

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
FAIRBANKS INTERNATIONAL AIRPORT

SAMPLE VENDING CONCESSION AGREEMENT

ADA-90879

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**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
FAIRBANKS INTERNATIONAL AIRPORT**

**SAMPLE VENDING CONCESSION
AGREEMENT ADA-90879**

THIS AGREEMENT is made this 15th day of May, 2020, between the State of Alaska, Department of Transportation and Public Facilities, Fairbanks International Airport (State), whose address is 6450 Airport Way, Suite 1, Fairbanks, Alaska 99709, and @ (Concessionaire) whose address is @.

In consideration of the Premises and of the charges, fees, covenants, rights and obligations contained herein, the parties agree to all conditions as follows:

INTRODUCTION

- A. The State owns and operates the Fairbanks International Airport (Airport), located in Fairbanks, Alaska.
- B. In connection with the Fairbanks International Airport, the State owns the Terminal Building. (Terminal).
- C. The State has determined it is necessary in the promotion and accommodation of air commerce and air transportation to have a Vending Concession available in Terminal at the Airport.
- D. For the benefit of air travelers and others, and to generate revenue for the State to support the Airport, the State makes space available for one (1) Vending Concession.
- E. It is in the State's best interest to have a Vending Concessionaire with proven experience in the vending business.
- F. The State has determined that selecting the Concessionaire through the competitive Invitation to Bid (ITB) process is in the best interest of the State.

**ARTICLE I
DEFINITIONS**

The following definitions apply for this Agreement:

- A. **Agreement**: This Concession Agreement ADA-90879, together with and incorporating the exhibits, the Concessionaire's bid in response to the Invitation to Bid (ITB), the ITB, and all other attachments and exhibits thereto, and all future amendments or supplements executed by the parties to this Agreement.
- B. **Agreement Year**: This Agreement includes the following five (5) Agreement Years (Base Term):
 - 1. May 15, 2020, through May 31, 2021
 - 2. June 1, 2021, through May 31, 2022
 - 3. June 1, 2022, through May 31, 2023

4. June 1, 2023, through May 31, 2024
5. June 1, 2024, through May 31, 2025

and five (5) one (1) Year Term Extensions, if exercised:

6. June 1, 2025, through May 31, 2026
 7. June 1, 2026, through May 31, 2027
 8. June 1, 2027, through May 31, 2028
 9. June 1, 2028, through May 31, 2029
 10. June 1, 2029, through May 31, 2030
- C. Airport: The real property and facilities of the Fairbanks International Airport, Fairbanks, Alaska, as they exist on the execution date of this Agreement, together with any future changes. The real property and facilities of the Fairbanks International Airport as they exist on February, 2020, are shown on Exhibit A of this Agreement.
- D. Annual Guarantee: For each Agreement Year, the minimum amount the Concessionaire must pay to the State in accordance with Article VI (Fees and Payments).
- E. Base Term: The first five (5) Agreement Years of this Agreement.
- F. Certified Activity Report: A report that the Concessionaire must submit to the State to report Gross Sales and other information and that is certified on behalf of the Concessionaire to be complete and accurate. A sample format is shown in Exhibit C (Certified Activity Report).
- G. Concessionaire: The successful bidder for the Invitation to Bid for this Vending Concession Agreement ADA-90879, who enters into this Agreement, or any other subsequent Concessionaire as provided under Article XXIII (Assignment or Subcontract) of this Agreement.
- H. Disadvantaged Business Enterprise (DBE): A business certified by the State of Alaska, Department of Transportation & Public Facilities as a disadvantaged business enterprise as defined in 49 CFR, Part 23 or in related guidance published by the U.S. Department of Transportation or Federal Aviation Administration.
- I. Effective Date: The contract is effective on the date it is signed by the State. However, as it is used in this Agreement, the term Effective Date refers to the first day of the first Agreement Year.
- J. Gross Revenue: All revenues, income and receipts of the Concessionaire, on an accrual basis, owed to or received by the Concessionaire from sales or other business at, from or related to the Airport.
- K. Invitation To Bid (ITB): All documents issued by the State, and all documents submitted by the Concessionaire, in connection with the Invitation to Bid for Concession Agreement ADA-90879, including the Notice Inviting Bids, Terms of Invitation, Instructions to Bidders, Bid Submittal Form, Bidder's Affidavit, Bidder's Questionnaire, Sample Concession Agreement and Supplemental Information as modified or supplemented by addenda, and all other documentation required in the ITB, and all information submitted by the Bidder with its bid.

- L. Minimum Annual Guarantee (MAG): The dollar amount bid in the ITB which is the minimum dollar amount the Concessionaire must pay the State each agreement year.
- M. Monthly Guarantee Rate: The monthly guarantee rate is the MAG divided by twelve (12).
- N. Percentage Fee: The percentage of Gross Receipts the Concessionaire is required to pay to the State in accordance with Article VI (Fees and Payments).
- O. Premises: The Premises will include five (5) locations indicated on Exhibit A Sheet 1 of 4 and Sheet 2 of 4, Spaces TC1101A, T1900E, C2203A, TC2200C, and TC2400A, updated February 2020, of Sample Vending Concession Agreement ADA-90879.
- P. Term: The period of time specified under Article III (Term) of this Agreement which includes the Base Term and may include one or more Term Extensions.
- Q. Term Extension: Each of five (5) Agreement Years that the State may exercise under Article III (Term) of this Agreement, after the Base Term.
- R. Terminal: The passenger terminal building at the Airport as shown on Exhibit A.

