



RESTAURANT CONCESSION

REQUEST FOR PROPOSALS

Please check your packet for the following:

1. Schedule
2. Ad for Request for Proposals
3. Request for Proposal Information
4. Proposal Submittal Form
5. Proposed Monthly Percentage Rate
6. Proposer's Questionnaire
7. Restaurant Concession Agreement - Draft
8. Exhibit A – Certified Activity Report
9. Exhibit B – Terminal Floor Plan
10. Exhibit C – Restaurant Equipment List
11. Exhibit D – Restaurant Safety & Maintenance list

Thank you for your interest in this concession.



RESTAURANT CONCESSION RFP SCHEDULE

The City of Kenai is proposals to provide a Restaurant Concession in the airport terminal building. Packets and detailed specifications may be picked up at the Airport Administrative office in the terminal building, 305 N. Willow, Suite 200, Kenai, Alaska. If you have any questions, please call 907-283-8281.

Date/Time	Event	Other information
January 31st and February 3rd, 2024	Advertising	<i>Peninsula Clarion</i>
February 13	Non-mandatory pre-proposal conference	<i>2:00 PM</i>
February 16	Last day for questions	<i>2:00 PM</i>
March 1, 2024 Friday—2:00 PM	RFP Due	<i>No proposals accepted after 2:00 PM</i>
March 20, 2024 Wednesday	Successful proposer to Council	
May 1, 2024	Concession Agreement starts	

Kenai Airport

305 N. Willow, Suite 200
Kenai, AK 99611

Phone: 907-283-8281
Fax: 907-283-3737
Email: sconley@kenai.city



REQUEST FOR PROPOSALS
RESTAURANT CONCESSION



The City of Kenai is soliciting Request for Proposals from qualified individuals to operate a **Restaurant Concession** in the Kenai Airport Terminal Building. An individual, partnership, corporation, or any other legal entity under the same or different names may submit only one bid.

A pre-proposal conference and café tour will be held **2:00 P.M., February 13, 2024** in the Airport Administrative Office, Kenai Municipal Airport Terminal, 305 N. Willow, Suite 200, Kenai, Alaska.

The Request for Proposal may be examined and/or obtained in the Airport Administrative Office, Kenai Airport, 305 N. Willow, Suite 200, Kenai, Alaska. Telephone (907) 283-8281.

The City will receive proposals in the Airport Administrative Office, at the address above, until **2:00 P.M. local time on Friday, March 1, 2024.**

All interested parties, including Disadvantaged Business Enterprises, are encouraged to submit proposals. The City of Kenai will not exclude bidders on the grounds of race, color, creed, national origin, or sex.

Persons with a disability who need special accommodations concerning this concession offering should contact Derek Ables, Airport Manager, at the above address and telephone number.

Peninsula Clarion Published: January 31 and February 3, 2024



CITY OF KENAI

REQUEST FOR PROPOSALS

RESTAURANT CONCESSION

At

THE KENAI MUNICIPAL AIRPORT TERMINAL

Issued: January 31, 2024

Section I: Introduction

TERMS OF REQUEST

The City of Kenai requests proposals for the nonexclusive right to operate a restaurant concession at the Kenai Municipal Airport Terminal. The limited nature of these rights is outlined in the Concession Agreement included with this Request for Proposals package. An individual, partnership, corporation, or any other legal entity under the same or different names may submit only one proposal.

All interested parties, including Disadvantaged Business Enterprises, are encouraged to submit proposal proposals. The City of Kenai will not exclude proposers on the grounds of race, color, creed, national origin, or sex.

The airport manager may amend details regarding the Request for Proposals, the summarized Concession Agreement, or the date, time, or place of any pre-proposal conference or for proposal submission by notice to all persons who have requested a copy of the Request for Proposals and without further publication. All potentially interested persons are encouraged to request a copy of the Request for Proposals and thereby become registered to receive a copy of any addenda that the City may issue regarding this solicitation.

For a copy of the Request for Proposals, contact the Airport Manager's Office, Kenai Airport, 305 N. Willow, Suite 200, Kenai, Alaska. Telephone (907) 283-8281.

It is each proposer's responsibility to examine carefully all documents that relate to this offering and to determine all conditions that may affect its proposal. A proposer's lack of understanding due to failure to thoroughly examine these documents is not grounds for modification of, or relief from, any term or condition of this offering based on a claim that the proposer misunderstood that term or condition. A pre-proposal conference will be held on **February 13, 2024, 2:00 p.m.**, in which participation, is strongly encouraged.

A proposer must submit a complete proposal and all forms furnished by the City as described in the RFP documents. The City must receive proposals in the Airport Manager's Office, located in the Kenai Municipal Airport Terminal, 305 N. Willow, Suite 200, Kenai, Alaska 99611, telephone 907-283-8281, by **2 P.M. local time on March 1, 2024**. The City will return any proposal received after this time.

All information submitted with the proposal becomes property of the City of Kenai and public information. All information submitted by the successful proposer will remain property of the City. All parts of all proposals become public information at the time the City issues a notice of intent to award. A proposer may not withdraw its proposal after the time and date set for submittal of proposals.

Persons with a disability who need special accommodations concerning this concession offering should contact Derek Ables, Airport Manager, at the above address and telephone number.

The City may reject any or all proposals and waive any minor defect, unless otherwise specified in these proposal documents, if it determines that the rejection or waiver is in the City's best interest. If the City rejects any or all proposals, the City may advertise for new proposals or award the concession privilege in any manner it believes is in its best interest. The City is not obligated to enter into an agreement with any proposer. The City is not responsible for any cost associated with the preparation or submission of proposals.

GOALS FOR THE RFP

It is important for Proposers to note that the airport operating environment presents a unique set of challenges that do not exist in a typical restaurant setting. Following are some key factors that may affect concession operations at the Airport:

- The airport is open every day of the year.
- Airport customers have a limited amount of time to spend in restaurants and must be served quickly.
- Major flight delays, generally, weather related, are not uncommon. An airport is affected not only by local weather, but also by weather in other parts of the country. This can result in a significant population of restless travelers at unusual hours. The restaurant operations plan must be flexible enough to provide extended hours or accommodate the additional business and customer service these delays afford.
- The terminal is a non-smoking facility.

The City's objectives for this Concession Agreement offering are as follows:

- Top quality food and beverage products and customer service consistent with industry standards and as provided at airports of a similar size.
- Hours of operation should be the best to serve the terminal employees, traveling public and other airport users. Concession should be open a minimum of 60 hours per week and 7 days per week.
- Service, hours of operation and products that attract local clientele to the airport.

- An experienced concessionaire that will properly care for and maintain the City's significant investment in infrastructure.
- A restaurant business that complements the airport environment and invests in the improvement of the decoration and upkeep of the space allocated.
- Optimum utilization of designated terminal space, including food and beverage preparation, serving areas, storage areas, and dining space.
- A concessionaire with experience in the food and beverage industry and a willingness to be flexible through the term of the contract to respond to changing airline schedules and other local factors.
- Reasonable fees to the airport commensurate with the objectives listed above.

The City's proposal review committee will determine how well a responsive proposal meets these objectives by an evaluation of the proposer's responses to the criteria established by the City.

HISTORICAL DATA FOR PROPOSERS

Restaurant Gross Receipts

2019 \$300,625.22
 2020 \$248,969.16
 2021 \$350,422.49
 2022 \$423,534.63
 2023 \$432,488.38 * Through October

Passenger Enplanements

2019- 95,004
 2020- 32,431
 2021- 67,844
 2022- 73,465
 2023- 71,605

Enstar Natural Gas

2022 \$4,763.95
 2023 \$4,735.22

PROPOSAL EVALUATION

Each responsive proposal will be evaluated, and the best proposal selected, based on the following criteria (a more detailed description of evaluation criteria is in Section II of this RFP under the title Specific Evaluation Criteria) and related weights:

A.	Experience and Qualifications	30
B.	Management and Operations Plan	20
D.	Disadvantaged Business Enterprise	10
E.	Proposed Monthly Percentage of Gross Receipts	<u>40</u>
	TOTAL	100

The proposal review committee will evaluate and score the criteria. The proposal review committee will, in its discretion, conduct interviews or request refined proposals from all proposers reasonably susceptible of award. After the proposal review committee completes its evaluation, and any necessary responsibility review is completed, the committee will provide the City Manager a written summary of its findings and a recommendation for the Concession Agreement award. The City Manager will, in the Manager's discretion, award the Concession Agreement as recommended or reject all proposals.

OVERVIEW OF CONCESSION OFFERING

Some provisions of the concession offering are listed below. Please read the complete offering for details. In case of a conflict between this Request for Proposals and the Restaurant Concession Agreement, the agreement controls.

CONCESSION TERM: Three years, beginning May 1, 2024 thru April 30, 2027.

EXTENSION: This Agreement may be extended for two successive one-year terms by mutual written consent of Owner and Concessionaire.

RIGHTS GRANTED: The non-exclusive right and obligation to operate a restaurant and if exercised and continued to operate, the restaurant concession business in the Kenai Airport. Failure to provide a restaurant concession service may result in the termination of this contract and all associated lease space and concession rights. Failure to provide any of these services for 30 consecutive days could result in loss of such rights.

PREMISES: The successful proposer will occupy Spaces 102,103,104,105,106 consisting of approximately 2,200 square feet.

