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LAWYERS

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March 11, 2019

HAND -DELIVERED

Alexandria Hicks
CON Coordinator
Alaska Dept of Health & Social Services
3601 C St, Suite 978
Anchorage, AK 99503

RE: Request for Determination

Dear Ms. Hicks,

We are writing on behalf of Cable & McCormick, APC doing business as Diagnostic Imaging of Alaska, who wish to open a new diagnostic imaging center at 2110 East Northern Lights Boulevard, Anchorage, Alaska. The center will be approximately 7,085 rentable square feet (“SF”)¹, and include the following radiological modalities: MRI, CT, C-Arm, Ultrasound, and an X-Ray. Construction and renovation will be finished by approximately 90 days after a notice to proceed², with a total project cost of \$1,380,661 as summarized below:

CON Project Cost Summary

Lease for Space:	\$429,681
Design and Construction	\$382,808
Equipment:	<u>\$568,172</u>
Total:	\$1,380,661

Diagnostic Imaging of Alaska requests a determination under 7 AAC 07.031 as to whether a certificate of need (“CON”) is required to complete its project. Since total project costs are less than \$1.5 million, per AS 18.07.031, a CON does not appear to be required for this project. The following sections and attached exhibits provide the substantiation for this summary.

¹ Since the building is two suites, one of which will be leased for unrelated purposes, the areas of the 8,411 square foot building have been allocated on a rentable square foot basis. Diagnostic Imaging of Alaska is 7,085 rentable square feet and the other lease space is 1,326 rentable square feet. Please see Wolf Architect allocations attached as Exhibit A.

² A notice to proceed has been issued and completion is contemplated in approximately 30 days.

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A. Lease for Space

Diagnostic Imaging of Alaska is under lease for the entire building at 2110 East Northern Lights Boulevard. The building is 8,411 SF, and the term of the lease is two years.³ An option to purchase the building at the end of the two-year term for \$1.5 million has been deleted by amendment and is no longer a term of the lease.⁴

Diagnostic Imaging of Alaska leased the entire building because the space offers an opportunity for the diagnostic imaging center to occupy part of the building (*i.e.* 7,085 rentable SF) while allowing the remaining portion (*i.e.* 1,326 rentable SF) to be used for a separate, unrelated purpose.⁵

Addressing the space reserved for an unrelated sublease, the remaining 1,326 rentable SF will be used for lease to unrelated parties. The space is shown on the attached architectural drawings.⁶ As depicted, this space is a separate unit with its own reception and waiting room. It is currently listed for lease with RE/MAX Dynamic Properties and is being actively marketed.⁷ The space will not be leased to another entity that is subject to certificate of need requirements. Because the intent is not to use the space, it will be leased to an unrelated party, who is not engaged in providing the same or similar services as Diagnostic Imaging of Alaska. Otherwise, any qualified business tenant whose operations are not a detriment to the appearance of the building or its occupants, would be welcome.

The space is currently vacant and being marketed per a listing agreement, Exhibit “D”, at \$1.85 a rentable square foot, plus 60 cents per rentable square foot for the pass-through utilities and

³ See attached Exhibit “B” (lease dated September 19, 2018 between AII Holdings LLC and Cable & McCormick, APC).

⁴ See attached Exhibit “L”

⁵ The entire building size is 8,411 square feet. While the lease says approximately 8,419 square feet, we have elected to go with the architect’s measurement of the building at 8,411 square feet as we believe it is more accurate and also it makes the numbers consistent. The separate unrelated leased space is 1,326 rentable square feet and bears its share of the common area. The common area is the entry (405 sq. ft.), washrooms (260 sq. ft.) and the mechanical and electrical rooms (190 sq. ft.) for a total of 885 square ft. So on a rentable basis, the leased unit is 1,326 rentable square feet and the imaging center space is 7,085 rentable square feet.

⁶ See attached Exhibit “C” (drawings by Wolf Architecture A1.2).

⁷ See attached Exhibit “D” (listing Agreement with RE/MAX Dynamic dated November 27, 2018).

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common area maintenance. As noted in the listing agreement this is \$2,453 per month, plus the pass-through costs for maintenance and utilities. These are the same pass through fees as paid on the prime lease. This amount of 60 cents per rentable square foot is based upon the pass through costs set forth in the master lease, Exhibit B at section 4.3(b). Those costs total \$795.60 per month. Over the term of the lease (24 months), these two costs (\$2,453 per month plus \$795.60 times 24 month) would total \$77,966.40. Allocating the option fee to that expense would add \$2,492.00 to the vacant marketed space cost, for a total of \$80,458.40.⁸

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.⁹

The lease rate for the 7085 rentable square foot diagnostic imaging center is \$1.85 per SF per month.¹⁰ Over the term of two years, this computes to \$314,574 (i.e. \$1.85 x 7085 SF x 24 months). Per the terms of the lease, Diagnostic Imaging of Alaska is also responsible for the Common Area Maintenance (“CAM”) fees, which are \$0.60 per SF per month. Over the term of two years, this computes to \$102,024 (i.e. \$0.60 x 7085 SF x 24 months).

The amendment to the lease removed the option to purchase the entire building. The option fee of \$15,575.00 was however retained by the landlord and is treated as a cost of the lease. For avoidance of doubt, Diagnostic Imaging of Alaska has included the option fee as part of the total lease expense for the purpose of this CON determination. Since the diagnostic imaging center is only 84% of the building,¹¹—84% of the fee should be counted for CON purposes as an expense of the leased space. This equates to \$13,083.