ARTICLE II

SCOPE OF AGREEMENT

The Concessionaire must perform all obligations and conduct all activities in compliance with this Agreement, and comply with all promises and representations made in its bid, which is by this reference incorporated here in its entirety, as accepted by the State. This includes all documents generated in the ITB, competition and award of this Agreement.

ARTICLE III

TERM

- A. This Agreement is in effect on the date it is signed on behalf of the State. The State grants the Concessionaire the rights listed in Article IV (Rights Granted) beginning May 15, 2020 and ending May 31, 2025 (the Base Term). The Effective Date, as defined in Article I (Definitions) and as used throughout this Agreement, is May 15, 2020, which is the date the initial term of this Agreement begins.
- B. The State reserves the right to exercise up to five (5) one year term extensions. The term extension year(s) shall operate under the same terms and conditions as the base term. The concession fee for term extensions will be the greater of the MAG for each term extension year or 35% of gross receipts. The extension term MAG will be set at the highest MAG amount from the base term bid.
- C. In order to avoid an interruption of services to the public or revenues to the State, and to facilitate fair and orderly selection of, and transition to, any successor Concessionaire, the State may by written notice to the Concessionaire not less than sixty (60) days before the end of the Agreement term, as applicable, require the Concessionaire to continue to operate and manage its Vending Concession at the Airport as set forth in this Agreement beyond the end of the Agreement Term. The holdover period, which shall be determined by the State, shall not exceed one (1) year from the expiration date of the immediately preceding Base Term except by mutual consent of the parties.

ARTICLE IV
RIGHTS GRANTED

The State grants the Concessionaire the authority to exercise the following rights subject to the obligations under this Agreement:

A. Concession Rights

1. The Concessionaire shall have certain exclusive rights, and a corresponding obligation, to install, operate, and maintain at its own expense a specific number of vending machines in each of the areas designated on Exhibit A, and to sell items from said machines. Concessionaire understands that the Airport has entered into other food and beverage concession agreements, and other concession agreements which permit the sale of food and beverages in the Airport Terminal; therefore the Concessionaire's exclusive rights pertain solely to vending machines.
2. The right to occupy the Premises for the business authorized under this Agreement.
3. The right 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.

ARTICLE V
PREMISES

- A. The State will deliver the Premises to the Concessionaire on May 15, 2020. The Concessionaire accepts the Premises in their then-present condition and "as is." The Concessionaire acknowledges that the State's obligation is limited to making the Premises available to the Concessionaire for its use.
- B. The Premises will include five (5) vending locations indicated on Exhibit A Sheet 1 of 4 and Sheet 2 of 4: Spaces TC1101A, T1900E, C2203A, TC2200C, and TC2400A, updated February 2020, of Vending Concession Agreement ADA-90879.

ARTICLE VI
FEES AND PAYMENTS

- A. Concession Fee: For the rights and privileges granted under this Agreement, the Concessionaire shall pay the State each month the greater of the monthly guarantee rate or the percentage rate of thirty five percent (35%) as applied to gross receipts.
 1. Year One Minimum Annual Guarantee (MAG): @ (bid amount)
Year Two Minimum Annual Guarantee (MAG): @ (bid amount)
Year Three Minimum Annual Guarantee (MAG): @ (bid amount)
Year Four Minimum Annual Guarantee (MAG): @ (bid amount)
Year Five Minimum Annual Guarantee (MAG): @ (bid amount)
 2. Percentage Fee Rate: The monthly Percentage Fee Rate shall be thirty five percent (35%) for the entire Term of the Agreement, including term extensions if exercised, as applied to Gross Receipts.

3. If term extensions are exercised, the MAG for each extension shall be the highest Minimum Annual Guarantee amount bid for the base term. The Concession fee shall be the greater of the annual guarantee rate or percentage rate of 35% as applied to gross receipts.

B. Payments to the State

1. By the twentieth (20th) day of each month during this Agreement, beginning July 20, 2020, the Concessionaire will pay the State the Concession Fee for the preceding month as defined in Section A above and the ITB.
2. The Concessionaire shall make payments in United States of America currency either in cash or by check, bank draft, money order payable to the State of Alaska or electronic funds transfer (EFT). The Concessionaire shall submit payments free from any claim, demand, setoff, or counterclaim of any kind against the State of Alaska, Fairbanks International Airport, Accounting, 6450 Airport Way, Suite 1, Fairbanks, Alaska 99709. The State must receive payments on or before the due date.

