LIO Project Damage To Alaska Building**

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.

28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work on the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work on the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. 716 LLC, Pfeffer, KPB, and Criterion are liable to Alaska Building for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.

B. A Judgement reforming the LIO Project lease to market value.

C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.

D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.

E. Punitive damages against 716 West Fourth Avenue LLC.

F. Costs and attorney's fees.

Complaint

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G. Such other further and additional relief as the Court find just.

DATED March 31, 2015.

Law Offices of James B. Gottstein, attorney for  
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein  
Alaska Bar No. 7811100

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
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ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

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716 WEST FOURTH AVENUE LLC,  
KOONCE PFEFFER BETTIS, INC., d/ba/  
KPB ARCHITECTS, PFEFFER  
DEVELOPMENT, LLC, LEGISLATIVE  
AFFAIRS AGENCY, and CRITERION  
GENERAL, INC.,

Defendants.

Case No. 3AN-15-3AN-15-05969CI

**AMENDED COMPLAINT**

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney,  
Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC,  
Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska  
Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

**I. Parties**

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building),  
has filed its biennial report and paid its corporate taxes last due, is in good standing, and  
is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability  
Company, located in Anchorage, Alaska (716 LLC).

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3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency (LAA) is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

## **II. Alaska Building Background**

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly described as:

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8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

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13. Plaintiff, which is 100% owned by James B. (Jim ) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

### **III. Legislative Information Office Project**

14. On September 19, 2013, 716 LLC entered into an agreement with LAA to

(a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building, and

(b) lease a newly constructed office building to LAA for the Anchorage Legislative Information Office

(LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Pub).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless [Alaska Building, Inc. (ABI)] . . . from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

#### **IV. Count One—Illegality of LIO Project**

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

#### **V. Count Two--LIO Project Damage To Alaska Building**

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.



28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work impacting the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work impacting the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. By entering into the LIO Project, 716 LLC and LAA caused the damage to the Alaska Building.

32. Damage to the Alaska Building as a result of the LIO Project was foreseeable.

33. Damage to the Alaska Building as a result of the LIO Project was foreseen.

34. Jim Gottstein, president of the Alaska Building, Inc., advised 716 LLC (through Pfeffer, its representative), Pfeffer, and Criterion that damage to the Alaska Building was all but certain if the LIO Project proceeded.

35. Jim Gottstein attempted to convince 716 LLC to not proceed with the LIO Project because of (a) the all but certain damage to the Alaska Building that would result, and (b) the illegality of the LIO Project.

36. 716 LLC refused and proceeded with the LIO Project, resulting in damage to the Alaska Building.

37. 716 LLC, Pfeffer, KPB, Criterion, and LAA are liable to Alaska Building, Inc., for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

- A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.
- B. A Judgement reforming the LIO Project lease to market value.
- C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.
- D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, Legislative Affairs Agency, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.
- E. Punitive damages against 716 West Fourth Avenue LLC.
- F. Costs and attorney's fees.
- G. Such other further and additional relief as the Court find just.

DATED June 8, 2015.

Law Offices of James B. Gottstein, attorney for  
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein  
Alaska Bar No. 7811100

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,  
KOONCE PFEFFER BETTIS, INC., d/b/a  
KPB ARCHITECTS, PFEFFER  
DEVELOPMENT, LLC, LEGISLATIVE  
AFFAIRS AGENCY, and CRITERION  
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S OPPOSITION TO  
LEGISLATIVE AFFAIRS AGENCY'S MOTION  
TO STAY DISCOVERY**

Plaintiff, Alaska Building, Inc. (ABI), opposes the Legislative Affairs Agency's Motion to Stay Discovery (Stay Motion). ABI agrees that it is within the Court's sound discretion to stay discovery, but respectfully suggests this Court should not grant the Stay Motion for the reasons that follow.<sup>1</sup>

<sup>1</sup> As an initial matter, the Legislative Affairs Agency (LAA) has clarified that its Stay Motion only applies to Count One of the Complaint pertaining to the illegality of the lease for the Anchorage Legislative Information Office, not Count Two, the damage claim. Exhibit A.



### A. Background

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC) entered into a sole source agreement with defendant Legislative Affairs Agency (LAA) to:

(a) demolish (i) the existing Anchorage Legislative Information Office down to its steel frame and (ii) the Empress Theatre building, and

(b) lease a newly constructed office building to LAA for the Anchorage Legislative Information Office on the two lots upon which the old LIO building and the Empress Theatre had been demolished (LIO Lease).

This was purportedly authorized under AS 36.30.083, but AS 36.30.083 only allows sole source procurement of leased space to extend a real property lease for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. (emphasis added).

The LIO Lease is not an extension because (1) the existing building was demolished down to its steel frame (2) the adjacent old Empress Theatre, most recently the Anchor Pub, was completely demolished, (3) a brand new building was constructed on the combined sites of the old Legislative Information Office Building and the Old Empress Theatre, and (4) the premises were vacated for at least 13 months during the demolition and while the new building was constructed. This was a new construction project not a lease extension.

Opposition to Motion  
to Stay Discovery

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In addition, the cost is well over the market rental value of the real property. Comparing apples to apples, the LIO Lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below market rate is about \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal LIO Lease of \$281,638. This is \$177,328 per month more than allowed under AS 36.30.083. Over the life of the LIO Lease this is \$21,279,360 more than allowed under AS 36.30.083.

The old Empress Theatre and the Alaska Building shared a wall (Party Wall) and the demolition of the old Empress Theatre and construction of the New Legislative Information Office Building caused substantial damage to the Alaska Building. This damage would not have occurred but for the LAA agreeing to the illegal LIO Lease. Filed contemporaneously herewith is an Amended Complaint, which makes this causation explicit.<sup>2</sup>

Count One of the original and Amended Complaint is to declare the LIO Lease null and void or reform it to at least 10 percent below the market rental value of the real property, and in either event, award ABI 10% of the savings for bringing this action in the face of such pervasive corruption that this blatantly illegal contract has been allowed to proceed.<sup>3</sup>

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<sup>2</sup> See, paragraph 31 of the Amended Complaint.

<sup>3</sup> Exhibit B is a copy of the e-mail transmitting a copy of the original complaint to the Legislative Affairs Agency and the Attorney General expressing the hope that either or both of them would support invalidation or reformation of the illegal LIO Lease as it appears the lease rate is at least \$2 million per year above market. While the Attorney

Count Two is for damage to the Alaska Building. The Amended Complaint includes that the Legislative Affairs Agency as liable in Count Two because its action in entering into the illegal LIO Lease caused the damage to the Alaska Building.<sup>4</sup> It also adds allegations regarding the foreseeability of damage to the Alaska Building,<sup>5</sup> that damage to the Alaska Building was in fact foreseen,<sup>6</sup> and the owner of ABI attempted to convince 716 LLC to not proceed with the project because of (a) the all but certain damage to the Alaska Building that would result and (b) the illegality of the LIO Lease.<sup>7</sup>

### **B. ABI Has Standing**

The issue of standing will be addressed in ABI's forthcoming Opposition to Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims for Misjoinder, which is due in a week, but it seems worthwhile to provide a thumbnail sketch here. First, the Amended Complaint added to Count Two that the Legislative Affairs Agency caused the damage to the Alaska Building by entering into the illegal lease and is liable therefor clearly establishes interest-injury standing against LAA with respect to Count Two. Second, with respect to Count One, ABI has interest-injury standing because it is seeking 10% of the cost savings. The request for a declaratory judgment that the LIO Lease is illegal, null and void is part of the 10% savings claims. Simply put, LAA's

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General's Office usually represents state agencies, in this case, the Legislative Affairs Agency hired private counsel, authorizing \$100,000 in attorney's fees to defend the illegal LIO Lease.

<sup>4</sup> Paragraph 37 of the Amended Complaint.

<sup>5</sup> Paragraph 32 of the Amended Complaint.

<sup>6</sup> Paragraphs 33 & 34 of the Amended Complaint.

<sup>7</sup> Paragraph 35 of the Amended Complaint.

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to Stay Discovery

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standing objection, particularly in light of the Amended complaint, lacks merit and its stated rationale for staying discovery does not exist.

**C. The Stay Motion is Interposed to Conceal Corruption**

It is apparent that the LIO Lease is the result of corruption. The effect and no doubt the main purpose of the Stay Motion is to keep the details of this corruption from being discovered. It would be against public policy for this Court to facilitate such a cover-up and the Stay Motion should also be denied for this reason.

Exhibit C is a letter to the Governor of Alaska detailing this apparent corruption, asking him to line item veto the appropriation for the LIO Lease rent, and noting that it is likely a crime was committed. The Attorney General was copied on this letter. Neither the Governor nor the Attorney General has responded. In light of the State of Alaska's extreme budget problems with the Legislature passing a budget that is unfunded by \$3 Billion that the Governor is trying to address with the Legislature, it is not surprising that he did not want to antagonize the powers that be in the Legislature by vetoing the rent appropriation for the New LIO Building even though the issue of the apparently corrupt LIO Lease was one of his campaign issues.

While politicians play politics, this Court should not. This Court should not facilitate a cover up of this apparent corruption by staying discovery.

#### **D. Alaska Building, Inc., Will Be Prejudiced by a Stay of Discovery**

The Legislative Affairs Agency asserts that a stay of discovery will not result in any unfair prejudice to ABI. This acknowledges that ABI will be prejudiced, but that such prejudice would not be unfair. ABI should not be subjected to any prejudice.

Assuming a prompt decision on its Motion to Dismiss or Sever,<sup>8</sup> the Legislative Affairs Agency asserts that any discovery delay is likely to be short. First, there is no assurance that a decision on the Motion to Dismiss or Sever will be forthcoming soon. Any delay beyond a week or few will be prejudicial to ABI because its attorney is a sole practitioner with no staff who is not able to throw a lot of personnel at this case at the last minute, unlike the five separate law firms defending the five defendants.

In addition, should the Motion to Dismiss be denied, it seems likely the Legislative Affairs Agency will then file a motion to dismiss for failure to state a claim upon which relief may be granted under Civil Rule 12(b)(6) and make the same argument for a stay of discovery with respect to it. This would cause additional delay.

If the actions of defense counsel heretofore are any guide, discovery needs to proceed promptly in order for there to be an orderly lead up to the trial set for August of 2016. Granting the Motion for Stay would be very and unfairly prejudicial to ABI.

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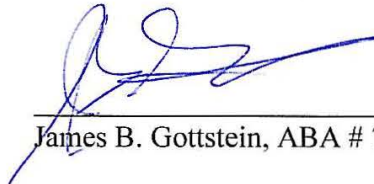
<sup>8</sup> Severing this action should not be the occasion for a stay of discovery. The proposed order lodged by the Legislative Affairs Agency is essentially a dismissal without prejudice, not a severance. Nowhere in its motion does the Legislative Affairs Agency support such action and such action does not appear to be authorized by the rules.

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**E. Conclusion**

For the foregoing reasons, the Legislative Affairs Agency's Motion to Stay  
Discovery should be **DENIED**.

Dated June 8, 2015.



James B. Gottstein, ABA # 7811100

Opposition to Motion  
to Stay Discovery

Page 7

**James B. Gottstein**

---

**From:** Cuddy, Kevin M. <kevin.cuddy@stoel.com>  
**Sent:** Tuesday, June 02, 2015 4:48 PM  
**To:** Jeffrey W. Robinson; James B. Gottstein; gthatcher@scheerlaw.com; dquinn@richmondquinn.com; Mark Scheer  
**Cc:** CLD@delaneywiles.com  
**Subject:** Alaska Building litigation

All,

To the extent that there was any confusion, please allow me to clarify that the Legislative Affairs Agency's motion to stay discovery is limited to Count 1. That is why both the motion and the proposed order emphasize that a stay of discovery is appropriate because, if the motion to dismiss Count 1 is granted due to lack of standing, it would dispose of the entire case against the Agency. If anyone has any questions, feel free to give me a call.

-Kevin

**Kevin M. Cuddy**  
**STOEL RIVES LLP** | 510 "L" Street, Suite 500 | Anchorage, AK 99501  
Direct: (907) 263-8410 | Fax: (907) 277-1920  
[kevin.cuddy@stoel.com](mailto:kevin.cuddy@stoel.com) | [www.stoel.com](http://www.stoel.com)

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**James B. Gottstein**

---

**From:** James B. Gottstein <james.b.gottstein@gottsteinlaw.com>  
**Sent:** Tuesday, March 31, 2015 12:25 PM  
**To:** attorney.general@alaska.gov; craig.richards@alaska.gov; pam.varni@akleg.gov  
**Cc:** james.b.gottstein@gottsteinlaw.com  
**Subject:** Complaint in 3AN-15-05969CI  
**Attachments:** 150331ComplaintRcvdStampedWCaseNo.pdf

Dear Mr. Richards and Ms. Varni:

Please find attached a copy of the just filed Complaint in *Alaska Building, Inc., v. 716 West Fourth Avenue, LLC; Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects; Pfeffer Development LLC; Legislative Affairs Agency; and Criterion General, Inc.*, Case No 3AN-15-05969CI, State of Alaska, Third Judicial District in Anchorage.

In addition to claiming for substantial damage to the Alaska Building, which is adjacent to the new Anchorage Legislative Information Office and shares a party wall, the Complaint alleges that the sole source lease entered into by the Legislative Affairs Agency is illegal under AS 36.30.83 because it is neither a lease extension nor 10 percent below the market rental value. The relief claimed is to invalidate or reform the lease so that it is at least 10% below market rental rates.

The lease clearly violates AS 36.30.83 and it is my hope the Legislative Affairs Agency and State of Alaska will support invalidation or reformation as it appears the lease rate is at least \$2 million per year above market.

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: James.B. Gottstein@GottsteinLaw.Com

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,  
KOONCE PFEFFER BETTIS, INC., d/ba/  
KPB ARCHITECTS, PFEFFER  
DEVELOPMENT, LLC, LEGISLATIVE  
AFFAIRS AGENCY, and CRITERION  
GENERAL, INC.,

Defendants.

**COPY**  
Original Received

MAR 31 2015

Clerk of the Trial Courts

Case No. 3AN-15- 05969CI

**COMPLAINT**

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney,  
Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC,  
Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska  
Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

**I. Parties**

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building),  
has filed its biennial report and paid its corporate taxes last due, is in good standing, and  
is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability  
Company, located in Anchorage, Alaska (716 LLC).

Exhibit B, page 2 of 7

LAW OFFICES OF JAMES B. GOTTSTEIN  
406 G STREET, SUITE 206  
ANCHORAGE, ALASKA 99501  
TELEPHONE (907) 274-7656  
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3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

## **II. Alaska Building Background**

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40), of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska.

(Alaska Building).

8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

9. The Alaska Building and the Empress Theatre Building were constructed with a party wall for the north 50 feet of the Empress Theatre Building's east wall, meaning that both buildings shared the wall.

10. The Alaska Building has historical significance.

11. J.B. (Jake) Gottstein purchased the Alaska Building in 1926.

12. Jake's son, Barnard Jacob (B.J.) Gottstein acquired the Alaska Building from Anna J. Gottstein, his mother and Jake Gottstein's widow, in 1972.

13. Plaintiff, which is 100% owned by James B. (Jim ) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

### III. Legislative Information Office Project

14. On September 19, 2013, 716 LLC entered into an agreement with the Legislative Affairs Agency to (a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building and (b) lease a newly constructed office building to the Legislative Affairs Agency for the Anchorage Legislative Information Office (LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Bar).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless [Alaska Building, Inc. (ABI)] . . . from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.



**IV. Count One—Illegality of LIO Project**

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

**V. Count Two--LIO Project Damage To Alaska Building**

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.

28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work on the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work on the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. 716 LLC, Pfeffer, KPB, and Criterion are liable to Alaska Building for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.

B. A Judgement reforming the LIO Project lease to market value.

C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.

D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.

E. Punitive damages against 716 West Fourth Avenue LLC.

F. Costs and attorney's fees.

Complaint

Page 5

Exhibit B, page 6 of 7

G. Such other further and additional relief as the Court find just.

DATED March 31, 2015.

Law Offices of James B. Gottstein, attorney for  
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein  
Alaska Bar No. 7811100

LAW OFFICES OF JAMES B. GOTTSTEIN

408 G STREET, SUITE 206  
ANCHORAGE, ALASKA 99501  
TELEPHONE (907) 274-7686  
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Complaint

Page 6

Exhibit B, page 7 of 7





## ***ALASKA BUILDING, INC.***

406 G Street, Suite 206, Anchorage, Alaska 99501  
(907) 274-7686 Phone ~ (907) 274-9493 Fax

May 1, 2015

Governor Bill Walker  
Suite 1700  
550 West 7th Avenue  
Anchorage, AK 99501

Hand Delivered

### **Open Letter**

Re: Line Item Veto of Illegal Anchorage Legislative Information Office Lease

Dear Governor Walker:

This is to urge you to stand up against the corruption involved in the sole source lease of the Anchorage Legislative Information Office (LIO) by using your line item veto authority to eliminate its FY 2016 appropriation, or at least reduce it to 10% below the market rate.

As you may know, the Alaska Building was damaged by the demolition of the then existing LIO and Anchor Pub and the construction of the new LIO, and Alaska Building, Inc., had to file a lawsuit over it. Since the sole source lease was illegal I included in the lawsuit that the lease should be declared invalid or the rent reduced.<sup>1</sup> Frankly, I should not have to bear the risk of bringing this claim and believe that as the Governor of Alaska you should address this blatant corruption.

Since we are both lawyers, I will provide the legal analysis. First, the lease was purportedly allowable under AS 36.30.083, which provides:

(a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

(emphasis added). In other words, there is a limited exception to the normal public bidding process required under state law to protect the public, allowing the legislature to extend a lease for up to 10 years, if the rental rate is at least 10 percent below market value.

First, tearing down the existing building to its steel frame and then constructing a brand new building, with no occupancy for 15 months, is not an extension.

---

<sup>1</sup> The Complaint and other documents pertaining to the lease have been uploaded to <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm> and will be updated as events occur.

Governor Bill Walker  
May 1, 2015  
Page 2

Second, it is common knowledge that the lease rate is over 2 times the market rate. For example, the December 21, 2013, Alaska Dispatch story, [No-Bid Deal To Expand Legislative Offices Downtown Draws Criticism](#), states, "on a square-footage basis, the state will pay more than double the going rate for downtown office space, according to a check of leases and space available on Multiple Listing Service." More specifically, comparing apples to apples, the current LIO lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below the market rate would be \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal lease of \$281,638.

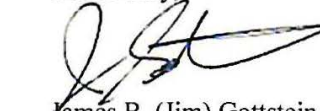
Finally, that this sole source lease was approved under these circumstances leads to the conclusion that it is the result of corruption. In this case, a crime appears to have been committed. AS 36.30.930(2) provides:

(2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.

I don't know who is guilty of this crime, but it seems to me that in addition to using your line item veto authority, the Attorney General should be asked to investigate this corruption and take appropriate action.

Regardless of whether an investigation into and appropriate action taken with respect to this corruption occurs, I urge you to veto the FY 2016 appropriation for the Anchorage LIO entirely, or at least reduce it to \$104,310 per month.<sup>2</sup>

Yours truly,



James B. (Jim) Gottstein  
President

cc: e-mail  
Craig Richards (via e-mail)

---

<sup>2</sup> The [so-called lease extension](#) is clear that it is subject to the funds being appropriated, so this should not result in any liability to the state. In addition, that the lease is illegal is also a defense to any claim of breach.

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

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and  
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

**COPY**  
Original Received

AUG 25 2015

Clerk of the Trial Courts

Case No. 3AN-15-3AN-15-05969CI

**SECOND AMENDED COMPLAINT**

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney, Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC, and the Alaska Legislative Affairs Agency, hereby alleges as follows.

1. Plaintiff Alaska Building, Inc., is an Alaska corporation, has filed its biennial report and paid its corporate taxes last due, is in good standing, and is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability Company, located in Anchorage, Alaska (716 LLC).

3. Defendant Legislative Affairs Agency (LAA) is an agency of the State of Alaska.

LAW OFFICES OF  
JAMES B. GOTTSTEIN  
406 G STREET, SUITE 206  
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99501

TELEPHONE  
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(907) 274-9493

4. On September 19, 2013, 716 LLC entered into an agreement with LAA to:

(a) demolish the existing Anchorage Legislative Information Office down to its steel frame and foundation, demolish the adjacent Empress Theatre building then occupied by the Anchor Pub, and

(b) lease a newly constructed office building on the combined site to LAA for the Anchorage Legislative Information Office

(LIO Project Lease).

5. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

6. Under AS 36.30.083(a) an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

7. The LIO Project Lease is not a lease extension.

8. The rental rate of the LIO Project Lease is not at least 10 percent below the market rental value of the real property at the time the LIO Project Lease was executed.

9. In fact, the rental rate of the LIO Project is at least twice the market rental value at the time the LIO Project Lease was executed.

10. The LIO Project Lease is illegal because it does not comply with AS 36.30.

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(907) 274-9493

Second Amended Complaint

Page 2

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Affairs Agency pertaining to the Anchorage Legislative Information Office building illegal, null and void.

B. A Judgment in favor of Alaska Building, Inc., in the amount of 10% of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease.

C. Punitive damages against 716 West Fourth Avenue LLC.

D. Costs and attorney's fees.

E. Such other further and additional relief as the Court find just.

DATED August 25, 2015.

Law Offices of James B. Gottstein, attorney for  
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein  
Alaska Bar No. 7811100

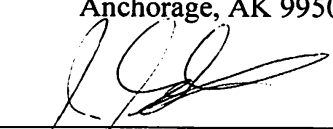
#### CERTIFICATE OF SERVICE

A copy hereof was mailed this date to:

Jeffrey W. Robinson/  
Eva R. Gardner  
Ashburn & Mason, PC  
1227 W. 9th Ave., Ste. 200  
Anchorage, AK 99501

Kevin M. Cuddy  
Stoel Rives LLP  
510 L St., Ste. 500  
Anchorage, AK 99501

Dated, August 25, 2015.

  
Jim Gottstein

LAW OFFICES OF  
JAMES B. GOTTSTEIN  
406 G STREET, SUITE 206  
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Second Amended Complaint

Page 3



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

ALASKA BUILDING, INC., an Alaska  
corporation,  
Plaintiff  
vs.  
716 WEST FOURTH AVENUE LLC, and  
LEGISLATIVE AFFAIRS AGENCY,  
Defendants.

**COPY**  
**Original Received**  
**OCT 03 2015**  
Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**AFFIDAVIT OF LARRY NORENE**

THIRD JUDICIAL DISTRICT )  
 )ss  
STATE OF ALASKA )

LARRY NORENE, being first sworn under oath hereby deposes and states as follows:

1. I am a retired real estate appraiser and Alaska commercial real estate broker very familiar with the Anchorage commercial real estate market, including the core downtown area.

2. I have reviewed the so-called "Extension of Lease and Lease Amendment No. 3," dated September 19, 2013, by and between, 716 West Fourth Avenue LLC and the Alaska Legislative Affairs agency pertaining to the Legislative Affair Agency leasing 716 W. 4th Avenue, Anchorage, Alaska, for its Anchorage Legislative Information Office (LIO Lease).

3. I have also reviewed the Rental Value Appraisal Report, Anchorage Legislative Information Office, Prepared for Alaska Housing Finance Corporation, as of June 1, 2014, by Timothy R. Lowe pertaining to the LIO Lease (Lowe Appraisal) and offer my opinion of the maximum fair market rent as of that date.

4. This estimate is based on the high end of a possible range, using market comparison, using full floor net rentable area in accordance with the market, and using full service lease comparisons which require an adjustment to reflect the subject net net lease.

5. At that time, it is my opinion that the maximum rent attainable would be \$2.00/square foot/month for the basement, and \$3.25/square foot/month for the upper floors for a full service lease, as follows:

<b>Market Rates</b>	<b>Square Feet</b>	<b>Monthly per sq/ft</b>	<b>Monthly</b>	<b>Annual</b>	<b>Over Lease Term</b>
Basement	9,806	\$ 2.00	\$ 19,612	\$ 235,344	\$ 2,353,440
Upper Floors	45,194	\$ 3.25	\$ 146,881	\$ 1,762,566	\$ 17,625,660
Market Rent Totals			\$ 166,493	\$ 1,997,910	\$ 19,979,100

6. The LIO Lease is for a completely net lease, and deducting the operating costs as estimated in the Lowe Appraisal, estimated at \$10/square feet/year, the fair market rent for completely net lease is \$1,447,910/year, or \$120,659/month.

7. Then, taking 90% of that as being the maximum allowed under AS 36.30.083(a), the maximum allowable lease rate would be \$1,303,119 per year or \$108,593 per month.

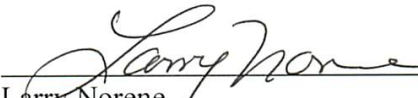
8. Thus, the LIO Lease charges \$2,076,537 per year over what is allowed under AS 36.30.083(a), or \$2,076,537 per month over what is allowed under AS 36.30.083(a).

9. Putting all of these and over the lease term figures in a matrix is as follows:

Market Rates	Square Feet	Monthly per sq/ft	Monthly	Annual	Over Lease Term
Basement	9,806	\$ 2.00	\$ 19,612	\$ 235,344	\$ 2,353,440
Upper Floors	45,194	\$ 3.25	\$ 146,881	\$ 1,762,566	\$17,625,660
Market Rent Totals			\$ 166,493	\$ 1,997,910	\$19,979,100
Deduct Operating Expenses for Triple Net			\$ (45,833)	\$ (550,000)	\$ (5,500,000)
Adjusted for Triple Net Lease			\$ 120,659	\$ 1,447,910	\$14,479,100
90% of Market Allowed By 36.30.083(a)			\$ 108,593	\$ 1,303,119	\$13,031,190
LIO Lease			\$ 281,638	\$ 3,379,656	\$33,796,560
Amount Over AS 36.30.083(a) Allowable			\$ 173,045	\$ 2,076,537	\$20,765,370

FURTHER YOUR AFFIANT SAYETH NAUGHT.


DATED this 2 day of Oct., 2015.

  
Larry Norene

SUBSCRIBED AND SWORN TO before me this 2 day of OCTOBER

2015.



  
Notary Public in and for Alaska  
My Commission Expires: 8-21-17

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska )  
corporation, )

Plaintiff, )

vs. )

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



Case No.: 3AN-15-05969 CI

**716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR  
QUI TAM AND PUNITIVE DAMAGES**

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves this Court to enter an order precluding Plaintiff Alaska Building, Inc.'s ("ABI") from pursuing its claims for *qui tam* damages and punitive damages. As a matter of law, these types of damages are not available under the facts alleged in the Second Amended Complaint.

**I. DAMAGES SOUGHT IN THE SECOND AMENDED COMPLAINT**

On August 25, 2015, ABI filed its Second Amended Complaint against 716 and the Legislative Affairs Agency ("Agency"). The Second Amended Complaint alleges that the lease renewal ("LIO Lease") entered into between 716 and the Agency in September 2013 was in violation of AS 36.30. Based on this allegation, the Second Amended Complaint seeks a variety of remedies: declaratory judgment that the LIO Lease is invalid, "A Judgment in favor of Alaska Building, Inc., in the amount of 10%

{10708-101-00290946;2}

Page 1 of 6

ASHBURN & MASON P.C.  
LAWYERS

1227 WEST 9TH AVENUE, SUITE 200

ANCHORAGE, ALASKA 99501

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of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease[.]” punitive damages against 716, as well as costs and attorney’s fees.<sup>1</sup>

## II. DISCUSSION

### A. ABI Should Be Precluded from Bringing an Unauthorized *Qui Tam* Claim.

ABI’s claim for “10% of the savings” to the Agency that would result from invalidation of the LIO Lease lacks any basis in law.<sup>2</sup> The Second Amended Complaint identifies no legal principle that entitles ABI to recover damages from 716 in the absence of any injury to ABI.<sup>3</sup> Rather, the claim for 10% represents ABI’s attempt to bring a *qui tam* action, which is not allowed absent express statutory provision.

Black’s Law Dictionary defines a *qui tam* action as follows:

*qui tam* action (kee-tam or kwi tam) [Latin *qui tam pro domino rege quam pro se ipso in hac parte sequitur* “who as well for the king as for himself sues in this matter”] (18c) An action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.<sup>4</sup>

<sup>1</sup> Second Amended Complaint at 3.

<sup>2</sup> For this reason, the Court previously found the 10% claim inadequate to confer standing. August 21, 2015 Order at 3 n.15 (noting that while “this rather novel claim” was not before the Court at that time, it did “not find enough credence in the claim to grant interest-injury standing.”).

<sup>3</sup> Any direct injury allegedly suffered by ABI as a result of the LIO Project will be fully addressed in the context of ABI’s pending lawsuit on that subject in 3AN-15-9785 CI.

<sup>4</sup> *Qui Tam Action*, Black’s Law Dictionary (10th ed. 2014).

716’S MOTION FOR RULING OF LAW PRECLUDING ABI’S CLAIMS FOR *QUI TAM* AND PUNITIVE DAMAGES

*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al.* 3AN-15-05969 Civil  
{10708-101-00290946;2}



This is exactly the type of action ABI seeks to bring here: ABI seeks to recover 10% for itself, with the remainder to the State.<sup>5</sup> *Qui tam* actions are not permissible unless specifically authorized by statute.<sup>6</sup> As the Alaska Legislature has not enacted any statute authorizing *qui tam* recovery under the circumstances alleged in the Second Amended Complaint, and as there is no basis in the common law for ABI's attempt to recover monetary damages in the absence of any injury, ABI's claim for 10% of the alleged savings to the Agency should be dismissed.

### **B. ABI Should Be Precluded from Seeking Punitive Damages.**

The Second Amended Complaint asserts a vague claim for punitive damages against 716. As a matter of law, punitive damages are generally unavailable in the absence of a compensatory damages award.<sup>7</sup> As ABI has asserted no cognizable claim for compensatory damages or other quantifiable injury, other than the unauthorized *qui tam* action discussed above, its punitive damages claim merits dismissal.

<sup>5</sup> Cf. ABI's Opp. to 716's Mot. to Dismiss at 2 n.3 ("[T]he State will receive 90% of the savings if [ABI] is successful.").

<sup>6</sup> *Qui Tam Action*, Black's Law Dictionary, *supra* n.3 ("An action brought under a statute . . .") (emphasis added); *Vermont Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 768 (2000) ("[T]he False Claims Act (FCA) is the most frequently used of a handful of extant laws creating a form of civil action known as *qui tam*." (emphasis added); cf. *Madden v. Croan*, No. S-10134, 2002 WL 31492593, at \*5 (Alaska Nov. 6, 2002) (unreported) ("As a result of alleged misconduct by the superior court judge, the guardian ad litem, and Susan and her attorney, Roger claims the right to over \$18 million in punitive damages. He also claims several more million dollars as the result of a "quitam action/whistle blowers 10% reward." These claims are completely unsupported.").

<sup>7</sup> *Deland v. Old Republic Life Ins. Co.*, 758 F.2d 1331, 1339 n.4 (9th Cir. 1985) ("There can be no punitive damages where compensatory damages have not been awarded."); *DeNardo v. GCI Commc'n Corp.*, 983 P.2d 1288, 1292 (Alaska 1999) ("A punitive damages claim cannot stand alone; because we reject DeNardo's underlying claim, we also necessarily affirm summary judgment on his punitive damages claim.").

716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR *QUI TAM* AND PUNITIVE DAMAGES

*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC*, et. al. 3AN-15-05969 Civil  
{10708-101-00290946;2}

Even if ABI had asserted a claim for monetary damage in this action, punitive damages would still be unavailable because the Second Amended Complaint fails to allege any conduct by 716 that could support a punitive damage award. "Punitive damages are imposed to punish malicious wrongdoers and to deter future malicious wrongs."<sup>8</sup> For that reason, AS 09.17.020(b) clearly limits the circumstances under which punitive damages may be awarded:

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

- (1) was outrageous, including acts done with malice or bad motives;  
or
- (2) evidenced reckless indifference to the interest of another person.

The Second Amended Complaint alleges no conduct by 716 that could plausibly meet either of these standards. Indeed, the Second Amended Complaint contains only a single allegation relating to conduct by 716: it alleges that 716 entered into the LIO Lease. It does not allege any facts suggesting that 716's entrance into the LIO Lease was outrageous or done with any improper motive; nor does it allege any facts suggesting this action was recklessly indifferent to the interest of any other person.

In the context of this case, the legislative council was entitled to extend the real property lease at issue under AS 36.30.083(a). Their approval was in compliance with their own procurement procedures under AS 36.30.020. 716 had nothing to do with establishing procurement guidelines, and ABI has not alleged any such involvement by

---

<sup>8</sup> *Alaska Hous. Fin. Corp. v. Salvucci*, 950 P.2d 1116, 1123 (Alaska 1997) (citation omitted).

716. Thus, it defies logic to assert that 716's conduct in merely agreeing to the lease extension could satisfy the strict statutory standard for punitive damages. Certainly, the Second Amended Complaint alleges nothing to justify this novel award.

As there is no plausible basis in the Second Amended Complaint for a punitive damage award against 716, ABI should be precluded from seeking punitive damages in this action.

### III. CONCLUSION

For the foregoing reasons, 716 respectfully requests that the Court enter an order precluding ABI from seeking (1) 10% of the purported savings to the Agency and (2) punitive damages.

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

DATED: 10-6-15

By: 

Jeffrey W. Robinson  
Alaska Bar No. 0805038

716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR *QUI TAM* AND PUNITIVE DAMAGES

*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC*, et. al. 3AN-15-05969 Civil  
{10708-101-00290946;2}

Page 5 of 6

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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-15-05969CI

**LEGISLATIVE AFFAIRS AGENCY'S NON-OPPOSITION TO 716'S MOTION  
FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR QUI TAM  
DAMAGES**

**I. INTRODUCTION**

Defendant Legislative Affairs Agency ("LAA") agrees that this Court should preclude Plaintiff from pursuing its claim for *qui tam* damages because Plaintiff's claim, as Plaintiff's president admitted under oath, has no legal support. Plaintiff's requested *qui tam* damages could potentially deprive LAA and taxpayers of millions of dollars if Plaintiff is successful in voiding the lease for the Legislative Information Office building.