AWARD: If there is an award, the City will award the Concession Agreement to the best responsive proposal selected by the City. The best responsive proposal is the proposal by a responsible proposer that, in the judgment of the City, best meets the City's goals and objectives as described above.

The successful proposer must sign and deliver the Concession Agreement to the Airport Manager's Office at the address previously listed within ten (10) calendar days after receipt of the award notice. The City may annul the award and retain the proposal deposit as liquidated damages for the lost benefit to and related additional costs incurred by the City if the successful proposer does not return the signed Concession Agreement within the required time. The City may then, in its discretion, award the Concession Agreement to the next best proposer.

MONTHLY PERCENTAGE OF GROSS RECEIPTS: Each proposer shall submit a percentage rate of 10% or greater that proposer will pay of gross receipts from sales during each month of Agreement.

CATERING: Concessionaire may provide catering services to private aircraft as well as off-premises as part of the restaurant function; however, all catering sales are also subject to the same fees as described above. Catering service is not exclusive to the restaurant concession.

UTILITIES: City shall pay for garbage removal and electrical utilities including heat and normal air conditioning during the operating hours of the terminal. All other utilities and services including gas, telephone communication, internet, cable, and other utilities and services incident to the Concessionaire's business, shall be operated and maintained at the Concessionaire's sole expense.

MAINTENANCE: Concessionaire shall be responsible for all routine upkeep, maintenance and cleaning of all City owned equipment. Concessionaire shall be responsible for all repairs/replacement costs associated with Concessionaire owned equipment. The concessionaire shall pay a \$1,000 per month maintenance fee to the City for the repair and replacement of all City owned equipment.

HOOD SYSTEM: Concessionaire will be responsible to have the hood system, including all fire protection, professionally cleaned and inspected at the Concessionaire's expense, three times per year. .

SECURITY DEPOSIT: The successful proposer will be required to provide a security deposit or bond for the same in the amount of \$3,000. This deposit or bond will be used by the City to remedy any proposer to comply with the contract terms or otherwise will be held until and if the premises is vacated by the proposer in full compliance with all agreement terms. The security deposit or bond must be provided to the City prior to execution of the Restaurant Concession Agreement.

INSURANCE REQUIREMENTS: The Concessionaire will, throughout the term of this Agreement and at its own expense, secure and keep in force adequate insurance, as stated below, to protect the City and the Concessionaire. Where specific limits are stated they are the minimum acceptable limits. If the Concessionaire's insurance policy contains higher limits, the City is entitled to coverage to the extent of the higher limits.

- a. Comprehensive general liability insurance with coverage limits not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence where generally applicable, including in-Terminal operations, independent contractors, products, and completed operations, broad-form property damage, blanket contractual, and personal injury endorsements.
- b. Worker's Compensation insurance with coverage for all employees engaged in work under this Agreement as required by AS 23.30.045. The Concessionaire is responsible for Worker's Compensation insurance for any subcontractor who directly or indirectly provides services under this Agreement.
- c. Comprehensive automobile liability insurance covering all owned, hired, and non-owned vehicles with coverage limits not less than \$250,000 combined single limit per occurrence.

All insurance required by this Article must meet the following requirements:

- a. For comprehensive general liability insurance, name the City additionally insured.
- b. For worker's compensation insurance, general liability when available, and automobile liability insurance include a waiver of subrogation so that the insurer waives all rights of subrogation against the City for payments made under the policy.
- c. Provide the City notification at least 20 days before any termination, cancellation, or material change in insurance coverage.
- d. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.

POSSESSORY INTEREST (TAXES): The proposer should be aware that the Kenai Peninsula Borough is the local tax authority. One of the taxes applicable to this proposal is Possessory Interest on lease holding. It is the proposer's sole responsibility to research any and all tax liability relevant to this proposal.

Section II: Instructions to Proposers

PROPOSAL SUBMITTALS

Proposers must submit proposals in a sealed envelope that is clearly marked on the outside with the proposer's name and the following label.

“Restaurant Concession – Kenai Municipal Airport”

If the proposal is mailed, the proposer must enclose the sealed envelope containing the proposal forms in a second envelope for mailing. The City will not consider late, electronic, or telephone proposals.

REQUIREMENTS FOR A COMPLETE PROPOSAL

The following three items constitute a complete proposal:

- A. A completed, signed, and notarized Proposal Submittal form
- B. A completed, signed, and notarized Restaurant Concession Monthly Percentage Rate of Gross Receipts Proposal in a separate sealed envelope
- C. A completed, signed, and notarized Proposers Questionnaire

SPECIFIC EVALUATION CRITERIA

The proposer should clearly label or key its response to each specific evaluation criterion. For example, for information the proposer submits in response to the “Experience and Qualifications” criterion, the proposer should clearly label the response “Experience and Qualifications.”

The specific evaluation criteria are listed below. Weighting is in parenthesis after the heading. At a **minimum**, the proposer's responses to this Evaluation Criterion must address the following:

1. Experience and Qualifications (30)

- a. Describe in detail the proposer's experience in the food and beverage industry. Experience in operation of such a business in the local area or at an airport is highly desired, but not required.

2. Management and Operations Plan (20)

- a. Key personnel; proposer should provide a list of individuals that will be responsible for the overall operation of the business and also of individuals responsible for day-to-day operations, if different.
- b. Proposed days and hours of operation including staffing or reduced service. (The City recognizes the long hours the airport is open may not be conducive to operation of a full-service restaurant, however, having

some level of food and beverage service during slower times is **very** desirable.)

- c. Proposed menu.
- d. Services to be provided, i.e. how does the proposer plan to meet the needs of customers who plan to eat on the premises as well as customers who place carry out orders in a timely manner?

3. Proposer is a certified Disadvantaged Business Enterprise (DBE) as defined in 49 CFR Part 23 (10)

- a. Proof of DBE certification must be submitted with the proposal.

4. Proposed Monthly Percentage of Gross Receipts (40)

- a. Points awarded for proposed monthly percentage rate of gross receipts. The minimum proposed monthly percentage of gross receipts must be at least 10%.
- b. This portion of the proposal must be submitted on the completed, signed, and notarized Kenai Municipal Airport Proposal Submittal Form attached to this RFP in a separate enclosed envelope.

PROPOSAL REVISION OR WITHDRAWAL

The following is required to withdraw or revise a proposal after submitting it to the City:

- A. The proposer's name must clearly appear on the outside of the sealed proposal. The City will not open any envelope for proposer identification or any other reason before **2:00 P.M., March 1, 2024.**
- B. The proposer must submit a written request for the return of the proposal that is signed and notarized by the proposer or its authorized representative.
- C. The proposer must complete any proposal withdrawal or revision before **2:00 P.M., March 1, 2024.**

The City will not accept electronic or telephonic proposal revisions or withdrawals.

GENERAL INFORMATION

This offering does not guarantee or imply that the successful proposer will make a profit. A proposer must have the ability to perform all obligations of the Concession Agreement and the proposal it submits. It is each proposer's responsibility to carefully examine all documents that relate to this concession offering and to judge for itself all conditions that may affect its proposal. A proposer's failure to thoroughly examine these documents is not grounds for any claim that the proposer misunderstood the conditions of the concession offering.

The City may perform any investigation it deems necessary to determine the proposer's ability to perform these obligations. The City may require that a proposer furnish additional information, including financial information, to determine if the proposer is

responsible and able to perform the obligations of both its proposal and the Concession Agreement.

The City may reject any or all proposals and waive any minor defect, unless otherwise specified in these RFP documents, if it determines that the rejection or waiver is in the City's best interest. If the City rejects any or all proposals, the City may advertise for new proposals or award the concession privilege in any manner it believes is in its best interest. The City is not obligated to enter into an agreement with any proposer. The City is not responsible for any cost associated with the preparation or submission of proposals.

**CITY OF KENAI
KENAI MUNICIPAL AIRPORT
PROPOSAL SUBMITTAL FORM**

Affirmation and Signature

The undersigned confirms that they are authorized to submit this proposal.

The undersigned has read this proposal and affirms that the undersigned is authorized to sign this proposal and confirms the truth and accuracy of all Statements, answers, and representations made in this proposal.

(If the proposer is a partnership or joint venture, all general partners or members of the joint venture must sign; if the proposer is a corporation, the signature of one authorized representative is sufficient unless the corporation requires two or more signatures.)

(Corporate Seal if
A Corporation)

Name of proposer as it should appear in the
Concession Agreement

Signature

Signature

Title

Title

Signature

Signature

Title

Title

**CITY OF KENAI
KENAI MUNICIPAL AIRPORT**

**RESTAURANT CONCESSION
PROPOSED MONTHLY PERCENTAGE RATE**

Date _____

The undersigned (individual, partnership, joint-venture, or corporation) offers to enter into the Concession for the right to operate a restaurant concession business in the Kenai Municipal Airport.

The proposer offers to pay the following monthly percentage rate of gross receipts in addition to utility costs for gas, and \$1000 monthly maintenance fee for the maintenance and replacement of city owned equipment.

Proposed Monthly Percentage
Rate of Gross Receipts _____ %

Percentage rate must be (10%) or greater

The proposer acknowledges receipt of the following addenda related to this offering for this Concession Agreement.

Addendum No. _____

(If the proposer is a partnership or joint venture, all general partners or members of the joint venture must sign; if the proposer is a corporation, the signature of one authorized representative is sufficient unless the corporation requires two or more signatures.)

