

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made this 5th day of June, 2020, between the ARKANSAS DEPARTMENT OF COMMERCE – ARKANSAS DEVELOPMENT FINANCE AUTHORITY (ADFA) and ARKANSAS TRANSFORMATION AND SHARED SERVICES – DIVISION OF BUILDING AUTHORITY (DBA) for the purchase of 1 Commerce Way, Little Rock, Arkansas 72202.

The parties agree to the following:

1. ADFA agrees to sell and DBA agree to purchase the below described property for the sum of \$27,500,000.00 (purchase price).
2. Both parties acknowledge DBA shall acquire the property pursuant to ADFA’s issuance of bonds under the “State Agencies Facilities Acquisition Act of 1991” (Ark. Code Ann. §22-3-1401 et seq.).
3. The parties have received approval of the purchase from the Governor of Arkansas and will seek review by the Arkansas Legislative Council.
4. The closing date for the acquisition will occur at a mutually acceptable date to be agreed upon by both parties.
5. DBA has inspected the property and has determined it suitable for State purposes.
6. ADFA shall furnish to DBA, at ADFA’s expense, a current commitment for owner title insurance policy of the described Property in an amount equal to the Purchase Price within thirty (30) days of execution of this Agreement. DBA shall have the right to inspect the title commitment. Written notice to ADFA that the title is unmerchantable or of any other unsatisfactory title condition shown by the title commitment shall be signed by or on behalf of DBA and given to ADFA prior to bond closing.
 - a. Within fifteen (15) calendar days of execution of this Agreement, ADFA shall provide to DBA true copies of any and all leases(s) and survey(s) in ADFA’s possession pertaining to the Property and shall disclose to DBA all easements, liens or other instruments not shown by the public records of which ADFA has actual knowledge. ADFA shall disclose to DBA within fifteen (15) calendar days after execution of this Agreement, any information known to ADFA that would affect the value of the Property, including but not limited to, litigation, environmental contamination, building restrictions, zoning, soil conditions, environmental studies, flood plain or floodway existence, and any other conditions.
 - b. ADFA shall cooperate with the DBA in obtaining permits, consents, easements, and other legal processes affecting the Property necessary for DBA to purchase the Property. DBA shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by ADFA or revealed by such inspection shall be signed by or on behalf of DBA and given to ADFA. DBA may waive objection to said unsatisfactory title condition or DBA may terminate this Contract.

7. ADFA shall give to DBA a special warranty deed free and clear of all liens and encumbrances upon final payment of debt service.
8. ADFA shall provide executed Estoppel Certificates for any existing leases on the Property in which DBA was not acting as agent for ADFA.
9. DBA shall be entitled to possession of Property as of bond closing.
10. The ADFA assures that it has sole ownership and is in exclusive possession of the Property.
11. ADFA assures that all liens against the Property and all money owed on the Property are the responsibility of ADFA and any items not paid will be disclosed prior to bond closing.
12. ADFA assures that there does not exist any unrecorded right of way for roadway, utilities or other matters.
13. ADFA assures that there are no money judgments entered by a court against the ADFA which constitute a lien on the ADFA's Real Property.
14. ADFA assures that there are no unrecorded contracts of sale or options to purchase, or both, affecting title to the Property. ADFA shall not without the prior written consent of DBA enter into any new leases or occupancy agreements for space at the Property.
15. Fixtures will remain with Property.
16. ADFA will be responsible for all risk of loss and to provide fire and hazard insurance until the bond closing.
17. ADFA will manage, operate, repair and maintain, either on its own or by a management agreement, the Property (making all necessary repairs and replacements and performing all necessary maintenance) in accordance with prudent management and operating standards and will keep the Property in as good a condition as exists on the date this Agreement is executed, and will not, prior to the bond closing, delay or defer repair, replacement or maintenance work required in the ordinary course.
18. ADFA will not terminate or enter into any renewal, extension, modification or replacement of any existing Service Contract(s) or enter into any new employment, maintenance, service, supply or other agreement relating to the Property that is not terminable upon thirty (30) days- notice or less without the express written permission of DBA.
19. ADFA will provide a survey of the Property.
20. ADFA will disclose to DBA, any and all ADA (Americans with Disabilities Act) compliance/non-compliance issues including complaints or requests for information regarding potential or actual compliance/non-compliance issues, that ADFA is aware of.

21. ADFA shall disclose to the DBA any environmental hazards contained within or existing on the Property. Prior to bond closing ADFA agrees at its sole expense to remove from the Property, and to repair any damage associated with such removal, any medical waste, radioactive materials or hazardous materials.
22. ADFA has received no notice alleging or claiming any violation of zoning, health, environmental, or other laws, rules or regulations affecting the Property and ADFA has no knowledge of any such violations and will promptly notify DBA prior to bond closing, if ADFA receives such notice.
23. This Property is known as the Department of Commerce Building and is located at #1 Commerce Way, Little Rock, AR 72202. Its legal description is attached as Exhibit 1.
24. This Sale includes all buildings, appurtenances and fixtures on and below the described Property as well as all oil, gas and other mineral rights.
25. Any notice to be given by either party to this Agreement shall be in writing and shall either be delivered personally, or by telecopy or other commercial delivery service addressed as follows:

ADFA: Office of the ADFA President
#1 Commerce Way, Suite 602
Little Rock, AR 72202

DBA: Office of the DBA Director
501 Woodlane, Suite 101N
Little Rock, AR 72201

Notice shall be deemed given on receipt, if delivered by hand or by telecopy, or when delivered to the carrier delivering same, delivery charges paid and properly wrapped, sealed and addressed. Any party hereto may change the address to which notices are to be sent by a written notice given to the other parties to this Agreement in the manner set forth above;

26. Both parties acknowledge that the real property transfer tax (revenue stamps) imposed by Ark. Code Ann. § 26-60-105 does not apply to this transaction pursuant to §26-60-102(1) since this transaction involves a transfer to an agency of the State of Arkansas.
27. This Agreement embodies the entire contract between the parties hereto with respect to the Property and supersedes any and all prior agreements and understandings, written or oral, formal or informal. No extensions, changes, modifications or amendment made or claimed by ADFA or DBA shall have any force or effect whatsoever, unless the same is contained in writing and is fully executed by the party against who such matter is asserted.
28. This Agreement shall be governed by the laws of the State of Arkansas.
29. If any term or provision of this Agreement shall be held to be illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby,

but each such remaining term and provision shall be valid and shall remain in full force and effect.

Executed by the parties who individually represent that each has the authority to enter this Agreement.

Secretary
Department of Commerce

Date

President
Arkansas Development Finance Authority

Date

Amy Fisher

Secretary
Department of Transformation and Shared Services

06/05/2020

Date

Clarence Rudlaw

Director
Division of Building Authority, Director

6/5/2020

Date