LEGISLATIVE AFFAIRS AGENCY'S NON-OPP RE 716'S MOTION FOR RULING OF LAW ON QUI TAM  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI  
Page 1 of 5

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Accordingly, LAA does not oppose 716 West Fourth Avenue LLC's Motion for Ruling of Law Precluding ABI's Claim for *Qui Tam* Damages.<sup>1</sup>

## II. STATEMENT OF UNDISPUTED FACTS

On October 16, 2015, defendants deposed James Gottstein in his capacity as the president of Alaska Building, Inc. Mr. Gottstein's deposition testimony established the following facts:

- Plaintiff is seeking 10 percent of any savings achieved by LAA if the lease is voided.<sup>2</sup>
- Plaintiff claims that LAA could save roughly \$21 million over the life of the loan by voiding the current lease, and that Plaintiff would therefore be entitled to a payment of roughly \$2.1 million under its requested relief.<sup>3</sup>
- Mr. Gottstein has experience litigating *qui tam* cases.<sup>4</sup>
- A *qui tam* complaint must be filed under seal in the first instance, and this complaint was not filed under seal.<sup>5</sup>
- According to Mr. Gottstein, this lawsuit is "not really a *qui tam* case."<sup>6</sup>

---

<sup>1</sup> LAA takes no position on Plaintiff's request for punitive damages, since that request is not directed at LAA and does not appear to impact LAA. LAA notes that it is difficult to conceive how punitive damages could apply in this case.

<sup>2</sup> A copy of the relevant excerpts of Mr. Gottstein's deposition is attached as Exhibit A. See Exh. A at 31:24-25, 32:1-17.

<sup>3</sup> See *id.* at 32:19-25, 33:1-25.

<sup>4</sup> See *id.* at 34:1-7.

<sup>5</sup> See *id.* at 41:3-8.

<sup>6</sup> *Id.* at 41:8, 43:10-12.



- According to Mr. Gottstein, he is unaware of any statute that would authorize Plaintiff's request for 10 percent of any savings.<sup>7</sup>
- According to Mr. Gottstein, he is unaware of any common law that would allow Plaintiff to recover 10 percent of any savings.<sup>8</sup>

### III. ARGUMENT

Under Plaintiff's theory, it would receive in excess of two million dollars for "savings" that the LAA would obtain due to the voiding of its lease with 716 West Fourth Avenue LLC. If awarded, however, all of these "savings" should go to the taxpayers and the LAA. Plaintiff is attempting to enrich itself through an unprecedented claim that it should receive a portion of any "savings" that otherwise would inure to the public's benefit. There is literally no legal support for this novel claim, as Plaintiff's president admitted under oath.

Consistent with Civil Rule 11(b)(2), it does not appear that Plaintiff's claim for 10 percent of any "savings" secured in this case is warranted by existing law or by a nonfrivolous argument for establishing new law. Plaintiff admits that this is not a *qui tam* case under the False Claims Act or any other statute. Congress enacted a comprehensive legislative scheme through the False Claims Act to punish persons who committed a fraud upon the government in violation of that statute, including the possibility that a qui

---

<sup>7</sup> See *id.* at 43:6-9.

<sup>8</sup> See *id.* at 43:13-18 ("Q. Is there any common law that you can point to to say that a savings of this type had been given to a private litigant? A. No. Well, not yet anyway. So, I mean, it's possible I'll come up with some, but I haven't found – I haven't seen any yet.").

tam plaintiff would receive a portion of any recovery.<sup>9</sup> In that circumstance, there is no room for the creation of additional common law to supplement the statute.<sup>10</sup> There are no common law *qui tam* actions.<sup>11</sup> Even if some *qui tam* theory was viable here, which it is not, a State agency like LAA is not subject to *qui tam* liability under the False Claims Act.<sup>12</sup> Plaintiff's claim for a portion of any "saving" should therefore be precluded.

#### IV. CONCLUSION

For the foregoing reasons, and the reasons described in 716 West Fourth Avenue LLC's original motion, this Court should preclude Plaintiff from receiving any portion of the "savings" that LAA obtains if the lease extension is declared null and void.

---

<sup>9</sup> See *Mortgages, Inc. v. United States Dist. Court for the Dist. of Nevada (Las Vegas)*, 934 F.2d 209, 210, 212 (9th Cir. 1991).

<sup>10</sup> "Where, however, Congress has enacted a comprehensive legislative scheme, including integrated procedures for enforcement, there is a strong presumption that Congress did not intend the courts to supplement the remedies enacted. . . . The FCA [False Claims Act] allows no room for the creation of additional federal common law."

<sup>11</sup> See *Vt. Agency of Nat. Resources v. U.S. ex rel. Stevens*, 529 U.S. 765, 768 (2000) (noting that only a handful of statutes currently create a form of civil action known as *qui tam*), 775 (noting that common-law *qui tam* actions fell into disuse after the 14th century in England, but continued to remain technically available for several centuries), 776 (noting that there is no evidence that the Colonies ever allowed common-law *qui tam* actions).

<sup>12</sup> See *id.* at 787-88. Plaintiff's claim is all the more confusing because it appears to accuse the LAA – a State agency – of defrauding the State by entering into a lease to which Plaintiff objects. That is, the State is somehow defrauding itself.

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DATED: October 21, 2015

STOEL RIVES LLP

By: 

KEVIN CUDDY  
(Alaska Bar #0810062)  
Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

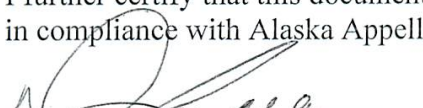
**CERTIFICATE OF SERVICE AND OF FONT**

This certifies that on October 21, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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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)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).

  
Debby Allen, Practice Assistant

LEGISLATIVE AFFAIRS AGENCY'S NON-OPP RE 716'S MOTION FOR RULING OF LAW ON QUI TAM  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

Page 5 of 5

80420771.1 0081622-00003

**In the Matter Of:**

**ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC**

---

**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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**EXHIBIT A | Page 1 of 10**

1	IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2	THIRD JUDICIAL DISTRICT AT ANCHORAGE
3	
4	ALASKA BUILDING, INC., an
5	Alaska corporation,
6	Plaintiff,
7	vs.
8	716 WEST FOURTH AVENUE LLC,
9	and LEGISLATIVE AFFAIRS
10	AGENCY,
11	Defendants.
12	Case No. 3AN-15-05969 CI
13	DEPOSITION OF JAMES B. GOTTSTEIN
14	VOLUME I
15	Pages 1 - 58, inclusive
16	Friday, October 16, 2015
17	2:00 P.M.
18	
19	Taken by Counsel for
20	Defendant 716 West Fourth Avenue LLC
21	at
22	ASHBURN & MASON
23	1227 West 9th Avenue, Suite 200
24	Anchorage, Alaska
25	

CERTIFIED  
TRANSCRIPT



1 A-P-P-E-A-R-A-N-C-E-S  
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5 LAW OFFICES OF JAMES B. GOTTSTEIN  
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18 For Defendant Legislative Affairs Agency:  
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22 Anchorage, Alaska 99501  
23 907/277-1900  
24  
25 Court Reporter:  
26 Gary Brooking, RPR  
27 PACIFIC RIM REPORTING  
28 711 M Street, Suite 4  
29 Anchorage, Alaska 99501  
30  
31  
32  
33  
34  
35

1 the New Seward Highway.

2 So I -- the lawsuit is about declaring it  
3 null and void. And the legislature -- anyway, there  
4 can be --

5 Q. Okay.

6 A. That's -- I mean, I think that the lease is  
7 illegal, and that's -- that's what the lawsuit asks  
8 for declaratory judgment on.

9 Q. And so the lease should end, and then as to  
10 whatever the parties do from that point on, it  
11 should comply with the statute. Is that right?

12 A. Well, like I said, there are numerous  
13 possible scenarios.

14 Q. But all of them require that the lease be  
15 declared null and void and cease to exist so that  
16 the parties can then proceed to comply with the  
17 statute. Isn't that your position?

18 A. Well, it may not be these parties. Like I  
19 said, there might be something else. The  
20 Legislative Information Office might move somewhere  
21 else. So I think -- so what's requested is that the  
22 lease be declared -- I think what I say is illegal,  
23 null and void.

24 Q. Okay. During the August 18 hearing on the  
25 standing issue and motion to sever, you informed the

1 Court that you were looking for the Court to  
2 establish Alaska Building, Inc.'s entitlement to  
3 10 percent of any savings achieved. Do you recall  
4 that?

5 A. It came up, yes.

6 Q. Alaska Building, Inc. does have a personal  
7 stake in this case, does it not?

8 A. I'm not sure what you mean by "personal  
9 stake."

10 Q. Monetary. You have a monetary stake in  
11 this case.

12 A. Other than the 10 percent?

13 Q. No. The 10 percent will do just fine.

14 A. Oh, yeah.

15 Q. The 10 percent is a monetary interest in  
16 the case --

17 A. Yes.

18 Q. -- correct?

19 Okay. And in some of the briefing in this  
20 case, specifically the opposition to the motion to  
21 dismiss or sever, Alaska Building, Inc. asserted that  
22 the amount being paid over the life of the lease was  
23 more than \$21 million more than what was allowed under  
24 the statute. Is that right?

25 A. Yes.



1 Q. And so if you were -- you, Alaska Building,  
2 Inc. was to receive 10 percent of the savings,  
3 that's a minimum of \$2.1 million in savings,  
4 correct? Well, 21 million in savings, but 2.1 is  
5 this 10 percent. Is that right?

6 A. Right. There have been some slight changes  
7 in those amounts with the affidavit of Larry Norene.  
8 But, yes, I mean -- so the State would, you know,  
9 say, end up with 19 million and Alaska Building,  
10 Inc. would get two.

11 Q. Okay. So that --

12 A. The judge expressed some skepticism about  
13 that, and there's a pending motion on that issue.

14 Q. That there is. For today, though, I just  
15 want to focus on this idea of monetary interest.

16 This 2 million or so that constitutes the  
17 10 percent, does that go back to the taxpayers or  
18 does that go to Alaska Building, Inc.?

19 A. It's -- it's for -- it's to go to Alaska  
20 Building, Inc., because otherwise is -- if it's  
21 successful, the State -- if it wasn't successful,  
22 the State would get none of it, and so this would  
23 be -- well, you could look at it different ways, but  
24 the State would get 19 million and Alaska Building,  
25 Inc. would get two.

1 Q. You have experience litigating qui tam  
2 cases, do you not?

3 A. Yes, some.

4 Q. And in particular, you led the charge in  
5 the US ex rel. Law Project for Psychiatric Rights  
6 versus Matsutani case?

7 A. Yes.

8 Q. The trial judge held in that case that the  
9 public already knew about the alleged misconduct.  
10 Is that right?

11 A. Well, there is -- I wouldn't say that  
12 that's a fair characterization. Under the False  
13 Claims Act, it's a very arcane process or set of  
14 rules, and one of them is what's called the public  
15 disclosure bar.

16 Q. Uh-huh.

17 A. And it's changed over the years, but  
18 basically, if I can recall it, if the -- I forget  
19 what it was, the transit -- but basically if the  
20 facts were disclosed through certain enumerated  
21 sources, including court cases, then -- then the  
22 public disclosure bar would be triggered.

23 And so I filed -- or the Law Project for  
24 Psychiatric Rights had filed a previous lawsuit in  
25 which this was raised in state court, and -- and so



1 that. I would be -- I'd welcome any kind of any  
2 indication of that.

3 Q. Under a qui tam case like you pursued in  
4 the Matsutani case, the complaint is filed under  
5 seal. Is that right?

6 A. Yes.

7 Q. And that was not done here?

8 A. No. It's not really a qui tam case.

9 Q. Okay.

10 A. And...

11 Q. So I think we can agree on that, that this  
12 is not a qui tam case. What is the basis for  
13 claiming an entitlement to 10 percent of the  
14 savings?

15 A. I think that it's -- it's a way to make  
16 real the citizen taxpayers' right to bring actions  
17 on behalf of the government to stop government --  
18 illegal government action.

19 What we had -- from about 1974 through 1998,  
20 the Alaska Supreme Court had established what's called  
21 a public interest exception to Civil Rule 82,  
22 providing that public interest litigants that were  
23 truly suing on behalf of the public were not subjected  
24 to having attorneys' fees against them and would  
25 have -- if they prevailed, would have -- be awarded



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

5 A. I just said it.

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

9 A. No.

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

12 A. Correct.

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

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

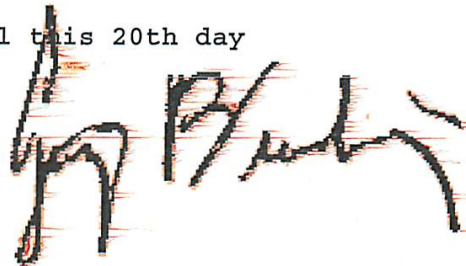
19 I mean, I think that the -- this is a very  
20 important public issue, and the point is, is that if  
21 this right of public -- the public citizens to sue  
22 over illegal government action is to have any, you  
23 know, reality at all, there needs to be some  
24 countervailing element for the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

1 CERTIFICATE

2

3 I, GARY BROOKING, Registered Professional  
4 Reporter and Notary Public in and for the State of  
5 Alaska, do hereby certify that the witness in the  
6 foregoing proceedings was duly sworn; that the  
7 proceedings were then taken before me at the time  
8 and place herein set forth; that the testimony  
9 and proceedings were reported stenographically by  
10 me and later transcribed by computer transcription;  
11 that the foregoing is a true record of the  
12 testimony and proceedings taken at that time;  
13 and that I am not a party to nor have I any  
14 interest in the outcome of the action herein  
15 contained.

16 IN WITNESS WHEREOF, I have hereunto set  
17 my hand and affixed my seal this 20th day  
18 of October, 2015.



19

20

21

GARY BROOKING, RPR  
My Commission Expires 6/28/2016

22

23

24

25 GB4223

**STOEL RIVES LLP**

RECEIVED  
OCT 22 2015  
BY: \_\_\_\_\_

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

Case No.: 3AN-15-05969CI

Y.

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

**(In Support of Defendant Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *qui tam* Damages)**

[illegible]

I, KEVIN M. CUDDY, declare as follows:

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

AFF. OF KEVIN M. CUDDY ISO OF DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S NON-OPPOSITION  
TO 716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR *QUI TAM* DAMAGES  
*ALASKA BUILDING, INC. V. 716 WEST FOURTH AVENUE, LLC, et al.*, Case No. 3AN-15-05969CI  
Page 1 of 3



1. 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 Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* Damages.

2. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.

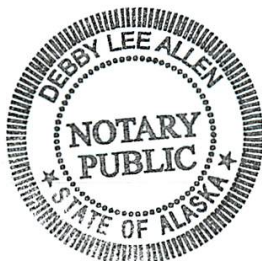
3. Attached as **Exhibit A** to the Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* Damages is a true and correct copy of excerpts from the October 16, 2015 deposition of James Gottstein.

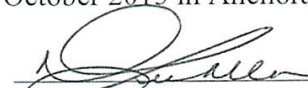
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 21 of October, 2015.

  
KEVIN M. CUDDY

Subscribed to before me this 24 day of October 2015 in Anchorage, Alaska.



  
Notary in and for the State of Alaska  
My Commission expires: 12/17/16

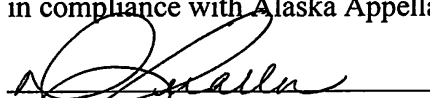
**CERTIFICATE OF SERVICE AND OF FONT**

This certifies that on October 24, 2015, a true and correct copy of the foregoing was served via USPS Priority Mail on:

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(Attorney for Plaintiff)

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

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).

  
Debby Allen, Practice Assistant

80420856.1 0081622-00003

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

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and  
LEGISLATIVE AFFAIRS AGENCY

Defendants.

**COPY**  
**Original Received**

OCT 27 2015

Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**OPPOSITION TO  
716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S  
CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES**

Plaintiff, Alaska Building, Inc., opposes 716's Motion For Ruling Of Law  
Precluding ABI's Claims For Qui Tam And Punitive Damages.

**A. Background**

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC)  
entered into a sole source agreement with defendant Legislative Affairs Agency (LAA) to:

(a) demolish (i) the existing Anchorage Legislative Information Office down to  
its steel frame and (ii) the Empress Theatre building, and

(b) lease a newly constructed office building to LAA for the Anchorage

Legislative Information Office on the two lots upon which the old LIO building and  
the Empress Theatre had been demolished

(LIO Lease or LIO Project).

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This was purportedly authorized under AS 36.30.083(a), but the statute only allows sole source procurement of leased space to extend a real property lease for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. (emphasis added).

The LIO Lease is not an extension because (1) the existing building was demolished down to its foundation and steel frame (2) the adjacent old Empress Theatre, most recently the Anchor Pub, was completely demolished, (3) a brand new building was constructed on the combined sites of the old Legislative Information Office Building and the Old Empress Theatre, and (4) the premises were vacated for at least 13 months during the demolition and while the new building was constructed. This was a new construction project not a lease extension.

In addition, the cost is well over the market rental value of the real property. As set forth in the Affidavit of Larry Norene filed October 6, 2015, 90% of the market rental value is \$108,593 per month. This is the maximum allowed by AS 36.30.083(a). However, the LIO Lease carries rent in the amount of \$281,638, which is \$173,045 more per month than allowed under AS 36.30.083(a).

The remedies sought are:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Affairs Agency pertaining to the Anchorage Legislative Information Office building illegal, null and void.

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*Opposition to 716 LLC Qui Tam  
& Punitive Damages Law Motion*

*Page 2 of 16*

B. A Judgment in favor of Alaska Building, Inc., in the amount of 10% of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease.

C. Punitive damages against 716 West Fourth Avenue LLC.

D. Costs and attorney's fees.

E. Such other further and additional relief as the Court find just.

Second Amended Complaint, filed August 25, 2015, page 3.

**B. The 10% of Savings Remedy Should Not Be Foreclosed**

It is respectfully suggested that allowance of Alaska Building, Inc.'s claim for 10% of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease is necessary to make meaningful the right of citizen-taxpayers to seek judicial redress of illegal governmental action. As a result of the unique development of Alaska law, both by statute and judicially, citizens' and taxpayers' right to bring cases to redress illegal government action has become a hollow paeon. More particularly, the now standard imposition of attorney's fees against such a plaintiff who does not prevail has chilled this important check against governmental misdeeds almost out of existence and allowing such a recovery can at least ameliorate this in situations in which such a recovery might be possible.

Prior to the enactment of HB145/Ch. 86 SLA 2003 by the Alaska Legislature, codified at AS 09.60.010(b)(e) (HB 145), the Alaska Supreme Court created a public interest exception to Civil Rule 82 that allowed plaintiffs truly bringing actions in the public interest to be protected from attorney fee awards against them and full, reasonable

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*Opposition to 716 LLC Qui Tam  
& Punitive Damages Law Motion*

*Page 3 of 16*

attorney's fees if they prevailed.<sup>1</sup> This enabled the right of civic minded people to hold the government accountable for disobeying the law and there was a fair amount of such litigation.

However, in response to the many times the State was found in violation of the law and the consequent awarding of full attorney's fees to the public minded citizens bringing these lawsuits, through HB 145, the Alaska Legislature abrogated the Alaska Supreme Court's judicially created public interest litigant exception to Civil Rule 82 except with respect to litigation to enforce constitutional rights. This was upheld in *Alaska v. Native Village of Nunapitchuk*, 156 P.3d 389 (Alaska 2007). Most public interest litigation has disappeared as a result. The risk of a large attorney's fee award against such a plaintiff has simply made the potential financial cost of a public interest lawsuit too great. *Alaska Conservation Foundation v. Pebble Limited Partnership*, 350 P.3d 273, 285 (Alaska 2015), describes the history and abrogation of the public interest exception to Civil Rule 82, and because the large attorney fee award was vacated because the underlying decision was reversed did not reach the issue of the extent to which this abrogation impermissibly infringes upon the constitutional right to access to the courts.

The problem of substantial attorney's fees awards under Civil Rule 82 chilling legitimate challenges to illegal government action is exacerbated by the abusive use of Offers of Judgment under Civil Rule 68 whereby the State threatens to seek as much as

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<sup>1</sup> *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974); *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977); *Kenai Lumber Co. v. LeResche*, 646 P.2d 215 (Alaska 1982); and *Dansereau v. Ulmer*, 955 P.2d 916 (Alaska 1998).

*Opposition to 716 LLC Qui Tam  
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75% of its attorney's fees against a plaintiff. At the same time the Legislature has successfully chilled public minded citizens from bring public interest litigation to challenge illegal government action, Alaska has had rampant corruption, of which the particular no-bid lease at issue here is an example with well over \$20 million more than allowed under the statute paid to 716 LLC.

Under these circumstances, approval of the modest 10% of savings claim made here<sup>2</sup> is something the judiciary can do to address such corruption and the chilling of public interest litigation as a result of the Legislature's abrogation of this Court's public interest litigant exception to Civil Rule 82. Such a judicially created recovery will not solve all the problems created by the legislative abrogation of the public interest litigant exception to Civil Rule 82, but it would address some of it.

In the Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Precluding ABI's Claims for *Qui Tam* Damages (LAA Non-Opposition), it complains that the 10% recovery could potentially deprive LAA and taxpayers of millions of dollars. This is disingenuous, or at least ironic, since the Legislative Affairs Agency is vigorously attempting to prevent such a savings in this case.

In spite of agreeing this is not a *qui tam* case,<sup>3</sup> the LAA Non-Opposition complains that a *qui tam* complaint must be filed under seal. The sealing provision is a specific

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<sup>2</sup> The federal False Claims Act, 31 USC §3729, *et seq.*, grants successful *qui tam* plaintiffs between 15 and 25% if the government intervenes and takes over the case and 25-30% if not. 31 USC §3730(d).

<sup>3</sup> Exhibit A, page 8: 22-12 to LAA Non-Opposition.

*Opposition to 716 LLC Qui Tam  
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provision of the federal False Claims Act, 31 U.S.C. § 3730(b)(2), which was enacted because of the Department of Justice's concerns that the filing of a qui tam suit by a private party might "tip off" investigation targets when a criminal inquiry was at a sensitive stage.<sup>4</sup> However, this case was not brought under the federal False Claims Act and there is no requirement, or even authorization, for this case to have been filed under seal. LAA's true complaint is that the illegality of the LIO Lease has been publicly exposed.

At page 4 of its Non-Opposition, the LAA asserts that because of the federal False Claims Act there is no room for the creation of additional common law. First, as set forth above, Alaska Building, Inc., is not making a *qui tam* argument. In any event, the 10% of savings claim is being made under state law. It can also be noted that many states have enacted state versions of the federal False Claims Act.<sup>5</sup>

Perhaps most egregiously, the LAA attaches pages 41 and 43 of the deposition of Alaska Building, Inc.'s president for the proposition that Alaska Building, Inc., has not stated any legal basis for the 10% claim, but jumps over page 42 of the deposition transcript, where just such an articulation is made (starting on page 41):

Q. · So I think we can agree on that, that this is not a qui tam case. ·  
What is the basis for claiming an entitlement to 10 percent of the savings?

A. · I think that it's -- it's a way to make real the citizen taxpayers' right to bring actions on behalf of the government to stop government -- illegal government action.

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<sup>4</sup> 1986 U.S.C.C.A.N. at 5288-89.

<sup>5</sup> See, <http://www.taf.org/states-false-claims-acts>, accessed October 24, 2015.

What we had -- from about 1974 through 1998, the Alaska Supreme Court had established what's called a public interest exception to Civil Rule 82, providing that public interest litigants that were truly suing on behalf of the public were not subjected to having attorneys' fees against them and would have -- if they prevailed, would have -- be awarded full attorneys' fees.

So there wasn't really -- if they could establish that they were public interest litigants, they wouldn't really face the risk of having attorneys' fees awarded against them.

In 2003, the Alaska legislature passed a statute that changed that, except with respect to constitutional claims, basically because they were tired of paying attorneys' fees in all these cases where the government was found to have acted illegally.

And so now you have a situation where anybody trying to bring such a suit faces potentially ruinous attorneys' fees if they don't prevail, or certainly large attorneys' fees if they don't prevail. And that, in my -- my sense of it, has essentially virtually dried up public interest litigation, and so now the government pretty much has free rein to act illegally without any kind of check through this public interest litigation.

And so by -- in these types of cases, where a big, you know, savings or recovery on behalf of the government is achieved, this is a way to really make real the citizens' rights to sue to redress illegal government action.<sup>6</sup>

LAA deleting this page of the transcript and then stating at page 3 that plaintiff has made no nonfrivolous argument for establishing new law appears to be a deliberate misstatement.

At note 12, the Legislative Affairs Agency states Alaska Building, Inc.'s claim is confusing because it appears to accuse the state of somehow defrauding itself. No, what Alaska Building, Inc. claims is that the lease the Legislative Affairs Agency executed with 716 LLC is illegal, null and void, and in the face of the Legislative Affairs Agency and the

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<sup>6</sup> Exhibit 1, page 4-5.



rest of officialdom ignoring its illegality, Alaska Building, Inc., should receive 10% of any savings achieved as a result of having the lease declared illegal, null and void.

### **C. Punitive Damages Should Not be Precluded**

In a *qui tam* action, which this is not, the party who improperly received money from the government pays a fine to the government, of which the *relator*<sup>7</sup> receives a portion. Under the federal False Claims Act, 31 USC §3729(a)(1)(G), there is a civil penalty of between \$5,500 and \$11,000 for each false claim, plus 3 times the amount of damages which the government sustained because of the act of that person (treble damages). In this case, 716 LLC is being overpaid more than \$170,000 per month. Since January of 2015, this presumably amounts to 716 being overpaid over \$1.7 million already.<sup>8</sup> Should punitive damages be awarded and paid,<sup>9</sup> they should be paid to the State of Alaska.<sup>10</sup>

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<sup>7</sup> The person who brings the action on behalf of the government.

<sup>8</sup> "Presumably," because both 716 LLC and LAA have refused to produce this information in response to Alaska Building, Inc.'s August 3, 2015, requests for production, which is the subject of a pending motion to compel against 716 LLC and may be the subject of a future motion to compel against LAA.

<sup>9</sup> It seems highly unlikely that 716 LLC will be able to even pay back the illegal rent it has received let alone any punitive damages. See, Memorandum in Support of Motion for Preliminary Injunction, filed October 6, 2015. Unless the Limited Liability Company Shield is pierced, the illegal rent paid to 716 LLC that has been distributed to its owners will not be recoverable (According to state records, Mount Trident LLC owns 44.44% of 716 LLC, Exhibit 2, and Mr. Pfeffer owns 100% of Mount Trident, Exhibit 3.)

Mr. Pfeffer also owns 100% of the beneficial interest in Pfeffer Development LLC, which was slated to receive \$2.4 million from the construction under the LIO Project. Exhibit 4. 716 LLC has refused to produce documents pertaining to the actual payments, but presumably the payments were pretty close to this. At the time, Mr. Pfeffer's revocable trust owned 100% of Pfeffer Development. Exhibit 5. After Alaska Building, Inc., began

With respect to 716 LLC's specific arguments against an award of punitive damages, it first states that because the 10% of savings claim for compensatory damages should be dismissed, there can be no punitive damages. The fundamental flaw in this argument is that it ignores that the State should be awarded compensatory damages in the amount of rent illegally received by 716 LLC.<sup>11</sup> So, whether or not Alaska Building, Inc., receives its 10% of any savings compensatory damages, the compensatory damages requirement for punitive damages is satisfied by an award to the State.

The other prong of 716 LLC's argument, citing AS 09.17.020(b) is that the complaint does not allege outrageous conduct, including acts done with malice or bad motives, or that 716 LLC did not evidence reckless indifference to the interest of another

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making the argument in this case that the illegal rent should be paid and perhaps followed to the owner, on August 3, 2015, Mr. Pfeffer filed a change of ownership with the state of Alaska that the Mark E. Pfeffer Alaska Exempt Trust (Pfeffer Exempt Trust) had become the 100% owner of Pfeffer Development. Exhibit 6. The Pfeffer Exempt Trust is presumably one under AS 34.40.110 that is designed to shield assets from creditors. *See, e.g., Timothy Lee, Alaska on the Asset Protection Trust Map: Not Far Enough for a Regulatory Advantage, but Too Far for Convenience?*, 29 *Alaska Law Review* 149, 150 (2012) (commentators have written numerous articles about the destruction of creditors' rights); and Jeremy M. Veit, *Self-Settled Spendthrift Trusts and the Alaska Trust Act: Has Alaska Moved Offshore?*, 16 *Alaska Law Review* 269, 270 (1999) ("The proponents of the Alaska Trust Act hoped to attract millions of dollars worth of trust investment (and the administrative fees that accompany it) to Alaska by providing protection [from creditors] previously available only offshore.").

Thus, Mr. Pfeffer has constructed various barriers to the State's recovery of illegal rent that ended up in his hands. Mr. Acree, on the other hand is the owner, directly, of his share of 716 LLC. Exhibit 2.

<sup>10</sup> AS 09.17.020(j), requires that 50% of any punitive damage award be paid to the state, but in this case, since the conduct was against the state, it should receive 100%, possibly subject to an award to Alaska Building, Inc. of 10% of the savings achieved as a result of this litigation.

<sup>11</sup> The complaint could be more clear on this and an amendment might be in order.

*Opposition to 716 LLC Qui Tam  
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*Page 9 of 16*

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person. AS 09.17.020(b) only requires that such conduct be proven in support of a claim for punitive damages. While both 716 LLC and LAA have improperly failed to provide relevant discovery, which is the subject a pending motion to compel against 716 LLC and continued discussions between Alaska Building, Inc., and LAA, even from what has been produced there is compelling evidence of conduct justifying punitive damages.

Discovery from 716 LLC reveals that Representative Mike Hawker<sup>12</sup> and Mark Pfeffer<sup>13</sup> had what Mr. Pfeffer called "back channel" communications using Rep. Hawker's private e-mail account that reveal, among other things, that they put pressure on Pam Varni, the director of the Legislative Affairs Agency, and Doug Gardner, the Legislative Affairs Agency's attorney, to go along with the LIO Project in spite of Ms. Varni's and Mr. Gardner's objections.<sup>14</sup> Discovery from both 716 LLC and the Legislative Affairs Agency also reveal that 716 LLC knew the LIO Lease is illegal.

Mr. Pfeffer and Rep. Hawker's plan in having the legislative procurement rules change to allow a no-bid "material modifications"<sup>15</sup> was to extend the existing lease in its

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<sup>12</sup> Rep. Hawker was the chair of the Legislative Council which controls the Legislative Affairs Agency who negotiated the no-bid lease with Mr. Pfeffer.

<sup>13</sup> At the time, Mr. Pfeffer was formally acting in his capacity as the Manager of Pfeffer Development LLC, which was working for the landlord, 716 LLC. On the same day that the LIO Lease was signed, September 19, 2013, Mr. Pfeffer's revocable trust became an owner of 716 LLC and Mr. Pfeffer became the Manager. Exhibit 7.

<sup>14</sup> The Legislative Affairs Agency failed to produce any e-mails from or to Rep. Hawker's private e-mail account, asserting that it doesn't have possession, custody, or control over it. Alaska Building, Inc., responded that since Rep. Hawker is listed as being subject to the attorney-client privilege these e-mails should be produced. This is the subject of ongoing discussions between the Legislative Affairs Agency and Alaska Building, Inc. Exhibit 8.

<sup>15</sup> See, Exhibit 9.

then current condition ("as-is") under AS 36.30.083(a) for at least 10% below market rent and then a "material modification" to perform the demolition and construction work to build the new Anchorage Legislative Information Office Building. *See*, June 20, 2013, e-mail from Mr. Stein to Mr. McClintock stating, "the intent was to extend based on beating the as-is BOV<sup>16</sup> by 10%, but then NOT being limited by that standard in the material modification." Exhibit 10, page 1.

Mr. Steiner then goes on to write,

"I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building."

*Id.* In other words 716 LLC knew the demolition and reconstruction of the Anchorage Legislative Information Office Building could not result in a rental rate 10% below market, but knew Rep. Hawker was determined to proceed regardless of the statutory restriction. Mr. McClintock's e-mail also foreshadows the circular reasoning valuation that was ultimately deployed to make the outrageous claim that the LIO Lease is at least 10% below market rent.<sup>17</sup> The e-mail, from Mr. McClintock, reports Mr. Gardner's "vision of [AS 36.30.] 083 and .040 is that the rent should be 10% below appraisal. *Id.*, page 2.

Mr. McClintock attempted to implement the extend "as-is" and material amendment plan in a July 12, 2013, e-mail to Mr. Gardner, forwarding a draft lease extension under

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<sup>16</sup> Broker's Opinion of Value.

<sup>17</sup> Exhibit 10, page 2. "You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing." *Id.*



AS 36.30.083(a) for the existing building "as-is" and a "material amendment" for the demolition and construction work for the LIO Project.<sup>18</sup> Exhibit 11.

On that same day, July 12, 2013, in an e-mail to Rep. Hawker, Mr. Pfeffer forwarded an e-mail from Mr. McClintock to John Stein, with the note "The back channel between lawyers." Exhibit 12, page 1. Mr. McClintock writes that he and Pfeffer Development's attorney, John Steiner are not confident the entire deal can be done under AS 36.30.083.<sup>19</sup> Exhibit 12, page 1. Rep. Hawker responded that he needed to get back and deal with Mr. Gardner again, stating, "I hate lawyers." *Id.* Presumably, the "I hate lawyers," comment was because Rep. Hawker does not like being told by lawyers that he can't do something because it is illegal.