Signature

Title

Signature

Title

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2024
_____, being personally known to me or having
produced satisfactory evidence of identification, appeared before me and
acknowledged the voluntary and authorized execution of the foregoing instrument
on behalf of said Corporation.

Notary Public for Alaska
My Commission expires: _____

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____ 2024,
_____, being personally known to me or having
produced satisfactory evidence of identification, appeared before me and
acknowledged the voluntary and authorized execution of the foregoing instrument
on behalf of said Corporation.

Notary Public for Alaska
My Commission expires: _____

**CITY OF KENAI
KENAI MUNICIPAL AIRPORT**

RESTAURANT CONCESSION

PROPOSER'S QUESTIONNAIRE

The proposer must submit the information requested in this questionnaire with its proposal. Attach additional pages, as necessary, and label responses with the same item number of the information requested. The proposer must make complete and accurate statements and present them in the form requested. The City reserves the right to reject a proposal for omissions, inaccuracies, or misstatements in this questionnaire or any attachment.

1. Name of proposer's contact:

2. Proposer's mailing address as it should appear in the Concession Agreement.

3. Proposer's physical address:

4. Proposer's telephone number: _____

5. Proposer's facsimile number: _____

6. Proposer's e-mail address: _____

7. If awarded the agreement, the proposer intends to operate as the following:

() Individual () Joint Venture () Sole Proprietorship
() General Partnership () Corporation () Limited Liability Company

8. Give the name, location, and date of any concession agreement with an airport or other public agency that was terminated, assigned, or transferred, within the past five years, either voluntarily or involuntarily, before expiration of the agreement. Please explain the circumstances. If none, mark this box [].

9. If the proposer ever had a bond or surety canceled or forfeited, explain the circumstances surrounding the cancellation of forfeiture as well as the name of the bonding company, date, and amount. If none, mark this Box [].
10. If the proposer ever declared bankruptcy, explain the circumstances surrounding the bankruptcy as well as the date, court jurisdiction, amount of liabilities, amount of assets, and status of any current bankruptcy action. If none, mark this box [].

The undersigned read this questionnaire and says on oath of affirmation that the undersigned is authorized to sign this questionnaire and confirms the truth and accuracy of all statements, answers, and representations made in this questionnaire, including all attached supplementary statements.

(If the proposer is a partnership or joint venture, all general partners or members of the joint venture must sign; if the proposer is a corporation, the signature of one authorized representative is sufficient unless the corporation requires two or more signatures.)

(Corporate Seal if
a Corporation)

Signature

Title

Signature

Title

Subscribed and sworn to or affirmed before me on the ____ of _____, 2024.

Notary Public in and for: _____

My commission expires: _____

**CITY OF KENAI
KENAI MUNICIPAL AIRPORT
RESTAURANT CONCESSION AGREEMENT**

XXXXXXXXXXXXXX, individually (Concessionaire), (NAME OF BUSINESS), (ADDRESS) (CITY), Alaska 99611, and the **CITY OF KENAI**, a municipal corporation, organized and existing under the laws of the State of Alaska (City), 210 Fidalgo Avenue, Suite 200, Kenai, Alaska 99611, hereby enter into this contract for restaurant concession services at the Kenai Airport, the term of which is May 1, 2024 through April 30, 2027.

INTRODUCTION

- A. The City owns and operates the Kenai Municipal Airport, located in Kenai, Alaska.
- B. In connection with the Airport, the City owns the Terminal.
- C. The City has determined that offering a Restaurant Concession Agreement by the competitive bid process is in the best interest of the City and the traveling public.
- D. The Concessionaire desires to operate the Restaurant Concession in the Terminal.
- E. The City solicited competitive bids for the Restaurant Concession, and the Concessionaire was the successful bidder.

ARTICLE I: DEFINITIONS

The following definitions apply for this Agreement:

- A. Agreement: This Agreement, together with:
 - 1. *Certified Activity Report* form (CAR) (Exhibit A)
 - 2. Drawing of Airport Restaurant Space 102/103/104/105/106 (Exhibit B);

3. List of city-owned equipment in the restaurant (Exhibit C);
 4. Restaurant Safety & Maintenance List (Exhibit D);
 5. Successful Proposal (Exhibit E); and
 6. All future amendments or supplements executed by the parties to this Agreement.
- B. Airport: The real property and facilities of the Kenai Municipal Airport, 305 N. Willow, Kenai, Alaska, as they exist on the execution date of this Agreement, together with any future additions or expansions.
- C. Airport Manager: The City's designated manager at Kenai Municipal Airport acting directly or through a duly authorized representative.
- D. Certified Activity Report: A report that lists the Gross Sales generated by the Restaurant Concession during the calendar month for which payment is made. The format of the Certified Activity Report is specified in Exhibit A.
- E. Concessionaire: The successful bidder for this Restaurant Concession Agreement, who enters into this Agreement, or any other subsequent Concessionaire as provided under Article XXI (Assignment or Subletting) of this Agreement.
- F. Disadvantaged Business Enterprise (DBE): A business certified by the City of Kenai or the State of Alaska, as a disadvantaged business enterprise as defined in 49 CFR, Part 23.
- G. Entertainment Device: A mechanical or electronic device, video game, or similar item used for personal entertainment in a public place.
- H. Manager: That person described in Article VII and having authority to act for the Concessionaire.
- I. Premises: The floor space available to the Concessionaire for the uses authorized under this Agreement is as shown below (also see Exhibit B):
- The premises known as the restaurant area of the Kenai Municipal Terminal within the Northwest Quarter (NW ¼) of the Southeast Quarter (SE ¼), Section 32, Township 6 North, Range 11 West, Seward Meridian, in the Kenai Recording District, Third Judicial District, State of Alaska.
- J. Term: The period of time specified under Article II of this Agreement.
- K. Terminal: The City of Kenai passenger terminal building at the Airport.

- L. Vending Machine: A coin-operated device for selling nonalcoholic beverages or food items.

ARTICLE II: TERM

- A. Term: This Agreement is effective on the date it is signed on behalf of the City. The City grants the Concessionaire the rights listed in Article III beginning at 12:01 a.m., **May 1, 2024** and ending at **12:00 midnight on April 30, 2027**, with an opportunity to extend for two successive one-year terms by mutual written consent of Owner and Concessionaire.
- B. Holding Over: If the Concessionaire holds over without a written renewal of this Agreement after it expires, the holding over does not operate as a renewal or extension of the rights granted under this Agreement, but only creates a month-to-month tenancy, regardless of any payment the City accepts. The Concessionaire's obligations to perform under this Agreement will continue until the City terminates the month-to-month tenancy. The City may terminate the holdover tenancy at any time by giving the Concessionaire at least 10 days' written notice. The monthly payment for any holdover period is the monthly rental fee.

ARTICLE III: RIGHTS GRANTED, RESERVATIONS, AND PROHIBITIONS

Subject to the rights and obligations under this Agreement, the City grants the Concessionaire the authority to exercise the following rights:

- A. Non-Exclusive Rights: The City grants the Concessionaire the following non-exclusive rights:
1. To prepare, serve, or sell food and beverage items, except vending machines.
 2. To provide in-flight meal service for airline crews and passengers.
 3. To provide delayed-flight meal service inside aircraft parked at the Terminal.
 4. To prepare, serve, and sell food and nonalcoholic beverages to customers in the Airport Terminal or off the Airport.
 5. To install and operate Entertainment Devices on the premises when approved in writing by the Airport Manager.

B. General Rights: The City grants the Concessionaire the following general rights:

1. To ingress, egress, and occupy the premises by the Concessionaire, its officers, contractors, suppliers, service personnel, guests, patrons, and invitees, subject to the security rules of the Airport.
2. To construct and install fixtures, equipment, and other improvements necessary to operate the concession, subject to the prior written approval of the City (Article X of this Agreement).

C. Reservations: The City reserves the following rights:

1. To authorize airlines to provide Restaurant service in airline VIP rooms.
2. To grant others any right or privilege not specifically and exclusively granted to the Concessionaire.
3. To allow airlines to provide complementary coffee and snacks during hours when food and beverage service provided under this agreement is not available.
4. The rights and privileges granted the Concessionaire under this Agreement is the only rights and privileges granted the Concessionaire. The Concessionaire has no easements, rights, or privileges, expressed or implied, other than those specifically granted under this Agreement.

D. Prohibitions: This Agreement prohibits the Concessionaire from the following:

1. To provide any service or product not described in this Agreement without the prior written consent of the City. If a question or dispute arises concerning the sale of any service or product, the Concessionaire may submit a written request to the City asking for a review and decision concerning the dispute. The City will deliver a written decision to the Concessionaire, and the decision of the City is final.
2. To sell any item or service for which the City has granted exclusive concession rights to others.
3. To divert any business or cause or allow by its own actions any business to be diverted from the Airport.

E. Hours/Days of Operation: The Concessionaire will be open for a minimum of 60 hours per week, 7 days per week, with the hours of operations outlined in their

proposal and attached as exhibit E. The Airport Manager must approve changes to hours of operation, in writing. If the concessionaire requests to operate for fewer hours then the City shall have the option of advertising for proposals and negotiating a new contract and terminating the existing contract if it is in the best interest of the City.

