



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of
Health and Social Services**

Certificate of Need Program

3601 C Street, Suite 978
Anchorage, Alaska 99503
Main: 907-754-3428
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April 1, 2019

Mr. Donald W. McClintock
Ashburn & Mason, P.C.
1227 West 9th Avenue, Suite 200
Anchorage, AK 99501

RE: Request for Determination dated 3-11-2019

Dear Mr. McClintock,

In a letter dated March 11, 2019, you formally requested a determination (“RFD”) under 7 AAC 07.031 as to whether a Certificate of Need (“CON”) is required to establish an independent diagnostic testing facility, as defined in AS 18.07.111 and 7 AAC 07.900(23) that your client, Diagnostic Imaging of Alaska (“DIA”), is proposing. You state in your request that the proposed project’s facility, located at 2110 East Northern Lights Boulevard in Anchorage, Alaska, will encompass 7,085 square feet of a 8,419 square foot building and will include the following radiological modalities: MRI, CT, C-Arm, Ultrasound and X-Ray. You provided the executed lease for the building where the project will be located, an executed lease amendment as well as certified cost estimates for equipment, design and construction costs.

The RFD estimates the cost of the project to be \$1,380,661 and construction to take approximately 90 days post notice from the department that your client may proceed. DIA plans to use 7,085 square feet of the leased building for its project and sub-lease 1,334 square feet of the building to an unrelated business enterprise.

“Because the actual diagnostic imaging center will occupy 7085 rentable SF, and since the remaining 1326 rentable SF will be used for a separate, unrelated purpose (see above), only the lease costs associated with the 7085 rentable SF diagnostic imaging center space are considered for CON expenditure purposes. Lease costs are analyzed under 7 AAC 07.010(a)(8), and the CON Program has historically interpreted this provision to mean the cost of the lease equals the total lease payments made over the term of the lease.”

DIA submitted the following costs for consideration:

\$17,358.25 – Lease and CAM per Month

\$13,107.25 - Rent per Month (7,085 S.F. x \$1.85 P.S.F.)

\$4,251.00 - Additional Rent per Month or Common Area Maintenance (7,085 S.F. x \$0.60 P.S.F.)

Per the executed lease amendment, which allows the option fee from the original lease to be retained by the Lessor, the fee is to be included in the overall project expenditures.

\$13,083.00 - Option Fee

\$13,083.00 – 84% of the Option Fee (7,085 S.F. or 84% of the building’s S.F.)

Total Expenditures: **\$1,380,661.00**

Lease and CAM over 24 months:	416,598.00
Option Fee:	13,083.00
Design/Construction:	382,808.00
Equipment:	568,172.00

The CON Program does not agree with your calculation of expenditures for this project. Specifically, the exclusion of the 1,326 S.F. and its appurtenant costs must be included in determining if the expenditures threshold has been breached. DIA is ultimately responsible for the entirety of the lease and that is the value that must be used in this determination. The lease, which was executed and signed by both parties, clearly delineates Dr.’s Cable and McCormick aka DIA as the Lessee of the entire building; not just the portion of the building DIA proposes to use for its diagnostic testing facility.

Carving out pieces of square footage to be used for other purposes does nothing to diminish the ultimate liability that is incurred by DIA in entering into this lease. The possibility that this other space will create a revenue stream to DIA in the future does not alter the liability for default or risk for inability to sublease the space.

Accordingly, all costs associated with the lease of the property should be considered as expenditures for the purposes of this determination. The total expenditures provided in the RFD do not encompass all the expenditures associated with the lease of the building by DIA. The executed lease agreement clearly states that it is for 8,419 gross square feet. The lease breaks down the costs specific to gross square feet, not rentable square feet.

Per the executed lease agreement and executed lease agreement amendment, the following are the terms that apply to the property located at 2110 East Northern Lights Boulevard:

\$20,626.40 – Lease and CAM per Month

\$15,575.00 - Rent per Month (8,419 S.F. x \$1.85 P.S.F.)

\$5,051.40 - Additional Rent per Month or Common Area Maintenance (8,419 S.F. x \$0.60 P.S.F.)

\$15,575 - Option Fee

\$15,575.00 – Option Fee retained by Landlord per Lease Amendment dated March 5, 2019

The following reflects the revised total expenditures to be considered for purposes of CON:

Total Expenditures: **\$1,461,592.20**

Lease and CAM:	495,037.20
Option Fee:	15,575.00
Design/Construction:	382,808.00
Equipment:	568,172.00

In conclusion, DIA is an IDTF that is subject to CON requirements. The total estimated costs of the proposed project are \$1,461,592.20. This expenditure amount is below the \$1.5 million statutory threshold under AS 18.07.031. Accordingly, a CON is not required for this project as it is proposed.

Since this determination is restricted to the specific project proposal, if the project experiences a change in scope, costs, or circumstances, then this office must be notified immediately because this determination is void and a CON may be required.

If you are dissatisfied with this determination, you may request reconsideration under 7 AAC 07.033. A request for reconsideration must be postmarked no later than 30 days after publication of the public notice.

Regards,

Alexandria Hicks

Alexandria Hicks, CON Program Coordinator