The next day, Mr. Steiner expanded on Mr. McClintock's report of their meeting with Mr. Gardner, including that the deal was not conceived as being 10% under market rent as required by AS 36.30.083 and that the project would not qualify under AS 36.30.083 as an extension because of the additional space, i.e., the inclusion the building built on the site of the demolished old Empress Theatre. Mr. Steiner also reported that Mr. Gardner believed that the plan to formally extend "as-is" for at least 10% below market rent and then enter into a material modification under the recently changed legislative procurement code would be seen as disingenuous (presumably because it would be disingenuous) and contrary to the action of the Legislative Council at its June 7, 2013

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<sup>18</sup> The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.

<sup>19</sup> Which means they do not believe the deal can legally be done under the statute.

meeting. Exhibit 13, page 2. Mr. Steiner also reports that Mr. Gardner was not keen to get crosswise with Rep. Hawker. *Id.*

Then, Mr. Pfeffer forwards this e-mail exchange to Rep. Hawker, telling Rep. Hawker that he thinks Gardner, who as counsel for the Legislative Affairs Agency is Rep. Hawker's lawyer in the matter, "is just flat out wrong," and that he thinks Gardner "needs to be brought along." Mr. Pfeffer also recognizes that the full legislature and governor needed to approve the deal. Exhibit 13, page 1.

On July 25, 2013, Mr. Pfeffer e-mails Rep. Hawker a LIO Project Procurement Analysis, with the warning, "I wouldn't share this with anyone yet. we will scrub the author references if you do want to share it." Exhibit 14.<sup>20</sup>

On July 26, 2013, Mr. Pfeffer sent an e-mail to Rep. Hawker, titled, "BACK CHANNEL ----- Draft 040(a) determination, stating, "If you agree with this I'll have my guys send to Gardner."<sup>21</sup> Exhibit 15.

On August 8, 2013, after the rent to which Rep. Hawker had agreed emerged, Pamela Varni, Executive Director of the Legislative Affairs e-mailed Rep. Hawker with her comments, including an analysis of proposed replacements for the Anchorage Legislative Information Office previously rejected by the Legislative Council, all of which were for much less money, as well as a schedule of Executive Branch Office leases.

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<sup>20</sup> The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.

<sup>21</sup> The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.



Exhibit 16. In her e-mail Ms. Varni points out that with the figures presented so far, she estimated the cost to be over \$5.00 per square foot, which would make it the most expensive lease ever for the State of Alaska. Exhibit 16, page 2. She also notes that the Legislative Affairs Agency's Fairbanks Class A rental space leasehold improvement costs were \$62.50 per square foot, while the proposal is for \$120 per month, asking, "What is the justification for the disparity." Exhibit 16, page 3

This e-mail was first forwarded by Rep. Hawker from his Legislative e-mail account to his private account and then forwarded to Mr. Pfeffer from his private e-mail account that same day. Exhibit 17, page 1. Mr. Pfeffer responded by writing he would produce a rebuttal and if "Doc" at the Alaska Housing Finance Corporation agrees AHFC can produce the memo to dispute Varni. *Id.* The next day, August 9, 2013, Mr. Pfeffer e-mailed Rep. Hawker a draft of a response to Ms. Varni's analysis, stating, "Obviously please do not forward this email."<sup>22</sup> Exhibit 18.

On August 25, 2013, Rep. Hawker e-mailed to Mr. Pfeffer that, "I don't see anything that Pam or Gardner can do now to derail this .... Not that they will not try." Exhibit 19.

On September 6, 2013, in response to an e-mail from Mr. Gardner, Rep. Hawker writes to Mr. McClintock and Mr. Pfeffer, "How are we doing with Gardner? This note makes me worry a bit. Do we need to plan another sit down?" Exhibit 20, page 1. Mr. Pfeffer responds, "Standby on this Mike. I'm working it." *Id.*

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<sup>22</sup> The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.

On September 11, 2013, Rep. Hawker e-mails, "I apologize for the obstructionist on my side of the table," which presumably means Mr. Gardner or Pam Varni. Exhibit 21, page 1.

These e-mails show that 716 LLC knew the LIO Project did not qualify under AS 36.30.083(a) because the addition of the tower to be constructed on the site of the demolished Old Empress Theatre ("enlargement") brought it outside the ambit of a lease extension. The e-mails also show that they knew the demolition and construction could not be accomplished and lease the building for at least 10% below market rent. They therefore developed a plan to amend the procurement rules to allow for a no-bid "material modification" of an existing lease, extend the then current lease "as-is" and then a "material modification" to do the demolition and construction work without the 10% below market rent constraint. When Mr. Gardner balked at this as being disingenuous and not what was approved by the Legislative Council, 716 LLC ignored that the LIO Project did not comply with AS 36.30.083(a) and when Ms. Varni balked at the shocking rental rate, and Mr. Gardner continued to raise objections, they were pressured to go along by Mr. Pfeffer, aided and abetted by Rep. Hawker. This much is clear even from what has not been withheld.

It is respectfully suggested that even this incomplete discovery provided by 716 LLC<sup>23</sup> and the Legislative Affairs Agency demonstrates corruption and outrageous action

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<sup>23</sup> The e-mail production by 716 LLC was 4,482, the bulk of which were attachments, but key attachments identified above were omitted. It strains credulity that this was inadvertent.

justifying punitive damages. However, to the extent this Court disagrees, it is believed additional discovery will reveal even more culpability on the part of 716 LLC, and Alaska Building, Inc., respectfully requests the Motion be held in abeyance pending completion of such discovery.

#### **D. Conclusion**

For the foregoing reasons, 716's Motion For Ruling Of Law Precluding ABI's Claims For Qui Tam And Punitive Damages should be **DENIED**.

Dated October 27, 2015.



James B. Gottstein, ABA # 7811100  
Attorney for Plaintiff

#### **CERTIFICATE OF SERVICE**

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

Dated October 27, 2015.



Jim Gottstein

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*Opposition to 716 LLC Qui Tam  
& Punitive Damages Law Motion*

*Page 16 of 16*

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

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**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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Exhibit 1, page 1 of 6

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3

4 ALASKA BUILDING INC. in  
ALASKA BUILDING INC. vs. 716 WEST FOURTH AVENUE LLC  
JAMES GOTTSTEIN - VOLUME I on 10/16/2015  
Alaska corporation,

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Plaintiff,

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vs.

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

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Defendants.

11

Case No. 3AN-15-05969 CI

12

13

DEPOSITION OF JAMES B. GOTTSTEIN

14

VOLUME I

15

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Pages 1 - 58, inclusive

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

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19

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Taken by Counsel for  
Defendant 716 West Fourth Avenue LLC  
at

21

ASHBURN & MASON  
1227 West 9th Avenue, Suite 200  
22 Anchorage, Alaska

23

24

25

26

CERTIFIED  
TRANSCRIPT

**PACIFIC RIM REPORTING**  
907-272-4383



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21 Court Reporter:

22 Gary Brooking, RPR  
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1 that. I would be -- I'd welcome any kind of any  
2 indication of that.

3 Q. Under a qui tam case like you pursued in  
4 the ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC  
JAMES GOTTSTEIN - VOLUME I on 10/16/2015 case, the complaint is filed under  
5 seal. Is that right?

6 A. Yes.

7 Q. And that was not done here?

8 A. No. It's not really a qui tam case.

9 Q. Okay.

10 A. And...

11 Q. So I think we can agree on that, that this  
12 is not a qui tam case. What is the basis for  
13 claiming an entitlement to 10 percent of the  
14 savings?

15 A. I think that it's -- it's a way to make  
16 real the citizen taxpayers' right to bring actions  
17 on behalf of the government to stop government --  
18 illegal government action.

19 What we had -- from about 1974 through 1998,  
20 the Alaska Supreme Court had established what's called  
21 a public interest exception to Civil Rule 82,  
22 providing that public interest litigants that were  
23 truly suing on behalf of the public were not subjected  
24 to having attorneys' fees against them and would  
25 have -- if they prevailed, would have -- be awarded

1 full attorneys' fees.

2 So there wasn't really -- if they could  
3 establish that they were public interest litigants,  
4 they wouldn't really face the risk of having  
5 attorneys' fees awarded against them.

6 In 2003, the Alaska legislature passed a  
7 statute that changed that, except with respect to  
8 constitutional claims, basically because they were  
9 tired of paying attorneys' fees in all these cases  
10 where the government was found to have acted  
11 illegally.

12 And so now you have a situation where anybody  
13 trying to bring such a suit faces potentially ruinous  
14 attorneys' fees if they don't prevail, or certainly  
15 large attorneys' fees if they don't prevail. And  
16 that, in my -- my sense of it, has essentially  
17 virtually dried up public interest litigation, and so  
18 now the government pretty much has free rein to act  
19 illegally without any kind of check through this  
20 public interest litigation.

21 And so by -- in these types of cases, where a  
22 big, you know, savings or recovery on behalf of the  
23 government is achieved, this is a way to really make  
24 real the citizens' rights to sue to redress illegal  
25 government action.

1

CERTIFICATE

2

3

I, GARY BROOKING, Registered Professional

4

Reported and Verified Public in and for the State of

5

Alaska, do hereby certify that the witness in the

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foregoing proceedings was duly sworn; that the

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proceedings were then taken before me at the time

8

and place herein set forth; that the testimony

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and proceedings were reported stenographically by

10

me and later transcribed by computer transcription;

11

that the foregoing is a true record of the

12

testimony and proceedings taken at that time;

13

and that I am not a party to nor have I any

14

interest in the outcome of the action herein

15

contained.

16

IN WITNESS WHEREOF, I have hereunto set

17

my hand and affixed my seal this 20th day

18

of October, 2015.

19

20

21

22

GARY BROOKING, RPR  
My Commission Expires 6/28/2016

23

24

25

GB4223



## Division of Corporations, Business and Professional Licensing

### Name(s)

Type	Name
Legal Name	716 West Fourth Avenue, LLC

### Entity Details

**Entity Type:** Limited Liability Company

**Entity #:** 75015D

**Status:** Good Standing

**AK Formed Date:** 12/18/2001

**Duration/Expiration:** Perpetual

**Home State:** ALASKA

**Next Biennial Report Due:** 1/2/2017

**Entity Mailing Address:** 425 G STREET , SUITE 210, ANCHORAGE, AK 99501

**Entity Physical Address:** 737 W 5TH AVE, ANCHORAGE, AK 99501

### Registered Agent

**Agent Name:** Robert B Acree

**Registered Mailing Address:** PO BOX 241826, ANCHORAGE, AK 99524

**Registered Physical Address:** 737 W 5th Ave, Anchorage, AK 99501

### Officials

AK Entity#	Name	Titles	Percent Owned
	Mark Pfeffer	Manager	
10013659	Mount Trident, LLC	Member	44.44
	ROBERT ACREE	Member	55.56

### Filed Documents

Date Filed	Type	Filing	Certificate
12/18/2001	Creation Filing		
1/31/2002	Biennial Report		



4/21/2003	Biennial Report		
2/2/2005	Biennial Report		
1/29/2007	Biennial Report		
2/28/2007	Agent Change		
9/10/2010	Biennial Report		
4/23/2011	Biennial Report		
5/6/2013	Biennial Report		
9/18/2013	Certificate of Compliance		
9/23/2013	Amendment		
9/23/2013	Change of Officials		
12/27/2013	Change of Officials		
12/2/2014	Certificate of Compliance		
12/22/2014	Biennial Report		

## Division of Corporations, Business and Professional Licensing

### Name(s)

Type	Name
Legal Name	Mount Trident, LLC

### Entity Details

**Entity Type:** Limited Liability Company

**Entity #:** 10013659

**Status:** Good Standing

**AK Formed Date:** 6/18/2013

**Duration/Expiration:** Perpetual

**Home State:** ALASKA

**Next Biennial Report Due:** 1/2/2017

**Entity Mailing Address:** 425 G STREET, SUITE 210, ANCHORAGE, AK 99501

**Entity Physical Address:** 425 G STREET, SUITE 210, ANCHORAGE, AK 99501

### Registered Agent

**Agent Name:** Ashburn & Mason, A Professional Corporation

**Registered Mailing Address:** 1227 W. 9TH AVENUE SUITE 200, ANCHORAGE, AK 99501

**Registered Physical Address:** 1227 W. 9TH AVENUE SUITE 200, ANCHORAGE, AK 99501

### Officials

AK Entity#	Name	Titles	Percent Owned
	Mark Pfeffer	Manager	
	Mark E. Pfeffer Alaska Trust Utad 12/28/07	Member	100

### Filed Documents

Date Filed	Type	Filing	Certificate
6/18/2013	Creation Filing		
12/16/2013	Initial Report		
12/22/2014	Biennial Report		



**Anchorage LIO Building****Development Budget  
September 18, 2013****64,048**

Gross SF

**Development Budget**

Existing Property & Property Acquisition	\$ 7,890,000	Note 1
Soft Costs	\$ 515,000	Note 2
Construction & A/E Services	\$ 30,169,055	Note 3
Interim Office Space	\$ 1,000,000	Note 4
Contingency	\$ 771,722	Note 5
Construction Loan Interest	\$ 1,133,388	Note 6
Loan Fee	\$ 622,368	Note 7
Construction Management	\$ 905,433	Note 8
Development Fee	\$ 1,509,055	Note 9
<b>Total</b>	<b>\$ 44,516,021</b>	Note 10

Note 1 Stipulated value for 716 W 4th + Acquisition cost of 712 W 4th

Note 2 Legal, Title, Appraisal, Geotech, Survey, Taxes, Insurance Environmental

Note 3 Stipulate Sum Proposal from Criterion Construction Date August 27th 2013 inclusive of A/E Fees with final design adjustments incorporated

Note 4 Loss of rent during construction + Cost to construct interim improvements,

Note 5 2.56% of Construction

Note 6 Subtotal project cost of \$39,628m (less existing building value) @ 5.0% for 1 year x 65% average draw down.

Note 7 1.5% of subtotal of cost

Note 8 3% of stipulated sum amount

Note 9 5% of stipulated sum amount

Note 10 Total Cost

DRAFT

9/18/2013 11:32 AM

L27

LAA\_001300

Exhibit 4



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Corporations, Business and Professional Licensing

Sean Parnell, Governor  
Susan K. Bell, Commissioner  
Don Habeger, Director

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**COR**

**Limited Liability Company**

**2014 Biennial Report**

For the period ending December 31, 2013

Web-1/20/2014 3:32:29 PM

- This report is due on January 02, 2014
- \$100.00 if postmarked before February 02, 2014
- \$137.50 if postmarked on or after February 02, 2014

**Entity Name:** Pfeffer Development, LLC  
**Entity Number:** 119867  
**Home Country:** UNITED STATES

**Home State/Province:** ALASKA

**Registered Agent**

**Name:** Mark Pfeffer  
**Physical Address:** 425 G Street, Ste. 210,  
Anchorage, AK 99501  
**Mailing Address:** 425 G Street, Ste. 210,  
Anchorage, AK 99501

**Entity Physical Address:** 425 G STREET, STE. 210, ANCHORAGE, AK 99501

**Entity Mailing Address:** 425 G STREET, STE. 210, ANCHORAGE, AK 99501

**Please include all officials.** Check all titles that apply. Must use titles provided. Please list the names and addresses of the members of the domestic limited liability company (LLC). There must be at least one member listed. If the LLC is managed by a manager(s), there must also be at least one manager listed. Please provide the name and address of each manager of the company. You must also list the name and address of each person owning at least 5% interest in the company and the percentage of interest held by that person.

Name	Address	% Owned	Titles
Mark E. Pfeffer	425 G STREET, STE. 210, ANCHORAGE, AK 99501		Manager
Mark E. Pfeffer Revocable Trust Utad 11/22/05	425 G STREET, STE. 210, ANCHORAGE, AK 99501	100	Member

**Purpose:** Any and all lawful purpose for which a limited liability company may be organized under the Alaska Limited Liability Act.

**NAICS Code:** 531390 - OTHER ACTIVITIES RELATED TO REAL ESTATE

**New NAICS Code (optional):**

I certify under penalty of perjury under the Uniform Electronic Transaction Act and the laws of the State of Alaska that the information provided in this application is true and correct, and further certify that by submitting this electronic filing I am contractually authorized by the Official(s) listed above to act on behalf of this entity.

**Name:** Alana Williams

PO Box 110806, Juneau, AK 99811-0806  
Telephone: (907) 465-2550 Fax: (907) 465-2974 Text Tel: (907) 465-5437  
Website: <http://commerce.alaska.gov/dnn/cbpl>



5577389

AK Entity #: 119867  
 Date Filed: 08/03/2015  
 State of Alaska, DCCED



State of Alaska  
 Division of Corporations, Business and Professional Licensing  
**CORPORATIONS SECTION**  
 PO Box 110806  
 Juneau, AK 99811-0806  
 Phone: (907) 465-2550  
 Fax: (907) 465-2974  
 Website: www.commerce.alaska.gov/occ

DO NOT STAMP ABOVE THIS BOX  
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RECEIVED  
 JUNEAU

AUG 13 2015

**NOTICE OF CHANGE OF OFFICIALS**  
**Domestic Limited Liability Company**  
**AS 10.50.765**

Division of Corporations, Business  
 and Professional Licensing

☒ **\$25.00 Filing Fee (non-refundable)**

Pursuant to Alaska Statutes 10.50.765, the following will apply to the members and/or managers on record.

**ITEM 1: Name of the Entity:**

**Alaska Entity #:**

Pfeffer Development, LLC	119867
--------------------------	--------

**ITEM 2: Prior and new information:**

Prior member/manager	New (replacement) member/manager	New (replacement) mailing address	X if Member	X if Manager	% of interest held
Mark E. Pfeffer Revocable Trust Utad 11/22/05	Mark E. Pfeffer Alaska Exempt Trust utad 12/28/07	425 G St. Suite 210 Anchorage, Alaska 99501	X		100%

Attach an additional sheet if necessary.

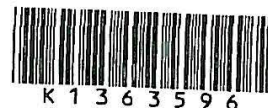
**ITEM 3: The Statement must be signed by a manager, member, or Attorney-in-Fact.**

	MARK PFEFFER	MEMBER	7/24/15
Signature	Printed name	Title	Date

**NOTE:** Persons who sign documents filed with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor.

Mail the Notice of Change of Officials and non-refundable \$25.00 filing fee in U.S. dollars to:  
 State of Alaska, Corporations Section, PO Box 110806, Juneau, AK 99811-0806

**STANDARD PROCESSING TIME** for complete and correct applications submitted to this office is approximately 10-15 business days. All applications are reviewed in the date order they are received.



3647501

AK Entity #: 75015D  
Date Filed: 09/23/2013  
State of Alaska, DCCED

State of Alaska  
Division of Corporations, Business and Professional Licensing  
**CORPORATIONS SECTION**  
PO Box 110806  
Juneau, AK 99811-0806  
Phone: (907) 465-2550  
Fax: (907) 465-2974  
Website: www.commerce.alaska.gov/occ

Office Use Only

CORP

**RECEIVED**  
Juneau

SEP 23 2013

Division of Corporations, Business  
and Professional Licensing

**ARTICLES OF AMENDMENT**  
Domestic Limited Liability Company  
AS 10.50.100

☒ \$25.00 Filing Fee (non-refundable)

Pursuant to Alaska Statutes 10.50.100, the undersigned corporation adopts the following amended Articles of Organization.

**ITEM 1:** Name of the E

716 West Fourth Avenue, LLC

\*Alaska En #:

75015D

**ITEM 2**

Date the original Articles of Organization were  
filed:

12/18/2001

**ITEM 3:** List each article number being amended, and the amended article in full. Any article being changed is considered an amendment; this includes deletions, edits, corrections, or renumbering of the articles. Verify with previous Articles of Organization and amendments already filed.

Article IV Management shall be amended and restated as follows:

Article IV Management. The limited liability company shall be managed by its  
Manager.

Attach a separate sheet if needed.

**ITEM 4:** The Articles of Amendment must be signed by a member, manager or  
-in-Fact.

Signature:   
Printed name: Robert B. Acree  
Title: Member

Date: 9/19/13

Mail the Articles of Amendment and the non-refundable \$25.00 filing fee in U.S. dollars to  
State of Alaska, Corporations Section, PO Box 110806, Juneau, AK 99811-0806

**STANDARD PROCESSING TIME** for complete and correct applications submitted to this office is  
approximately 10-15 business days. All applications are reviewed in the date order they are received

**James B. Gottstein**

---

**From:** Cuddy, Kevin M. <kevin.cuddy@stoel.com>  
**Sent:** Monday, October 19, 2015 11:19 AM  
**To:** James B. Gottstein  
**Subject:** RE: Discovery Meeting

Jim,

That's fine. I'm looking into the other questions you've raised.

-Kevin

---

**From:** James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]  
**Sent:** Monday, October 19, 2015 8:41 AM  
**To:** Cuddy, Kevin M.  
**Cc:** [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)  
**Subject:** Discovery Meeting

Hi Kevin,

Do you want to reschedule our discovery meeting to accommodate 716's continued deposition of me?

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: [James.B. Gottstein@GottsteinLaw.Com](mailto:James.B.Gottstein@GottsteinLaw.Com)

**James B. Gottstein**

---

**From:** James B. Gottstein <james.b.gottstein@gottsteinlaw.com>  
**Sent:** Sunday, October 18, 2015 11:28 AM  
**To:** 'Cuddy, Kevin M.'  
**Cc:** james.b.gottstein@gottsteinlaw.com  
**Subject:** RE: Discovery Meeting

Thanks Kevin.

I will plan on popping over if that is okay.

With respect to Rep. Hawker's e-mails, it seems to me that since you are claiming the attorney-client privilege applies, that you are obligated to provide documents in his possession, custody or control. Will you agree to supplement your responses to include such documents?

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: James.B. Gottstein@GottsteinLaw.Com

-----Original Message-----

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]  
Sent: Sunday, October 18, 2015 10:46 AM  
To: James B. Gottstein  
Subject: RE: Discovery Meeting

Jim,

I'm available at 2 p.m. on Friday. I trust you'll call me then.

I do not know whether this particular email was part of the several thousand pages that LAA already produced, but I do note that it appears to be an email sent to Mike Hawker's personal email account -- not his legislative account. LAA does not have possession, custody, or control over legislators' private email accounts (or their private mail, etc.).

-Kevin

---

From: James B. Gottstein [[james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)]  
Sent: Sunday, October 18, 2015 10:35 AM  
To: Cuddy, Kevin M.  
Cc: [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)  
Subject: RE: Discovery Meeting

Hi Kevin,



How about 2:00 pm on Friday?

I have been going through 716 LLC's e-mail production and there are e-mails that the Legislative Affairs Agency (LAA) should have produced too, such as the attached. If I am mistaken and it was produced by the LAA, I apologize.  
Otherwise, please explain/justify.

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: James.B. Gottstein@GottsteinLaw.Com

-----Original Message-----

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]  
Sent: Sunday, October 18, 2015 8:13 AM  
To: James B. Gottstein  
Subject: Re: Discovery Meeting

Jim,

Let me know some times that work for you. Wednesday is bad for me, but otherwise I'm pretty flexible.

On Oct 17, 2015, at 10:08 PM, James B. Gottstein  
<[james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)<<mailto:james.b.gottstein@gottsteinlaw.com>>> wrote:

Hi Kevin,

I totally forgot about setting a time to meet about discovery when we were together yesterday.

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: James.B. Gottstein@GottsteinLaw.Com<<http://gottsteinlaw.com>>  
=



---

**From:** Mark Pfeffer  
**Sent:** Thursday, June 20, 2013 10:55 AM  
**To:** Mike Hawker (mhawker@gci.net)  
**Subject:** FW: LAA procurement issues

FYI,

The back channel between lawyers.

*Mark Pfeffer*

**PFEFFER DEVELOPMENT, LLC**  
425 G Street, Suite 210 | Anchorage, Alaska 99501  
p 907 646 4644 | f 907.646.4655 |

**Cell Phone**  
907 317 6030

---

**From:** John L. Steiner  
**Sent:** Thursday, June 20, 2013 10:39 AM  
**To:** Donald W. McClintock; Mark Pfeffer  
**Cc:** Heidi A. Wyckoff  
**Subject:** RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

*John L. Steiner*  
Project Director and Counsel

---

**Pfeffer Development, LLC**  
*Commercial Real Estate Developers*  
425 G Street, Suite 210 | Anchorage, Alaska 99501  
p 907.646.4644 | f 907.646.4655  
d 907 770.4306 | c 907.382.2300

This email may contain confidential or attorney-client privileged information and is in any case confidential. If you are not the intended recipient of this email please notify the sender then delete it permanently.

---

**From:** Donald W. McClintock [mailto:dwm@anchorlaw.com]  
**Sent:** Thursday, June 20, 2013 10:18 AM

1

716-001271

Exhibit 8, page 4 of 5

**To:** Mark Pfeffer; John L. Steiner  
**Cc:** Heidi A. Wyckoff  
**Subject:** LAA procuremnt issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. His vision of .083 and .040 is that the rent should be 10% below appraisal. Mark is that your financial plan? You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing. But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

I have not given him permission to talk to Mark, just because we want to keep Mark and Hawker only talking to each other, but I told him he should feel free to talk to John directly.

During the discussion, he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

Don

**Donald W. McClintock**  
**Ashburn & Mason, P.C.**  
1227 W. 9th Ave. Ste. 200  
Anchorage, AK 99501  
(907) 276-4331 (voice)  
(907) 277-8235 (fax)  
[www.anchorlaw.com](http://www.anchorlaw.com)

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## ALASKA STATE LEGISLATURE LEGISLATIVE COUNCIL

### Revised Agenda and Motion Sheet

June 7, 2013

Time: 10:00am – 2:00pm

Room: Anchorage LIO Room 670

I. Call to Order

EXECUTIVE SESSION MOTION: I move that Legislative Council go into executive session under Uniform Rule 22 (b) for the discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit.

II. Anchorage LIO (moved up from bottom of agenda)

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

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

MOTION - ENGAGE AHFC 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.

III. Approval of Minutes

a. May 13, 2013

MOTION: I move that the minutes from the Legislative Council meeting on May 13, 2013 be approved.

L85

LAA\_001358

Exhibit 9, page 1 of 9

IV. Ratification of Charitable Events

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

- a. 14<sup>th</sup> Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc.

V. Contract Approvals

- a. MatSu LIO Lease

MOTION: I move that Legislative Council authorize the chairman to approve a one-year renewal of the existing lease agreement for the MatSu Legislative Information Office and Legislators' District Office space for a cost of \$182,215.20.

VI. Other Committee Business

- a. Seward LIO

MOTION: I move that Council approve the Seward LIO going from session only to full time effective June 4, 2013 and ask the Agency to include that increase in their FY 15 budget request.

VII. Adjournment

AMENDMENT NO. 12<sup>1</sup>  
TO PROCUREMENT PROCEDURES

\* **Section 1.** Procurement Procedures sec. 040 is amended by adding a new subsection to read:

(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.

---

<sup>1</sup> The purpose of this amendment is to allow the agency or a legislative committee to materially modify an existing lease where appropriate without triggering a requirement to obtain a new lease.



10:04:42 AM

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

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

10:06:50 AM

Legislative Council went into executive session.

1:02:43 PM

Legislative Council came out of executive session.

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

## II. ANCHORAGE LIO LEASE

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

### MOTION - LEASE EXTENSION

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

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

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

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

Representative Gruenberg joined the meeting at this time.

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

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

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

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

**MOTION - AMEND PROCUREMENT PROCEDURE**

1:13:32 PM

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

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

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

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

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

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

Senator Coghill joined the meeting at this time via teleconference.

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

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

**MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE**

1:17:19 PM

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

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

SENATOR EGAN asked for a copy of the motions.

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

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

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

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

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

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

**MOTION - ENGAGE AHFC AS LESSEE'S REPRESENTATIVE**

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

1:21:58 PM

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

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

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

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



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

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

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

### III. APPROVAL OF MINUTES

1:25:18 PM

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

The minutes were approved with no objections.

### IV. RATIFICATION OF CHARITABLE EVENT

1:25:53 PM

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

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

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

The event was ratified with no objections.

---

**From:** Mark Pfeffer  
**Sent:** Thursday, June 20, 2013 10:55 AM  
**To:** Mike Hawker (mhawker@gcd.net)  
**Subject:** FW: LAA procurement issues

FYI,

The back channel between lawyers.

*Mark Pfeffer*

**PFEFFER DEVELOPMENT, LLC**  
425 G Street, Suite 210 | Anchorage, Alaska 99501  
p 907 646 4644 | f 907.646.4655 |

**Cell Phone**  
907 317 5030

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**From:** John L. Steiner  
**Sent:** Thursday, June 20, 2013 10:39 AM  
**To:** Donald W. McClintock; Mark Pfeffer  
**Cc:** Heidi A. Wyckoff  
**Subject:** RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

*John L. Steiner*

Project Director and Counsel

---

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**From:** Donald W. McClintock [mailto:dwm@anchoragelaw.com]  
**Sent:** Thursday, June 20, 2013 10:18 AM

1

716-001271

Exhibit 10, page 1 of 2

**To:** Mark Pfeffer; John L. Steiner  
**Cc:** Heidi A. Wyckoff  
**Subject:** LAA procuremnt issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. His vision of .083 and .040 is that the rent should be 10% below appraisal. Mark is that your financial plan? You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing. But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

I have not given him permission to talk to Mark, just because we want to keep Mark and Hawker only talking to each other, but I told him he should feel free to talk to John directly.

During the discussion, he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

Don

**Donald W. McClintock**  
**Ashburn & Mason, P.C.**  
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**From:** Donald W. McClintock <dwm@anchorlaw.com>  
**Sent:** Friday, July 12, 2013 12:53 PM  
**To:** LAA Legal  
**Cc:** 'bob acree'; Mark Pfeffer; John L. Steiner; Heidi A. Wyckoff  
**Subject:** LAA leases  
**Attachments:** 10 year lease extension 7-11-13 (00133314-3).docx.html; AS 36-30-083 Analysis 7-11 (JS) (00133366).docx.html; Amendment and Restatement of Lease (00132213-6).docx.html

Doug,

Per our conversation today, please find attached draft leases for 716 W. 4<sup>th</sup> extension and the material amendment to add 712 W. 4<sup>th</sup> and renovate.

I also attach the analysis on how the extension rent was set under the BOV delivered to Representative Hawker.

As noted, there are business issues that you need to confirm with your clients, but we also stand by to address the various boilerplate clauses. Note, we tried to anticipate from your existing lease structure some of the clauses you would expect to see and obviously are receptive to adding others we may have missed. A lot of the technical detail that are in your leases will be in the plans and specifications in this deal, which we will both have to see once the AHFC and architectural process is complete.

I look forward to working these through with you. Enjoy the weekend; we are enjoying a blue bird summer day in Anchorage.

Don

**Donald W. McClintock**  
**Ashburn & Mason, P.C.**  
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**From:** mhawker@gci.net on behalf of Mike Hawker <mhawker@gci.net>  
**Sent:** Friday, July 12, 2013 6:47 PM  
**To:** Mark Pfeffer  
**Subject:** Re: conversation with Gardner / Attorney client conversation

Crap. I need to get back and deal with him again. Double crap. I hate lawyers.

M

On Jul 12, 2013, at 8:38 PM, Mark Pfeffer <MPfeffer@PfefferDevelopment.com> wrote:

FYI. Let's discuss.

Mark Pfeffer  
Sent from my iPhone  
907-317-5030

Begin forwarded message:

**From:** "Donald W. McClintock" <dwm@anchorlaw.com>  
**Date:** July 12, 2013, 5:21:47 PM AKDT  
**To:** Mark Pfeffer <MPfeffer@PfefferDevelopment.com>, 'bob acree' <bobacree@gmail.com>  
**Cc:** John Steiner L. <JSteiner@PfefferDevelopment.com>  
**Subject:** conversation with Gardner / Attorney client conversation

All,

The initial conversation with Gardner was a little rocky. Although his earlier tone a few weeks ago seemed to be more interested in addressing solutions to the contracting issues, today he was quite dug in with his theory that the motions contemplate a final contract that is 10% below FMV and a deal that can entirely be justified by section 083. He seems to have blown right past his concerns shared a few weeks ago about how to do a material modification under section 083 and discounted the value of a section 080 approval by the legislature. I think John and I fundamentally are not confident that the entire deal can be done under section 083 with the material modification as well. Plus the 10 year term limit is a problem.

He also was not receptive to the reimbursement concept.

We explained that we understood both the motion structure (which he now discounted as not being meaningful or a real justification for how we structured the deal) and the business deal was to allow a FMV deal approved by AHFC. He stated that he had other clients in the Legislature other than Hawker who will be very concerned about not getting a 10% below FMV deal. Hawker is out for a week and he clearly will not budge until after he speaks with him.

We did leave it that next week can be spent ironing out boilerplate, etc., but the big issues will go on hold on his side until after Hawker returns.

1

716-001363

Exhibit 12, page 1 of 2



John can chip in when he gets access to a computer.

Don

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**From:** Mark Pfeffer  
**Sent:** Saturday, July 13, 2013 10:01 AM  
**To:** Mike Hawker  
**Subject:** Fwd: conversation with Gardner / Attorney client conversation

Before I called you the other day Steiner told me to tell you that he is keenly aware that Rep. Hawker starts with "I hate lawyers".

So at least he is sensitized sentiment.

Anyway see the attached internal memo.

I think Gardner is just flat out wrong.

A) you can extend as is where is.

B) you voted to allow major modifications

C) you can commit previously appropriated funds for the purpose of new and or improved facilities.

D) if the full legislature decides to move forward by approving the lease (and the governor signs off) what more do you need?

I think Gardner has "A" way to keep going but he needs to be brought along other ways.

Anyway, don't stress out over this we'll get there. I think we plan an all hands meeting Monday the 22nd and we don't leave the table until we have agreement on direction.

Lastly, Juli seemed to be fully on board with the direction we discussed. The new schedule worked for her better than the October start.

I'm around if you want to discuss.