- F. Emergency Closures: The City recognizes that emergencies may occur that are beyond the control of the concessionaire. If an emergency arises that requires an unexpected closure then the Concessionaire will notify the Airport Manager of the circumstances in writing. If excessive closures occur, the City shall have the option of terminating this contract.
- G. Closure for Repairs: The parties recognize that major repairs of the building and city owned equipment may occur during the life of this contract. The City reserves the right to cause interruptions to the utilities and other amenities as necessary to conduct normal repairs. If such interruptions are minimal and notification of such work is provided the concessionaire then the City is not held liable for lost revenue.

ARTICLE IV: PREMISES

The City will deliver the premises to the Concessionaire at 12:01 a.m. on **May 1, 2024**. The Concessionaire accepts the premises in its then-present condition and as is. The Concessionaire acknowledges that the City's obligation is limited to making the premises available to the Concessionaire for its use.

ARTICLE V: FEES AND PAYMENTS

- A. Monthly Percentage of Gross Receipts: For the rights and privileges granted under this Agreement, the Concessionaire will pay the City a monthly percentage of gross receipts _____%, plus applicable sales tax.

The percent required to be paid shall be paid for each calendar month during the term of this Agreement and shall be due and payable on the tenth (10th) day of the calendar month succeeding the month for which the payment is applicable.

Concessionaire shall provide a Certified Activity Report (CAR) for each month of the preceding month for the City's audit purposes to determine compliance with this requirement. The Concessionaire shall submit each CAR in the format shown in **Exhibit A**. The CAR shall be submitted to the Airport Manager's office at the Airport.

Percentage payment payable to the City by the Concessionaire under this Agreement shall be owned by the City at the time of each customer transaction and will be held in trust by the Concessionaire while the funds are in Concessionaire's custody and control. The Concessionaire is responsible for these fees until delivered to the City. If any fees payable to the City are lost, stolen, or otherwise unlawfully removed from the custody and control of the Concessionaire, the Concessionaire remains responsible to the City for the revenue.

1. Gross sales numbers are confidential to the extent allowed by law.
 2. Payments must be submitted to City of Kenai, Finance Department, 210 Fidalgo, Kenai, AK 99611.
 3. The Concessionaire will make its payments free from any claim, demand, setoff, or counterclaim of any kind against the City, and will make its payments in cash or by check, bank draft, or money order payable to the City of Kenai.
- B. Utilities: City shall pay for garbage removal and electrical utilities including heat and normal air conditioning during the operating hours of the terminal. All other utilities and services including gas, telephone communication, internet, cable and other utilities and services incident to the Concessionaire's business, shall be operated and maintained at the Concessionaire's sole expense.
- C. Catering: Concessionaire may provide catering services to private aircraft as well as off-premises as part of the restaurant function; however, all catering sales are also subject to the same fees as described above. Catering service is not exclusive to the restaurant concession.
- D. Waiver of Monthly Rental:
1. The City will waive the monthly percentage payment if any of the following events occur:
 - a. Any event, not the fault of the Concessionaire that so damages the Terminal, or city owned equipment, and prevents the normal operation of the Concessionaire's business for more than 30 consecutive days. If the normal operation of the Concessionaire's business is prevented for more than 30 consecutive days, this waiver is effective from the first day following the period of 30 consecutive days and will continue until normal operations can resume.

- b. Complete closure of the Airport to the commercial air transport of passengers for more than 30 consecutive days. If complete closure of the Airport exceeds 30 consecutive days, this waiver will be effective from the first day following the period of 30 consecutive days and will continue until the Airport is reopened to the commercial air transport of passengers.
2. For the purposes of this Section, if the waiver period does not fall on the first or last day of the month, the minimum rent may be prorated on a daily basis to determine the Concessionaire's correct monthly fee.
3. At its discretion, the City will either credit any overpayment resulting from a waiver toward future payments due the City or refund the overpayment to the Concessionaire.
- E. Fees Vest in the City: Whether for cash or credit, the fees due the City for the services the Concessionaire is authorized to provide under this Agreement immediately vest in and become the property of the City. The Concessionaire is responsible for those fees until delivered to the City.
- F. Unpaid Fees: Any rent, charge, fee, or other consideration due but unpaid at the expiration or voluntary or involuntary termination or cancellation of this Agreement is a charge against the Concessionaire and its property, real or personal, and the City has any lien rights allowed by law. Either the City or its authorized agent may provide enforcement.
- G. Security Deposit: The successful proposer will be required to provide a security deposit or bond for the same in the amount of \$3,000.00. This deposit or bond will be used by the City to remedy any late payments, property damage, or other costs incurred due to the failure of the proposer to comply with the contract terms and otherwise will be held until and if the premises is vacated by the successful proposer in full compliance with all agreement terms. The security deposit or bond must be provided to the City prior to the execution of the Restaurant Concession Agreement.
- H. Closure Fees: Concessionaire shall be open a minimum of 60 hours per week, 7 days per week. The City may require the Concessionaire to pay a penalty of \$200 per week for any week the Concessionaire is not open a minimum 60-hours, 7 days per week unless the City authorizes in writing a reduction of hours for that week. This penalty will be in addition to normal fees due the City under this concession agreement.
- I. Maintenance Fee: Concessionaire shall pay a \$1,000 monthly maintenance fee to the city for repair and replacement of city owned equipment.

ARTICLE VI: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

DISADVANTAGED BUSINESS ENTERPRISES (DBE'S): The City of Kenai's policy is to ensure that DBE's have the maximum opportunity to participate in the performance of Airport concession contracts.

(a) Concessionaire's obligation: The Concessionaire will ensure that DBE's have the maximum opportunity to participate in the performance of this agreement.

This agreement is subject to the requirements of the United State Department of Transportation's regulations, 49 CFR, Part 23, Subpart F. The Concessionaire Agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR, Part 23, Subpart F. The Concessionaire agrees to include the above statements in any subsequent concession arrangements that it enters and cause those businesses to similarly include the statements in further agreements.

The Concessionaire will comply with all applicable laws and regulations regarding the fair and equitable treatment of DBEs now in effect or which may subsequently take effect during this Agreement. The Concessionaire will include a provision to this effect in any subcontract or other arrangement for DBE participation entered into under this Agreement.

ARTICLE VII: PERSONNEL

The Concessionaire will maintain an adequate staff with the experience necessary to meet the provisions of this Agreement.

- A. Manager: The Concessionaire will select and properly train a Manager responsible for the general day-to-day operations under this Agreement. The Manager must reside in the Kenai area and be ordinarily available during regular business hours. At all times during the Manager's absence, a responsible subordinate must be in charge and available.
- B. Other Personnel: The Concessionaire's personnel will meet the standards set forth in this Agreement and will conduct the Concessionaire's operations in accordance with the standards set forth in Article IX of this Agreement.

ARTICLE VIII: OWNERSHIP OF EQUIPMENT AND IMPROVEMENTS

- A. City-owned Equipment: The City holds title to certain restaurant equipment that is located on the premises and is listed on Exhibit C.
- B. Concessionaire-owned Equipment
1. Title to all Concessionaire-owned personal property, trade fixtures, equipment, furniture, vending machines, and entertainment devices remains vested in the Concessionaire.
 2. Entertainment Devices: The City will approve the locations, maximum number, and kinds of entertainment devices it will allow on the premises. The Concessionaire will relocate or remove any Entertainment Device at its sole expense when requested to do so by the City.
- C. Ownership of Permanent Improvements
On expiration, cancellation, or termination of this Agreement, title to any structural or other improvements that the Concessionaire cannot, in the City's determination, remove without damage to the premises vests in the City. These improvements include interior walls, ceilings, carpeting, finished flooring, electrical wiring, air-conditioning ducts and equipment, and all interior decorations and finishing erected or installed by the Concessionaire.

ARTICLE IX: SERVICE AND OPERATION

The Concessionaire's operation under this Agreement is a service to terminal employees, the traveling public and other users of the Airport. The Concessionaire will operate its Concession in accordance with the highest standards and practices of the food and beverage industry. The Concessionaire will take all reasonable measures to maintain, develop, and increase its business within the Terminal. Accordingly, the Concessionaire will provide service in a first-class, businesslike, efficient, courteous, accommodating manner and will comply with the following:

- A. Service Quality: The Concessionaire will provide terminal employees, the traveling public and other users of the Airport with high-quality service and products.
- B. Orderly Operation: The Concessionaire will conduct all business in a quiet, orderly, and courteous manner, so as not to annoy, disturb, or offend customers, patrons, or tenants of the Airport.

C. Health Standards and Facilities' Cleanliness

1. The Concessionaire will comply with all established health standards as monitored by the local governmental health department.
2. Within five (5) days of any health standards inspection, the Concessionaire will provide the City with a copy of the inspection report.
3. The Concessionaire will have an ongoing cleaning program for both the public and non-public areas within the premises. The program will include cleaning of carpets, floors, equipment, trade fixtures, furniture, entertainment devices, vents, and service areas.

D. Standard of Conduct for Employees: The Concessionaire will maintain a standard of conduct for its employees that include the following:

1. Employees must be well groomed and maintain a pleasant attitude toward the public.
2. Employees may not display their grievances in public, use improper language or conduct, or drink any alcoholic beverage while on duty or in uniform.

E. Janitorial and Cleaning Services: The Concessionaire will provide, at its own expense, the day-to-day janitorial and cleaning services and supplies necessary to maintain the premises except for those services provided by the City under Article XI of this Agreement. The Concessionaire will maintain the premises in a clean, neat, and sanitary condition.

