# **Independent Review of the Proposed Acquisition of the 716 Bldg**

Anchorage Community Development Authority.

ACDA was established in 2005 to become a somewhat autonomous and flexible public corporation, although it is a wholly owned municipal authority. This corporation has a separate board of directors, bylaws, employees, and a mission which are different from its government parent. The authority is an instrument of the municipality but exists independently of and separately from the municipality with powers listed within its code. It is the mission of ACDA to engage in community and economic development opportunities, including but not limited to the acquisition of vacant or abandoned property and facilities, with the goal of encouraging economic growth, commercial development, and safe and vibrant neighborhoods, and furthering the goals and objectives of municipal plans and policies. This municipal authority holds title to properties in its own name and not that of the MOA.

ACDA generates revenue from its properties and projects to create and develop opportunities that forward municipal goals and objectives, using innovation, partnerships, sound planning and incentives. The ACDA board of directors is required to consist of nine members based on relevant expertise and experience; with a diverse combination of community members and municipal employees. This authority pays Municipal Enterprise Service Assessment (MESA).

The MOA requested ACDA acquire the subject property, which was a vacant foreclosed building, on their behalf given the municipal charter restriction on lease-to-own transactions. At that time, the MOA was required to seek voter approval of a lease/purchase transaction if the value exceeded $1 million. ACDA did not have that restriction and owned assets in their name that were debt free and could be used as collateral for a loan for the purchase of the property. The Charter was amended in 2019 and the MOA can now enter into lease-to-own transactions which is the instrument that is anticipated to be used in the current proposed acquisition.

As ACDA was acquiring the property, a lease with the MOA was negotiated for use of the building. It is assumed since ACDA was purchasing the property on behalf of the MOA for use as the Anchorage Police Department Headquarters, ADCA intended to minimize its financial risk as the building owner. The rental rate, terms and conditions of the lease indicates shifting as much financial risk to the MOA as possible, including the CPI-U annual rent rate adjustment provision. Although this provision is not commonly used in commercial leases, some leases do contain a form of CPI adjustments. The MOA has two leases as the Lessor that contain a form of CPI adjustment and one current MOA lease, as the Lessee, on the Permit Center. See below:

*"4. RENT. Tenant covenants and agrees to pay to the Landlord rent at a monthly rate of One Hundred Thirty-Two Thousand Three Hundred Twenty-Five Dollars ($132,325) with annual rate adjustments, adjusted in accordance with the U.S. Department of Labor Consumer Price Index for Urban Consumers (CUP-U)."*

The lease also contains a provision for the future acquisition of the property by the MOA, indicating further purchase discussions during lease negotiations. This provision has standard industry language and provides the MOA with the option of First Offer to Purchase. This section of the lease outlines the parties' rights and obligations.

At the termination of this lease, ACDA has the following options:

1. Enter into negotiations for a new lease with the MOA; the rental rate, terms and conditions could be more favorable or less favorable than the current lease.
2. Sell the property to the MOA; the price, terms and conditions would be determined at that time.
3. Require the tenant, the MOA, to vacate immediately and restore the premises to their original condition with normal wear and tear excepted.
4. Sell the property to a third party without the Right of First Offer to Purchase provided to the MOA.

Anytime during the lease term, the term, covenants, and conditions of this contract can be modified by written agreement of all authorized representatives of the parties.

<u>Draft Purchase and Sale Agreement (PSA) for the Proposed Acquisition</u>

The current draft PSA is a standard municipal commercial document used in other similar acquisitions by the MOA. The purchase price, terms, covenants, and conditions reflect ORDINANCE No. 2022-104 (S). This document will normally remain in draft form until any amendments to the ordinance are incorporated and the ordinance is approved. PSA documents are normally confidential to the parties to the contract until escrow closing.

The purchase price has been established by negotiation between the parties as the fair market value of the property. The definition of Fair Market Value (FMV) in real estate is the determined price that a property will sell for in an open market. Both parties need to know of its uses and purposes to which the property is adapted, and for which is capable of being used. The FMV is agreed upon between a willing buyer and seller, both of whom are reasonably knowledgeable about the property in question.

When parties cannot agree on FMV, a commercial appraisal is commissioned. Generally, a commercial real estate appraisal is an unbiased valuation assessment to help determine the value of a commercial property. The most common reasons for an appraisal are to help commercial real estate sellers determine fair selling prices, help commercial buyers determine fair offer prices, and for lenders to value the collateral for a commercial loan.

In researching prior appraisals on the subject property that are of public record, I could only find one that was completed by Waronzof Associates from California commissioned by the Alaska Housing Finance Corporation for an Estimate of Rent Value dated June 1, 2014 regarding a prior owner's financing, along with an Evaluation of Cost Estimate for the redevelopment of the property by Braslavsky Consulting Engineers dated October 10, 2013. Other appraisals may have been completed on the property in the past, but prior owners and their private lenders may not have been required to make those documents public.

<u>Is the Acquisition of this Property in the Best Interest of the Municipality of Anchorage?</u>

Currently the MOA is subject to a lease for the next approximately fifteen- and one-half years that has an adjustable rental rate. Also, if an offer were to be presented to ACDA for the purchase of the subject property and ACDA determines the offer is legitimate and chooses to pursue a sale, the MOA will have to make the decision whether to acquire the property under the pressure of a competing offer. At that time, financing rates could be higher or lower compared to current rates and the MOA could have a new landlord if the property is not acquired under the Right of First Offer to Purchase. At the expiration of the current lease, the MOA has few options to continue occupancy of the building.

Also, currently the MOA pays the costs for the building as if they were the owners, given that every available expense has been shifted to them in the lease, as well as reimbursement of those expenses that are required to be paid by the property owner. The MOA reimburses ACDA for the District 1SD97 Special Assessment District, MESA on the property, and all insurance coverage costs paid by ACDA for the property. MOA pays for all maintenance and repairs on the property except for major maintenance, such as roof replacement, structural work and replacement of portions or the entirety of building systems. This type of lease is known as a triple net lease (triple net or NNN) whereby the tenant or lessee promises to pay all the expenses of the property, including real estate taxes, building insurance, and maintenance. These expenses are in addition to the cost of rent and utilities.

If the MOA has a policy goal of continued occupancy and use of the property without risking the loss of that use and wants a more stable annual cost for that occupancy, it would be in the best interests of the MOA to acquire the property now. I believe the purchase price of $18 million is a reasonable price for the building and could be substantially below the value established by a commercial appraisal. The 2023 municipal property tax assessment is $18,212,300. Additionally, the acquisition of the property would include an existing Version Wireless telecommunications lease for the roof of the building with an annual revenue stream in excess of $20,000.00.

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