Mark Pfeffer  
Sent from my iPhone  
907-317-5030

Begin forwarded message:

**From:** "John L. Steiner" <JSteiner@PfefferDevelopment.com>  
**Date:** July 13, 2013, 8:44:59 AM AKDT  
**To:** "Donald W. McClintock" <dwm@anchorlaw.com>, Mark Pfeffer <MPfeffer@PfefferDevelopment.com>, 'bob acree' <bobacree@gmail.com>  
**Subject:** RE: conversation with Gardner / Attorney client conversation

I concur with Don's summary, but will expand on it.

Gardner said he liked the .083 rationale because that section begins "Notwithstanding any other provision of this chapter" which he felt offers complete legal justification and protection. But that

assumes—as he has assumed—that the long-term enlarged and renovated LIO would have to come in at 10% below a BOV for that facility and be limited to 10 years. We explained that the long term deal was not conceived with those expectations, which we believe was fully understood by Rep. Hawker. Gardner seemed to think some of the legislative council members voted in reliance on exactly the contrary understanding: that the renovated space would satisfy those parameters.

Gardner has always tended to focus on procurement issues, and specifically raised that again: he said that if we are falling under .080 and not .083, he did not see why that would not need to be selected through an RFP. I responded that the Procurement Code makes this real estate interest transaction exempt from all procurement rules other than .080, and that so long as it complies with that section's legislative approval requirement, no other process is required. He did not concede that point, but offered no reason it was not so. We did not discuss the fact that this transaction was approved by the legislative council as an outgrowth of the its conclusion based on the prior RFI that other feasible and timely alternatives were not available.

Reading between the lines, it seems he likes the .083 rationale also because he assumes competition is ordinarily required, and that it is only the 10% below market standard that provides justification for not competing. He thinks *that* would need to be true for the expanded and renovated space, and if it *were* to be true for the finished project, that should also bring the non-competitive expansion and renovation under the protection of .083 (even though that section addresses only extension, not enlargement—a factor we did not discuss with him yesterday).

He also said he did not see the justification for extending the existing space for ten years AS IS under .083 since it was not contemplated that they would remain in it AS IS. He implied that he thought it was—or would be seen to be—disingenuous to extend based on a 10% below market AS IS justification, when it was not the plan to actually continue that AS IS deal. I responded that indeed they would continue to enjoy that deal—for ten years—if they elect not to approve the renovation modification. It would only be if they conclude the renovation deal is better, and approve that one independently under .080, that the extension would not continue AS IS under .083.

Overall, the deal is not as he had understood it or thought it should be, so he is at least very skeptical and initially resistant to the differences.

I should note that while he was clearly not happy with the plan as we laid it out, he remained cordial with us and said he would read the drafts and continue to think about it. And while he was concerned about how other legislators would view it, he said he was also not keen to get crosswise with Rep. Hawker, with whom he said he was not in regular touch right now due to Rep. Hawker being out of state for personal reasons.

If Gardner continues to believe there is a procurement issue, it may be useful to carve out the procurement portion of my internal analysis, and provide that to him.

Don, please let us know if you disagree with my recollections in any way. Thanks.

**John L. Steiner**

Project Director and Counsel

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**Pfeffer Development, LLC**

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**From:** Donald W. McClintock [<mailto:dwm@anchorlaw.com>]  
**Sent:** Friday, July 12, 2013 5:22 PM  
**To:** Mark Pfeffer; 'bob acree'  
**Cc:** John L. Steiner  
**Subject:** conversation with Gardner / Attorney client conversation

All,

The initial conversation with Gardner was a little rocky. Although his earlier tone a few weeks ago seemed to be more interested in addressing solutions to the contracting issues, today he was quite dug in with his theory that the motions contemplate a final contract that is 10% below FMV and a deal that can entirely be justified by section 083. He seems to have blown right past his concerns shared a few weeks ago about how to do a material modification under section 083 and discounted the value of a section 080 approval by the legislature. I think John and I fundamentally are not confident that the entire deal can be done under section 083 with the material modification as well. Plus the 10 year term limit is a problem.

He also was not receptive to the reimbursement concept.

We explained that we understood both the motion structure (which he now discounted as not being meaningful or a real justification for how we structured the deal) and the business deal was to allow a FMV deal approved by AHFC. He stated that he had other clients in the Legislature other than Hawker who will be very concerned about not getting a 10% below FMV deal. Hawker is out for a week and he clearly will not budge until after he speaks with him.

We did leave it that next week can be spent ironing out boilerplate, etc., but the big issues will go on hold on his side until after Hawker returns.

John can chip in when he gets access to a computer.

Don

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**From:** Mark Pfeffer  
**Sent:** Thursday, July 25, 2013 9:48 AM  
**To:** Mike Hawker (mhawker@gci.net)  
**Subject:** Procurement  
**Attachments:** Supplement to LIO Project Procurement Analysis 7-24-2013.pdf.html

Mike,

I wouldn't share this with anyone yet. we will scrub the author references if you do want to share it. OR if you get outside counsel they could research and draw their own conclusions

*Mark Pfeffer*

**PFEFFER DEVELOPMENT, LLC**  
425 G Street, Suite 210 | Anchorage, Alaska 99501  
p 907 646 4644 | f 907.646.4655 |

**Cell Phone**  
907 317 5030



---

**From:** Mark Pfeffer  
**Sent:** Friday, July 26, 2013 3:49 PM  
**To:** Mike Hawker (mhawker@gci.net)  
**Subject:** BACK CHANNEL ----- Draft 040(a) determination (00139337-2)\_v2.docx  
**Attachments:** Draft 040(a) determination (00139337-2)\_v2.docx.html

Mike,

If you agree with this I'll have my guys send to Gardner. On hold until I hear from you

**Pamela Varni**

---

**From:** Pamela Varni  
**Sent:** Thursday, August 08, 2013 1:37 PM  
**To:** Rep. Mike Hawker  
**Cc:** Juli Lucky  
**Subject:** Comments on Extension of Lease Amendment #3  
**Attachments:** Extension of Lease Comments.docx; Research Report - 1 pg comparison.pdf; Chart of Executive Branch Anchorage Leases.pdf

Dear Mike – as you requested, attached are my comments on the Extension of Lease and Lease Amendment No. 3 with some additional documentation.

You might not want to change anything but I wanted to show you some comparisons and some of my concerns.

Pam

*Pam Varni, Executive Director  
Legislative Affairs Agency  
State Capitol, Room 3  
Juneau, AK 99801-1182  
Main line (907) 465-3800  
Direct line (907) 465-6622  
Cell phone (907) 209-1942*

## 1. Page 2 of 22 – Rental Property and Rental Rate.

The latest version for cost per square foot went from rentable to gross. As I have stated before, all of the Legislature's leases are usable square feet, as are the Executive Branch leases. Basing the rate on gross is not a benefit to the Legislature and increases the overall lease costs. Calculating on rentable is more easily justified since we will be occupying the entire building. What is the justification for using gross square feet? If we had done an RFP, we would be asking for usable office space with windows; we would also not be requesting over 9,000 square feet of basement space. We currently have 811 square feet of basement space at 716 W. 4<sup>th</sup> Avenue and we rent an additional 480 square feet offsite for \$1.20 per square foot. We used to have a conference room in the basement but it was rarely used so we gave up that space. I believe basement space will be undesirable and therefore underutilized. We should not be paying the same per square foot rate for it. The Chris Stephens Commercial Brokerage Opinion of Lease Rate (dated May 5, 2013) for our existing lease at 716 W. 4<sup>th</sup> Avenue valued the basement rate at \$1.00 per square foot. Under the terms of this proposal, we will be paying four times the amount for basement space as we are currently and even more compared to his valuation.

Under this proposal, 712 and 716 will not be retail space but rather an office building; again, we should not be calculating the lease on gross square feet. As I have stated above, we are already paying additional per square foot costs switching from usable to rentable. Total Gross Building Area is computed by measuring to the outside finished surface of permanent outer building walls without any deductions. All enclosed floors of the building including basements, mechanical equipment floors, penthouses, and the like are included in the measurement. We should not be leasing the penthouse, vertical penetrations, mechanical equipment, etc., which amounts to paying for space we don't occupy.

## 2. Page 3 of 22 – The Base Monthly Rental is \$230,630 (this number needs to be grossed up to include the cost of Property Taxes and Insurance)

Why is there a comment about grossing up the number for property taxes and insurance? When will there be firm numbers? The monthly rental rate of \$230,630 comes to \$3.60 sq. ft. with an additional proposal to do a partial triple net with an estimated cost of over \$600,000 per year on top of that rate. With the figures presented so far, I estimate our cost to be over \$5.00 per square foot for a ten year lease. It is worth noting that this Anchorage lease as proposed will be the most expensive Anchorage lease for the State of Alaska (see attached exhibit of Anchorage leases by the Executive Branch). Also, for comparison purposes, I had Research run the numbers comparing the other proposals for Anchorage legislative office space that have been before Legislative Council and this proposal. As you can see, this proposal is by far the most expensive of any previous proposals over a 30-year period (see attached).

3. Page 3 of 22 – CPI Removed, 3% yearly increase in rent

The percentage of change in CPI-U needs to be back in the lease. Automatically adding a 3% increase to the total monthly rent is excessive. The calculation for the CPI-U is 35% x base monthly rent x % change in CPI-U, not 100% over the previous month's rent every July 1. As proposed, our costs will increase 3 times as much as the State of Alaska pays for CPI-U increases in rent. For example, our normal CPI-U increase on the \$230,630 (35% x base monthly rental rate x % of change in CPI-U (we will use 3% as an example) would be an increase of \$2,421.62/month versus \$6,918.90/month (\$230,630 x 3%). Also, the CPI-U calculations are meant to compensate the Lessor for the increase in utilities. Under the proposal, the Legislature pays the utilities, etc., under a partial triple net. What is the justification for a 3% yearly increase of rent under those terms?

4. Page 3 of 22 – Monthly Rental Payments Sent by Wire Transfer

The State of Alaska does not at this time pay by wire transfer unless it is to a foreign entity or a payment over a million dollars. Our \$230,630 a month would not qualify. Our Accounting Section has all our leases on "Scheduled Payments" and the Department of Administration issues payment before the first of the month.

5. Page 5 of 22 – Tenant Improvements

The State of Alaska separates the leasehold improvement costs from the base lease cost. Contrast that standard with this proposal which includes in the base lease cost rental rate a portion of the leasehold improvement costs in the amount of \$2,685,760. When the State of Alaska goes out to bid, they have the leasehold improvement portion of construction distinct from the primary structure so that it is limited to the construction needs specific to the requirement of the Agency's solicitation and does not include the basic structure of the building or construction in common areas. The complete new construction of a facility is not considered leasehold improvements. Only a percentage as deemed directly connected with the Agency's needs are identified as leasehold improvements, i.e., partition walls and electrical and data outlets required to meet specific needs of the Agency. Where are the figures to show we are only paying for normal tenant improvements, (i.e. partition walls, electrical, etc.) not for the structure, etc.?

Our Fairbanks Class A rental space cost \$62.50 per square foot for leasehold improvements; and these leasehold improvements were not included in the base rent. This proposal requests a leasehold improvement rate of \$120 per square foot, twice that amount. What is the justification for the disparity?

6. Page 6 of 22 – Utilities and Services

I strongly recommend we have a full service lease and know exactly what our price per square foot is minus 10% to show the savings required under a lease extension. It seems we are assuming too much risk and unknown costs for a ten year period without a substantial reduction in rent to accommodate our maintaining the building and parking areas for maintenance, utilities, janitorial, elevators, fire alarm, HVAC, plumbing repairs, etc.

Other legislative leases require the Lessor at least every five years to renovate the space for worn walls, ceilings, floors and replace damaged or worn wall, floor, or window coverings or paint. This proposal has the Legislature assuming that cost and responsibility.

7. Page 7 of 22 – Electrical Outlets

Our language of electrical outlets every 8 linear feet of wall space is standard RFP language. In fact, the Executive Branch electrical requirements further state, "and one duplex outlet on every wall less than eight linear feet." I do not see a copy of the Approval Plans to ensure we have adequate electrical requirements. I would like to keep our 8 linear feet language and add a section that the Agency will review plans and negotiate with the Lessor to review the electrical requirements.

8. Page 12 of 22 – Maintenance and Repair

The Lessee should 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. With the Glacier Brewhouse, Orzo, etc. around our existing building, we have had had multiple problems with urine, cigarettes, blood, etc. The Lessor should take responsibility and not have us cleaning up the mess from the surrounding properties.

I suggest we have a full service lease and not substitute Lessor with Lessee.

9. Page 19 of 22 – Reimbursement

I don't think the documentation section should come out. I also can see the Agency paying for design, engineering, etc. that was specific to our requirements, but not for items that are for the structure that would then be of benefit to the Lessor or another tenant.

I'm pleased to discuss further at your convenience.





## LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature  
Division of Legal and Research Services  
State Capitol, Juneau, AK 99801

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### Memorandum

TO: Pamela Varni, Executive Director, Legislative Affairs Agency  
FROM: Roger Withington, Legislative Analyst  
DATE: August 7, 2013  
RE: Comparing 30-Year Costs of Construction and Operation of Prospective Anchorage Office Buildings  
LRS Report 14.016

*You asked for a comparison of total 30-year costs of constructing and operating various proposed Anchorage office buildings that have been or are being considered by the Legislative Council.*

As you know, in recent years the Legislative Council has considered a number of proposals for the construction or lease of office space in Anchorage.<sup>1</sup> Below, we briefly compare the estimated aggregate construction (if applicable) and operating costs of those proposals at the end of a 30-year period.<sup>2</sup>

#### Estimated Aggregate Construction or Lease Costs and Operating Costs of Certain Proposed Anchorage Legislative Office Buildings at the End of a 30-Year Period

Location	Total Construction or Lease Cost <sup>(a)</sup>	Total Operating Cost	Grand Total
909 W. 9 <sup>th</sup> Ave. (Unocal Building)	\$14,700,000	\$20,428,952	\$35,128,952
Block 102	\$26,200,000	\$32,609,013	\$58,809,013
Anchorage Community Development Authority Proposal	\$60,609,600	\$40,178,962	\$100,788,562
Block 39	\$89,450,000	\$23,583,304	\$113,033,304
Prospective New Lease for Current Offices at 716 4 <sup>th</sup> Ave.	\$132,913,441	\$33,063,292	\$165,976,733
Notes: (a) The construction costs of the 909 W. 9th Ave. (Unocal Building), Block 102, Anchorage Community Development Authority Proposal, and Block 39 properties reflect construction costs, including any applicable debt service, at the time the Legislative Council considered these properties.			

We hope this is helpful. If you have questions or need additional information, please let us know.

<sup>1</sup> In the interest of brevity, we omit background information and supporting documentation from this memorandum. At your request, we would be happy to provide our previous reports on this topic, which collectively provide extensive detail. Please note, that with the exception of the Prospective New Lease, all properties reflect construction costs, including any applicable debt service, as calculated at the time the Legislative Council considered the properties.

<sup>2</sup> The cost of operations for the 909 W. 9th Ave. (Unocal Building), Block 102, and Block 39 properties are based on a uniform cost per square foot of \$11.28 provided by Tanci Mintz, the state's lease manager. Ms. Mintz based this figure on actual costs experienced at the Atwood Building in Anchorage. The Anchorage Community Development Authority (ACDA) proposal to the Legislature included an estimated cost of operations. The cost of operations for the Prospective New Lease is set contractually at \$10 per gross square foot for FY2014. We adjusted all operations costs for inflation at a rate of 3.5 percent annually. Please keep in mind that the building systems at each of the proposed facility would be of somewhat varying design, these operating cost figures should be viewed as rough estimates.

leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2556	Anchor Point	Pub Safety	Kyllonen Business Center	Kyllonen Business Center; Anchor River Subdivision; 34115 Sterling Highway; Anchor Point, AK 99556	Kyllonen Enterprises	3202	1.98520924	Office	4/30/2014		1 One year	Mike Szewc	Southcentral
2556	Anchor Point	Pub Safety	Kyllonen Business Center	Kyllonen Business Center; Anchor River Subdivision; 34115 Sterling Highway; Anchor Point, AK 99556	Kyllonen Enterprises	3600	0.16178611	Outside Storage	4/30/2014		1 One year	Mike Szewc	Southcentral
1201	Anchorage	H&SS	Blomfield Building	Fourth & Gambell LLC Building; East 4th Avenue & Gambell Street; Lot 1A, Block 25B; Anchorage, AK	Fourth & Gambell, LLC	29472	1.90692216	Office	1/31/2021		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated  
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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
1328	Anchorage	M&VA	Huffman Business Park	Huffman Business Park; Huffman Building O - Suite 1; 12050 Industry Way; Anchorage, AK    Huffman Business Park; Huffman Building M & N - Unit 4; 11900 Industry Way; Anchorage, AK    Huffman Business Park; Huffman Building Q - Unit Q5; 12150 Industry Way;	Huffman Building O, LLC	7455	1.39727297	Warehouse	10/14/2013		1 One year	Ken Stewart	Anchorage
1328	Anchorage	Transp &PF	Huffman Business Park	Huffman Business Park; Huffman Building O - Suite 1; 12050 Industry Way; Anchorage, AK    Huffman Business Park; Huffman Building M & N - Unit 4; 11900 Industry Way; Anchorage, AK    Huffman Business Park; Huffman Building Q - Unit Q5; 12150 Industry Way;	Huffman Building O, LLC	7200	1.35	Office	10/31/2017		5 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
1328	Anchorage	Transp &PF	Huffman Business Park	Huffman Business Park; Huffman Building O - Suite 1; 12050 Industry Way; Anchorage, AK    Huffman Business Park; Huffman Building M & N - Unit 4; 11900 Industry Way; Anchorage, AK    Huffman Business Park; Huffman Building Q - Unit Q5; 12150 Industry Way;	Huffman Building O, LLC	5800	1.35	Office	10/31/2017		5 One year	Ken Stewart	Anchorage
1445	Anchorage	Labor	SLM Subdivision, 33rd & Eagle	SLM Subdivision; 3301 Eagle Street; Lot 1B, Block 3; Anchorage, AK	Thirty-Third & Eagle, LLC	48640	1.755	Office	3/31/2022		0 0	Ken Stewart	Anchorage
1511	Anchorage	F&G	Raspberry Industrial Park Subdivision	Raspberry Industrial Park Subdivision; Lot 6, Block 2; 333 Raspberry Road; Anchorage, AK    Raspberry Industrial Park Subdivision; Lot 4A, Block 1; 525 West 67th Avenue; Anchorage, AK	Worthington F&G, LLC	82382	1.36421718	Office and Other Types of Space	6/30/2020		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
1521	Anchorage	Pub Safety	Heather Meadows Subdivision	Heather Meadows Subdivision; 536 East 48th Avenue; Lot 7E, Block 2; Anchorage, AK	Egemo Properties, Inc.	2900	1.16457931	Warehouse	2/29/2016		1 One year	Ken Stewart	Anchorage
1521	Anchorage	Pub Safety	Heather Meadows Subdivision	Heather Meadows Subdivision; 536 East 48th Avenue; Lot 7E, Block 2; Anchorage, AK	Egemo Properties, Inc.	10000	1.000481	Office and Other Types of Space	2/29/2016		1 One year	Ken Stewart	Anchorage
2078	Anchorage	H&SS	550 West 8th Avenue	unnamed property; 550 West 8th Avenue; Anchorage, AK	Eighth and F, LLC	1	1293.99	Leasehold Improvement Costs	9/30/2014		0 0	Ken Stewart	Anchorage
2078	Anchorage	H&SS	550 West 8th Avenue	unnamed property; 550 West 8th Avenue; Anchorage, AK	Eighth and F, LLC	24076	1.79236003	Office	9/30/2019		0 0	Ken Stewart	Anchorage
2303	Anchorage	Correct ion	800 A Street	800 A Street; 800 A Street; Anchorage, AK	8th & A, LLC	15000	1.69348333	Office and Other Types of Space	7/31/2014		1 One year	Ken Stewart	Anchorage
2303	Anchorage	Correct ion	800 A Street	800 A Street; 800 A Street; Anchorage, AK	8th & A, LLC	1186	1.79	Office	7/31/2014		1 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2313	Anchorage	M&VA	Dimond Center	Dimond Center; Suite 3-220; 800 East Dimond Boulevard; Anchorage, AK    Dimond Center; Suite 3-209; 800 East Dimond Boulevard; Anchorage, AK	Dimond Center, LLC	3127	2.21039655	Office	12/31/2013		0 0	Ken Stewart	Anchorage
2313	Anchorage	M&VA	Dimond Center	Dimond Center; Suite 3-220; 800 East Dimond Boulevard; Anchorage, AK    Dimond Center; Suite 3-209; 800 East Dimond Boulevard; Anchorage, AK	Dimond Center, LLC	142	0	Office	12/31/2013		0 0	Ken Stewart	Anchorage
2345	Anchorage	E&ED	Post Office Mall	Post Office Mall; 333 West 4th Avenue; Lot 5, Block 24A, Plat 68- 122; Anchorage, AK	Windward Town & Country Plaza, Inc.	10800	1.75069815	Office	5/31/2014		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2382	Anchorage	Law	Carr-Gottstein & Resolution Tower Buildings	Carr-Gottstein Building ; 310 K Street; Lot 1B, Block 31; Anchorage, AK    Resolution Tower Building; 1031 West 4th Avenue; Lot 7, Block 31; Anchorage, AK	Whale Building, LLC	81812	3.22144979	Office	9/30/2014		1 Five years	Ken Stewart	Anchorage
2382	Anchorage	Law	Carr-Gottstein & Resolution Tower Buildings	Carr-Gottstein Building ; 310 K Street; Lot 1B, Block 31; Anchorage, AK    Resolution Tower Building; 1031 West 4th Avenue; Lot 7, Block 31; Anchorage, AK	Whale Building, LLC	4317	3.22139912	Office	9/30/2014		1 Five years	Ken Stewart	Anchorage
2401	Anchorage	Enviro Con	555 Cordova Street	unnamed property; 555 Cordova Street; Anchorage, AK	555 Cordova, LLC	45050	2.28740622	Office	5/31/2015		5 One year	Ken Stewart	Anchorage
2413	Anchorage	Correction	Carr Gottstein Building	Carr Gottstein Building; 310 K Street; Lot 1 B, Block 31; Anchorage, AK	Whale Building, LLC	2554	2.36922866	Office	6/30/2015		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2428	Anchorage	Labor	Muldoon Heights Subdivision	Muldoon Heights Subdivision; 1251 Muldoon Road; Tract A, Plat No. 70-257; Anchorage, AK	Noodlum Equities, Ltd.	1	5759	Leasehold Improvement Costs	7/31/2016		0 0	Ken Stewart	Anchorage
2428	Anchorage	Labor; H&SS	Muldoon Heights Subdivision	Muldoon Heights Subdivision; 1251 Muldoon Road; Tract A, Plat No. 70-257; Anchorage, AK	Noodlum Equities, Ltd.	30198	1.42322439	Office	9/30/2022		0 0	Ken Stewart	Anchorage
2434	Anchorage	Governor; Labor; Admin	Bayview Commercial Building	Bayview Commercial Building; ARRC Anchorage Terminal; 619 East Ship Creek Avenue; Anchorage, AK 99501	Bayview Properties, LLC	5345	1.55168382	Office	2/28/2014		0 0	Ken Stewart	Anchorage
2435	Anchorage	Labor	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; Anchorage, AK 99501	Bayview Properties, LLC	11987	1.69472178	Office	5/31/2016		1 Three years	Ken Stewart	Anchorage
2449	Anchorage	Admin	College Corner Subdivision	College Corner Subdivision; Suite 128; 2221 E Northern Light Boulevard; Anchorage, AK	Big W Ranch Corp.	3000	1.40662687	Office	12/31/2013		5 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2451	Anchorage	Revenue	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	2200	1.8	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2451	Anchorage	Govern or, Revenue	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	3255	1.73511214	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2451	Anchorage	Nat Res	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	21266	1.72823897	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2451	Anchorage	Revenue	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	3690	1.73511382	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2455	Anchorage	Enviro Con	Fuller Industrial Park	Fuller Industrial Park; 502 West 58th Avenue, Unit J ; Lot 6, Block 4; Anchorage, AK	Arctic Center VIII	2298	1.24020888	Office and Other Types of Space	4/30/2016		3 One year	Ken Stewart	Anchorage
2458	Anchorage	Enviro Con	Warehouse B - 1330 East 2nd Avenue	Warehouse A; 1313 East 3rd Avenue; Lots 1 & 3A, Block 32D; Anchorage, AK    Warehouse B; 1330 East 2nd Avenue; Lots 1 & 3A, Block 32D; Anchorage, AK	Stewart Stewart & Cupples, LLC	1223	1.16896157	Office and Other Types of Space	6/30/2013		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	330	1.12487879	Storage	11/30/2017		0	Ken Stewart	Anchorage
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	8644	2.35099954	Office	11/30/2017		0	Ken Stewart	Anchorage
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	1	2955.26	Leasehold Improvement Costs	11/30/2017		0 0	Ken Stewart	Anchorage
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	5000	2.542228	Office	11/30/2017		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2468	Anchorage	Nat Res	Phillips Office Complex	Phillips Office Complex; 701 West 8th Avenue; Lot 1A, Block 81; Anchorage, AK	Conoco Phillips Alaska, Inc.	3819	3.11965436	Office	3/31/2016		2 Five years	Ken Stewart	Anchorage
2468	Anchorage	Law, CC&E D	Phillips Office Complex	Phillips Office Complex; 701 West 8th Avenue; Lot 1A, Block 81; Anchorage, AK	Conoco Phillips Alaska, Inc.	22709	2.12895944	Office	3/31/2016		2 Five years	Ken Stewart	Anchorage
2469	Anchorage	Admin	Benson DMV	Benson DMV; Corner of Benson Blvd & Spenard Road; 1300 West Benson Boulevard; Anchorage, AK	North Star 1300, LLC	44773	-1.5126304	Lease Rent Credit/Abatement	5/31/2016		1 Three years	Ken Stewart	Anchorage
2469	Anchorage	Admin	Benson DMV	Benson DMV; Corner of Benson Blvd & Spenard Road; 1300 West Benson Boulevard; Anchorage, AK	North Star 1300, LLC	44773	2.15840909	Office and Other Types of Space	5/31/2016		1 Three years	Ken Stewart	Anchorage
2482	Anchorage	Admin	Fifth Avenue Building	Fifth Avenue Building; 900 West Fifth Avenue; Block 55, Lot 1A, Plat 79-259; Anchorage, AK	5th & 6th, LLC	14852	2.7142634	Office	12/31/2016		1 Three years	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2483	Anchorage	Admin	Fifth Avenue Building	Fifth Avenue Building; 900 West Fifth Avenue; Block 55, Lot 1A, Plat 79-259; Anchorage, AK	5th & 6th, LLC	20496	2.71416228	Office	12/31/2016		1 Three years	Ken Stewart	Anchorage
2498	Anchorage	Correction	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	3529	1.6031227	Office	5/31/2014		3 One year	Ken Stewart	Anchorage
2498	Anchorage	Environment	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	9640	1.61467842	Office and Other Types of Space	5/31/2014		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Governor	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	3217	1.37244949	Office	5/31/2014		3 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	616	1.75170455	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	2492	1.37345907	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	335	1.802	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	163	1.67110429	Office	5/31/2015		2 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	12864	1.38945274	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2503	Anchorage	Correct ion	Town Square Plaza	Town Square Plaza; 500 West 6th Avenue; Lot B, Block 70; Anchorage, AK	Ounalashka Properties, Inc.	3206	1.575	Office	7/31/2017		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	996	3.21472892	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	56093	3.21473196	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	1658	3.21473462	Office	6/30/2019		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	882	3.21472769	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	Correction	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	2064	3.21473837	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	20629	3.21473217	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	4527	3.21473161	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	2053	3.21472986	Office	6/30/2019		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	1848	3.21472944	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	6589	3.21473213	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	6485	3.21473246	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	11824	3.2147319	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	9978	3.21473241	Office	6/30/2019		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2508	Anchorage	Labor; Admin	Alaska Legal Center	Alaska Legal Center; 1016 West 6th Avenue; Lot 1C, Block 65; Anchorage, AK	S & K Properties	16928	2.22299976	Office	7/31/2017		5 One year	Ken Stewart	Anchorage
2525	Anchorage	Nat Res	Arctic Business Park	Arctic Business Park; 510 West 41st Avenue - Suite 102, Unit H; Birch Knoll Tract 1B; Anchorage, AK	Arctic Business Park III	1835	1.39295913	Office and Other Types of Space	4/30/2014		0 0	Ken Stewart	Anchorage
2528	Anchorage	Governor	800 A Street	800 A Street; Lots 1,2,3,4, and 5, Block 105; 800 A Street; Anchorage, AK	8th & A, LLC	752	1.8524867	Office	9/30/2013		0 0	Ken Stewart	Anchorage
2528	Anchorage	Governor	800 A Street	800 A Street; Lots 1,2,3,4, and 5, Block 105; 800 A Street; Anchorage, AK	8th & A, LLC	6794	1.65004121	Office	9/30/2013		0 0	Ken Stewart	Anchorage
2535	Anchorage	H&SS	Revere Commercial Center	Revere Commercial Center; Independence Park Subdivision; 9210 Vanguard Drive, Suite #102; Anchorage, AK 99507	Spinvest, LLC	5361	1.828241	Office and Other Types of Space	10/31/2013		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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Exhibit 16, page 21 of 29

leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2537	Anchorage	Enviro Con	Dimond Industrial Center	Dimond Industrial Center; 7720 King Street; Lot 5, Block 5, Plat No. 80-49; Anchorage, AK	King Street Rentals	5324	0.46494741	Office and Other Types of Space	1/31/2014		0 0	Ken Stewart	Anchorage
2560	Anchorage	Govern or	RAM Building	RAM Building; 2525 Gambell Street; Lot 28A, Block 4, Lampert Subdivision; Anchorage, AK	Michael Investments, LLC	9044	1.43110349	Office	4/30/2014		1 One year	Ken Stewart	Anchorage
2562	Anchorage	M&VA	Dimond Center	Dimond Center; 800 East Dimond Boulevard, Suite 3- 229; Lot 3D, Block 2; Anchorage, AK	Dimond Center, LLC	1035	2.08637681	Office	12/31/2013		0 0	Ken Stewart	Anchorage
2578	Anchorage	E&ED	Dimond Center	Dimond Center; Dimond Industrial Subdivision; 800 E. Dimond East Boulevard, STE #200; Anchorage, AK	Dimond Center Holdings, LLC	400	1.031525	Storage	5/31/2014		4 One year	Ken Stewart	Anchorage
2578	Anchorage	E&ED	Dimond Center	Dimond Center; Dimond Industrial Subdivision; 800 E. Dimond East Boulevard, STE #200; Anchorage, AK	Dimond Center Holdings, LLC	5170	1.23784333	Office	5/31/2014		4 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2587	Anchorage	H&SS	McKay Annex	McKay Annex - McKay Subdivision; 323 E. 4th Avenue; Lot A1; Anchorage, AK	JBG Memorial, LLC	1	33649	Leasehold Improvement Costs	2/28/2023		0 0	Ken Stewart	Anchorage
2587	Anchorage	H&SS	McKay Annex	McKay Annex - McKay Subdivision; 323 E. 4th Avenue; Lot A1; Anchorage, AK	JBG Memorial, LLC	45168	1.70168836	Office	2/28/2023		3 Five years	Ken Stewart	Anchorage
2599	Anchorage	Correction	Transit Center	Transit Center; 830 G Street; Anchorage, AK 99501	Anchorage Community Development Authority	2205	2.19	Office	2/7/2017		2 Five years	Ken Stewart	Anchorage
2603	Anchorage	Correction	Transit Center - Municipality Parking Garage	Transit Center - Municipality Parking Garage; 6th & H Street Parking Garage; 700 West 6th Avenue; Anchorage, AK	Anchorage Community Development Authority	13	103.846154	Parking	9/30/2017		0 0	Ken Stewart	Anchorage
2608	Anchorage	H&SS	Mt. McKinley Professional Building	Mt. McKinley Professional Building; 733 West 4th Avenue, Suite #300; Lot 9, Block 28; Anchorage, AK 99501	WBC Real Estate Investment Fund #1, LLC	2899	2.67928941	Office and Other Types of Space	12/31/2014		4 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2608	Anchorage	H&SS	MT McKinley Professional Building	MT McKinley Professional Building; 733 West 4th Avenue, Suite #300; Lot 9, Block 28; Anchorage, AK 99501	WBC Real Estate Investment Fund #1, LLC	1	1579.2	Leasehold Improvement Costs	12/31/2013		0 0	Ken Stewart	Anchorage
2617	Anchorage	M&VA	4600 Debarr Road Building	4600 Debarr Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debarr Road, Suite #300; Anchorage, AK 99508	4600 Debarr Road, LLC	1458	2.7	Office	6/30/2019		10 year	Ken Stewart	Anchorage
2617	Anchorage	Labor	4600 Debarr Road Building	4600 Debarr Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debarr Road, Suite #300; Anchorage, AK 99508	4600 Debarr Road, LLC	1	4744.4	Leasehold Improvement Costs	6/30/2019		0 0	Ken Stewart	Anchorage
2617	Anchorage	M&VA	4600 Debarr Road Building	4600 Debarr Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debarr Road, Suite #300; Anchorage, AK 99508	4600 Debarr Road, LLC	1	750.33	Leasehold Improvement Costs	6/30/2019		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2617	Anchorage	Labor	4600 Debar Road Building	4600 Debar Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debar Road, Suite #300; Anchorage, AK 99508	4600 Debar Road, LLC	9350	2.70204064	Office	6/30/2019		10 One year	Ken Stewart	Anchorage
2620	Anchorage	Pub Safety	Tudor Municipal Campus Subdivision	Tudor Municipal Campus Subdivision; Anchorage, AK 99519	Anchorage, Municipality of	691732	0.00000012	Ground	2/28/2059		1 25 years	Ken Stewart	Anchorage
2632	Anchorage	H&SS; Correct ion	920 East Whitney Road	Unknown; 920 East Whitney Road; Anchorage, AK 99501	Alaska Railroad Corporation	7200	1.01388889	Storage	11/30/2013		0 0	Ken Stewart	Anchorage
2636	Anchorage	E&ED	Mountain View Commerce Center	Mountain View Commerce Center; 161 South Klevin Street, Suite #102; Anchorage, AK 99508	Anchorage Community Land Trust	3549	1.34081995	Office	4/30/2015		5 One year	Ken Stewart	Anchorage
2636	Anchorage	E&ED	Mountain View Commerce Center	Mountain View Commerce Center; 161 South Klevin Street, Suite #102; Anchorage, AK 99508	Anchorage Community Land Trust	1	4604.96	Leasehold Improvement Costs	4/30/2015		0 0	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated  
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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2637	Anchorage	Pub Safety	Regional Fire Training Center	Regional Fire Training Center; 1140 Airport Heights; Anchorage, AK 99508	Anchorage, Municipality of	400	3.75	Office	9/30/2015		Five years	Ken Stewart	Anchorage
2641	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Busines Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK    Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K- 10 & K-42 ; Anchorage, AK    Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	6079	1.9	Office	7/31/2018		4 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated  
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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2641	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK    Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K- 10 & K-42 ; Anchorage, AK    Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	1	10727.56	Leasehold Improvement Costs	2/29/2016		0 0	Ken Stewart	Anchorage
2641	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK    Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K- 10 & K-42 ; Anchorage, AK    Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	15531	1.9	Office	2/29/2016		5 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2641	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK    Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K- 10 & K-42 ; Anchorage, AK    Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	2148	1.9	Office	2/29/2016		5 One year	Ken Stewart	Anchorage
2641	Anchorage	Transp &PF	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK    Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K- 10 & K-42 ; Anchorage, AK    Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	870	1.98102299	Office	2/29/2016		5 One year	Ken Stewart	Anchorage

\* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2653	Anchorage	CC&E D	Tonsina Subdivision	Tonsina Subdivision; Lot 2 Wood Subdiv & Lot 3 Sunbeam Subdiv; 903 W Northern Lights; Anchorage, AK 99503	Griffin, Sue c/o Tammy Krous	3545	1.55	Office	10/31/2013		1 One year	Ken Stewart	Anchorage
2660	Anchorage	Enviro Con	East Dimond Center	East Dimond Center; 2241 Cinnabar Loop; Block 2, Lot 17; Anchorage, AK 99507	GTK Commercial Real Estate, LLC	15075	0.72898574	Office and Other Types of Space	5/31/2020		3 One year	Ken Stewart	Anchorage
2660	Anchorage	Enviro Con	East Dimond Center	East Dimond Center; 2241 Cinnabar Loop; Block 2, Lot 17; Anchorage, AK 99507	GTK Commercial Real Estate, LLC	1	3459.14	Leasehold Improvement Costs	5/31/2020		0 0	Ken Stewart	Anchorage



---

**From:** Mike Hawker <mhawker@gci.net>  
**Sent:** Thursday, August 08, 2013 5:01 PM  
**To:** Mark Pfeffer  
**Subject:** Re: Comments on Extension of Lease Amendment #3

Yep. M

On Aug 8, 2013, at 4:43 PM, Mark Pfeffer <MPfeffer@PfefferDevelopment.com> wrote:

Well. Here we go!