F. Trash, Garbage, and Refuse: The Concessionaire will provide for the adequate sanitary handling and removal of all trash, garbage, and other refuse caused as a result of the Concessionaire's operations. The Concessionaire will coordinate a schedule and procedure of trash removal with the City. The Concessionaire will provide and use suitably covered or sealed receptacles for all garbage, trash, and other refuse from its operations inside the Terminal.

G. Security: The Concessionaire will adhere to all applicable responsibilities of the federal airport security program set out in Federal Aviation Regulations Part 107 and the Airport Master Security Program. The Concessionaire will procure any required identification badges necessary to access the premises or the Concessionaire's operations authorized under this Agreement. Any fine that results from a violation of the federal airport security program by the Concessionaire, its agents, officers, suppliers, sub lessees, vendors, guests, customers, or employees, whether on or off the premises, that is found by the

Federal Aviation Administration or the City to be the fault of the Concessionaire will be the sole responsibility of the Concessionaire. If the City pays any such fine to meet the Federal Aviation Administration deadlines, the Concessionaire will reimburse the City within 30 days after written notice by the City. The Concessionaire will coordinate any Airport security matter with the City.

- H. Smoking: Neither the Concessionaire, employees, or customers may smoke inside or outside the Terminal except in designated smoking areas.
- I. Complaints, Questions, or Concerns: The City will forward to the Concessionaire for response any complaints, questions, or concerns regarding the Concessionaire's operations. The City reserves the right to address and resolve any problems arising out of the Concessionaire's operations.
- J. Signs: The Concessionaire may, after consent by the Airport Manager, install signs at its premises identifying its business. The Concessionaire will request the City's advance written approval through the City's building permit process (Article X, Section B of this Agreement) before installation of any signage. The City will approve or disapprove the names selected for the restaurant.

ARTICLE X: MAINTENANCE AND CONSTRUCTION ON THE PREMISES

A. Maintenance

- 1. The Concessionaire will, at its sole expense:
 - a. Be responsible for all routine upkeep, maintenance and cleaning of all City owned equipment. Pay a \$1000 monthly maintenance fee to the city for the repair and replacement of city owned equipment. Be responsible for all repairs/replacement costs associated with Concessionaire owned equipment. A Restaurant Safety & Maintenance List, Exhibit D, will be strictly monitored and enforced by the City.
 - b. Do or cause to be done without delay all those things which in the determination of the City are necessary or desirable in the interest of safety or to maintain the premises, furniture, trade fixtures, equipment, and Entertainment Devices in good repair and appearance.
 - c. Pay for damage to the facilities of any other Airport tenant or the City caused by the Concessionaire's lack of adequate maintenance of any equipment, fixture, or system installed by the Concessionaire.

2. The City may require the Concessionaire to perform necessary repairs to the premises, furniture, trade fixtures, equipment, ~~and vending machines~~, and entertainment devices at the Concessionaire's own expense.
3. If, after 30 days following notice, or in shorter periods if an emergency exists, the Concessionaire fails or refuses to perform any action required by this Agreement, the City has the right, but not the obligation, to perform any or all actions required by this Agreement at the sole expense of the Concessionaire. The City will not take action if the Concessionaire begins and continues expeditious action to perform any action required by this Agreement that cannot be reasonably completed within 30 days. If the City performs any action required of the Concessionaire, the Concessionaire will reimburse the City within 30 days from the date of billing.
4. Concessionaire will be responsible to have the hood system, including all fire protection, professionally cleaned and inspected at the Concessionaire's expense, 3 times per year.

B. Terminal Building Permit Process:

1. The Concessionaire may not make repairs or alter the premises without first obtaining the City's prior written consent through the building permit process. The Concessionaire will complete a Terminal Building Permit Application form obtained from the City. Repairing and altering the premises include the following:
 - a. Installation, maintenance, repair, or removal of trade fixtures, equipment, entertainment devices, locks, antennae, counters, shelving, signs, posters, telephone lines, data circuits, floor coverings, wall coverings, painting, electrical, plumbing, and refrigeration work; and
 - b. Any other repair or alteration that the City deems necessary to be approved through the building permit process.
2. The City may withhold its approval if the Concessionaire is in violation of any requirement under this Agreement.
3. The Concessionaire will make all repairs and alterations to the premises at its own expense. The City has the right to approve the final repair or alteration.

C. General Construction Requirements

1. Any alteration, repair, construction, or improvement performed by the Concessionaire will be neat, presentable, and compatible with the architecture of the Terminal, as determined by the City, and performed at no cost to the City.
2. The Concessionaire will deliver detailed as built drawings to the City within 30 days after completion of any permanent improvement. The as built drawings must show the location and dimensions of any permanent improvement made by the Concessionaire.

ARTICLE XI: CITY SERVICES

A. City Services

1. The City will perform the following services:
 - a. Maintain the structure of the Terminal, the roof, and exterior walls.
 - b. Agrees to pay for electricity consumed on the Premises.
 - c. Wash the outside of all exterior Terminal windows as well as clean and maintain the public areas in the Terminal.
 - d. Maintain the Terminal's existing and future utility systems in good condition and repair. Utility systems include systems to supply heat, electricity, water, sewage disposal, fire alarm, fire protection, sprinkler, air conditioning, and telecommunications services. The City has the right to maintain lines, pipes, mains, wire, conduits, and equipment connected with or appurtenant to any system. However, the City may refuse to maintain any system installed by the Concessionaire and may charge the Concessionaire for any repair necessary due to negligence by the Concessionaire during any such installation or as the result of any such installation.
2. The City will invoice the Concessionaire and the Concessionaire will pay for any extraordinary lighting, power, utility bills, or cleaning services used by the Concessionaire that, in the determination of the City, are beyond the scope of normal services provided by the City.

- B. Hold Harmless: The Concessionaire will waive any claim and hold the City harmless for damages from any failure or interruption of utility or other service

furnished by the City, including failure or interruption of electrical energy, space heating or cooling, or any public or passenger convenience. In addition, the City may make any repair or alteration necessary for the proper functioning of the Terminal without liability to the Concessionaire for any damages.

ARTICLE XII: CITY'S RIGHTS OF INSPECTION AND ACCESS

- A. Inspection: The City, by its officers, employees, agents, representatives, and contractors, may at any reasonable time enter the premises to inspect or observe the Concessionaire's performance of its obligations under this Agreement, or to take any action that the City is obligated to take under this Agreement or otherwise. The Concessionaire will neither claim nor does the City allow an abatement of fees if the City exercises this right. Except in an emergency, the City will coordinate all inspections with the Concessionaire to minimize interference with the Concessionaire's activity on the premises.
- B. Access:
1. The Concessionaire will assure the City of emergency access to the premises by providing emergency telephone numbers by which the Concessionaire or the Concessionaire's Manager may be reached on a 24-hour basis.
 2. Without limiting the generality of the foregoing, the City, by its officers, employees, agents, representatives, and contractors, has the right to maintain the existing and future utility systems or portions of them on the premises as listed in Article XIII of this Agreement. The City has the right to enter the premises at any reasonable time to make repairs, alterations, or replacements that are, in the determination of the City, necessary or advisable, and, from time to time, to construct or install over, in, or through the premise's new lines, pipes, mains, wires, conduits, and equipment. Any repair, alteration, replacement, or construction will not unreasonably interfere with the use of the premises by the Concessionaire, and nothing in this Article may be construed to relieve the Concessionaire of any obligation to maintain the premises and improvements.
 3. At any time during ordinary business hours within the 12 months preceding expiration of this Agreement, the City has the right to enter the premises to measure, photograph, show, and view all parts of the premises.

ARTICLE XIII: ADDITION OR REDUCTION IN SPACE

If the Concessionaire requests additional terminal space and the City determines that suitable space is available and needed, the City may lease the additional space subject to the requirements of law concerning leasing of Airport Terminal space.

ARTICLE XIV: CITY-DIRECTED RELOCATION

The Concessionaire acknowledges that the City may require the relocation of the premises, in whole or in part, if the City determines that relocation is necessary to meet the needs of the traveling public or the City. If the City requires relocation of the premises, the following applies:

- A. City's Responsibilities: The City, at its sole expense, will provide the new space with interior permanent improvements including floors, ceiling, carpeting, lighting, electricity, wall finishes, heating and cooling, ventilation, and permanent fixtures similar to those in the premises.
- B. Concessionaire's Responsibilities
 - 1. The Concessionaire, at its sole expense, will relocate all nonpermanent fixtures, furnishings, and equipment from the premises; provide any additional fixtures, furnishings, and equipment that the Concessionaire finds necessary or desirable to fully use the new lease space; and vacate and surrender the former lease space to the City when the new space is completed. Concessionaire will continue to be liable for rental fees and payments as provided in Article V.
 - 2. The City and the Concessionaire will perform their respective obligations in an expeditious manner, excluding any delay that is beyond the control of either party. The new lease space will have a floor area similar in size to the area being vacated by the Concessionaire. The City will make every reasonable effort to ensure that the new lease space will provide access and exposure to passenger traffic similar to that of the former lease space. However, the City will not be responsible for any financial losses that the Concessionaire may incur due to relocation under this Article unless the losses are the result of a breach by the City of its obligations under this Article.
 - 3. The Concessionaire is responsible to maintain an account and all costs for the natural gas utility for the restaurant/café.

4. The concessionaire is responsible for water & sewer charges.

ARTICLE XV: LAWS AND TAXES

This Agreement is subject to all City of Kenai laws and regulations, including those relating to leasing facilities and granting privileges at city airports.