In total, the lease expense for CON purposes is the sum of the diagnostic imaging center’s lease payments over the two-year term plus the sum of the diagnostic imaging center’s CAM fees over

⁸ Although the option has been deleted by amendment, the fee has been retained by the landlord and remains a cost of the lease. This is consistent with the original lease where the landlord retained the option fee if the option was not exercised. The Amendment deleting the option is attached as Exhibit “L”.

⁹ See attached Exhibit “N” and Exhibit “O” (prior Department determinations).

¹⁰ The lease rate was the lease rate requested by the landlord in an arm’s length negotiation and meets the test for fair market value.

¹¹ See the architect’s calculation in Exhibit “A” n.1 *supra*.

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the two-year term plus the proportionate share of the unearned and abandoned option fee. This equals $\$314,574 + \$102,024 + \$13,083 = \underline{\$429,681}$.

B. Design & Construction

Diagnostic Imaging of Alaska engaged Wolf Architects to perform the design services for its project for the purpose of a design build contract to be built by Cadence General, LLC, an experienced design build contractor. The total contract, inclusive of design costs and total construction costs has a guaranteed maximum price (“GMP”) of \$338,208.¹² A design build contract differs from traditional construction contracts in that the responsibility for resolving design issues is resolved between the contractor and the architect within the GMP. This avoids the risk of cost overruns due to design errors or oversights. The GMP also contains a reasonable contingency to address any unknown conditions in the project. As noted, the project is scheduled to be complete within 90 days of the notice to proceed. A copy of the design build contract is attached along with the certified cost estimate from Cadence General, LLC.¹³ Based on this schedule, the cost of construction for the imaging center is \$338,208. The design cost is based on the actual proposal from Wolf Architecture, Inc, to undertake the design work for a total of \$44,600.¹⁴ The total is \$382,808.

In total, the design work and estimated construction amount to a total cost of \$382,808 for CON purposes. That pricing remains accurate today, with the project underway.

C. Equipment

The new diagnostic imaging center will house the following pieces of equipment: MRI, CT, C-Arm, Ultrasound, and an X-Ray.¹⁵ The attached quotes support the cost of each piece of equipment.

¹² This was clarified by an amendment to the contract. See attached Exhibit “M” (AIA 195 - 2008 Errata).

¹³ See Exhibit “E” (AIA 195 -2008). Exhibit “A” to Form AIA 195 has the guaranteed maximum price as well as the general contractor cost certification for the renovation project as required by 7 AAC 07.031(b)(2). It is on page 6 of Exhibit “A”. This was clarified by Exhibit “M”.

¹⁴ The design fees are by fee proposal contract dated September 21, 2018. See attached Exhibit “F”

¹⁵ 7 AAC 7.900(16)(A) defines equipment as “an installed device or system of devices necessary for the safe, functional, and medically appropriate operation of the facility[.]” Subsection (B) clarifies that it “does not include optional design features, furnishings, or décor choices that do not add to the minimum necessary for the safe, functional and medically appropriate operation of

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The MRI was purchased from the medical practice that previously occupied space in the 2110 East Northern Lights Boulevard building and is already in the building. It is a GS SIGNA MR 1.5 HDI (age: 2006 and upgraded in 2011). The contract purchase price is \$215,350.¹⁶ This is based upon the attached option to purchase for \$215,000 plus \$350 documentation fee.

The CT has been purchased from GE Healthcare (“GE”). The CT is a refurbished GoldSeal Optima –CT540, with a one year warranty and its cost is \$207,000, which includes installation.¹⁷

The C-Arm is an OEC 9900 Elite Office Pain Extended 9 Inch Super C-arm and accessory equipment and is invoiced at \$118,003. It is new and includes installation.¹⁸

The ultrasound is a Logic E9, (age: 2008) and its cost is \$2,819. This was based upon a cash payment of \$2,000, plus a trade of a portable ultrasound machine valued at \$819.¹⁹

Lastly, the X-Ray equipment, which is a Quantum Medical Imaging Model REF QG-40G (2013), was purchased from Denali Orthopedic Surgery for \$25,000.²⁰

In total, the cost of equipment: MRI \$215,350 + CT \$207,000 + C-Arm \$118,003 + Ultrasound \$2819+ X-Ray \$25,000 amounts to \$568,172 for this CON determination.

Conclusion

Diagnostic Imaging of Alaska seeks to open a new diagnostic imaging center at 2110 East Northern Lights Boulevard, Anchorage, Alaska. The center will be approximately 7,085 rentable SF, and include the following imaging modalities: MRI, CT, C-Arm, Ultrasound, and an X-Ray. Construction and renovation will be finished within 90 days of a notice to proceed with a total project cost of \$1,380,661.

the facility.” In other words, supplies, furniture, office décor, and other non-infrastructure items are not considered ‘equipment’.

¹⁶ See Exhibit “G” (GE quote dated September 27, 2018).

¹⁷ See Exhibit “H” (GE quote dated November 28, 2018). The options will not be ordered.

¹⁸ See Exhibit “I” (GE Health Care quote dated September 27, 2018).

¹⁹ See Exhibit “J” (bill of sale dated November 20, 2018). We have been verbally advised that the ultrasound is not equipment subject to review as part of the Certificate of Need program.

However, that has not been confirmed in writing, so we are including it for avoidance of doubt.

²⁰ See Exhibit “K” (Denali Orthopedic bill of sale dated September 14, 2018).

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Because the total costs associated with this project are less than \$1.5 million, per AS 18.07.031, we request your determination and concurrence that a CON is not required for this project.

We appreciate your time and attention to this request. Please do not hesitate to call if I can clarify anything for you in this request.

Sincerely,

ASHBURN & MASON, P.C.



Donald W. McClintock

Enclosures

Exhibits A-O