I'll dig into this. Once I've identified All of the math errors and bad assumptions ill get with Do. At AHFC and see if be agrees. if he does they can produce the memo that settles up the issues.

Jeeez! & double Jeez!

Sent from my iPhone

On Aug 8, 2013, at 2:27 PM, "Mike Hawker" <mhawker@gci.net> wrote:

Begin forwarded message:

**From:** "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>  
**Date:** August 8, 2013, 2:22:05 PM AKDT  
**To:** Hawker Michael <mhawker@gci.net>  
**Subject:** Fwd: Comments on Extension of Lease Amendment #3

Begin forwarded message:

**From:** "Pamela Varni" <Pamela.Varni@akleg.gov>  
**To:** "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>  
**Cc:** "Juli Lucky" <Juli.Lucky@akleg.gov>  
**Subject:** Comments on Extension of Lease Amendment #3

Dear Mike – as you requested, attached are my comments on the Extension of Lease and Lease Amendment No. 3 with some additional documentation.

You might not want to change anything but I

1

716-002173  
Exhibit 17, page 1 of 2

wanted to show you some comparisons and some of my concerns.

Pam

Pam Varni, Executive Director  
Legislative Affairs Agency  
State Capitol, Room 3  
Juneau, AK 99801-1182  
Main line (907) 465-3800  
Direct line (907) 465-6622  
Cell phone (907) 209-1942

<Extension of Lease Comments.docx>  
<Research Report - 1 pg comparison.pdf>  
<Chart of Executive Branch Anchorage Leases.pdf>

---

**From:** Mark Pfeffer  
**Sent:** Friday, August 09, 2013 1:36 PM  
**To:** Mike Hawker  
**Subject:** response  
**Attachments:** 8\_9\_13 response document draft.docx.html

I ran out of time but this is a draft and you can see where its heading.

I'm a little bit pissed off that I am having to spend several hours responding to a work product that is frankly "GARBAGE"

When faced with a credible well thought out proposal that can be factually documented by the experts (ours), but which she is incapable of comprehending, Pam is reverting to her hold "smoke and mirror" ways. None of the numbers on the comparable proposal sheet make any sense to me.

I can't find my version of the Pam produced "comparable" document that I gave you at our first meeting in January. Do you still have that? See how the amounts on that sheet tally with the new comparable sheet.

Obviously please do not forward this email. Thanks.

More to follow

*Mark Pfeffer*

PFEFFER DEVELOPMENT, LLC  
425 G Street, Suite 210 | Anchorage, Alaska 99501  
p 907 646 4644 | f 907.646.4655 |

Cell Phone  
907 317 5030

---

**From:** MHawker <mhawker@gci.net>  
**Sent:** Sunday, August 25, 2013 7:48 AM  
**To:** Mark Pfeffer  
**Subject:** did not get the revised schedule

Hi Mark,

I received the new schematic presentation, but did not receive a copy of the revised project schedule we discussed on the phone.

If you can forward it, I will be really happy to give it a look see.

Again, magnificent presentation on Friday..... I don't see anything that Pam or Gardner can do now to derail this.... Not that they will not try.

Best,

Mike

---

**From:** Rep. Mike Hawker <Rep.Mike.Hawker@akleg.gov>  
**Sent:** Friday, September 06, 2013 11:40 AM  
**To:** Mark Pfeffer  
**Subject:** Re: LIO Lease Extension and Amendment v. 09/04/2013

Got it. Thanks.

On Sep 6, 2013, at 11:18 AM, "Mark Pfeffer" <MPfeffer@PfefferDevelopment.com> wrote:

> Standby on this Mike. I'm working it  
>  
> Mark Pfeffer  
>  
> PFEFFER DEVELOPMENT, LLC  
> 425 G Street, Suite 210 | Anchorage, Alaska 99501 p 907 646 4644 |  
> f 907.646.4655 |  
>  
> Cell Phone  
> 907 317 5030  
>  
>  
> -----Original Message-----  
> From: Rep. Mike Hawker [mailto:Rep.Mike.Hawker@akleg.gov]  
> Sent: Friday, September 06, 2013 9:54 AM  
> To: 'Donald W. McClintock' (dwm@anchorlaw.com); Mark Pfeffer;  
> mbuller@ahfc.us  
> Subject: FW: LIO Lease Extension and Amendment v. 09/04/2013  
>  
> How are we doing with Gardner? This note made me worry a bit. Do we need to plan another sit down?  
>  
> Mike  
>  
>  
>  
> -----Original Message-----  
> From: Nola Cedergreen [mailto:ncedergr@ahfc.us]  
> Sent: Wednesday, September 04, 2013 2:44 PM  
> To: LAA Legal; Rep. Mike Hawker; Pamela Varni; dwm@anchorlaw.com  
> Subject: RE: LIO Lease Extension and Amendment v. 09/04/2013  
>  
> Sounds like a plan. I will keep my schedule open.  
>  
>  
> Sent from my Verizon Wireless 4G LTE Smartphone  
>  
>  
>  
> ----- Original message -----  
> From: LAA Legal <LAA.Legal@akleg.gov>

1

716-001402

Exhibit 20, page 1 of 3



> Date: 09/04/2013 1:47 PM (GMT-08:00)  
> To: Nola Cedergreen <ncedergr@ahfc.us>, "Rep. Mike Hawker"  
> <Rep.Mike.Hawker@akleg.gov>, Pamela Varni  
> <Pamela.Varni@akleg.gov>, dwm@anchorlaw.com  
> Subject: RE: LIO Lease Extension and Amendment v. 09/04/2013  
>  
>  
> Nola,  
> Thanks for your drafting work. I understand that you have, in your most recent draft, made some changes and not others. I will leave it to the client to make a decision on how to move forward on your recommendations in your current draft. However, section 1.1(b) and section 36 require, in my view, a conversation by short teleconference.  
>  
> If Exhibits A and B will be ready soon, I suggest that when the drafts are available we have another teleconference to address them and secs. 1.1(b) and 36. The last call was productive and efficient. I will hold my comments on new drafts until then, if this suggested process is acceptable to Representative Hawker.  
> Doug Gardner, Director  
> LAA Legal Services  
>  
> Sent by:  
> MaryEllen Duffy  
> Special Assistant  
> LAA Legal Services  
> 907-465-6651 direct  
> 907-465-2029 fax  
> MaryEllen.Duffy@akleg.gov  
>  
>  
>  
>  
> Warning: This message and any attachments to it are confidential. If you have received this message in error, please notify the sender by electronic mail and delete the message. If you are not the intended recipient of this message, you are hereby notified that disclosing, disseminating, or copying this message or any attachments to it is prohibited. Thank you.  
>  
>  
>  
> -----Original Message-----  
> From: Nola Cedergreen [mailto:ncedergr@ahfc.us]  
> Sent: Tuesday, September 03, 2013 7:37 PM  
> To: Rep. Mike Hawker; LAA Legal; Pamela Varni; dwm@anchorlaw.com  
> Subject: LIO Lease Extension and Amendment v. 09/04/2013  
>  
> Please give this a test drive ...  
>  
> Mr. McClintock's latest draft was used as the base document which was revised slightly based upon a review of my handwritten notes from our teleconference, the detailed notes provided by Representative Hawker's office, and the September 3rd summary prepared by Doug Gardner.  
>  
> With the exception of the following reference in Doug's September 3rd document, I believe I have addressed most questions: "P. 11. Sec. 21: ...after 'not the responsibility of Lessor' ... that the clause ... be included." I couldn't find "not the responsibility of Lessor" in Section 21. Please point me in the right direction.  
>

> The definition section has been expanded and requires some review to be certain the parties agree. The delay in performance section has hopefully been clarified in a manner that will avoid confusion between the renovation to be accomplished prior to the Lessee's acceptance and occupancy of the Premises and any subsequent alteration/renovation projects that may come along after occupancy. Section 43 requires a careful read. I believe I have quoted AS 36.30.083 (a) correctly but recommend a legal review of my work.

>

> Attached is a track changes comparison between Mr. McClintock's draft and the 9/4/13 version. I believe Doc Crouse and Mark Pfeffer are both working on the content of Exhibit "A" and Exhibit "B".

>

> Thanks for all of your help and feedback.

>

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---

**From:** Rep. Mike Hawker <Rep.Mike.Hawker@akleg.gov>  
**Sent:** Wednesday, September 11, 2013 6:01 AM  
**To:** Nola Cedergreen  
**Cc:** Mark Pfeffer; Mike Buller  
**Subject:** Re: Lease revisions.

Thanks all for the extra hours. I apologize for the obstructionist on my side of the table.

I will also review this first thing this morning.

Mike, let me know where and when you want to meet with Mark on numbers.

Mike

On Sep 11, 2013, at 5:27 AM, "Nola Cedergreen" <[ncedergr@ahfc.us](mailto:ncedergr@ahfc.us)> wrote:

> Looks great. Good revisions/clarification.

>

>

> From: Donald W. McClintock [[dwm@anchorlaw.com](mailto:dwm@anchorlaw.com)]

> Sent: Tuesday, September 10, 2013 7:48 PM

> To: Nola Cedergreen; [Rep.Mike.Hawker@akleg.gov](mailto:Rep.Mike.Hawker@akleg.gov); [laa.legal@akleg.gov](mailto:laa.legal@akleg.gov); [Pamela.Varni@akleg.gov](mailto:Pamela.Varni@akleg.gov)

> Cc: [mpfeffer@pfefferdevelopment.com](mailto:mpfeffer@pfefferdevelopment.com); Mike Buller; Heidi A. Wyckoff

> Subject: RE: Lease revisions.

>

> Nola and Doug,

>

> Here are my tracked changes annotations to the lease on Nola's post teleconference version. I am available to talk tomorrow any time up to 4:15 when I have a court system conference.

>

> Doug, I tweaked the para. 36 language for consistency; please review it carefully.

>

> These changes have not been reviewed by Mark so I reserve the right to make additional changes per his review.

>

> I look forward to getting this wrapped up tomorrow and appreciate your attention.

>

> Don

>

> Donald W. McClintock

> Ashburn & Mason, P.C.

> 1227 W. 9th Ave. Ste. 200

> Anchorage, AK 99501

> (907) 276-4331 (voice)

> (907) 277-8235 (fax)

> [www.anchorlaw.com](http://www.anchorlaw.com)

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copies. This communication is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. Your cooperation is appreciated.

>  
>

> -----Original Message-----

> From: Nola Cedergreen [<mailto:ncedergr@ahfc.us>]

> Sent: Tuesday, September 10, 2013 4:11 PM

> To: [Rep.Mike.Hawker@akleg.gov](mailto:Rep.Mike.Hawker@akleg.gov); [jaa.legal@akleg.gov](mailto:jaa.legal@akleg.gov); [Pamela.Varni@akleg.gov](mailto:Pamela.Varni@akleg.gov)

> Cc: Donald W. McClintock; [mpfeffer@pfefferdevelopment.com](mailto:mpfeffer@pfefferdevelopment.com); Mike Buller

> Subject:

>

> Here is a version for Mr. McClintock to work from.

>

> Representative Hawker/Pam: please see rough draft language for Section 3 ... does it accurately reflect your intent?

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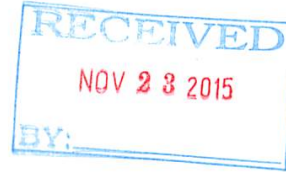
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Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan  
corporation,  
  
Plaintiff,

Case No.: 3AN-15-05969CI

v.

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

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S JOINDER OF REPLY IN  
SUPPORT OF 716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S  
CLAIMS FOR QUI TAM DAMAGES**

In its non-opposition to 716 West Fourth Avenue, LLC's motion for ruling of law precluding Alaska Building, Inc.'s ("ABI") claims for *qui tam* damages, Defendant Legislative Affairs Agency ("LAA") explained that there is absolutely no legal support for ABI's claim for 10 percent of any "savings" secured in this case. There is no statute and no common law that would allow this recovery. ABI does not dispute this.

LAA'S JOINDER OF REPLY IN SUPPORT OF 716'S MOTION FOR RULING OF LAW (QUI TAM)  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI  
Page 1 of 5  
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Instead, ABI argues that this Court should establish new law to authorize a multi-million dollar payday to ABI – at the expense of Alaska taxpayers – if ABI prevails in its lawsuit.<sup>1</sup> ABI concedes (again) that this is not a False Claims Act action, but offers the *non sequitur* that many states have enacted state versions of the federal False Claims Act as though this legitimizes ABI’s requested relief.<sup>2</sup> Alaska has not enacted a version of the False Claims Act, so it is unclear how this is relevant. There is simply no basis in Alaska state law for this claim, and ABI has never identified one.

ABI asks this Court to create some new remedy that would award ABI millions of dollars if it prevails, but this request is frivolous.<sup>3</sup> As ABI makes clear, this hypothetical “judicially created recovery” is intended to establish new law out of whole cloth and override the legislative abrogation of the public interest litigant exception to Civil Rule 82.<sup>4</sup> ABI is already aware of this abrogation because it affirmatively cited to *Alaska v. Native Village of Nunapitchuk*, 156 P.3d 389 (Alaska 2007), the very case which

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<sup>1</sup> See Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* and Punitive Damages at 3-7 (“Opp.”) (filed Oct. 27, 2015).

<sup>2</sup> See *id.* at 6.

<sup>3</sup> ABI devotes the bulk of its brief to complaining that a plaintiff *who does not prevail* may be subjected to a large attorney fee award, thereby “chilling” that plaintiff’s desire to bring claims in the public interest. See *id.* at 3 (“imposition of attorney’s fees against such a plaintiff who does not prevail has chilled this important check against governmental misdeeds”); *id.* at 4-5 (“The problem of substantial attorney’s fee awards under Civil Rule 82 chilling legitimate challenges to illegal government action . . . .”); *id.* at 4 (“The risk of a large attorney’s fee award against such a plaintiff has simply made the potential financial cost of a public interest lawsuit too great.”). This is an entirely different issue than whether or not a private litigant *who does prevail* should be entitled to millions of dollars in a *qui tam*-like recovery for a successful lawsuit. That is the focus of the instant motion and this brief.

<sup>4</sup> See Opp. at 5, 7.

recognized that the general public interest exception to Civil Rule 82 had been abrogated (and upheld that abrogation).<sup>5</sup> This made-up *qui tam* recovery is designed, in ABI's view, to incentivize public interest litigation by compensating a prevailing party with more than the usual Rule 82 fees for winning a case, but state law unequivocally forecloses any such recovery: "Except as otherwise provided by statute, a court in this state may not discriminate in the award of attorney fees and costs to or against a party in a civil action or appeal based on [the former public interest litigant factors]."<sup>6</sup> See AS 09.60.010(b). ABI is asking this Court to grant a type of relief that is prohibited by state law and has no legal support whatsoever.

During the August 18 oral argument with respect to standing and the severance of ABI's claims, this Court noted that ABI was asking the Court to manufacture a claim for 10 percent of the purported savings. The Court went on to hold in its subsequent Order that ABI "clearly" did not have interest-injury standing – meaning ABI did not have even an "identifiable trifle" of an interest – to challenge the legality of the lease.<sup>7</sup> Plaintiff refused to take the hint and doubled-down by re-raising the claim for 10 percent of

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<sup>5</sup> See *id.* at 404; see Opp. at 4 (citing case and noting that it upheld the abrogation of the judicially created public interest litigant exception to Civil Rule 82 except as to constitutional claims, which are not relevant here).

<sup>6</sup> "The purpose of Rule 82 is to partially compensate a prevailing party for the expenses incurred in winning a case." *Nautilus Marine Enters. v. Exxon Mobil*, 332 P.3d 554, 559 (Alaska 2014) (internal quotation omitted). If ABI's claim is not for some type of heightened "prevailing party" award, then ABI has presented no basis whatsoever for its 10 percent "savings" request.

<sup>7</sup> See Order dated Aug. 20, 2015, at 3 & n.15 ("This Court would note that this rather novel claim [for 10 percent of any savings] is not an issue presently before the Court, but the Court does not find enough credence in the claim to grant interest-injury standing.").

savings in its second amended complaint thereafter. In the absence of an “identifiable trifle” of an interest that needed to be compensated, ABI obviously had no claim for millions of dollars here. Even assuming that ABI genuinely believes that it should be rewarded with millions of dollars for belatedly suing the defendants *17 months after ABI concluded* that LAA allegedly failed to comply with the State Procurement Code (and after ABI pocketed tens of thousands of dollars from the construction project), this belief is not objectively reasonable.<sup>8</sup> There is no statutory basis for ABI’s requested recovery. There is no common law basis, either, and the False Claims Act does not allow for the creation of additional common law to supplement its remedies.<sup>9</sup> ABI’s contention is precisely the type of “empty-head pure-heart” justification for patently frivolous arguments that Rule 11 is intended to eliminate.<sup>10</sup>

For the foregoing reasons, LAA requests that the Court preclude ABI from recovering 10 percent of any “savings” it recovers if ABI prevails in its challenge to the legality of the lease. LAA also requests such other relief as the Court deems appropriate.

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<sup>8</sup> See Legislative Affairs Agency’s Memorandum in Support of Motion for Summary Judgment Under the Laches Doctrine at 2-6 (filed Oct. 21, 2015)

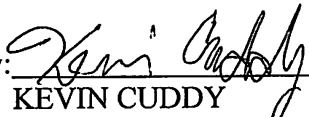
<sup>9</sup> See *Mortgages, Inc. v. United States Dist. Court for the Dist. of Nevada (Las Vegas)*, 934 F.2d 209, 213 (9th Cir. 1991).

<sup>10</sup> See *Smith v. Ricks*, 31 F.3d 1478, 1488 (9th Cir. 1994); *Margo v. Weiss*, 213 F.3d 55, 64 (2d Cir. 2000) (quoting Fed. R. Civ. P. 11 advisory committee note to 1993 amendments).

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DATED: November 20, 2015.

STOEL RIVES LLP

By:   
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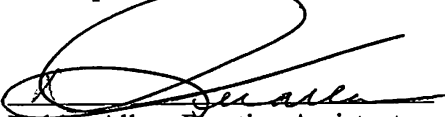
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This certifies that on November 20, 2015, a true and correct copy of the foregoing was served by U.S. mail on:

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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).

  
Debby Allen, Practice Assistant

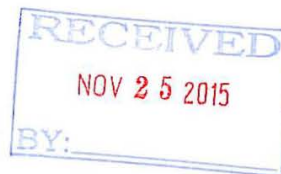
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska )  
corporation, )

Plaintiff, )

vs. )

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



Case No.: 3AN-15-05969 CI

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

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

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

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

<sup>1</sup> See August 21, 2015 Order at 3, n 15.



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

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

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

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

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

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

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

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

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

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

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

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<sup>4</sup> 716's Motion at 3 and n.7.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> Plaintiff's Opposition at 9.

<sup>7</sup> Plaintiff's Opposition at 2 (quoting Second Amended Complaint).

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

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

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

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

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

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

<sup>10</sup> 716's Motion at 4-5.

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

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

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

716 presented three renewal options to the full Legislative Council in May of 2013, each at different rent levels. The Council issued an RFI on May 14, 2013 to fully assess whether any other building (existing or new) would meet the State's requirements.<sup>12</sup> The RFI explicitly did not require the Agency to enter into a contractual relationship with any entity that responded to the RFI, not did it preclude the Agency from entering into contract with an entity that did not respond to the RFI.<sup>13</sup>

On June 7, 2013 the Legislative Council voted unanimously to authorize its Chairman and Chief Procurement Officer, Representative Mike Hawker, to negotiate material modifications to the lease, including renovation and retrofit of the expanded premises, with its existing Landlord, 716.<sup>14</sup> In compliance with Alaska Legislative Procurement Procedure 040(d), Rep. Hawker's provided a written determination setting forth in detail the Council's basis for authorizing the lease modifications, which

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<sup>11</sup> Over the years, the lease was subject to prior extensions and numerous amendments.

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

<sup>13</sup> See Exhibit B at 3.

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



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

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

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

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

annual rent payment exceeded the 10 percent reduction in market rental value<sup>17</sup>, and would save the Lessee \$528,344 annually.<sup>18</sup> The parties executed the lease extension on September 19, 2013.

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

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

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

<sup>18</sup> See Exhibit D.

<sup>19</sup> Plaintiff’s Opposition at 10.

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

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

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

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

<sup>21</sup> See Plaintiff's Opposition, Exhibit 10, page 2 of 2.

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

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

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<sup>22</sup> See Plaintiff's Opposition at 8.

<sup>23</sup> See Plaintiff's Opposition, Exhibit 15

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

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

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

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

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

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



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

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

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<sup>27</sup> See Opposition at 2-3.

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

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

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

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

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<sup>29</sup> The appraisals submitted under seal demonstrate this.

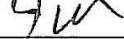
<sup>30</sup> Mr. Lowe's appraisal included market data gathered from Per Bjorn Rolli, MAI of Reliant Advisors and Steve Carlson, MAI, both of Anchorage. Mr. Lowe's appraisal was further referenced in, and relied upon, in an appraisal prepared by Theodore Jensen, MAI for EverBank on December 12, 2014.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

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

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

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

DATED: 11-24-15

By:   
Jeffrey W. Robinson  
Alaska Bar No. 0805038

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

ASHBURN & MASON <sup>INC.</sup>

LAWYERS

1227 WEST 9TH AVENUE, SUITE 200

ANCHORAGE, ALASKA 99501

TEL 907.276.4331 • FAX 907.277.8235

**CERTIFICATE OF SERVICE**

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

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, Alaska 99501

Kevin Cuddy  
Stoel Rives, LLP  
510 L Street, Suite 500  
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff  
Heidi Wyckoff

REPLY TO OPPOSITION TO MOTION FOR RULING OF LAW

*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al.* 3AN-15-05969Civil  
{10708-101-00303157;3}

Page 15 of 15

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

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**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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**PACIFIC RIM REPORTING**  
**STENOGRAPHIC COURT REPORTERS**  
**711 M STREET, SUITE 4**  
**ANCHORAGE, ALASKA 99501**  
**907-272-4383**  
**[www.courtreportersalaska.com](http://www.courtreportersalaska.com)**

EXHIBIT A  
Page 1 of 4



1           IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2                   THIRD JUDICIAL DISTRICT AT ANCHORAGE

3

4       ALASKA BUILDING, INC., an  
5       Alaska corporation,

6                               Plaintiff,

7                   vs.

8       716 WEST FOURTH AVENUE LLC,  
9       and LEGISLATIVE AFFAIRS  
10       AGENCY,

11                               Defendants.

12       \_\_\_\_\_  
13       Case No. 3AN-15-05969 CI

14

15                               DEPOSITION OF JAMES B. GOTTSTEIN

16   VOLUME I

17

18                               Pages 1 - 58, inclusive

19                               Friday, October 16, 2015  
20   2:00 P.M.

21

22                               Taken by Counsel for  
23                               Defendant 716 West Fourth Avenue LLC  
24   at  
25                               ASHBURN & MASON  
                              1227 West 9th Avenue, Suite 200  
                              Anchorage, Alaska

CERTIFIED  
TRANSCRIPT

**PACIFIC RIM REPORTING**  
907-272-4383

EXHIBIT A  
Page 2 of 4

1 A-P-P-E-A-R-A-N-C-E-S

2

For Plaintiff:

3

James B. Gottstein  
LAW OFFICES OF JAMES B. GOTTSTEIN  
406 G Street, Suite 206  
Anchorage, Alaska 99501  
907/274-7686

6

7 For Defendant 716 West Fourth Avenue LLC:

8

Jeffrey W. Robinson  
Eva Gardner  
ASHBURN & MASON  
1227 West 9th Avenue, Suite 200  
Anchorage, Alaska 99501  
907/276-4331

11

12 For Defendant Legislative Affairs Agency:

13

Kevin M. Cuddy  
STOEL RIVES  
510 L Street, Suite 500  
Anchorage, Alaska 99501  
907/277-1900

15

16

Court Reporter:

17

Gary Brooking, RPR  
PACIFIC RIM REPORTING  
711 M Street, Suite 4  
Anchorage, Alaska 99501

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

5 A. I just said it.

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

9 A. No.

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

12 A. Correct.

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

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

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

# State of Alaska

## Legislative Affairs Agency

Administrative Services, Supply Section

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



### REQUEST FOR INFORMATION (RFI) ANCHORAGE PROFESSIONAL OFFICE SPACE

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

Respondents must include the following property identification information:

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

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

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



# State of Alaska

## Legislative Affairs Agency

Administrative Services, Supply Section

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



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

### **Occupancy Date:**

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

### **Cost Information:**

Provide approximate cost information:

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

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

### **Submission:**

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

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



# State of Alaska

## Legislative Affairs Agency

*Administrative Services, Supply Section*

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

---



FAX: (907) 465-2918

Email: [tina.strong@akleg.gov](mailto:tina.strong@akleg.gov)

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

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

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

Introduction

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

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

Background

A. Legislative Council's Authorization to Materially Modify Lease

On June 7, 2013, Legislative Council passed the following 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

---

<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

Final  
Page 9

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

EXHIBIT C  
Page 9 of 9



**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*



September 19, 2013

2013 SEP 25 AM 9:49

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

EXHIBIT D  
Page 1 of 1

### **EXTENSION OF LEASE AND LEASE AMENDMENT NO. 3**

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

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

#### **WITNESSETH:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Base Monthly Rental Adjustments

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

e. Monthly Lease Payments

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**5. ELECTRICAL REQUIREMENTS:**

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

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

**6. PLUMBING REQUIREMENTS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



3. The Successor Lessor shall not be bound by:

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

49. **DEFINITIONS:**

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

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

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

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

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

50. **INCORPORATION:**

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

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

Exhibit "B" Project Schedule

Exhibit B-1 Interim Occupancy Schedule

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

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

51. **AGREEMENT IN ITS ENTIRETY:**

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



51. **AGREEMENT IN ITS ENTIRETY:**

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

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Manager:

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Member:

\_\_\_\_\_  
Robert B. Acree                      Date  
Member                      9/19/13

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Member:

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

\_\_\_\_\_  
Alana Williams                      date  
Its: Trustee


LESSEE:  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

\_\_\_\_\_  
Representative Mike Hawker      Date  
Chair, Alaska Legislative Council  
Procurement Officer

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Manager:

 9/19/13  
\_\_\_\_\_  
Mark E. Pfeffer Date  
Manager  
Tax Identification No.: 46-3682212  
Business License No.: 423463


LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Member:

\_\_\_\_\_  
Robert B. Acree Date  
Member

LESSOR:  
716 WEST FOURTH AVENUE, LLC

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

 9/19/13  
\_\_\_\_\_  
Alana Williams Date  
Its: Trustee

LESSEE:  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

\_\_\_\_\_  
Representative Mike Hawker Date  
Chair, Alaska Legislative Council  
Procurement Officer

CERTIFYING AUTHORITY

\_\_\_\_\_  
Pamela A. Vami Date  
Executive Director  
Legislative Affairs Agency

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel Date

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Manager:

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Member:

\_\_\_\_\_  
Robert B. Acree                      Date  
Member

LESSOR:  
716 WEST FOURTH AVENUE, LLC

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

\_\_\_\_\_  
Alana Williams                      Date  
Its: Trustee

LESSEE:  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

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

CERTIFYING AUTHORITY

APPROVED AS TO FORM:

\_\_\_\_\_  
Pamela A. Varni                      Date  
Executive Director  
Legislative Affairs Agency

\_\_\_\_\_  
Legal Counsel                      Date

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Manager:

\_\_\_\_\_  
Mark E. Pfeffer                      Date  
Manager  
Tax Identification No.: 48-3682212  
Business License No.: 423463

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Member:

\_\_\_\_\_  
Robert B. Acree                      Date  
Member

LESSOR:  
716 WEST FOURTH AVENUE, LLC

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

\_\_\_\_\_  
Alana Williams                      Date  
Its: Trustee

LESSEE:  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

\_\_\_\_\_  
Representative Mike Hawker      Date  
Chair, Alaska Legislative Council  
Procurement Officer

CERTIFYING AUTHORITY

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel                      Date

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Manager:

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

LESSOR:  
716 WEST FOURTH AVENUE, LLC

By its Member:

\_\_\_\_\_  
Robert B. Acree                      Date  
Member

LESSOR:  
716 WEST FOURTH AVENUE, LLC

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

\_\_\_\_\_  
Alana Williams                      Date  
Its: Trustee

LESSEE:  
STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

\_\_\_\_\_  
Representative Mike Hawker      Date  
Chair, Alaska Legislative Council  
Procurement Officer

CERTIFYING AUTHORITY

\_\_\_\_\_  
Pamela A. Vami                      Date  
Executive Director  
Legislative Affairs Agency

APPROVED AS TO FORM:

\_\_\_\_\_  
R. J. Anderson      9-19-13  
Legal Counsel                      Date



CERTIFYING AUTHORITY

APPROVED AS TO FORM:

Pamela A. Varri Date  
Executive Director  
Legislative Affairs Agency

Legal Counsel Date

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

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


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

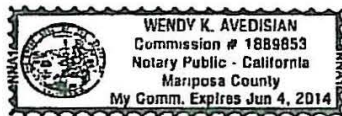
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ~~ALASKA~~ <sup>California</sup> )  
THIRD JUDICIAL DISTRICT <sup>County of Mariposa</sup> ) ss.

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

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

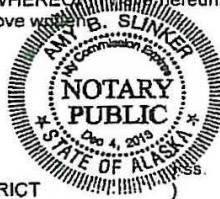
  
Notary Public in and for Alaska  
My commission expires: 6/4/14



STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

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

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



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

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

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

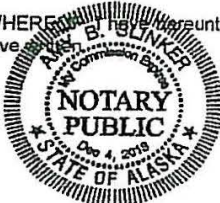
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

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

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



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

10:04:42 AM

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

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

10:06:50 AM

Legislative Council went into executive session.

1:02:43 PM

Legislative Council came out of executive session.

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

## II. ANCHORAGE LIO LEASE

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

### MOTION - LEASE EXTENSION

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

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

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

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

Representative Gruenberg joined the meeting at this time.

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

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

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

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

**MOTION - AMEND PROCUREMENT PROCEDURE**

1:13:32 PM

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

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

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

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



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

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

Senator Coghill joined the meeting at this time via teleconference.

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

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

**MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE**

1:17:19 PM

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

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

SENATOR EGAN asked for a copy of the motions.

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

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

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

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

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

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

**MOTION - ENGAGE AHFC AS LESSEE'S REPRESENTATIVE**

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

1:21:58 PM

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

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

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

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

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

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

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

### III. APPROVAL OF MINUTES

1:25:18 PM

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

The minutes were approved with no objections.