A. Laws

1. At no expense to the City, the Concessionaire will comply with all federal, City, and local laws, ordinances, regulations, and Airport rules that are either now or in the future in force that may apply to the business authorized under this Agreement, or to the use, care, operation, maintenance, and protection of the Airport, including matters of health, safety, sanitation, and pollution. The City is neither liable to the Concessionaire for any diminution or deprivation of the Concessionaire's rights due to the exercise of any authority, nor is the Concessionaire entitled to terminate the whole or any portion of this Agreement by reason of the City's exercise of any authority.
2. The Concessionaire will comply with all City and federal regulations governing hazardous substances, including hazardous wastes, and will comply with all instructions of the City with regard to environmental concerns and requirements, regardless of whether based on specific law, regulation, or order of any governmental authority. In addition, the Concessionaire assumes responsibility for any spill of oil, oil-based substance, or hazardous substance attributable to its operation under this Agreement. With respect to any such occurrence, the Concessionaire will indemnify, defend, save, and hold the City and its employees harmless from any loss, claim, suit, or judgment.
3. The Concessionaire will properly handle its spills of hazardous substances. The Concessionaire will immediately notify the City of any spill that occurs on the Airport, as well as the action taken, while performing under this Agreement. The Concessionaire will forward copies of any written spill reports and reports regarding action taken to the City as soon as they are available.

- B. Taxes: The Concessionaire will obtain all necessary licenses, permits, pay all taxes and special assessments lawfully imposed on its business, and pay any other fee or charge assessed under any applicable public statute, regulation, or ordinance.

- C. Disputes: In any dispute between the parties, the laws of the State of Alaska will govern and any lawsuit must be brought before the courts of the State of Alaska.
- D. Claims: Concessionaire will notify the City of any claim, demand, or lawsuit arising out of the rights granted to the Concessionaire under this Agreement. At the City's request, the Concessionaire will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit that affects the rights granted the Concessionaire under this Agreement.

ARTICLE XVI: DEFENSE OR ENFORCEMENT OF AGREEMENT

The Concessionaire will pay all reasonable actual expenses, costs, and attorney fees the City may incur, with or without formal action, to enforce, defend, or protect this Agreement or the City's rights under this Agreement, including any expense incurred with respect to environmental compliance, bankruptcy or any proceeding that involves the Concessionaire, the Agreement, the premises, improvements, or property on the premises. The Concessionaire will make payment within 30 days of the date of each notice from the City of any amounts payable under this Article. Any amount not timely paid under this Article will constitute a default of the Agreement and will accrue interest from the date of the notice as provided in Article V of this Agreement.

ARTICLE XVII: INDEMNIFICATION AND INSURANCE

A. Indemnification

1. The Concessionaire will indemnify, defend, and hold the City, its agents, officers, and employees harmless from any liability, action, claim, suit, or loss for property damage or personal injury of whatever kind resulting from or arising out of any act or omission by the Concessionaire or the Concessionaire's agents, employees, or clients or arising from or connected with the Concessionaire's rights and privileges granted under this Agreement.
2. In any litigation brought by a third party against the City or the Concessionaire that specifically challenges the rights granted in Article III, the Concessionaire would assume the responsibility to defend the City and the Concessionaire unless the City elects to defend itself. The City will assist in the defense of the rights granted. The City is not required to indemnify the Concessionaire for any attorney fees the Concessionaire incurs to defend the City.

B. Insurance

1. The Concessionaire will, throughout the term of this Agreement and at its own expense, secure and keep in force adequate insurance, as stated below, to protect the City and the Concessionaire. Where specific limits are stated they are the minimum acceptable limits. If the Concessionaire's insurance policy contains higher limits, the City is entitled to coverage to the extent of the higher limits.
 - a. Comprehensive general liability insurance with coverage limits not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence where generally applicable, including in-Terminal operations, independent contractors, products, and completed operations, broad-form property damage, blanket contractual, and personal injury endorsements.
 - b. Worker's Compensation insurance with coverage for all employees engaged in work under this Agreement as required by AS 23.30.045. The Concessionaire is responsible for Worker's Compensation insurance for any subcontractor who directly or indirectly provides services under this Agreement.
 - c. Comprehensive automobile liability insurance covering all owned, hired, and non-owned vehicles with coverage limits not less than \$250,000 combined single limit per occurrence.
2. All insurance required by this Article must meet the following requirements:
 - a. For comprehensive general liability insurance, name the City additionally insured.
 - b. For worker's compensation insurance, general liability and automobile liability insurance include a waiver of subrogation so that the insurer waives all rights of subrogation against the City for payments made under the policy.
 - c. Provide the City notification at least 20 days before any termination, cancellation, or material change in insurance coverage.
 - d. All policies will be by a company/corporation currently rated "A-" or better by A.M. Best.

C. Evidence of Insurance Coverage

1. The Concessionaire will submit to the City proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person authorized by the insurer to bind coverage on its behalf.
2. Evidence of insurance coverage must be submitted to the City by **May 1, 2024**. The effective date of the insurance will be no later than **May 1, 2024**.

D. Obligation: The indemnification and insurance-coverage requirements stated in Sections A and B above do not relieve the Concessionaire of any other obligation under this Agreement.

E. Increase or Revision: The City may increase the amount or revise the type of required insurance on written demand without requiring amendment to this Agreement. The City will base any increase or revision on reasonable and justifiable grounds. Within two weeks of the written demand, the Concessionaire will submit to the City evidence of insurance coverage that meets the requirements of the City.

ARTICLE XVIII: CANCELLATION BY CITY

A. Breach of Agreement

1. The City may cancel this Agreement and recover possession of the premises by giving the Concessionaire 30 days' advance written notice from the postmark date of the written notice if any of the following events occur and the breach is not cured within the above-specified 30 days:
 - a. The Concessionaire fails to pay when due any rent, fee, penalty, or other charge specified under this Agreement.
 - b. A check for any payment to the City is returned for insufficient funds.
 - c. The Concessionaire uses the premises for purposes not authorized under this Agreement.
 - d. A petition in bankruptcy is filed by or against the Concessionaire.
 - e. A court enters a judgment of insolvency against the Concessionaire.

- f. A trustee or receiver is appointed for the Concessionaire's assets in a proceeding brought by or against the Concessionaire.
 - g. A lien is filed against the premises because of any act or omission of the Concessionaire and the lien is not removed, enjoined, or a bond of satisfaction of the lien is not posted within 60 days.
 - h. The Concessionaire fails to operate the business authorized under this Agreement for a period of more than seven consecutive calendar days without the City's prior written approval.
 - i. The cessation or deterioration of any service for any period, which, in the determination of the City, materially and adversely affects the service the Concessionaire, is required to perform under this Agreement.
 - j. The Concessionaire fails to perform any provision or covenant under this Agreement.
2. In the case of a breach, which is not reasonably curable within 30 days, a cancellation notice under this Article may be stayed by the City if the Concessionaire begins and continues expeditious action to cure the breach within the 30-day notice period. The determination of "expeditious action" and "not reasonably curable" is at the City's sole discretion.
- B. City's Right of Reentry: As an additional remedy, on giving written notice of cancellation or termination, the City may reenter any part of the premises on the effective date of cancellation or termination without further notice of any kind, remove any persons or property, and regain and resume possession with or without the institution of summary or legal proceedings or otherwise. Any reentry, however, will not in any manner affect, alter, or diminish any obligation of the Concessionaire under this Agreement.
- C. Additional Rights of the City
1. On termination or cancellation of this Agreement or on reentry, the City may regain or resume possession of the premises, may occupy the premises, and may permit any person, firm, or corporation to enter on and use the premises. Others may occupy any part of the premises or the entire premises or a part of the premises together with other space for the time remaining under this Agreement, and on terms and conditions the same as or different than those set forth under this Agreement.

2. The City also has the right to repair or to make any structural or other change in the premises that is necessary, in the City's sole judgment, to maintain the suitability of the premises for the uses and purposes similar to those granted under this Agreement without affecting, altering, or diminishing the obligations of the Concessionaire under this Agreement. The City will charge, and the Concessionaire will pay to the City within 30 days of billing, the cost of these repairs.

D. Survival of Concessionaire's Obligations:

1. If the City cancels or terminates this Agreement, all of the Concessionaire's obligations under this Agreement will survive in full force for the entire term of this Agreement. Subject to the City's obligation to mitigate damages, the fees and charges become due and payable to the City to the same extent, at the same time, and in the same manner as if no termination or cancellation had occurred. The City may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.
2. The amount of damages for the time subsequent to termination or cancellation will be the sum of the following:
 - a. Title to all improvements as provided in Article IX, Section C of this Agreement.
 - b. The total monthly rental obligation that would have been paid by the Concessionaire during the balance of the Term of this Agreement if no termination or cancellation had occurred. However, the amount will be offset by any fees or charges received by the City from a succeeding concessionaire.

E. Waiver of Redemption and Damages

1. The Concessionaire waives any right of redemption granted by or under any present or future law or statute if the Concessionaire is dispossessed for any cause, or if the City obtains or retains possession of the premises in any lawful manner.
2. The Concessionaire acknowledges that if it is necessary for the City to gain possession of the premises, the total amount of damages to which the Concessionaire is entitled is the sum of ONE DOLLAR (\$1.00). The Concessionaire also acknowledges that this provision may be filed in any action as its stipulation fixing the amount of damages to which it is entitled.