### IV. RATIFICATION OF CHARITABLE EVENT

1:25:53 PM

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

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

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

The event was ratified with no objections.

Appraisal Assignment  
Format: Appraisal Report

Reliant



**Legislative Affairs Building**

**716 West 4th Avenue  
Anchorage, Alaska 99501**

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

*Client Reference Number: RIMS #14-000472-03-01  
Reliant Reference Number: 14-0900*



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

**as of December 5, 2014**

**Prepared For:  
Mr. Jim StJohn  
EverBank**

716-000279

EXHIBIT G  
Page 1 of 2

follows:

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

The following information was not available to the appraiser:

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

#### Market Analysis

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

#### Approaches to Value

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

716-000296

EXHIBIT G  
Page 2 of 2



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

Alaska Building Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
716 West Fourth Avenue LLC, and	)	
Legislative Affairs Agency,	)	Case No. 3AN-15-05969CI
	)	
Defendants.	)	

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**ORDER REGARDING ABI'S QUI TAM AND PUNITIVE DAMAGES REQUEST FOR  
RELEIF**

**I. Background**

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project). At the completion of this project, the LAA once again leased the office space.<sup>1</sup> Construction began in December 2013 and was completed around January 9, 2015.<sup>2</sup>

The Alaska Building, owned by Alaska Building Inc. (ABI), is a building adjacent to the LIO Project whose president and sole member is James Gottstein. ABI filed a lawsuit on behalf of ABI and the Alaskan taxpayers on March 31, 2015 alleging in relevant part that because the LIO Project did not comply with the requirements under AS 36.30, the project is illegal. Under AS 36.30, leases into which LAA enter are subject to a competitive bidding process and legislative notice. AS 36.30.083 exempts from these bidding and notice requirements lease extensions that will result in a "cost savings of at least 10 percent below the market rental value of the... property." As part of his remedies, ABI requested "[j]udgement in favor of Alaska Building in the amount of

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<sup>1</sup> 716's Opp. to Mot. for Prelim. Inj. 1-2.

<sup>2</sup> *Id.* at 4.

10% of the savings to the Legislative Affairs Agency for invalidation of the LIO Project Lease”<sup>3</sup> and “[p]unitive damages against 716 W. Fourth Avenue LLC.”<sup>4</sup> 716 and the LAA have moved for a ruling of law as to whether ABI may pursue these two requested reliefs.

## **II. Legal Standard**

716 and LAA have requested a “ruling of law precluding ABI’s claims for *qui tam* and punitive damages.”<sup>5</sup> The practical effect of a ruling in favor of 716 and LAA would be granting them summary judgement on these issues. As such, the summary judgement standard will be utilized here.

Summary judgement is appropriate where “there is no issue as to any material fact and the moving party is entitled to a judgement as a matter of law.”<sup>6</sup> The non-moving party must “set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant’s evidence and thus demonstrate that a material issues of fact exists.”<sup>7</sup> Alaska has a lenient summary judgement standard,<sup>8</sup> but mere allegations are insufficient and the non-moving party “must set forth specific facts showing that there is a genuine issue of material fact.”<sup>9</sup> The court views “the facts in the light most favorable to the non-moving party and draw[s] all factual inferences in the non-moving party’s favor.”<sup>10</sup>

## **III. Issues Presented**

*A. ABI has no legal grounds upon which to request 10% of any savings resulting invalidating the lease.*

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<sup>3</sup> Second Amended Complaint ¶ C.

<sup>4</sup> *Id.* at ¶ E.

<sup>5</sup> Title of Defendant’s Motion “716’s Motion for Ruling of Law Precluding ABU’s Claims for Qui Tam and Punitive Damages.”

<sup>6</sup> Alaska R. Civ. P. 56(c).

<sup>7</sup> *Christensen v. Alaska Sales and Service, Inc.* 335 P.3d 514, 517 (Alaska 2014).

<sup>8</sup> *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533, 537 (Alaska 2006).

<sup>9</sup> *Kelly v. Municipality of Anchorage*, 270 P. 3d 801, 803 (Alaska 2012) (internal citations omitted).

<sup>10</sup> *Kalenka v. Jadon, Inc.*, 305 P.3d 346, 349 (Alaska 2013).

*B. ABI may not seek punitive damages because declaratory judgment provides no pecuniary relief.*

#### IV. Analysis

*A. ABI has no legal grounds upon which to request 10% of any savings resulting from invalidating the lease.*

Black's Law Dictionary defines a *qui tam* action as "[a]n action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specific public institution will receive."<sup>11</sup> This court first notes that ABI is not bringing its lawsuit under a statute that provides a monetary penalty. It therefore finds that ABI is not bringing a *qui tam* case.

ABI argues that it is not in fact bringing a *qui tam* action<sup>12</sup> but that the court should grant an award equaling 10% of the savings "to make meaningful the right of citizen-taxpayers to seek judicial redress of illegal government action."<sup>13</sup> It argues that the 2003 passage of HB 145 codified as AS 09.60.010(b)-(e) had a chilling effect on citizen-taxpayer suits. ABI urges this court to create a common law incentive for bringing public interest law suits.

HB 145 abolished the Alaska Supreme Court's public-interest exception to Alaska Rule of Civil Procedure 82 concerning attorney's fees.<sup>14</sup> Rule 82 provides discretion for courts to allocate attorney's fees, and in most civil litigation, it acts as a "loser pays" rule.<sup>15</sup> In *Gilbert v. State*, the Alaska Supreme Court carved out its exception holding that "it is an abuse of discretion [under Civil Rule 82] to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the

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<sup>11</sup> *Qui Tam Action*, Black's Law Dictionary (10<sup>th</sup> ed.2014) (emphasis added).

<sup>12</sup> Pl.'s Opp. Mot. 6.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *State v. Native Village of Nunapitchuk*, 156 P.3d 389, 391-92 (Alaska 2007).

<sup>15</sup> *Id.* at 394.

courts.”<sup>16</sup> HB 145 overruled this judicially created public interest exception and courts are no longer allowed to consider whether a claim is of a public interest nature except in limited constitutional contexts.<sup>17</sup>

The Alaska Supreme Court’s public interest exception was grounded in the discretion Rule 82 afforded to courts when allocating attorney’s fees. Here, there is no statutory authority that would allow this court to create such an incentive, and ABI does not provide any legal theory upon which this court could justify creating new law. Rather, ABI’s argument is one of public policy, which is better left to legislature; like HB 145, any incentive to bring a public interest case should go through the proper legislative channels. The court therefore declines ABI’s invitation to create a public interest lawsuit incentive and finds that ABI has no legal grounds on which to request 10% of any lease savings.

*B. ABI may not seek punitive damages because declaratory judgment provides no pecuniary relief.*

Alaska allows punitive damages when the plaintiff can show “by clear and convincing evidence that the defendant’s conduct[.]

- (1) Was outrageous, including acts done with malice or bad motives; or
- (2) Evidenced reckless indifference to the interest of another person.”<sup>18</sup>

716 argues that because ABI is not seeking compensatory damages, punitive damages are unavailable.<sup>19</sup> Thus the first issue is whether punitive damages are even available to ABI.

Compensatory damages are a legal remedy. ABI requests in relevant part that the lease between the LAA and 716 be declared “illegal, null and void.”<sup>20</sup> A declaratory

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<sup>16</sup> *Id.* (internal citations omitted).

<sup>17</sup> *Id.* at 395.

<sup>18</sup> AAS 09.17.020 (b)(1)-(2).

<sup>19</sup> Def.’s Mot. Ruling of Law 3.

<sup>20</sup> Second Amended Compl. ¶1A.

judgement is neither legal nor equitable but is an additional remedy<sup>21</sup> and does not provide any remedy beyond a declaration of "the rights and legal relations of an interested party seeking the declaration."<sup>22</sup> Though ABI states that "the State should be awarded compensatory damages in the amount of rent illegally received by 716 LLC,"<sup>23</sup> the relief requested does not provide the legal remedy of compensatory damages.<sup>24</sup> However, the unavailability of compensatory damages does not necessarily foreclose ABI from receiving punitive damages.

Alaska's punitive damage statute does not require, per se, that compensatory damages, or any damages, be awarded before punitive damages are allowed.<sup>25</sup> In capping punitive damages, the statute provides that a punitive damages award "may not exceed the greater of 1) three times the amount of compensatory damages awarded to the plaintiff in the actions; or 2) the sum of \$500,000."<sup>26</sup> Looking at the first section, logic dictates that if the compensatory damages are zero then the punitive damages must also be zero. But, the two sections are separated by the disjunctive "or" suggesting that compensatory damages are not a prerequisite for punitive damages if the plaintiff has met the other statutory requirements. A cursory review of the Alaska's tort reform act of 2007 (HB 58) does not provide any insight on whether Alaska's legislators intended punitive damages to be tied strictly to an award of compensatory damages or if punitive damages could be awarded in the absence of other damages.

Despite the ambiguity of Alaska's punitive damages statute, the traditional position is that punitive damages are not allowed absent a request for or award of

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<sup>21</sup> *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725, 730 (Alaska 2000).

<sup>22</sup> AS 22.10.020(g).

<sup>23</sup> Plt.'s Opposition Mot. 9.

<sup>24</sup> Moreover, when a court finds a contract is illegal it often "leave[s] the parties as the court finds them at the time the illegality is discovered, [and does not] restore them to the same position they would have been had the contract never existed." *Jipac, N.V. v. Silas*, 174 Vt. 57, 61-62 (Vermont 2002). A declaratory judgement that the lease is illegal may therefore not allow for any money to be returned to the LAA.

<sup>25</sup> See AS 09.17.020.

<sup>26</sup> AS 09.17.020(f)(1)-(2).



compensatory damages.<sup>27</sup> The Mississippi Supreme Court succinctly summarizes the justification of this line of thinking:

As a general rule, exemplary or punitive damages are “added damages” and are in addition to the actual or compensatory damages due because of an injury or wrong. The kind of wrongs to which punitive damages are applicable are those which, besides the violation of a right or the actual damages sustained, import insult, fraud, or oppression and not merely injuries but injuries inflicted in the spirit of wanton disregard for the rights of others. In order to warrant the recovery of punitive damages, there must enter into the injury some element of aggression or some coloring of insult, malice or gross negligence, evincing ruthless disregard for the rights of others, so as to take the case out of the ordinary rule.

In other words, punitive damages do not exist in a vacuum, but serve as a way of increasing the punishment in cases involving truly reprehensible behaviors.

716 cites *DeNardo v. GCI Commc'n Corp.*, 983 P.2d 1288, 1292 (Alaska 1999), which states “[a] punitive damages claim cannot stand alone; because we reject DeNardo’s underlying claim, we also necessarily affirm summary judgment on his punitive damages claim.” However, in that case, the court affirmed summary judgement against all DeNardo’s underlying claims leaving *only* a request for punitive damages. This scenario is distinguishable from the present case where compensatory damages are not requested or recoverable but other claims exist besides that for punitive damages.

Alaska courts have awarded punitive damages without compensatory damages. In *Lockhart v. Draper*, 209 P.3d 1025 (Alaska 2009) the Alaska Supreme Court found that:

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<sup>27</sup> *Groshek v. Trewin*, 784 N.W.2d 163, 175 (Wis. 2010) (Therefore, our holding in *Tucker* forecloses recovery of punitive damages in a case where there is no award of compensatory damages); *Nabours v. Longview Sav. & Loan Ass’n*, 700 S.W.2d 901, 903 (Tx. 1985) (Even in cases where actual damages are *not recoverable*, it is still necessary to allege, prove and secure jury findings on the existence and amount of actual damage sufficient to support an award of punitive damage) (emphasis in original).

punitive damages may be available though actual damages are not an "essential element" of the cause of action if (1) the underlying cause of action states a claim for relief independent of the request for punitive damages, and (2) the plaintiff establishes that defendant's conduct rose to the requisite level of culpability and that plaintiff suffered "substantial damage," even if the amount of actual damages may be uncertain.<sup>28</sup>

There, the appellant was appealing an award of punitive damages against him in a fraudulent conveyance action. The Alaska Supreme Court upheld the superior court's conclusion that "it could award punitive damages "in a case where something substitutes for the compensatory damages, i.e., the wrongful conveyance which is righted." The *Lockhart* court relied on *Haskins v. Sheldon*, 558 P.2d 487 (Alaska 1976) which allowed the return of a wrongfully converted tractor to substitute for damages and upheld the appellee's award of punitive damages because of the malice conduct under which the tractor was seized.

In both cases, the courts found that there was an underlying pecuniary loss that was righted even though damages were not an element of either legal theory under which the cases were brought. In *Haskins* it was the return of the seized tractor and in *Lockhart* it was the corrected wrongful conveyance. These two situations are distinguishable from the present case. Assuming *arguendo* that the contract is found to be "illegal null and void," this declaratory judgment would not provide a substitute for compensatory damages necessary under the *Lockhart* and *Haskins* reasoning.<sup>29</sup> Thus, even though punitive damages may be awarded even when compensatory damages are not sought as long as the two elements identified in *Lockhart* are present,<sup>30</sup> a declaratory judgment would not provide a substitute for compensatory damages and thus the first element of *Lockhart* is absent. The court therefore finds that ABI may not

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<sup>28</sup> *Lockhart v. Draper*, 209 P.3d 1025, 1028 (Alaska 2009).

<sup>29</sup> In addition to the *Lockhart* and *Haskins* reasoning, the Alaska Supreme Court has also permitted punitive damages when only nominal damages are awarded. *Barber v. Nat'l Bank of Alaska*, 815 P.2d 857, 864 (Alaska 1991) (holding punitive damages may be awarded in nominal damages).

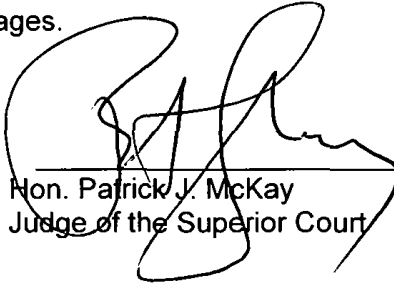
<sup>30</sup> "(1) the underlying cause of action states a claim for relief independent of the request for punitive damages, and (2) the plaintiff establishes that defendant's conduct rose to the requisite level of culpability and that plaintiff suffered "substantial damage," even if the amount of actual damages may be uncertain." *Lockhart v. Draper*, 209 P.3d at 1028 (Alaska 2009).

pursue punitive damages. Because the court has determined that ABI may not seek punitive damages in the absence of some pecuniary relief, it does not need to address *Lockhart's* second element - malicious or egregious behavior.<sup>31</sup>

## V. Conclusion

There is no statutory authority under which ABI may request 10% of any savings stemming from invalidating the lease nor is there statutory authority that would permit the court to create a monetary incentive for bringing public interest law suits. The court therefore finds that ABI is not entitled to request such relief. The court further finds that though punitive damages may be awarded absent compensatory damages, there must at least be an aspect of pecuniary relief, which is absent in the present case, and thus ABI is precluded from requesting punitive damages.

1/13/16  
DATE

  
Hon. Patrick J. McKay  
Judge of the Superior Court

I certify that on 1/13/16,  
a copy of the above was mailed to each of  
the following at their addresses of record: *emailed*  
*James Robinson*  
*Jeffrey Robinson* *Kevin Cuddey*  
K. Nixon/Judicial Assistant

<sup>31</sup> Additional issues regarding whether ABI may seek punitive damages include whether ABI can request punitive damages on behalf of the state and whether the state can collect punitive damages in a public-interest law suit. Because the court has already determined that ABI may not pursue punitive damages, the court will not address these questions at this time.

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

ALASKA BUILDING, INC., an Alaskan )  
corporation, )  
Plaintiff, )  
vs. )  
716 WEST FOURTH AVENUE, LLC, and )  
LEGISLATIVE AFFAIRS AGENCY, )  
Defendants. )  
\_\_\_\_\_ )

3AN-15-05969 CI

ORDER ON MOTION FOR SUMMARY JUDGMENT RE: LEASE IS NOT AN  
EXTENSION

INTRODUCTION

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project). The project required a virtual “gutting” and reconstruction of the existing rental space, demolition and subsequent construction of a separate building on an adjoining lot, increasing the square footage of the leasehold from approximately 23,645 square feet to approximately 64,048 square feet<sup>1</sup>. The agreement called for the LAA to pay for certain tenant improvements estimated to have cost in excess of \$7.5 million. The project required relocation of the tenants for several months. At the completion of this project, the LAA once again leased the office space. Construction began in December 2013 and was completed around January 9,

<sup>1</sup> 170% increase in square footage.

2015. The monthly rental increased from \$56,863.05 to \$281,638 and the term of the lease was extended to May 31, 2024.<sup>2</sup>

Plaintiff, Alaska Building, Inc. (ABI) has moved for partial summary judgment asking the court to declare that the lease is not a permissive non-competitive bid "extension" under AS 36.30.083(a) and to find the lease invalid as a matter of law. LAA first argues that the lease is an "extension" under AS 36.30.083(a); secondly argues that the Legislative Council developed and followed its own procurement regulations in extending the lease; and finally argues that portions of the dispute are non-justiciable.

716 supports the LAA arguments regarding the legality of the "extension" and further argues the entire dispute is non-justiciable<sup>3</sup>, requiring summary dismissal.

As more fully explained herein, this court finds that to the extent this dispute is justiciable, the lease does not qualify as an "extension" under AS 36.30.083(a) and is illegal. The court further finds that portions of the dispute are in fact not justiciable.

## I. Background

The Legislative Council (Council) is an interim legislative committee created by the Alaska Constitution.<sup>4</sup> It "may meet between legislative sessions ... [and] may perform duties and employ personnel as provided by the

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<sup>2</sup> 395% increase in monthly rent.

<sup>3</sup> Actually 716 first raised the issue of justiciability in its memorandum opposing this motion for partial summary judgment. LAA did not raise this issue until prompted by the court to state its position. See LAA's Response to Court's Request Dated February 26, 2016.

<sup>4</sup> Alaska Constitution Art. II §11.



legislature.<sup>5</sup> The Alaska Legislature made it a permanent interim committee<sup>6</sup> recognizing the legislature's need "for full-time technical assistance in accomplishing the research, reporting, bill drafting, and examination and revision of statutes, and general administrative services essential to the development of sound legislation in the public interest." The Legislature also granted the Council certain powers including the power to:

- (1) to organize and adopt rules for the conduct of its business;...
- (4) in addition to providing the administrative services required for the operation of the legislative branch...
- (E) to do all things necessary to carry out legislative directives and law, and the duties set out in the uniform rules of the legislature...
- (5) to exercise control and direction over all legislative space, supplies, and equipment and permanent legislative help between legislative sessions; the exercise of control over legislative space is subject to AS 36.30.080 (c) if the exercise involves the rent or lease of facilities...<sup>7</sup>

The Legislature further granted the Council the authority to:

adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the legislative branch as determined by the legislative council. ...The procedures must be consistent with the provisions of AS 36.30.080 (c) - (e) and 36.30.085. Notwithstanding the other provisions of this section, the legislative agencies subject to the legislative council's regulations shall comply with AS 36.30.170(b).<sup>8</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> AS 24.20.010 (emphasis added).

<sup>7</sup> AS 24.20.060

<sup>8</sup> AS 36.30.020

AS 36.30.080 provides that:

(c) If ... the legislative council intends to enter into or renew a lease of real property with an annual rent to the ... legislative council that is anticipated to exceed \$500,000, or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease, ... the legislative council ... shall provide notice to the legislature.

The notice must include the anticipated annual lease obligation amount and the total lease payments for the full term of the lease.

"The ... legislative council ... may not enter into or renew a lease of real property

(1) requiring notice under this subsection unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease for purposes of this paragraph;

(2) under this subsection if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options.

(d) When the department is evaluating proposals for a lease of space, the department shall consider, in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the proposed building.

(e) When the department is considering leasing space, the department should consider whether leasing is likely to be the least costly means to provide the space.<sup>9</sup>

Under its authority to "adopt rules for the conduct of its business" the Council unanimously passed four motions on June 7, 2013: "1) a motion allowing the Chairman to negotiate all the terms and conditions necessary to extend the lease under AS 36.30.083(a); 2) a motion for the Legislative Council to adopt

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<sup>9</sup> AS 36.30.080 (c)-(e).

Amendment No.12 to the Legislative Procurement Procedure 040 to allow the Agency to materially modify an existing lease that was previously competitively procured; 3) a motion to authorize material amendments to the lease, including the addition of 712 West Fourth Ave with other terms and conditions necessary to accommodate renovations and 4) a motion of the legislative council to authorize the Alaska Housing Finance Corp to act as its representative during negotiations."<sup>10</sup>

Pursuant to the Council's regulations, the Legislative Affairs Agency (LAA) and 716 signed a lease in September 2013, which under the new regulations, purported to extend the April 2004 lease for LIO office space with 716. Alaska Building, Inc. argues that the lease between LAA and 716 violates AS 36.30.083(a) because it "does not extend a real property lease."<sup>11</sup> 716 counters that this issue presents a nonjusticiable political question because the court will be reviewing the legislature's application of its internal regulations to itself. The LAA agreed with 716 in part. In its briefing, the LAA agreed that the legislature's findings under the Legislative Procurement Procedures are discretionary determinations and as such are nonjusticiable.<sup>12</sup> However, the LAA conceded that the court can review the lease's compliance with AS 36.30.083.<sup>13</sup>

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<sup>10</sup> 716 LLC's Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension) at 4. See also 28<sup>th</sup> Legislature (2013-2014) Committee Minutes from June 7, 2013, 716's Opposition Exhibit B.

<sup>11</sup> Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension) at

1.

<sup>12</sup> LAA's Response to Court's Request Dated February 26, 2016 at 1.

<sup>13</sup> *Id.* at 2.

## II. Legal Standard

Summary judgement is appropriate where “there is no issue as to any material fact and the moving party is entitled to a judgement as a matter of law.”<sup>14</sup> The non-moving party must “set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant’s evidence and thus demonstrate that a material issues of fact exists.”<sup>15</sup> Alaska has a lenient summary judgement standard,<sup>16</sup> but mere allegations are insufficient and the non-moving party “must set forth specific facts showing that there is a genuine issue of material fact.”<sup>17</sup> The court views “the facts in the light most favorable to the non-moving party and draw[s] all factual inferences in the non-moving party’s favor.”<sup>18</sup>

## III. Issues Presented

- A. Is this case justiciable in whole or in part?
- B. Does the lease does comply with AS.36.30.083?

## IV. Analysis

### A. Justiciability

“[T]he political question doctrine is essentially a function of the separation of powers, existing to restrain courts from inappropriate interference in the

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<sup>14</sup> Alaska R. Civ. P. 56(c).

<sup>15</sup> *Christensen v. Alaska Sales and Service, Inc.* 335 P.3d 514, 517 (Alaska 2014).

<sup>16</sup> *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533, 537 (Alaska 2006).

<sup>17</sup> *Kelly v. Municipality of Anchorage*, 270 P. 3d 801, 803 (Alaska 2012) (internal citations omitted).

<sup>18</sup> *Kalenka v. Jadon, Inc.*, 305 P.3d 346, 349 (Alaska 2013).

business of the other branches of Government, and deriving in large part from prudential concerns about the respect [the judiciary] owe[s] the political departments."<sup>19</sup> It is difficult to "defin[e] the contours of the doctrine of justiciability" because it is "not a legal concept with a fixed content or susceptible of scientific verification."<sup>20</sup> Nonjusticiable political questions nevertheless share common characteristics:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.<sup>21</sup>

The Alaska Supreme Court has examined the boundaries of judicial authority to review laws regulating the legislature's own actions. In *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, (Alaska 1987), the League of Women Voters of Alaska and others (the League) brought suit against certain members of the legislature for holding closed meetings, which the League alleged violated Alaska's Open Meeting Act (AS 44.62.310) and the legislature's Uniform Rule 22. The court held that "out of respect owed to a coordinate branch

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<sup>19</sup> *Nixon v. United States*, 506 U.S. 224, 252-53 (1993).

<sup>20</sup> *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 336 (Alaska 1987) (internal citations omitted).

<sup>21</sup> *Baker v. Carr* 369 U.S. 186, 217 (1962).



of state government, we must defer to the wisdom of the legislature concerning violations of legislative rules which govern the internal workings of the legislature."<sup>22</sup> It further found, that "it is the legislature's prerogative to make, interpret and enforce its own procedural rules and the judiciary cannot compel the legislature to exercise a purely legislative prerogative."<sup>23</sup> Unless the legislature's action are infringing upon a constitutional right or impacting a person not in the legislature, courts are reluctant to interfere because "it is not the function of the judiciary to require that the legislature follow its own rules."<sup>24</sup>

In another similar case, *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982), the former Speaker of the House of Representatives, Representative Duncan, appealed from a lower court decision in which he brought suit against various members of the legislature alleging that they had illegally and unconstitutionally replaced him as Speaker of the House. As part of his complaint, he alleged that another Representative had violated AS 24.10.020, which allows the majority leader to preside only if the elected officer "resigns, becomes incapacitated, or dies," by calling to order a meeting in which the House voted to replace Representative Duncan. Because none of the contingencies provided for in AS 24.10.020 were present when the other Representative called to order the meeting, Representative Duncan urged the court to find that the Representative had usurped power. The Alaska Supreme Court declined to address whether AS 24.10.020 vested the power to convene meetings solely in Representative Duncan as Speaker because even if he was correct:

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<sup>22</sup> *Abood*, 743 P.2d at 337.

<sup>23</sup> *Id.* at 338.

<sup>24</sup> *Id.*

it would still be improper for a court to declare the June 16th election of Representative Hayes to the Speakership invalid.

Such a declaration would, in our view, be an unwarranted intrusion into the business of the House. To be sure, the judicial branch of government has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature. But a statute such as AS 24.10.020 relates solely to the internal organization of the legislature, a subject which has been committed by our constitution to each house. Insofar as compliance with such a statute is concerned, we believe that a proper recognition of the respective roles of the legislature and the judiciary requires that the latter not intervene.<sup>25</sup>

The court recognizes that the political question doctrine seemingly may leave a plaintiff such as ABI without a remedy. But the doctrine simply affirms that in some limited cases, the constitutional requirement of separation of powers shifts the ultimate resolution of certain disputes from the courts back to the governmental branch involved in the dispute- whether it be through further discussion with their colleagues or ultimately the citizens who placed them in their position.

716 argues that the present suit is almost identical to *Abood* and *Malone*. It argues that the Legislative Council, a constitutionally created entity, adopted internal procurement procedures pursuant to its statutorily granted authority to do so.<sup>26</sup> The Council then followed its own regulations (as amended) and made the

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<sup>25</sup> 650 P.2d at 356.

<sup>26</sup> AS 36.30.020.

written findings necessary to utilize the exemption amendment. 716 contends that these actions all fall within the legislature's constitutionally mandated prerogative to regulate itself.<sup>27</sup>

The LAA agrees that there are portions of this lease extension issue that are nonjudiciable because they "lack ... judicially discoverable and manageable standards for resolving [the issue]."<sup>28</sup> Specifically, the LAA argues that the Procurement Officer's written findings under Procurement Procedure 040 are nonjudiciable discretionary policy decisions. Beyond these determinations, the LAA allowed that the court could rule on whether the lease is in fact an extension under AS 36.30.083.<sup>29</sup>

Based upon the pleadings and case law cited above, the court agrees with LAA position as stated herein. Despite 716's argument that the entire dispute is nonjusticiable, it would seem particularly inappropriate to fail to rule on the main issue in this dispute out of deference to a branch of government which is not asking for deference. It is this key fact that distinguishes this case from *Abood* or *Malone*. In both those cases, legislators raised the political question doctrine defense which prompted the Court in both cases to defer to the legislature. Because the legislature is not requesting such deference here, this court can review the lease's legality without concern that it is not showing due respect for

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<sup>27</sup> ABI briefly raises the issue that 716 may not be allowed to raise a nonjusticiable political question defense. Though often the party raising the defense of a "textually demonstrable constitutional commitment of the issue to a coordinate political department" (*Baker v. Carr*, 369 U.S. 186, 217 (1962)), belongs to one of the three branches of government, (see e.g. *Nixon v. U.S.*, 506 U.S.224 (1993)), a party does not have to belong to the government to raise this defense. See e.g. *Corrie v. Caterpillar, Inc.*, 503 F. 3d 974 (9th Cir. 2007).

<sup>28</sup> LAA's Response to Court's Request Dated February 26, 2016; *Baker v. Carr*, 369 U.S. 186, 217 (1962).

<sup>29</sup> *Id.* at 2.

an equal branch of government. However, out of due respect for the legislature, the court will not look behind the legislative curtain and will only consider whether the lease is a valid extension under AS 36.30.083(a).<sup>30</sup>

*B. The lease does not comply with AS.36.30.*

LAA and 716 argue that to extend a real property lease under AS 36.30.083(a) they are only required to demonstrate a 10% savings and it does not matter whether the contract sought to be extended is substantively modified. AS 36.30.083(a) reads:

Notwithstanding any other provision of this chapter ... the legislative council ... may *extend* a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease.<sup>31</sup>

Thus the first requirement of this section is that the instrument in question is in fact a lease extension. Certainly, one of the provisions of the 2013 document extended the time LAA had the right to remain in the leased premises. But the

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<sup>30</sup>As a separate and likely also another nonjusticiable matter, the court does not agree that that the Legislative Council's promulgated procurement regulations, and the amendments thereto specifically promulgated to accommodate the lease at issue, comport with the state's procurement code. The Legislative Council has the authority to enact regulations to "... govern the procurement of supplies, services, professional services..." (AS 36.30.020). This provision is limited, however, by the mandate that these rules "be based on the competitive principles consistent with the legislative chapter of the state procurement code." In this court's opinion, altering the requirements of the procurement code to exempt certain legislative leases from the bidding process does not conform to the chapter's "competitive principles." (Id.). This finding is only included to permit review and prevent the need for remand and further expensive litigation if a reviewing court finds this issue is justiciable. But the believes this is not a justiciable issue under Abood and Malone, supra

<sup>31</sup>Emphasis added.

court does not accept the argument that the contract is only an extension simply because that is what 716 and LAA named it in the document.

Black's Law Dictionary 523 (5<sup>th</sup> Ed. 1979) defines an "extension" generally as "an increase in length of time." As it relates to leases, it defines an extension as "a prolongation of the previous leasehold estate...*the same lease* continues in force during additional period upon performance of stipulated act."<sup>32</sup> Likewise Garner's Dictionary of Legal Usage 346 (3<sup>rd</sup> Ed. 2011) defines "extension" as a legal contract that "continues *the same contract* for a specified period..."<sup>33</sup> Other jurisdictions have contemplated the meaning of a lease extension when differentiating between an extension and a lease renewal.<sup>34</sup> For example, the Minnesota Supreme Court has said that "[t]he legal distinction between an extension and a renewal of a lease is that an *extension merely continues the original lease*, while a renewal requires a new lease."<sup>35</sup> When considering the difference between an option to extend a contract and an agreement to negotiate a contract extension, a Florida court found that negotiating to extend a contract created "new and successive contracts. [Exercising an option to extend] merely operated to extend the duration of the agreement for specified periods under the same terms and conditions, all of which...had been subject of the initial bidding procedure."<sup>36</sup> The common theme throughout these definitions and explanations is that a lease extension only alters the time period of the contract while the remainder of the contract remains in full effect. The court finds the plain meaning

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<sup>32</sup> Emphasis added.

<sup>33</sup> Emphasis added

<sup>34</sup> See e.g. *Med-Care Associates, Inc. v. Noot*, 329 N.W. 2d 549, (Minn. 1983).

<sup>35</sup> *Id.* at 551 (emphasis added).

<sup>36</sup> *City of Lakeland, Fla. V. Union Oil Co. of Cal.*, 352 F. Supp. 758 (M. D. Florida 1973).



of AS 36.30.083(a) is to exempt an extension of the length of a lease (without substantive modification to the terms of the lease) from the competitive bidding requirement. As the parties argued before the court, AS 36.30.083(a) does not specifically prohibit substantive modification. The court agrees but further notes that AS 36.30.083(a) does not *permit* substantive modification either, except for rental amount to meet the cost savings requirement. This statutory silence actually supports the court's finding that an extension of a lease does not contemplate substantive modification of the terms.

As additional support for its findings, the court first notes that the legislature separated new leases and lease renewals from lease extensions.<sup>37</sup> By creating separate statutes to govern these different contractual principles, the legislature recognized the differences among these contracts and chose differing statutory approaches, requiring new leases and renewals to be subject to competitive bidding, and exempting only extensions with a 10% savings over market rate. The court assumes that the legislature did this purposefully and was mindful of not muddling the two statutes by conflating a lease extension with either a new lease or a lease renewal.

AS 36.30.083(a) permits a lease extension and, impliedly, the ability to modify the monthly rental payment to 90% of market value established "by a real estate broker's opinion of the rental value or by an appraisal the rental value". The lease between the LAA and 716 does not fit within the definitions of "extension" as articulated above because the 2013 lease is undoubtedly a different lease instrument from the 2004 contract. Significantly, the subject

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<sup>37</sup> Compare AS 36.30.080 (Leases/Renewals) with AS 36.30.083 (Lease Extensions Authorized).

property of the 2013 lease is vastly different from the 2004 lease subject property. As the LAA states, the 2013 lease:

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. 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 insulation designs. The Alaska State Legislature vacated the premises for over 13 months during the demolition and reconstruction process.<sup>38</sup>

The fact that the previous LIO absorbed the next door building significantly increasing the square footage of the building and the extensiveness of the new construction and reconstruction persuade this court that the 2013 lease's subject property is different from the subject property in the 2004 lease. Other factors that influence the court's decision include that the 2013 lease provides substantially altered rights and obligations for the parties<sup>39</sup> along with a 395% price increase.<sup>40</sup>

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<sup>38</sup> Legislative Affairs Agency Opposition at 6-7. The court finds no genuine issue of material fact.

<sup>39</sup> See e.g. Section 3 Extension of Lease and Lease Amendment No. 3.

<sup>40</sup> *Id.* at Section 1.1(c).

The court similarly does not agree that the contracting parties' interpretation of an "extension" falls within the meaning the legislature intended when it passed AS 36.30.083(a). Legislative history indicates that the primary impetus for enacting the revised version of this statute was to save money by reduced rent and make it easier for agencies to remain in their current building and avoid the costs of moving and re-procurement, especially since initial construction costs are usually amortized over the building's first years. As the then Chief Procurement Officer stated during one committee hearing:

...(T)he upfront construction and tenant improvement costs are generally financed and amortized over the initial firm term of the lease. The lessor is afforded an opportunity to bid a different price during the option periods of a lease. Generally, there is a dramatic decrease in prices after the initial firm period is over.<sup>41</sup>

.....

Tenant improvements and upfront construction [to prepare a new office for agency needs] are generally substantial for a large-size lease. There are also telephone relocations and CAT-5 cables are expensive... Furthermore, the disruption of a relocation is difficult to quantify.<sup>42</sup>

In agreeing to setting the incentive rate at 10% below market value, then Representative Rokeberg stated that it would "allow the department to move

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<sup>41</sup> *Background and History of HB 545 – State Real Property Lease Extensions: Hearing Before the House Labor and Commerce Standing Committee*, April 16, 2004, at p.8. (Statement of Mr. Vern Jones, Chief Procurement Officer, Division of General Services, Department of Administration); Exhibit 1 to Plaintiffs Memorandum in Support of Motion For Partial Summary Judgment.

<sup>42</sup> *Id.* at p.11.

forward with a sole source type contract and ...avoid the appearance of any noncompetitive type of acquisition or continuation of lease.”<sup>43</sup>

The legislative history indicates that permitting sole-source contracting when there was a 10% savings was intended as both a cost saving measure and for agency convenience. Here, the legislature paid \$7,500,000.00 for additional tenant improvements and disrupted the legislature by relocating for over a year while the existing building was essentially demolished to its structural framing, rebuilt and new construction was completed on newly acquired premises. Thus none of the legislature's stated purposes for exempting a lease extension from the competitive bid process was realized from this lease “extension.” The court does not find that the legislative history supports the positions of LAA and 716.

Finally, plain common sense -a principle which jurisprudence should not require to be checked at the courtroom door- mandates a finding that a contract to lease over 2.5 times more newly constructed space for just under 5 times the current rent with an introductory payment of \$7.5 million<sup>44</sup> for leasehold improvements is not a simple lease extension. A court finding that this leasing scheme could be sole-sourced would eviscerate the competitive principles of the state procurement code. The court finds this lease invalid as it does not comply with AS 38.30.083 (a).

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<sup>43</sup>*Background and History of HB 545 – State Real Property Lease Extensions: Hearing Before the House Labor and Commerce Standing Committee*, April 16, 2004, at p. 25.

<sup>44</sup> The court notes that this amount is significantly more than the LAA paid for rent in toto for 9 years under the 2004 lease.

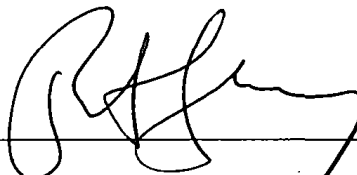
V. Conclusion

Though 716 initially invoked the political question doctrine, the LAA agreed that the court can decide whether the lease is an extension under AS 36.30.083. After reviewing various definitions and interpretations of a lease extension, the plain meaning of the words of the statute, the legislative history and intent, this court finds that this contract is not an agreement to extend a lease but rather a wholly new lease instrument altogether and should have been competitively bid. Summary judgment is GRANTED in favor of plaintiff ABI that the lease is not an extension under AS 38.30.083 (a).

The court further enters, as the final appealable order<sup>45</sup>, a declaratory judgment that the lease is invalid based on the lease's non-compliance with AS 38.30.083(a). Because the court finds the lease invalid, all further proceedings are vacated as it is not necessary to decide whether the lease rate is 10% below the current market rate.<sup>46</sup>

3/24/16

DATE

  
Hon. Patrick J. McKay  
Judge of the Superior Court

I certify that on 3/24/16 a copy  
of the following was mailed/faxed/hand delivered  
to each of the following at their addresses of mailed  
record. James Gottstein  
Jeffrey Robinson / Kevin Cuddey  
Administrative Assistant Ki

<sup>45</sup> Declaratory judgment is the only remaining relief requested in ABI's Second Amended Complaint dated August 25, 2015.

<sup>46</sup> This ruling renders current pending motions MOOT.



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

Alaska Building Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
716 West Fourth Avenue LLC, and	)	
Legislative Affairs Agency,	)	Case No. 3AN-15-05969CI
	)	
Defendants.	)	

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**ORDER DENYING MOTION FOR RECONSIDERATION OF DECLARATORY  
JUDGMENT AND SUMMARY JUDGMENT**

716 has moved for reconsideration of the 3/24/16 order granting summary judgment and entering a declaratory judgment declaring the 716/LAA lease extension invalid. LAA partially joins the request. ABI opposes the request.

716 believes it was denied due process because the court did not give them a sufficient opportunity to argue against the court's declaratory judgment invalidating the lease rather than simply a finding that the competitive principles of the procurement code were not met. 716 further resurrects its argument that the entire dispute is non-justiciable.

Both 716 and LAA want the court to retain jurisdiction essentially to adjudicate nonexistent cross-claims they may have against each other.

ABI is content that the court ruled on the only issues placed before the court.

So is the court. The motion for reconsideration is DENIED.

The Second Amended Complaint dated 8/25/15 requests three (3) forms of relief; declaratory judgment, *qui tam* damages, and punitive damages.<sup>1</sup> Neither 716 nor LAA filed counterclaims or cross-claims with their answers. ABI's request for *qui tam* and punitive damages were dismissed by motion.<sup>2</sup> The only requested relief remaining before the court when ruling on the motion for summary judgment was the request for a declaratory judgment. Any issues regarding a preliminary injunction, *qui tam* and punitive damages had been resolved. The parties had not raised any issues of "unique facts" that would prevent the court from ruling as a matter of law the lease extension did not comply with AS 36.30.083(a). ABI did not pursue a request for any monetary damages that had not been dismissed (no Third Amended Complaint). Tactically, 716 and LAA did not pursue any claims against each other (no request to amend answer to add cross-claim).

Simply put, there is no properly pled remaining relief requested to which the defense of *laches* would be applicable. The court has decided the only issue remaining before it- the lease extension does not comply with AS 36.30.083(a) and is invalid. All parties had ample opportunity to address the issue.

If the court's ruling that the lease "extension" is invalid raises justiciable issues between 716 and LAA, neither is precluded by the court's ruling from pursuing their remedies (perhaps other than requesting a subsequent court to revisit the lease extension's compliance with AS 36.30.083{a} which is presumably *res judicata* between the parties). But this court is not going to retain jurisdiction, after fully resolving the issues presented, just in case one of the defendants wants to further utilize the courts to resolve their unpled, potential claims against each other.

Finally, the court declines 716's invitation to revisit it's ruling on justiciability simply because 716 now raises an issue under AS 36.30.080(c) (1)<sup>3</sup>, rather than AS 36.30.083(a). As noted in the decision<sup>4</sup>, and cited in 716's request to reconsider, the

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<sup>1</sup> At the time of the court's ruling on *laches*, ABI had filed a motion for preliminary injunction, subsequently denied.

<sup>2</sup> See Order Regarding ABI's *Qui Tam* and Punitive Damages Requests for Relief dated 1/13/16.

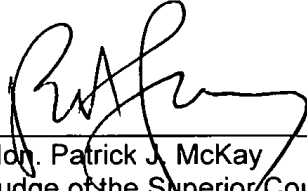
<sup>3</sup> A careful review of 716's opposition to the underlying motion reveals one citation to AS 36.30.080(a), not (c), at p. 6, which the court believes was a miscite to AS 36.30.083(a).

<sup>4</sup> At p.11, footnote 30.

court did not find the Legislative Council's compliance with AS 36.30.020 to be a justiciable issue, but gave an advisory opinion that should the Alaska Supreme Court find justiciability, this court would not find that the newly adopted procurement procedures were consistent with the required competitive principles of the procurement code. This was solely an attempt to limit expensive litigation should the case be remanded on this issue. This court fails to see how the reasoning would differ if the word "extension" was systematically removed from every newly amended regulation, procedure, or "finding" and viewed under the prism of AS 36.30.080(c). Additionally, the Legislature has not extended the same invitation to the court to weigh in on this issue.

The motion for reconsideration is DENIED.

May 20, 2016  
DATE

  
Hon. Patrick J. McKay  
Judge of the Superior Court

I certify that on 5/20/16  
a copy of the above was mailed to each of  
the following at their addresses of record:

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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

**ERRATA TO LEGISLATIVE AFFAIRS AGENCY'S MEMORANDUM IN  
SUPPORT OF MOTION FOR RULES 11 AND 82 FEES**

COMES NOW Defendant Legislative Affairs Agency (LAA), by and through its counsel of record, and hereby corrects its filing entitled *Memorandum in Support of Legislative Affairs Agency's Motion for Rules 11 and 82 Fees* filed with this court on May 31, 2016 to correct the Exhibit identified as Exhibit B to Exhibit A and to include Exhibit A which was inadvertently omitted from the May 31, 2016 filing.

ERRATA TO MEMORANDUM IN SUPPORT OF LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR RULE  
82 ATTORNEYS' FEES  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI  
Page 1 of 5

Exhibit A is attached hereto.

DATED: June 2, 2016

STOEL RIVES LLP

By:  #0911060



KEVIN CUDDY

(Alaska Bar #0810062)

Attorney for Defendant


LEGISLATIVE AFFAIRS AGENCY

**CERTIFICATE OF SERVICE**

This certifies that on June 2, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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Debby Allen, Litigation Practice Assistant

86718366.1 0081622-00003



**In the Matter Of:**

**ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC**

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**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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**EXHIBIT A | Page 1 of 5**

1                   IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2                   THIRD JUDICIAL DISTRICT AT ANCHORAGE

3

4       ALASKA BUILDING, INC., an  
5       Alaska corporation,

6

                  Plaintiff,

7

                  vs.

**CERTIFIED  
TRANSCRIPT**

8

716 WEST FOURTH AVENUE LLC,  
and LEGISLATIVE AFFAIRS  
AGENCY,

9

                  Defendants.

10

Case No. 3AN-15-05969 CI

11

12

DEPOSITION OF JAMES B. GOTTSTEIN

13

VOLUME I

14

15

Pages 1 - 58, inclusive

16

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

17

18

19

Taken by Counsel for  
Defendant 716 West Fourth Avenue LLC  
at  
ASHBURN & MASON  
1227 West 9th Avenue, Suite 200  
Anchorage, Alaska

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1	A-P-P-E-A-R-A-N-C-E-S
2	
3	For Plaintiff:
4	James B. Gottstein
5	LAW OFFICES OF JAMES B. GOTTSTEIN
6	406 G Street, Suite 206
7	Anchorage, Alaska 99501
8	907/274-7686
9	
10	For Defendant 716 West Fourth Avenue LLC:
11	Jeffrey W. Robinson
12	Eva Gardner
13	ASHBURN & MASON
14	1227 West 9th Avenue, Suite 200
15	Anchorage, Alaska 99501
16	907/276-4331
17	
18	For Defendant Legislative Affairs Agency:
19	Kevin M. Cuddy
20	STOEL RIVES
21	510 L Street, Suite 500
22	Anchorage, Alaska 99501
23	907/277-1900
24	
25	Court Reporter:
26	Gary Brooking, RPR
27	PACIFIC RIM REPORTING
28	711 M Street, Suite 4
29	Anchorage, Alaska 99501
30	
31	
32	
33	
34	
35	

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

5 A. I just said it.

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

9 A. No.

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

12 A. Correct.

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

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

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

1 CERTIFICATE

2

3 I, GARY BROOKING, Registered Professional

4 Reporter and Notary Public in and for the State of

5 Alaska, do hereby certify that the witness in the

6 foregoing proceedings was duly sworn; that the

7 proceedings were then taken before me at the time

8 and place herein set forth; that the testimony

9 and proceedings were reported stenographically by

10 me and later transcribed by computer transcription;

11 that the foregoing is a true record of the

12 testimony and proceedings taken at that time;

13 and that I am not a party to nor have I any

14 interest in the outcome of the action herein

15 contained.

16 IN WITNESS WHEREOF, I have hereunto set

17 my hand and affixed my seal this 20th day

18 of October, 2015.

19

20

21

22 GARY BROOKING, RPR  
My Commission Expires 6/28/2016

23

24

25 GB4223



STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main (907) 277-1900 Fax (907) 277-1920

Kevin Cuddy (Alaska Bar #0810062)  
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Anchorage, AK 99501  
Telephone: (907) 277-1900  
Facsimile: (907) 277-1920



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, and  
CRITERION GENERAL, INC.,  
  
Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR  
RULE 11 AND RULE 82 FEES**

Defendant Legislative Affairs Agency (LAA), moves for an award of its attorneys' fees incurred in connection with its defense of Plaintiff Alaska Building, Inc.'s (ABI) qui

tam request for relief<sup>1</sup> and Count 2 (property damage claim) under Rules 11 and 82. LAA is the prevailing party on Count 2 for the reasons explained in its October 15, 2015 Motion and Memorandum in Support of Request for Entitlement to Attorneys' Fees and Costs and its October 29, 2015 Reply in Support of Request for Entitlement to Attorneys' Fees and Costs.

Attached to the Affidavit of Kevin M. Cuddy filed concurrently with this Motion are true and correct copies of Stoel Rives LLP invoices identified as Exhibit A. Exhibit A includes comprehensive time records for attorney and paralegal fees Stoel Rives LLP charged LAA, was paid by LAA, and for which LAA is seeking an award from Alaska Building Inc.

Actual attorneys' fees billed in this matter for which LAA seeks to recover under Rules 11 and 82 total \$11,089.00. LAA seeks an award of attorney's fees of no less than twenty percent of that amount under Rule 82(b)(2), but requests that the Court award full fees related to LAA's defense of the property damage claim and qui tam request for relief because, under Rules 82(b)(3) and Rule 11, ABI had no good faith basis or legal support for bringing those claims. LAA therefore seeks an award of fees in the total amount of \$11,089.00.


---

<sup>1</sup> Though the Court found that ABI did not in fact bring a formal qui tam action in its January 13, 2016 Order Regarding ABI's *Qui Tam* and Punitive Damages Request for Relief, this motion and accompanying memorandum characterize ABI's June 8, 2015 request for relief in the form of "10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease" as a qui tam request because the motions and briefing related to this issue all used that term.

STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main (907) 277-1900 Fax (907) 277-1920

DATED: May 31, 2016

STOEL RIVES LLP

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

**CERTIFICATE OF SERVICE**

This certifies that on May 31, 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  
Anchorage, AK 99501  
(Attorney for Plaintiff)

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

  
Debby Allen, Litigation Practice Assistant  
86688838.1 0081622-00003

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Anchorage, AK 99501  
Telephone: (907) 277-1900  
Facsimile: (907) 277-1920

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, and  
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**MEMORANDUM IN SUPPORT OF LEGISLATIVE AFFAIRS AGENCY'S  
MOTION FOR RULES 11 AND 82 FEES**

Defendant Legislative Affairs Agency (LAA) seeks to recover attorneys' fees for  
its defense of Plaintiff Alaska Building, Inc.'s (ABI) qui tam request for relief<sup>1</sup> and Count

<sup>1</sup> Though the Court found that ABI did not in fact bring a formal qui tam action in  
its January 13, 2016 Order Regarding ABI's *Qui Tam* and Punitive Damages Request for  
Relief, this memorandum characterizes ABI's June 8, 2015 request for relief in the form  
(continued . . .)

2 (property damage claim) of Plaintiff's June 8, 2015 Amended Complaint under Rules 11 and 82.

LAA requests Rule 82 fees related to Count 2 (property damage) since LAA was the prevailing party on that claim under the Court's August 20, 2015 order granting LAA's motion to sever the property damage claim and ordering that the claim must proceed, if at all, in a new lawsuit. LAA briefed why it is the prevailing party as to that ruling in its October 15, 2015 Motion and Memorandum in Support of Request for Entitlement to Attorneys' Fees and Costs and its October 29, 2015 Reply in Support of Request for Entitlement to Attorneys' Fees and Costs. LAA hereby references and incorporates that briefing here.

Though Rule 82(b)(2) provides for 20% of a prevailing party's fees, LAA requests a full fee award under Rule 11<sup>2</sup> for the qui tam and property damage issues because LAA had no good faith basis for bringing its claims. ABI's president, Mr. James Gottstein, admitted under oath that ABI had no legal support for its request for relief in the form of

---

(... continued)

of "10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease" as a qui tam request because the motions and briefing related to this issue all used that term.

<sup>2</sup> Alaska Civil Rule 95 states that a court "may withhold or assess costs or attorney's fees" for "any infraction of these rules," including Civil Rule 11; *see also Enders v. Parker*, 125 P.3d 1027, 1037 n.37 (Alaska 2005).



10% of the alleged savings to the LAA for lease invalidation,<sup>3</sup> and there was and is similarly no good faith basis for bringing any property damage claim against a lessee who played no role in the construction of the building. LAA did not cause any of the property damage at issue, and ABI was fully aware that there was no good faith basis in fact or in law for contending that LAA was responsible for any such property damage.

Under Rule 11(b)(2), claims, defenses, and other legal contentions must be “warranted by existing law.” Pleadings must also not “needlessly increase the cost of litigation” under Rule 11(b)(1). ABI brazenly violated Rule 11 by admitting that there was no statutory support for its request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation, which this Court recognized in its January 13, 2016 Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief. As the Court stated, “there is no statutory authority” for that request, and “ABI does not provide any legal theory upon which this court could justify creating new law.”<sup>4</sup>

As the Alaska Supreme Court held in *Keen v. Ruddy*, Rule 11 sanctions are

---

<sup>3</sup> See Oct. 16, 2015 Deposition of James Gottstein, Exhibit B, at 43:6-9 (admitting that Mr. Gottstein is unaware of any statute that would authorize Plaintiff’s request for 10 percent of any savings); 43:13-18 (“Q. Is there any common law that you can point to to say that a savings of this type had been given to a private litigant? A. No. Well, not yet anyway. So, I mean, it’s possible I’ll come up with some, but I haven’t found – I haven’t seen any yet.”); see also LAA’s October 21, 2015 Non-Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages and November 20, 2015 Joinder of Reply in Support of 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages.

<sup>4</sup> January 13, 2016 Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief, at 4.

appropriate when a court “finds that a pleading signed by [an attorney] is not well grounded in fact, is not warranted by existing law or a reasonable argument for its extension, or is interposed for an improper purpose.”<sup>5</sup> It is clear that ABI’s request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation was not supported by existing law because Alaska has not enacted a version of the False Claims Act, as discussed in LAA’s November 20, 2015 Joinder of Reply in Support of 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages. Moreover, ABI could not have had a good faith argument for extending the law based on the Alaska Legislature’s 2003 passage of HB 145, codified as AS 09.06.010(b)-(3), which clearly abolished the Alaska Supreme Court’s public interest exception to Rule 82 and was discussed by this Court in its January 13, 2016 order.

Rule 11 no longer strictly requires willful conduct or subjective bad faith to impose sanctions.<sup>6</sup> Rather, the determining factor is whether there was a reasonable basis for the attorney’s signature.<sup>7</sup> Rule 11 sanctions are warranted here because ABI and its representative Mr. James Gottstein could not have had a reasonable belief that the

---

<sup>5</sup> 784 P.2d 653, 658 (Alaska 1989); *see also State Employees Assoc. v. Pub. Emp. Assoc.*, 813 P.2d 669, 671 (Alaska 1991) (holding that a court can impose sanctions when it finds that the pleadings were not warranted by existing law or a reasonable argument for their extension, modification, or reversal).

<sup>6</sup> *See Alaska Fed. Savings & Loan Assoc. of Juneau v. Bernhardt*, 794 P.2d 579 (Alaska 1990).

<sup>7</sup> *See id.*

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pleadings were supported by existing law or that there was a good faith argument for extending the law.

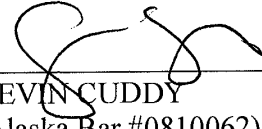
### REQUEST

The hourly attorney and paralegal fees claimed are reasonable, were actually incurred, and are supported by the Affidavit of Kevin M. Cuddy filed concurrently herewith. The invoices attached to the Affidavit of Kevin M. Cuddy as Exhibit A include comprehensive time records for all of the attorney fees charged by the firms for which LAA is seeking an award. These legal fees and costs were specifically and necessarily incurred in connection with LAA's defense of ABI's qui tam request for relief and Count 2 of its Amended Complaint.

LAA seeks an award of attorneys' fees of at least 20% of \$11,089.00. This request is based on prevailing fees for rates in Anchorage, Alaska, as described in the accompanying Kevin M. Cuddy Affidavit.

DATED: May 31, 2016

STOEL RIVES LLP

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

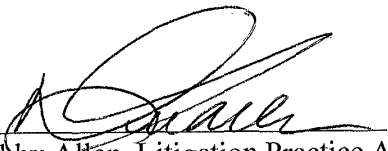
STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main (907) 277-1900 Fax (907) 277-1920

**CERTIFICATE OF SERVICE**

This certifies that on May 31, 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  
Anchorage, AK 99501  
(Attorney for Plaintiff)

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

  
Debby Allen, Litigation Practice Assistant  
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Kevin Cuddy (Alaska Bar #0810062)  
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Telephone: (907) 277-1900  
Facsimile: (907) 277-1920

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, and  
CRITERION GENERAL, INC.,  
  
Defendants.

Case No. 3AN-15-05969 CI

**AFFIDAVIT OF KEVIN M. CUDDY IN SUPPORT OF LEGISLATIVE AFFAIRS  
AGENCY'S MOTION FOR RULE 82 ATTORNEY'S FEES**

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.

AFFIDAVIT OF KEVIN M. CUDDY IN SUPPORT OF LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR  
RULE 82 ATTORNEYS' FEES  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI  
Page 1 of 5



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 Motion for Rule 82 Attorneys' Fees.

3. I have been admitted to practice law in Alaska for more than 8 years, all in private practice. I have served as lead counsel in numerous complex litigation matters before this court and other Alaska courts.

3. Stoel typically bills its clients on a monthly basis, preparing comprehensive time records describing all tasks performed by attorneys and paralegals, and the time spent on each. In this matter, such monthly invoices were prepared and sent to LAA.

5. I reviewed the monthly invoices each month to ensure that the tasks and time reflected on them were described accurately and were necessary and reasonable.

6. I have had overall leadership responsibility for this litigation for Stoel.

7. In preparation for this filing, I have reviewed Stoel's invoices and identified those containing attorney's fees incurred in defense of Plaintiff Alaska Building, Inc.'s (ABI) qui tam request for relief and Count 2 (property damage claim) of Plaintiff's June 8, 2015 Amended Complaint under Rules 11 and 82.

8. Attached as Exhibit A is a true and correct compilation of attorney and paralegal time worked in this matter by Stoel for the first eight months of this litigation. Exhibit A includes comprehensive time records for all of the attorney and paralegal fees charged by Stoel for which LAA is seeking an award from ABI as described in our

briefing. Attorney-client privileged information and unrelated information has been redacted from the invoices. Unredacted copies of the actual invoices are available if requested by the Court, or to the extent necessary to address any opposition to LAA's request for fees and costs, LAA will file a copy of the unredacted invoices under seal for the Court's eyes only.

10. In addition to the invoices marked as Exhibit A, Stoel will bill LAA for work on this matter for which a printed invoice has not yet been generated.

11. These legal fees were specifically and necessarily incurred for the reasons described in detail in the "Facts" section of the accompanying memorandum in support of the fees motions.

12. Based on my knowledge of the Alaska legal market, the billing rates for which LAA seeks its recovery are consistent with rates charged by other legal professionals similarly situated in this market, and are appropriate given the nature and complexity of the work performed.

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

DATED this 31st day of May, 2016.

---

KEVIN M. CUDDY

STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main (907) 277-1900 Fax (907) 277-1920

SUBSCRIBED AND SWORN to before me this 31st day of May 2016 in

Anchorage, Alaska.

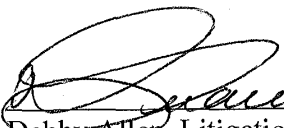
Notary in and for the State of Alaska  
My Commission expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

This certifies that on May 31, 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  
Anchorage, AK 99501  
(Attorney for Plaintiff)

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



Debby Allen, Litigation Practice Assistant

86689197.1 0081622-00003

AFFIDAVIT OF KEVIN M. CUDDY IN SUPPORT OF LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR  
RULE 82 ATTORNEYS' FEES

ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

Page 4 of 5



510 L STREET, SUITE 500  
ANCHORAGE, AK 99501-1959  
Telephone(907) 277-1900  
Fax(907) 277-1920  
For Billing Inquiries 1-800-305-8453  
Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY  
DOUG GARDNER, DIR. OF LEGAL SERVICES  
STATE CAPITOL, MAIL STOP 3101  
JUNEAU, AK 99801

INVOICE DATE 06/23/15  
INVOICE NUMBER 3832342  
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY  
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING INC.

**STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 05/31/15**

Balance From Previous Statement

Redacted

Payment(s) Received

Redacted

Current Activity:

Fees for Professional Services  
(see attached for detail)

Redacted

Disbursements and Other Charges

Redacted

**TOTAL CURRENT AMOUNT DUE**

Redacted

Total Outstanding Balance as of 06/23/15

Redacted

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204

**EXHIBIT A | Page 1 of 20**  
**3AN-15-05969CI**



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0081622 LEGISLATIVE AFFAIRS AGENCY  
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING  
INC.

INVOICE DATE 06/23/15  
INVOICE NUMBER 3832342  
JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 05/31/15	ATTY	HOURS
Redacted	[Redacted]	[Redacted]	[Redacted]
Redacted	[Redacted]	[Redacted]	[Redacted]
05/08/15	Continue drafting motion to dismiss for lack of standing	RLD	3.0
[Redacted]	[Redacted]	[Redacted]	[Redacted]
05/13/15	Revise motion to dismiss; research re same	KMC	2.1
05/14/15	Review and revise motion to dismiss; send updated draft to Kevin Cuddy	RLD	1.3
05/15/15	Review and revise edits to draft motion to dismiss; revise and add analysis to discuss why Plaintiff is not an appropriate plaintiff and lacks standing	RLD	1.4
05/15/15	Draft, research, and revise motion to dismiss; email with client re same	KMC	1.8
Redacted	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
05/27/15	Call with client re filing; revise proposed order re dismissal; review filings; arrange for filing and service of motion to dismiss and motion to stay of discovery; call with Jeff Robinson re same	KMC	2.1
05/27/15	Review and analyze documents filed in case today	RLD	.1
Total			[Redacted]



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0081622 LEGISLATIVE AFFAIRS AGENCY  
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING  
INC.

INVOICE DATE 06/23/15  
INVOICE NUMBER 3832342  
JET

Employer's Identification No. 93-0408771

**TOTAL CURRENT SERVICES**

**\$8,797.50**

**TIME RECAP**

KEVIN M. CUDDY (KMC)  
RACHEL L. DUNNINGTON (RLD)

HOURS	RATE	VALUE
Redacted	360	Redacted
Redacted	255	Redacted
Redacted		Redacted

TIMEKEEPER TOTALS





510 L STREET, SUITE 500  
ANCHORAGE, AK 99501-1959  
Telephone(907) 277-1900  
Fax(907) 277-1920  
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0081622 LEGISLATIVE AFFAIRS AGENCY  
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING  
INC.

INVOICE DATE 06/23/15  
INVOICE NUMBER 3832342  
JET

Employer's Identification No. 93-0408771

**CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 05/31/15**

DATE	ITEM	AMOUNT
05/06/15	Document Reproduction	3.60
05/18/15	Document Reproduction	9.72
05/27/15	Document Reproduction	27.72
05/05/15	Computerized Research - Westlaw Redacted	27.72
05/08/15	Computerized Research - Westlaw Redacted	93.52
05/14/15	Computerized Research - Westlaw Redacted	13.86
05/21/15	Computerized Research - Westlaw Redacted	20.79
05/22/15	Computerized Research - Westlaw Redacted	86.59
05/22/15	Computerized Research - Westlaw Redacted	13.86
<b>TOTAL CURRENT CHARGES</b>		<b>\$297.38</b>



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Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY  
DOUG GARDNER, DIR. OF LEGAL SERVICES  
STATE CAPITOL, MAIL STOP 3101  
JUNEAU, AK 99801

INVOICE DATE 07/28/15  
INVOICE NUMBER 3838247  
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

**STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 06/30/15**

Balance From Previous Statement Redacted

Payment(s) Received Redacted

**Current Activity:**

Fees for Professional Services  
(see attached for detail) Redacted

Disbursements and Other Charges Redacted

**TOTAL CURRENT AMOUNT DUE** Redacted

Total Outstanding Balance as of 07/28/15 Redacted

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204

**EXHIBIT A | Page 5 of 20**  
**3AN-15-05969CI**



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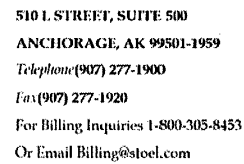
INVOICE DATE 07/28/15

INVOICE NUMBER 3838247  
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Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME		Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
Redacted	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
00002	LEGISLATIVE AFFAIRS AGENCY	9094.88	9094.88	12990.00	661.40	13651.40
00003	LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN					
TOTALS		Redacted	Redacted	Redacted	Redacted	Redacted



INVOICE DATE	07/28/15
INVOICE NUMBER	3838247 JET

DATE	CURRENT SERVICES THROUGH 06/30/15	ATTY	HOURS
------	-----------------------------------	------	-------

[illegible]



INVOICE DATE	07/28/15
INVOICE NUMBER	3838247 JET

DATE	CURRENT SERVICES THROUGH 06/30/15	ATTY	HOURS
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/16/15	Draft reply in support of motion to dismiss; research re lessee/tenant liability; research re Civil Rule 21	RLD	1.9
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/17/15	Draft reply in support of motion to dismiss; research re liability of lessees; research re construction law; research re vicarious liability	RLD	6.8
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]



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Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY  
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING  
INC.

INVOICE DATE 07/28/15  
INVOICE NUMBER 3838247  
JET

Employer's Identification No. 93-0408771

**TOTAL CURRENT SERVICES**

**Redacted**





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00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING  
INC.

INVOICE DATE 07/28/15  
INVOICE NUMBER 3838247  
JET

Employer's Identification No. 93-0408771

**CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 06/30/15**

DATE	ITEM	AMOUNT
06/03/15	Document Reproduction	1.44
06/09/15	Document Reproduction	89.36
06/10/15	Document Reproduction	.12
06/12/15	Document Reproduction	11.00
06/15/15	Document Reproduction	33.48
06/15/15	Document Reproduction	3.60
06/18/15	Document Reproduction	8.64
06/19/15	Document Reproduction	9.60
06/29/15	Document Reproduction	46.08
06/06/15	Computerized Research - Westlaw Redacted	27.72
06/11/15	Computerized Research - Westlaw Redacted	34.65
06/16/15	Computerized Research - Westlaw Redacted	62.37
06/17/15	Computerized Research - Westlaw Redacted	238.07
06/17/15	Computerized Research - Westlaw Redacted	54.04
06/25/15	Computerized Research - Westlaw Redacted	41.23
<b>TOTAL CURRENT CHARGES</b>		<b>\$661.40</b>



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TO: LEGISLATIVE AFFAIRS AGENCY  
DOUG GARDNER, DIR. OF LEGAL SERVICES  
STATE CAPITOL, MAIL STOP 3101  
JUNEAU, AK 99801

INVOICE DATE 09/25/15  
INVOICE NUMBER 3850093  
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

**STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 08/31/15**

Balance From Previous Statement **Redacted**

Payment(s) Received **Redacted**

**Current Activity:**

Fees for Professional Services  
(see attached for detail) **Redacted**

Disbursements and Other Charges **Redacted**

**TOTAL CURRENT AMOUNT DUE** **Redacted**

Total Outstanding Balance as of 09/25/15 **Redacted**

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204

**EXHIBIT A | Page 11 of 20**  
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STATE CAPITOL, MAIL STOP 3101  
JUNEAU, AK 99801

INVOICE DATE 09/25/15  
INVOICE NUMBER 3850093  
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME		Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
Redacted Redacted 00003	LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	Redacted Redacted	Redacted	Redacted	Redacted	Redacted
TOTALS		Redacted	Redacted	Redacted	Redacted	Redacted

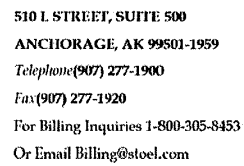


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0081622	LEGISLATIVE AFFAIRS AGENCY	INVOICE DATE	09/25/15
00003	LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING INC.	INVOICE NUMBER	3850093 JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 08/31/15	ATTY	HOURS
08/03/15	Review proposed stipulation of dismissal for Criterion; finalize and serve initial disclosures; call re tender issues; begin preparation for oral argument	KMC	.9
08/06/15	Call with counsel for 716 regarding tender of defense and strategy for resolving Count 2 of amended complaint	KMC	.3
08/13/15	Research re court's discretion in denying a case based on standing; draft email to Kevin Cuddy re the same	RLD	1.8
08/13/15	Preparation for oral argument on motion to dismiss	KMC	2.1
08/14/15	Oral argument preparation for hearing on motion to dismiss	KMC	1.8
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
08/17/15	Prepare for oral argument on motions to dismiss and sever claims	KMC	4.4
08/18/15	Oral argument on motion to dismiss and sever; prep for same; meeting with client to discuss next steps in litigation; review case law and briefing on standing issues	KMC	1.0
08/18/15	Review and analyze court order granting 716's request for ruling and joining as a party for oral argument	RLD	.1
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	



INVOICE DATE	09/25/15
INVOICE NUMBER	3850093
	JET

<b>DATE</b>	<b>CURRENT SERVICES THROUGH 08/31/15</b>	<b>ATTY</b>	<b>HOURS</b>
	Redacted		
	Total		Redacted
	<b>TOTAL CURRENT SERVICES</b>		Redacted



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0081622 LEGISLATIVE AFFAIRS AGENCY  
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING  
INC.