F. Surrender of Possession

1. The Concessionaire will yield possession of the premises to the City on the date of the termination, cancellation, or normal expiration of this Agreement promptly, peaceably, quietly, and in as good order and condition as the same now or later improved by the Concessionaire or the City, reasonable use and wear-and-tear accepted.
2. The Concessionaire will be allowed a maximum of three calendar days after the effective date of the expiration of this Agreement to remove all of its personal property, equipment, furniture, trade fixtures, and Entertainment Devices from the premises and from the Terminal subject to the provisions of Article VIII, Section C of this Agreement. The Concessionaire and the City agree, as part of the consideration for this Agreement, that all property remaining on the premises after these three calendar days will become the sole property of the City, with full title vested in the City, and the City may remove, modify, sell, or destroy the property as it sees fit. The Concessionaire will reimburse the City for any cost the City incurs in removing and disposing of the property.

ARTICLE XIX: CANCELLATION BY CONCESSIONAIRE

The Concessionaire may cancel this Agreement by mutual agreement of the City or giving the City advance written notice of ten (10) days if any of the following events occur:

- A. The permanent abandonment of the Airport by all passenger airlines or the removal of all passenger airline service from the Airport for a period of at least 90 consecutive days.
- B. The lawful assumption by the United States government, or its authorized agent, of the operation, control, or use of the Airport, or any substantial part of the Airport, that restricts the Concessionaire from operating its business under this Agreement for a period of at least 90 consecutive days.
- C. A court of competent jurisdiction issues an injunction that prevents or restrains the use of the Airport by all airlines provided the injunction remains in force for at least 90 consecutive days.

ARTICLE XX: CANCELLATION BY CONCESSIONAIRE

Subsequent Agreement Award: The Concessionaire acknowledges that on the expiration, cancellation, or termination of this Agreement, the City may award any subsequent concession agreement by any legal means then available to the City.

ARTICLE XXI: ASSIGNMENT OR SUBLETTING

- A. City's Consent: The Concessionaire will not assign this Agreement or any interest, and will not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, agents and employees of the Concessionaire excepted, to occupy or use the premises or any portion thereof without first obtaining the written consent from the City. A consent by the City to one assignment, subletting, occupancy, or use by another party will not be deemed to be a consent to any subsequent assignment, subletting, occupancy, or use by another person or entity. Any such assignment, subletting, occupancy, or use by another person or entity without such consent by the City will be void and will, at the option of the City, terminate this Agreement. This Agreement will not, nor will any interest, be assignable as to the interest of the Concessionaire by operation of law without the written consent of the City. The City agrees that it will not unreasonably withhold its consent required hereunder.
- B. Approval Process: The Concessionaire will submit to the City copies of any proposed assignment, encumbrance, or sublease bearing the original notarized signatures of all parties. All covenants and provisions in this Agreement extend to and bind the legal representatives, successors, and assigns of the parties.
- C. Merger, Consolidation, or Reorganization:
1. The City will not unreasonably withhold its consent to an assignment of this Agreement by the Concessionaire to a corporation that results from a merger, consolidation, or reorganization of the Concessionaire to a corporation that purchases all or substantially all of the assets of the Concessionaire or to any corporation that controls or is controlled by or is under common control with the Concessionaire.
 2. For purposes of this Section, "control" of any corporation is deemed vested in the person or persons owning more than 50 percent of the voting power for electing the board of directors of the corporation.

ARTICLE XXII: GENERAL COVENANTS

- A. Execution by City: This Agreement is not effective until signed by the City Manager.
- B. Approval by City: The City may not unreasonably withhold any approval required under this Agreement.
- C. Notices: Any notice required under this Agreement must be hand delivered, sent by certified mail or by electronic transmission in such a way as to confirm receipt to the appropriate party, or delivered by a reliable overnight delivery service to the appropriate party at the address set forth on page one of this Agreement or to any other address that the parties subsequently designate in writing. All notice periods begin on the date the notice is mailed.
- D. Modification: The Concessionaire acknowledges that the City may make any modification to this Agreement necessary to meet the revised requirements of federal or City grants, to operate the Airport, or to conform to the requirements of any revenue bond covenant to which the City of Kenai is a party and may do so without formal amendment. However, a modification may neither reduce the rights or privileges granted the Concessionaire under this Agreement nor cause the Concessionaire financial loss.
- E. Interrelationship of Provisions: All provisions of this Agreement and the associated proposal documents are essential parts of this Agreement and are intended to be cooperative, to provide for the use of the Airport, and to describe the respective rights and obligations of the parties to this Agreement. In the event of any irreconcilable conflict between the Agreement and the incorporated proposal of the Concessionaire, the provisions of Agreement will prevail. Each party will fully perform all provisions of this Agreement and the associated proposal documents.
- F. Validity of Parts: If any part of this Agreement is declared invalid by a court of competent jurisdiction, the remaining parts continue in full force.
- G. Radio Interference: At the City's request, the Concessionaire will discontinue the use of any machine or device that interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.
- H. Discrimination: The Concessionaire may not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner

prohibited by federal or City law. The Concessionaire recognizes the right of the City to take any action necessary to enforce this covenant, including actions required by any federal or City law.

- I. Nondiscrimination: The Concessionaire will undertake a nondiscrimination program required by 14 CFR, Part 152, Subpart E, to ensure that no person will be excluded from participating in any employment activity covered by 14 CFR, Part 152, Subpart E, on the grounds of race, creed, color, national origin, or sex. The Concessionaire may not exclude any person on these grounds from participating in or receiving the services or benefits of any program or activity covered by the Subpart. The Concessionaire further understands that it will require its covered sub organizations to provide assurances to the City that they will also undertake nondiscrimination programs and require assurances from their sub organizations, as required by 14 CFR, Part 152, Subpart E.
- J. National Emergency: If the federal government declares a national emergency, the Concessionaire may not hold the City liable for its inability to perform any part of this Agreement resulting from the national emergency.
- K. Vacation: At the expiration, cancellation, or termination of this Agreement, the Concessionaire must promptly, peaceably, and quietly vacate the premises, remove all personal property, and return possession to the City. The premises must be left in a clean, neat, and presentable condition, except for reasonable wear and tear, to the satisfaction of the City.
- L. No Waiver: The City's failure to insist in any one or more instances on the strict performance by the Concessionaire of any provision in this Agreement is not a waiver nor relinquishment for the future, but the provision will continue in full force. A City waiver of any provision in this Agreement cannot be enforced nor relied on unless the waiver is in writing and signed on behalf of the City.
- M. Disasters: If, in the determination of the City, a fire, flood, earthquake, or other disaster damages the Airport so extensively as to render it untenable, either party may elect to terminate this Agreement on 30 days' written notice to the other party. If this Agreement is terminated because of a disaster, the City will prorate the fees payable under this Agreement up to the time the Airport becomes untenable.
- N. Condemnation: If the Airport is condemned by any proper authority, this Agreement ends on the date the Concessionaire is required to leave the Airport. The City is entitled to all condemnation proceeds. However, the City will pay the Concessionaire the portion of proceeds attributable to the fair market value of any

improvements placed on the Airport by the Concessionaire, according to the provisions of the then-current Alaska Administrative Code.

- O. Liens: The Concessionaire will keep the premises free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the Concessionaire on the premises, and hold the City harmless from liability for any liens, including costs and attorney fees. By this provision, the City does not recognize that it is in any way liable for any liens on the premises.
- P. Quiet Enjoyment: The City covenants that it has full, unencumbered title to the Airport; that it has the right and lawful authority to execute this Agreement; and that the Concessionaire will have, hold, and enjoy peaceful and uninterrupted use of the premises.
- Q. Captions: The captions of the Articles and Sections of this Agreement are for convenience only and do not necessarily define, limit, describe, or construe the contents of any Article or Section. The use of the singular or plural form of words is intended to include the singular and plural, as appropriate.
- R. Proposal Documents: The Request for Proposals, the Notice Inviting Proposals, the General Instructions to Proposers, the Proposal Submittal Form, including the Specific Proposal Requirements, the Concessionaire's proposal, any addenda, and the required proposal deposit are parts of this Agreement, and each party will fully perform its obligations under all provisions of these documents.
- S. Entire Agreement: This Agreement, including any amendments and all items listed under Section R of this Article, constitutes the entire agreement between the parties. No modification or amendment of this Agreement is effective unless in writing and signed by both parties, except as Stated in section D. above.
- T. Force Majeure: Except for the payment of fees, neither the City nor the Concessionaire is in violation of this Agreement if it is prevented from performance by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, act of God, act of public enemy, act of superior governmental authority, weather condition, riot, rebellion, sabotage, or any other circumstance for which it is not responsible and which is beyond its control.
- U. Time: Time is of the essence in the performance of all rights and obligations of the parties to this Agreement.
- V. Employee Parking: Restaurant employees may use non-exclusive employee vehicle parking facilities at no charge. All employees must register their vehicle(s) at the Airport Manager's office to receive a vehicle-parking permit to park while on

the job. Concessionaire shall be held accountable for Concessionaire's employees' use of designated vehicle parking facilities and shall assure that employees comply with all applicable Airport Directives.

- W. COSTS AND EXPENSES: Costs and expenses incidental to this lease, including but not limited to, recording costs shall be paid by Concessionaire.

IN WITNESS WHEREOF, the parties have set their hands the day and year stated in the acknowledgment below.