INVOICE DATE 09/25/15  
INVOICE NUMBER 3850093  
JET

Employer's Identification No. 93-0408771

**CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 08/31/15**

DATE	ITEM	AMOUNT
08/03/15	Document Reproduction	7.92
08/03/15	Document Reproduction	12.50
08/31/15	Document Reproduction	455.96
08/13/15	Computerized Research - Westlaw Redacted	55.44
08/17/15	Computerized Research - Westlaw Redacted	13.86
08/21/15	Computerized Research - Westlaw Redacted	6.93
08/23/15	Computerized Research - Westlaw Redacted	6.93
<b>TOTAL CURRENT CHARGES</b>		<b>\$559.54</b>





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TO: LEGISLATIVE AFFAIRS AGENCY  
DOUG GARDNER, DIR. OF LEGAL SERVICES  
STATE CAPITOL, MAIL STOP 3101  
JUNEAU, AK 99801

INVOICE DATE 11/20/15  
INVOICE NUMBER 3861997  
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

**STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 10/31/15**

Balance From Previous Statement **Redacted**

Payment(s) Received **Redacted**

**Current Activity:**

Fees for Professional Services  
(see attached for detail) **Redacted**

Disbursements and Other Charges **Redacted**

**TOTAL CURRENT AMOUNT DUE** **Redacted**

Total Outstanding Balance as of 11/20/15 **Redacted**

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

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**EXHIBIT A | Page 16 of 20**  
**3AN-15-05969CI**



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STATE CAPITOL, MAIL STOP 3101  
JUNEAU, AK 99801

INVOICE DATE 11/20/15  
INVOICE NUMBER 3861997  
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME	Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
Redacted 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	Redacted 3359.32	Redacted 3359.32	Redacted 18108.00	Redacted 443.10	Redacted 18551.10
TOTALS	Redacted	Redacted	Redacted	Redacted	Redacted



INVOICE DATE	11/20/15
INVOICE NUMBER	3861997 JET

Employer's Identification No. 93-0408771

[illegible]



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0081622	LEGISLATIVE AFFAIRS AGENCY	INVOICE DATE	11/20/15
00003	LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING INC.	INVOICE NUMBER	3861997 JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 10/31/15	ATTY	HOURS
10/21/15	Revise non-opposition re qui tam damages; email with client re same; review and finalize motion for summary judgment on laches; review updated affidavit; arrange for filing and service of same; email re request for oral argument	KMC	.5
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
10/26/15	Draft, research, and revise reply brief in support of fees	KMC	2.3
Redacted	Redacted	Redacted	Redacted
10/28/15	Draft, research, and revise reply brief in support of ruling of law on qui tam damages	KMC	2.3
10/29/15	Draft, research and revise reply brief in support of motion to preclude qui tam relief for plaintiff; emails re same	KMC	2.9
Redacted	Redacted	Redacted	Redacted
	Total		Redacted
	TOTAL CURRENT SERVICES		Redacted



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0081622 LEGISLATIVE AFFAIRS AGENCY  
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING  
INC.

INVOICE DATE 11/20/15  
INVOICE NUMBER 3861997  
JET

Employer's Identification No. 93-0408771

**CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 10/31/15**

DATE	ITEM	AMOUNT
10/09/15	Document Reproduction	.24
10/12/15	Document Reproduction	5.04
10/15/15	Document Reproduction	3.36
10/16/15	Document Reproduction	1.08
10/21/15	Document Reproduction	72.52
10/23/15	Document Reproduction	3.00
10/27/15	Document Reproduction	2.40
10/29/15	Document Reproduction	24.54
10/19/15	Court Reporter Services -- Vendor: [Redacted]	[Redacted]
	[Redacted]	
	[Redacted]	
09/09/15	[Redacted]	[Redacted]
<b>TOTAL CURRENT CHARGES</b>		<b>\$443.10</b>

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Kevin Cuddy (Alaska Bar #0810062)  
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Telephone: (907) 277-1900  
Facsimile: (907) 277-1920

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, and  
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S NOTICE OF FILING  
UNSIGNED COPY OF THE AFFIDAVIT OF KEVIN M. CUDDY**

Defendant Legislative Affairs Agency hereby notifies this Court of filing an unsigned copy of the Affidavit of Kevin M. Cuddy submitted in support of Defendant Legislative Affairs Agency's Motion for Rule 82 Attorneys' Fees. The original signed affidavit will be filed with the Court promptly upon Mr. Cuddy's return to the State of Alaska.

LEGISLATIVE AFFAIRS AGENCY'S NOTICE OF FILING UNSIGNED COPY OF AFFIDAVIT (CUDDY)  
*ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al.*, Case No. 3AN-15-05969CI  
Page 1 of 2



STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
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DATED: May 31, 2016

STOEL RIVES LLP

By: 

for KEVIN CUDDY  
(Alaska Bar #0810062)

Attorney for Defendant  
LEGISLATIVE AFFAIRS AGENCY

**CERTIFICATE OF SERVICE**

This certifies that on May 31, 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  
Anchorage, AK 99501  
(Attorney for Plaintiff)

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



Debby Allen, Litigation Practice Assistant  
86704144.1 0081622-00003

STOEL RIVES LLP  
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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,

Case No. 3AN-15-05969 CI

v.

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

Defendants.

**[PROPOSED] ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S  
MOTION FOR RULES 11 AND 82 ATTORNEYS' FEES**

Defendant Legislative Affairs Agency ("LAA") has moved for Rules 11 and 82 attorney fees against Plaintiff Alaska Building, Inc. relating to its fees incurred in the defense of Plaintiff's qui tam request for relief and Count 2 of Plaintiff's June 8, 2015 Amended Complaint.

ORDER GRANTING LAA'S MOTION FOR RULE 82 ATTORNEYS' FEES (re: Count 2)  
*ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al.*, Case No. 3AN-15-05969CI  
Page 1 of 2

THIS COURT, upon consideration of the motion and responses thereto, finds LAA is the prevailing party as to Count 2 of Plaintiff's June 8, 2015 Amended Complaint, and hereby **GRANTS** LAA's Motion for Rule 82 Attorneys' Fees. The Court also finds that Plaintiff's request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation was frivolous and hereby **GRANTS** LAA's Motion for Rule 11 Attorneys' Fees.

IT IS HEREBY ORDERED that Defendant's Legislative Affairs Agency is awarded its fees of \$ \_\_\_\_\_, due and payable on or before \_\_\_\_\_, 2016.

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


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

**CERTIFICATE OF SERVICE**

This certifies that on May 31, 2016, I caused a true and correct copy of the foregoing to be served by first class mail 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)

  
Debby Allen, Litigation Practice Assistant

86689858.1 0081622-00003

ORDER GRANTING LAA'S MOTION FOR RULE 82 ATTORNEYS' FEES (re: Count 2)  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI  
Page 2 of 2

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

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and  
LEGISLATIVE AFFAIRS AGENCY

Defendants.

**COPY**  
Original Received

**JUN 10 2016**

**Clerk of the Trial Courts**

Case No. 3AN-15-05969CI

**ALASKA BUILDING, INC., OPPOSITION TO  
LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR  
RULE 11 AND RULE 82 FEES**

Alaska Building, Inc., opposes the Legislative Affairs Agency's Motion for Rule 11  
and Rule 82 Fees.

**A. Rule 11 Fees Are Not Appropriate Here**

At page 3 of its Memorandum, the Legislative Affairs asserts that "Under Rule  
11(b)(2), claims, defenses and other legal contentions must be 'warranted by existing law.'"  
At page 4, the Legislative Affairs Agency also argues sanctions under Rule 11 are  
appropriate when a pleading "is not warranted by existing law or a reasonable argument  
for its extension," citing to 2 cases considering a prior version of Rule 11. The Legislative  
Affairs Agency then submits a single page of a deposition stating Alaska Building, Inc.,  
admitted under oath it had no support for its claim for 10% of the savings to accrue to the  
State from the lease being declared illegal.

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First, Rule 11(b)(2) provides:

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . .

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(emphasis added).

Attached hereto as Exhibit 1, is the full deposition testimony regarding the issue, which is as follows:

Q. (Kevin Cuddy) Under a qui tam case like you pursued in the Matsutani case, the complaint is filed under seal. Is that right?

A. (Jim Gottstein) Yes.

Q. And that was not done here?

A. No. It's not really a qui tam case.

Q. Okay.

A. And...

Q. So I think we can agree on that, that this is not a qui tam case. What is the basis for claiming an entitlement to 10 percent of the savings?

A. I think that it's -- it's a way to make real the citizen taxpayers' right to bring actions on behalf of the government to stop government -- illegal government action.

What we had -- from about 1974 through 1998, the Alaska Supreme Court had established what's called a public interest exception to Civil Rule 82, providing that public interest litigants that were truly suing on behalf of the public were not subjected to having attorneys' fees against them and would have -- if they prevailed, would have -- be awarded full attorneys' fees.

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*Opposition to Legislative Affairs Agency  
Motion for Rule 11 and Rule 82 Fees*

*Page 2 of 6*

So there wasn't really -- if they could establish that they were public interest litigants, they wouldn't really face the risk of having attorneys' fees awarded against them.

In 2003, the Alaska legislature passed a statute that changed that, except with respect to constitutional claims, basically because they were tired of paying attorneys' fees in all these cases where the government was found to have acted illegally.

And so now you have a situation where anybody trying to bring such a suit faces potentially ruinous attorneys' fees if they don't prevail, or certainly large attorneys' fees if they don't prevail. And that, in my -- my sense of it, has essentially virtually dried up public interest litigation, and so now the government pretty much has free rein to act illegally without any kind of check through this public interest litigation.

And so by -- in these types of cases, where a big, you know, savings or recovery on behalf of the government is achieved, this is a way to really make real the citizens' rights to sue to redress illegal government action.

Q. · So thank you for the answer. · I'm going to go back to my original question, which is: · What is the basis for your claim to an entitlement of 10 percent of the fees?

A. · I just said it.

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

A. · No.

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

A. · Correct.

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

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

I mean, I think that the -- this is a very important public issue, and the point is, is that if this right of public -- the public citizens to sue over illegal government action is to have any, you know, reality at all, there

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*Opposition to Legislative Affairs Agency  
Motion for Rule 11 and Rule 82 Fees*

*Page 3 of 6*



needs to be some countervailing element for the prospect of attorneys' fees being awarded against a plaintiff if they're unsuccessful.

Exhibit 1. Perhaps more coherently, Alaska Building Inc., made the same argument in its October 27, 2015 Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* and Punitive Damages, Section B. The 10% of Savings Remedy Should Not Be Foreclosed.

Alaska Building, Inc., was clear that it was attempting to establish new law to partially ameliorate the adverse effects of the Legislature's abrogation of the Public Interest Litigant Exception to Rule 82. This is specifically allowed under Rule 11(b)(2), as set forth above. In fact, the amendment to Rule 11 in 2012 through Supreme Court Order No. 1728, specifically added that a nonfrivolous argument for establishing new law is not grounds for Rule 11 sanctions. It is also respectfully suggested this Court should heed the Supreme Court's caution that Rule 11 should not "stifle creative advocacy or chill an attorney's enthusiasm in pursuing factual or legal theories." *Enders v. Parker*, 125 P.3d 1027, 20132 (Alaska 2005) (internal quotations omitted).

In *Alaska State Employees Ass'n v. Alaska Public Employees Ass'n*, 813 P.2d 669, 672 (Alaska 1991), the Supreme Court reversed an award of Rule 11 sanctions holding, the party's "position was not so devoid of merit as to justify the imposition of sanctions." The Supreme Court also noted that "Under Rule 11, a court cannot impose sanctions on a party simply for losing." 813 P.2d at 671. Moreover, even if this Court were to find that Rule 11 was violated, this Court acts within its discretion to deny sanctions. *Rude v. Cook Inlet*

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*Opposition to Legislative Affairs Agency  
Motion for Rule 11 and Rule 82 Fees*

*Page 4 of 6*

*Region, Inc.*, 322 P.3d 853, 860 (Alaska 2014). *See, also, Enders v. Parker*, 125 P.3d 1027, 1037 (Alaska 2005).

**B. Rule 82 Fees Should Not Be Awarded to the Legislative  
Affairs Agency**

The Legislative Affairs Agency also asks this Court to award it fees with respect to what was Count 2. This would be improper.

First, the Legislative Affairs Agency is not a prevailing party even with respect to what was Count 2. In its August 20, 2015, Order, this Court ordered Count 2 be severed from this action:

Count One should be severed from Count Two. Plaintiff shall file an amended complaint in this action as to the allegations in Count One. Plaintiff shall file a separate action, if desired, on the allegations in Count Two. . . .

**RULING**

. . . This Court further finds that the claims present in Court Two shall be SEVERED from the current matter and a new suit shall proceed separately.

This does not make the Legislative Affairs Agency the prevailing party on Count 2. That Alaska Building, Inc., did not name the Legislative Affairs Agency in the new suit does not change that. In fact, Alaska Building, Inc., could still amend the complaint in that suit to name the Legislative Affairs Agency.<sup>1</sup> In any event, this question was essentially

---

<sup>1</sup> In its October 29, 2015, Reply In Support of Request for Entitlement to Attorneys' Fees and Costs, the Legislative Affairs Agency correctly points out that Alaska Building, Inc., got the timing wrong on the Criterion settlement. However, Alaska Building, Inc., believes it had and still has a colorable claim against the Legislative Affairs Agency for damage to the Alaska Building. It just has so far chosen not to pursue it in the separate suit.

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*Opposition to Legislative Affairs Agency  
Motion for Rule 11 and Rule 82 Fees*

*Page 5 of 6*

answered in *Tenala, Ltd. v. Fowler*, 993 P.2d 447, 450 (Alaska 1999) where the Supreme Court rejected a claim for attorney's fees for an abandoned claim.

Second, the Supreme Court has a long jurisprudence that Rule 82 fees are to be awarded to the party "who prevails on the principal dispositive issue" and not apportioned by issue *Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Railway Co.*, 658 P.2d 776, 779 (Alaska 1983); *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*, 332 P.3d 554, 564 (Alaska 2014), citing *Gold Bondholders*.


Third, it is unclear that this Court even has jurisdiction to award fees as to a severed claim.

Finally, there is no way to really evaluate the reasonableness of the fees because there is no allocation to the issues for which the Legislative Affairs Agency seeks fees.

### C. Conclusion

For the foregoing reasons, the Legislative Affairs Agency's Motion For Rule 11 And Rule 82 Fees should be **DENIED**.

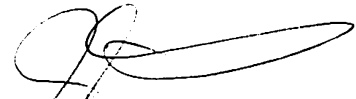
Dated June 10, 2016.

  
\_\_\_\_\_  
James B. Gottstein, ABA # 7811100  
Attorney for Plaintiff

### 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 June 10, 2016.

  
\_\_\_\_\_  
Jim Gottstein

*Opposition to Legislative Affairs Agency  
Motion for Rule 11 and Rule 82 Fees*

Page 6 of 6

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

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**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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Exhibit 1, page 1 of 7

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

---

3  
4   ALASKA BUILDING, INC., an  
5   Alaska corporation,

6                   Plaintiff,

7                   vs.

8   716 WEST FOURTH AVENUE LLC,  
9   and LEGISLATIVE AFFAIRS  
10   AGENCY,

11                   Defendants.

12                   \_\_\_\_\_  
13   Case No. 3AN-15-05969 CI

**CERTIFIED  
TRANSCRIPT**

---

14                   DEPOSITION OF JAMES B. GOTTSTEIN  
15                   VOLUME I

---

16                   Pages 1 - 58, inclusive

17                   Friday, October 16, 2015  
18                   2:00 P.M.

19                   Taken by Counsel for  
20   Defendant 716 West Fourth Avenue LLC  
21                   at  
22                   ASHBURN & MASON  
23                   1227 West 9th Avenue, Suite 200  
24                   Anchorage, Alaska  
25

1     that. I would be -- I'd welcome any kind of any  
2     indication of that.

3           Q. Under a qui tam case like you pursued in  
4     the Matsutani case, the complaint is filed under  
5     seal. Is that right?

6           A. Yes.

7           Q. And that was not done here?

8           A. No. It's not really a qui tam case.

9           Q. Okay.

10          A. And...

11          Q. So I think we can agree on that, that this  
12     is not a qui tam case. What is the basis for  
13     claiming an entitlement to 10 percent of the  
14     savings?

15          A. I think that it's -- it's a way to make  
16     real the citizen taxpayers' right to bring actions  
17     on behalf of the government to stop government --  
18     illegal government action.

19                 What we had -- from about 1974 through 1998,  
20     the Alaska Supreme Court had established what's called  
21     a public interest exception to Civil Rule 82,  
22     providing that public interest litigants that were  
23     truly suing on behalf of the public were not subjected  
24     to having attorneys' fees against them and would  
25     have -- if they prevailed, would have -- be awarded



1 full attorneys' fees.

2 So there wasn't really -- if they could  
3 establish that they were public interest litigants,  
4 they wouldn't really face the risk of having  
5 attorneys' fees awarded against them.

6 In 2003, the Alaska legislature passed a  
7 statute that changed that, except with respect to  
8 constitutional claims, basically because they were  
9 tired of paying attorneys' fees in all these cases  
10 where the government was found to have acted  
11 illegally.

12 And so now you have a situation where anybody  
13 trying to bring such a suit faces potentially ruinous  
14 attorneys' fees if they don't prevail, or certainly  
15 large attorneys' fees if they don't prevail. And  
16 that, in my -- my sense of it, has essentially  
17 virtually dried up public interest litigation, and so  
18 now the government pretty much has free rein to act  
19 illegally without any kind of check through this  
20 public interest litigation.

21 And so by -- in these types of cases, where a  
22 big, you know, savings or recovery on behalf of the  
23 government is achieved, this is a way to really make  
24 real the citizens' rights to sue to redress illegal  
25 government action.

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

5 A. I just said it.

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

9 A. No.

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

12 A. Correct.

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

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

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

1     unsuccessful.

2           Q.     So I'm going to switch gears.

3           MR. ROBINSON: Before you do that, Kevin, I'm  
4     going to request a brief restroom break. Is that  
5     okay?

6           MR. CUDDY: Sure. Yeah.

7           MR. ROBINSON: Just a couple minutes.

8           (Recess taken.)

9           MR. CUDDY: Okay. I am ready whenever you  
10    are.

11          Q.     Mr. Gottstein, just stepping back for a  
12    minute, the construction in this project started in,  
13    roughly, early December of 2013. Is that right?

14          A.     Yes.

15          Q.     And once construction started, you had no  
16    reason to believe that the Legislative Affairs  
17    Agency was going to abandon the lease due to any  
18    alleged problem with the procurement process,  
19    correct?

20          A.     Yes.

21          Q.     And you were aware, once construction  
22    started, that the defendants were going to be  
23    committing millions of dollars to the project in  
24    order to complete the construction?

25          A.     It's been asked and answered, hasn't it?

1 CERTIFICATE

2

3 I, GARY BROOKING, Registered Professional  
4 Reporter and Notary Public in and for the State of  
5 Alaska, do hereby certify that the witness in the  
6 foregoing proceedings was duly sworn; that the  
7 proceedings were then taken before me at the time  
8 and place herein set forth; that the testimony  
9 and proceedings were reported stenographically by  
10 me and later transcribed by computer transcription;  
11 that the foregoing is a true record of the  
12 testimony and proceedings taken at that time;  
13 and that I am not a party to nor have I any  
14 interest in the outcome of the action herein  
15 contained.

16 IN WITNESS WHEREOF, I have hereunto set  
17 my hand and affixed my seal this 20th day  
18 of October, 2015.

19

20

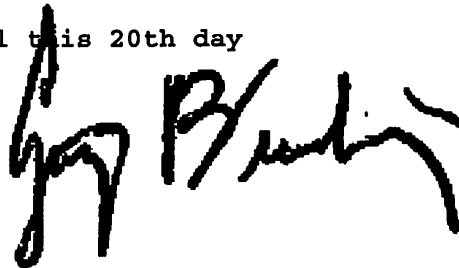
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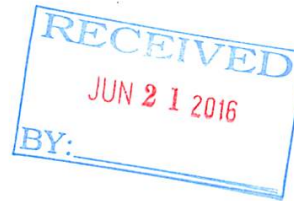
25 GB4223



GARY BROOKING, RPR  
My Commission Expires 6/28/2016

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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, and  
CRITERION GENERAL, INC.,  
  
Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF ITS MOTION  
FOR RULE 11 AND RULE 82 FEES**

The Legislative Affairs Agency (LAA) is entitled to its attorneys' fees pursuant to Civil Rule 82 as to the "property damage" claim (sometimes called "Count 2," since it was originally the second count in ABI's complaint). ABI was required to have brought that claim in a separate lawsuit, and LAA is clearly the prevailing party as to that claim.

LAA is also entitled to its attorneys' fees pursuant to Civil Rule 11 with respect both to the "property damage" claim *and* the "qui tam" claim – in which ABI sought damages for 10% of any "savings" the State received from the invalidation of the underlying lease – because ABI had no good faith basis for bringing either claim. ABI's arguments to the contrary lack merit.

#### **I. LAA IS ENTITLED TO RULE 82 FEES**

LAA is the prevailing party with respect to the property damages claim. As explained in the earlier briefing,<sup>1</sup> ABI was required to bring the property damage claim in a separate lawsuit from the declaratory judgment claim regarding the legality of the lease. After amending its complaint to add allegations against LAA with respect to the property damage claim, ABI functionally dismissed LAA from the claim when the claim was severed from the original lawsuit and brought separately.

ABI originally argued to the Court that LAA should not be deemed the prevailing party solely because LAA "was not named in the separate action [which related just to property damage, and is pending in another court] because the claim against it was for vicarious liability for the actions of Criterion, which was included in the \$50,000

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<sup>1</sup> See Defendant Legislative Affairs Agency's Motion and Memorandum in Support of Request for Entitlement to Attorneys' Fees and Costs (filed Oct. 15, 2015); Defendant Legislative Affairs Agency's Reply in Support of Request for Entitlement to Attorneys' Fees and Costs (the "Fees Reply") (filed Oct. 29, 2015).



settlement.”<sup>2</sup> That is, ABI’s claim against LAA was just for vicarious liability and, since ABI secured a settlement from Criterion, the reason for the claim against LAA no longer applied. *This was an objectively false representation to the Court, as ABI now admits.*<sup>3</sup> In fact, ABI continued to press LAA for payment of tens of thousands of dollars *after* getting a settlement from Criterion.<sup>4</sup> Either ABI did not know what the basis for its property damage claim against LAA was, or ABI attempted to mislead the Court as to why it brought the property damage claim against LAA in the first place.

ABI now changes its tune. It now says that it believes it still has a “colorable claim” against LAA for property damage, but has just opted not to pursue it.<sup>5</sup> If ABI’s earlier statement to the Court was true – i.e., the claim against LAA was for vicarious liability, which was resolved by the Criterion settlement – then this current statement is untrue. Even assuming *arguendo* that ABI is now telling the truth, its theory is incorrect. By functionally dismissing LAA from the property damages lawsuit, LAA became the prevailing party. If ABI *later* decides to bring suit against LAA for property damages as a tenant (which lacks any legal support), then there would be a separate determination as

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<sup>2</sup> Opposition to Legislative Affairs Agency’s Motion for Entitlement to Attorney’s Fees and Costs at 1-2 (filed Oct. 23, 2015).

<sup>3</sup> See Alaska Building, Inc., Opposition to Legislative Affairs Agency’s Motion for Rule 11 and Rule 82 Fees at 5 n.1 (“Opp.”) (filed June 10, 2016) (admitting that ABI “got the timing wrong on the Criterion settlement”).

<sup>4</sup> See Fees Reply at 2-3.

<sup>5</sup> See Opp. at 5 & n.1.

to whether LAA or ABI was the prevailing party when the latter lawsuit was resolved. But it does not change the fact that LAA is the prevailing party as to the property damage claim now. Otherwise, there could never be a prevailing party award as to a dismissed party because it would always be possible that the claimant could decide to bring some other claim within the statute of limitations.

ABI next argues that it was the prevailing party as to the principal issue and that the Court should decline to apportion the fees by issue. ABI misses the point. The property damage claim was not properly included in this lawsuit in the first place, as the Court held, because of misjoinder. The declaratory judgment issue was not the “principal issue” as compared to the property damage issue because these were always required to be two separate lawsuits. As to the property damage lawsuit, LAA is a prevailing party.<sup>6</sup>

In a single sentence, ABI questions (but does not actually dispute) the Court’s jurisdiction to award fees as to the severed claim. In the September 15, 2015 status hearing, the Court indicated that it would entertain a motion for “prevailing party” fees after determining whether ABI would proceed with a separate property damage lawsuit. This Court is the correct one to address the fees associated with the severed claim

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<sup>6</sup> Likewise, this was not an “abandoned claim” within a lawsuit. These were two entirely distinct claims that were required to be litigated in two separate lawsuits. ABI cannot claim an entitlement to fees for work on a claim that was required to be litigated elsewhere. LAA also notes that ABI misstates the holding in *Tenala, Ltd. v. Fowler*, 993 P.2d 447, 450 (Alaska 1999). The Alaska Supreme Court did not reject a claim for attorney’s fees for an abandoned claim. Rather, it allowed a prevailing party to include work for an abandoned claim when that claim was an “important component” of the quiet title action in which the plaintiff ultimately prevailed.

because all of the work relating to that severed claim was performed under this Court's jurisdiction. As a practical matter, LAA would be unable to pursue its fees in the other lawsuit because it is not a party to any other lawsuit regarding these claims.

Lastly, ABI does not challenge the reasonableness of any of LAA's fees, but complains that the Court cannot evaluate those fees because there is no allocation. A cursory review of the invoices confirms that all of the work that predates October 20, 2015 relates to the property damage claim, and all of the work from October 20, 2015 onward relates to the qui tam claim.<sup>7</sup>

## II. LAA IS ENTITLED TO ATTORNEYS' FEES UNDER RULE 11

In its opening brief, LAA requested a full fee award under Civil Rule 11 for both the "property damage" claim and the "qui tam" claim because ABI had no good faith basis for bringing those claims.<sup>8</sup> In its opposition brief, *ABI does not dispute that it had no good faith basis for bringing the property damage claim against LAA*. ABI does not address the issue at all. Given this concession, LAA should be awarded its full fees for defending against that baseless claim. There is simply no legal authority to support a claim against a tenant for property damage relating to construction work that was not controlled or performed by that tenant. ABI has never attempted to identify any such

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<sup>7</sup> See Affidavit of Kevin M. Cuddy in Support of Legislative Affairs Agency's Motion for Rule 82 Attorney's Fees.

<sup>8</sup> See Memorandum in Support of Legislative Affairs Agency's Motion for Rule 11 and 82 Fees at 2-3 (filed May 31, 2016).

legal support – and LAA is not aware of any – and persisted with its claim even after any conceivable vicarious liability was resolved by the Criterion settlement.

As to the “qui tam” claim, ABI argues that its claim was an attempt to “establish new law.”<sup>9</sup> An attorney is required to certify that to the best of his knowledge, information, and belief, formed after a reasonable inquiry, the claims and legal contentions in his pleadings to the Court are warranted (1) by existing law or (2) by a nonfrivolous argument for extending, modifying, or reversing existing law or (3) by a nonfrivolous argument for establishing new law.<sup>10</sup> This is an objective standard and is more stringent than mere “good faith.”<sup>11</sup> ABI admits, as it must, that to the best of its counsel’s knowledge and belief, the “qui tam” claim was not warranted by existing law or by any nonfrivolous argument for extending or modifying existing law. In fact, more than six months *after* bringing the claim, ABI’s counsel admitted under oath that he still had not located any statutory or common law basis for the claim.<sup>12</sup> Instead, ABI asserts exclusively that the third prong applies here because ABI purportedly made a nonfrivolous argument for establishing new law. As explained below, ABI’s argument was frivolous.

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<sup>9</sup> Opp. at 4.

<sup>10</sup> See Civil Rule 11(b)(2).

<sup>11</sup> See *Keen v. Ruddy*, 784 P.2d 653, 658 (Alaska 1989).

<sup>12</sup> See Memorandum in Support of Legislative Affairs Agency’s Motion for Rules 11 and 82 Fees, Exh. A.

Importantly, the Court already addressed – and rejected – ABI’s contention that its *qui tam* claim warrants the establishment of new law. The Court held that “*ABI does not provide any legal theory upon which this court could justify creating new law. Rather, ABI’s argument is one of public policy, which is better left to [the] legislature[.]*”<sup>13</sup> ABI has never presented any legal theory whatsoever that would justify the creation of new law by the Court. Indeed, as LAA already pointed out, the courts have already clearly held that there is no room for the creation of “new” or additional common law to supplement the comprehensive legislative scheme present under the False Claims Act.<sup>14</sup> According to the United States Supreme Court, no common law *qui tam* claim has ever been available in this country – even in Colonial times.<sup>15</sup> ABI’s request was and is, by definition, frivolous. ABI complains that granting sanctions here would “stifle creative advocacy” or punish ABI for pursuing a losing theory. To be very clear, that is not what happened here. ABI pursued a manufactured claim for common law *qui tam* relief that flies in the face of hundreds of years of legal precedent. The claim had no legal support

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<sup>13</sup> Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief at 4 (emphasis added).

<sup>14</sup> See Legislative Affairs Agency’s Non-Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for Qui Tam Damages at 3-4 (filed Oct. 24, 2015) (citing *Mortgages, Inc. v. United States Dist. Court for the Dist. of Nevada (Las Vegas)*, 934 F.2d 209 (9th Cir. 1991) and *Vt. Agency of Nat. Resources v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000)).

<sup>15</sup> *Vt. Agency of Nat. Resources*, 529 U.S. at 776.

whatsoever and ABI's counsel knew it. His decision to pursue that claim with a frivolous argument for the creation of a new common law *qui tam* remedy is sanctionable.

Underlining the Court's conclusion that ABI's request for *qui tam* relief was not a valid request for the Court to create new law under any existing legal theory, ABI's counsel confirmed as much in a published piece in the newspaper. On February 8, 2016, ABI's counsel published an article in the *Alaska Dispatch News* urging the Legislature to "pass a law similar to the federal False Claims act, just as most other states have already done."<sup>16</sup> This was necessary "for future lawsuits" like his.<sup>17</sup> The article reflects the author's belated conclusion that only the Legislature could create the statutory law that would permit the type of *qui tam* claim he brought in this lawsuit. In other words, while Mr. Gottstein insisted during this lawsuit that his claim was not really a *qui tam* claim under the False Claims Act, this was untrue. His claim for 10% of the savings was precisely a *qui tam* claim, but there was not any False Claims Act under Alaska law that would have enabled his claim to proceed. In the absence of a valid underlying statute – which was a prerequisite to his claim – Mr. Gottstein simply made up a new claim out of whole cloth and hoped the Court would ignore centuries of legal history to permit it. It was and is a frivolous argument.

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<sup>16</sup> See <http://www.adn.com/commentary/article/jim-gottstein-why-i-am-willing-settle-taj-mahawker-lawsuit/2016/02/08/>.

<sup>17</sup> *Id.*



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Whether under Rule 11 or Rule 82(b)(3)(F) – which relates to “the reasonableness of the claims and defenses pursued by each side” – LAA is entitled to its full fees and costs for litigating the frivolous *qui tam* claim.

### III. CONCLUSION

For the foregoing reasons, LAA respectfully requests that the Court grant LAA’s motion for fees and costs pursuant to Civil Rules 11 and 82. LAA also requests its fees for preparing this briefing.

DATED: June 20, 2016

STOEL RIVES LLP

By:

  
KEVIN CUDDY

(Alaska Bar #0810062)

Attorney for Defendant

LEGISLATIVE AFFAIRS AGENCY

### CERTIFICATE OF SERVICE

This certifies that on June ~~20~~ 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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MAY 31 2016

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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,

Case No. 3AN-15-05969 CI

v.

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

Defendants.

**[PROPOSED] ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S  
MOTION FOR RULES 11 AND 82 ATTORNEYS' FEES**

Defendant Legislative Affairs Agency ("LAA") has moved for Rules 11 and 82 attorney fees against Plaintiff Alaska Building, Inc. relating to its fees incurred in the defense of Plaintiff's qui tam request for relief and Count 2 of Plaintiff's June 8, 2015 Amended Complaint.

ORDER GRANTING LAA'S MOTION FOR RULE 82 ATTORNEYS' FEES (re: Count 2)  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI  
Page 1 of 2

THIS COURT, upon consideration of the motion and responses thereto, finds LAA is the prevailing party as to Count 2 of Plaintiff's June 8, 2015 Amended Complaint, and hereby **GRANTS** LAA's Motion for Rule 82 Attorneys' Fees. The Court also finds that Plaintiff's request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation was frivolous and hereby **GRANTS** LAA's Motion for Rule 11 Attorneys' Fees.

IT IS HEREBY ORDERED that Defendant's Legislative Affairs Agency is awarded its fees of \$ 22,178.80, ~~due and payable on or before~~ see separate order. May be applied toward ABI, 2016. fee recovery.

DATED this 23rd day of May, 2016.


  
Honorable Patrick McKay  
Superior Court Judge

**CERTIFICATE OF SERVICE**

This certifies that on May 31, 2016, I caused a true and correct copy of the foregoing to be served by first class mail on:

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I certify that on 6/24/16 a copy of the following was mailed/faxed/hand-delivered to each of the following at their addresses of record. sent  
James B. Gottstein  
Jeffrey Robinson  
Kevin Cudde  
Administrative Assistant ky