(If the Concessionaire is a partnership or joint venture, all general partners or members of the joint venture must sign; if the Concessionaire is a corporation, the signature of one authorized representative is sufficient unless the corporation requires two or more signatures.)

LESSOR:

CITY OF KENAI

Terry Eubank, City Manager

CONCESSIONAIRE:

(NAME OF BUSINESS)

XXXXXXXXXX – Owner/Manager

XXXXXXXXXX – Owner/Manager

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2024, (NAME), Owner/Manager (CONCESSIONAIRE), being personally known to me or having produced satisfactory evidence of identification, appeared before me and acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of said Corporation.

Notary Public for Alaska
My Commission Expires:_____

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2024, personally appeared before me, **Terry Eubank**, known to me and to me known to be the City Manager of the City of Kenai, Alaska, and who acknowledged before me that the foregoing instrument was freely and voluntarily executed on behalf of the City of Kenai, for the uses and purposes set forth and with full authority of the City of Kenai to do so.

Notary Public in and for Alaska
My Commission expires: _____

Approved by Kenai City Council on _____

Approved as to lease form by City Attorney _____

Approved by Finance Director

Approved by City Manager _____



Certified Activity Report
Concession Gross Receipts

Concessionaire: _____ Month _____, _____ Year

	<u>% RATE</u>		<u>AMOUNT</u>
Total receipts for month \$ _____	X _____ %	=	\$ _____

Sales tax (the lessor of 6% or \$30.00)		=	\$ _____
---	--	---	----------

Total Percentage Rent due: \$ _____

(Due and payable on the 10th day of the calendar month succeeding the month for which the rental Installment is applicable.

**Remit to: City of Kenai
210 Fidalgo Ave.
Kenai, AK 99611**

Certification:

I hereby certify that the figures presented are true and correct.

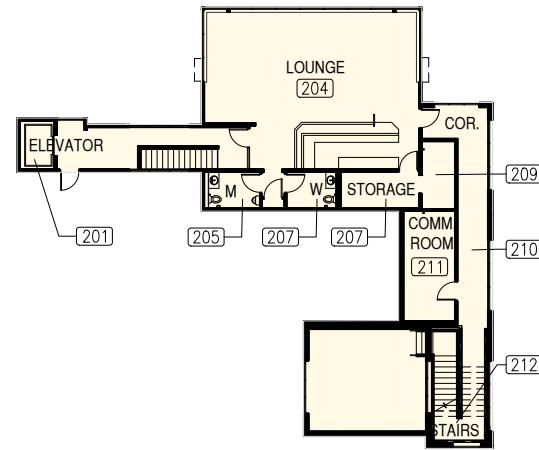
Business: _____

Address: _____

Signature: _____

Phone No.: _____

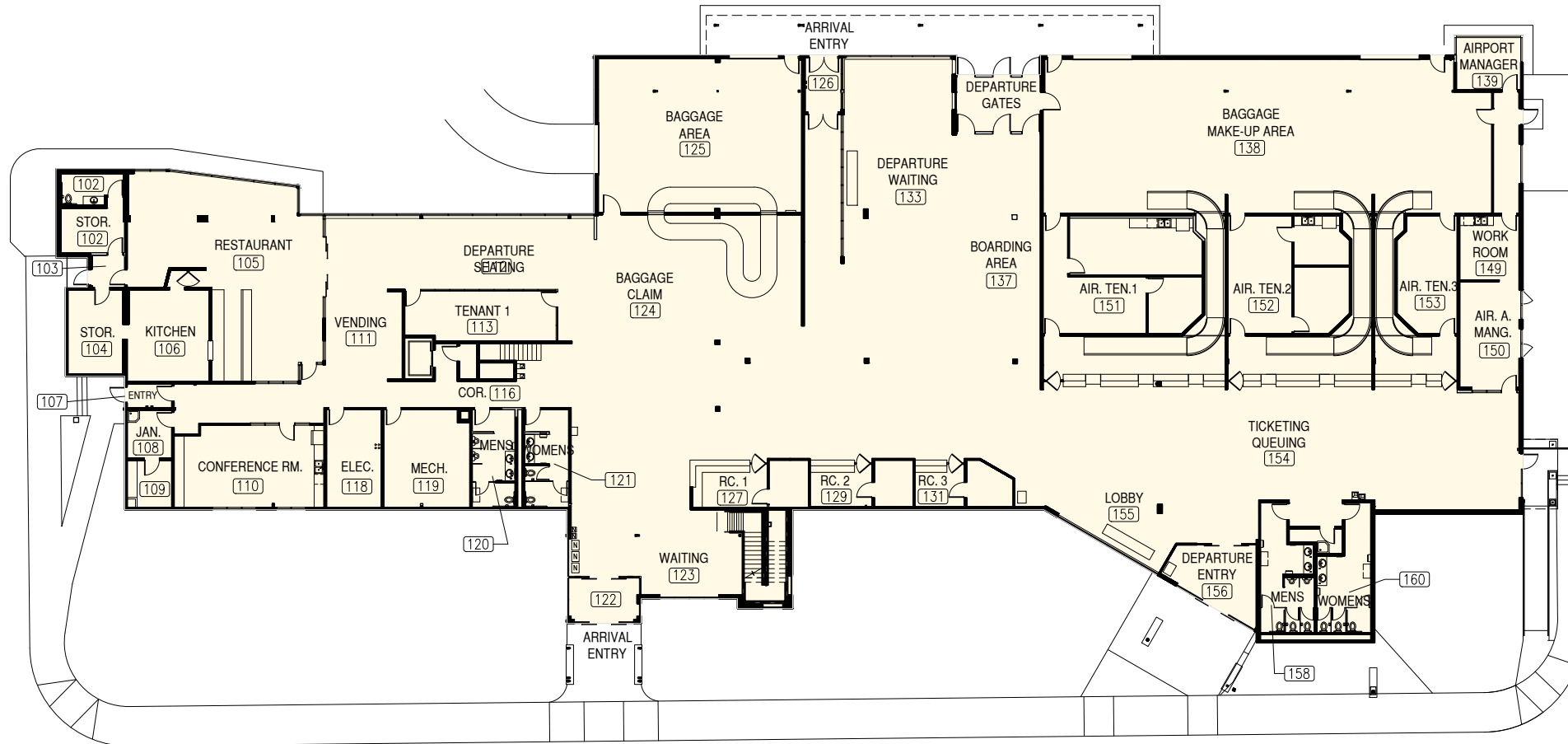
Copy of this report must also be submitted to the Airport Manager's office.



1 SECOND FLOOR PLAN - EXHIBIT

GRAPHIC SCALE: 2' 6' 12' 24'

W
S REF. N
E



2 FIRST FLOOR PLAN - EXHIBIT

GRAPHIC SCALE: 2' 6' 12' 24'

W
S REF. N
E

EXHIBIT B

KENAI MUNICIPAL RESTAURANT EQUIPMENT LIST

1.	Shelving, 5 tier:	10 each
	24" x 60"	2 each
	24" x 48"	1 each
	24" x 42"	1 each
	24" x 36"	2 each
	18" x 42"	5 each
	Posts, 86"	24 each
	"S" Clips	8 each
2.	Dish Counter with Hand Sink	1 each
3.	Trash Bin with Cover	1 each
4.	Soiled Dish Table	1 each
5.	Dishwasher	1 each
6.	Clean Dish Table	1 each
7.	Hot Water Booster	1 each
8.	Pot Sink, 3 Compartment, 91" long	1 each
9.	Wall mounted shelf, 2 tier	1 each
10.	Hood with Ansul Fire Suppression System	1 each
11.	Range, Gas	1 each
12.	Fryers with Space, Gas (new 2004)	2 each
13.	Work Station with Preparation Sink	1 each
14.	Salad/Sandwich Station, Refrigerated	1 each
15.	Double Over Shelf	1 each
16.	Freezer/Cooler Walk-In	1 each
17.	Can Opener	1 each
18.	Back Counter, Wood Fabrication	1 each
19.	Glass Filler/Sink	1 each
20.	Coffee and Hot Water Maker	1 each
21.	Service Counter, Wood Fabrication	1 each
22.	Carbonated Drink System, Four Drink	1 each
23.	Worktable, Mobile	1 each
24.	Ticket Holder	1 each

RESTAURANT SAFETY & MAINTENANCE LIST

Exhibit D

Year _____

GREASE TRAP MAINTENANCE		JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEP		OCT		NOV		DEC	
1	Every 1 wks (minimum) (Initial & Date cleaning)																								
EXTINGUISHERS																									
2	Are automatic dry chemical extinguishing systems over ranges, grills, & fat fryers present?																								
3	Do the automatic extinguishing systems have current inspections tags?																								
4	Are the automatic temperature shut-offs on the fryer(s) operational?																								
5	Are the exhaust filter(s) cleaned at least once a week?																								
6	Are exhaust systems(s) cleaned semi-annually by a qualified contractor?																								
7	Are fire extinguishers properly wall-mounted?																								
8	Is there at least 3 feet of clearance around the portable fire extinguishers?																								
SPRINKLER SYSTEMS																									
9	At least 18 inches of clearance between the sprinkler heads and any stored materials?																								
FIRE SAFETY																									
10	Are combustibles stored at least 30 ft. from any heat source?																								
11	Are all exits unlocked during business hours?																								
12	Are all exits marked, illuminated, and clear of obstructions?																								
13	Are non-exits identified?																								

Signed by: _____ Owner/ Operator

Date: _____