C. Certified Activity Reports

1. On or before the twentieth (20th) day of each month during this Agreement, beginning on July 20, 2020, the Concessionaire shall deliver to Airport Accounting, Fairbanks International Airport, 6450 Airport Way, Suite 1, Fairbanks, Alaska 99709, a certified activity report.
2. The Concessionaire shall submit the certified activity report in a form that is acceptable to the State, which may include an electronic file in current Microsoft Excel for Windows or other electronic file acceptable to the State. The Certified Activity Report must reflect the Concessionaire's Gross Sales for the previous calendar month in terms of United States of America currency. A sample format is shown on Exhibit C (Certified Activity Report).
3. If the Concessionaire fails to submit to the State the Certified Activity Report (CAR) with payment as required by Section C (Certified Activity Reports) of this Article by the due date stated in that section, the Concessionaire shall pay, in addition to interest on all unpaid fees payable with that report, a late fee of \$30.00 for the first day late and \$15.00 per day thereafter until the report is received. The fee will be assessed beginning the day after the report is due and will include the day it is received. If the due date falls on a weekend or a date the State's offices are closed due to a holiday, the Concessionaire shall submit the report, and payment if applicable, by the end of the first work day following the weekend or holiday.

- D. Fees Vest in the State:** Fees payable to the State by the Concessionaire under this Agreement shall be owned by the State 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 State. If any fees payable to the State are lost, stolen, or otherwise unlawfully removed from the custody and control of the Concessionaire, the Concessionaire remains responsible to the State for the revenue.

E. Liquidated Damages

1. Time is of the essence in meeting the requirements of this Agreement. Without waiving any of its other legal or equitable remedies, the State will have the right to assess liquidated damages in an amount not to exceed one hundred dollars (\$100) for the first day and twenty dollars (\$20) per day thereafter, unless another amount is specifically stated within this Agreement as being applicable to a specific section of this Agreement, for failure to timely comply with the requirements of any Article of this Agreement after 24 hours of being non-operational or out of stock, not as a result of the State.
2. The State will notify the Concessionaire in writing of any deficiency and the State's intent to assess liquidated damages. The Concessionaire shall have forty-eight (48) hours after receipt of the notice to remedy all deficiencies identified in the notice prior to the State assessing the liquidated damages. If the Concessionaire fails to remedy any deficiency by the date indicated in the written notice, the assessment of liquidated damages will be retroactive to the date of the notice.
3. The State recognizes that there may be deficiencies that require more than forty-eight (48) hours to remedy and, as such, will be reasonable when considering requests for additional time to cure deficiencies. The Concessionaire must submit request for additional time, in writing, prior to the deadline stated in any written notice by the State. Any permission from the State for an extended period to cure a deficiency shall be granted or denied in writing.
4. The State is not required to issue a written notice related to an established deadline that the Concessionaire fails to meet, such as a report due date or a payment due date. Failure by the Concessionaire to meet a specified deadline may result in the immediate assessment of liquidated damages without a written notice by the State.
5. The Concessionaire and the State stipulate that assessment of liquidated damages shall not be construed as a penalty; rather, the Concessionaire and the State stipulate that the damages resulting from violations of this Agreement and the ITB will be hard to measure and ascertain and may, at the option of the State, be stated as "liquidated damages".
6. The Concessionaire shall pay any assessment of liquidated damages by the State within ten (10) days of receipt of an invoice for such damages.
7. The Concessionaire may protest any assessment of liquidated damages under 17 AAC 42.910.

F. Unpaid Fees: Any rent, charge, fee, liquidated damage, or other consideration due but unpaid at the expiration or cancellation of this Agreement is a charge against the Concessionaire and its property, real or personal, at the Airport. The State has any lien rights allowed by law. Either the State or its authorized agent may provide enforcement.

G. Interest: Beginning the day after payment is due, all fees due and unpaid accrue interest at ten and one-half percent (10.5%) per annum until paid. In its discretion, the State

may increase this interest rate to the legal rate for post-judgment interest under Alaska law.

- H. Bid Deposit: The State, in its sole discretion, will either refund the Concessionaire's bid deposit or apply it to the fees due the State beginning no later than ninety (90) days after the Effective Date.
- I. Badge/Fingerprint Fees: Concessionaire will pay the requisite and current Airport Badge Fees and Fingerprinting Fee for each badge issued during the term of this Agreement. As may be applicable, the Concessionaire will also pay any other badge-related fee duly established, including fees for replacement badges and for lost or otherwise unreturned badges.
- J. Other Fees: The State reserves the right to impose and collect charges and fees from Concessionaire for the following:
 - 1. The use of parking and tenant employee parking on the Airport;
 - 2. The use of specified equipment, facilities or services when such use is requested by Concessionaire; and
 - 3. The privilege of accessing the Airport to conduct any business other than vending machine services.

ARTICLE VII
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

- A. State Policy: The State of Alaska's policy is to ensure that Disadvantaged Business Enterprises (DBEs) have equal opportunity to participate in the performance of Airport concession contracts.
- B. Concessionaire's Obligation
 - 1. That it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in the connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Parts 23 or 26;
 - 2. That it shall assist the Airport in reaching its overall ACDBE participation goal by subleasing, whenever possible, a portion of its concession locations to Small Business Enterprises, Woman Business Enterprises, and Certified ACDBE's; and;
 - 3. That it shall include the following statements in any subleases or contracts covered by 49 CFR Parts 23 and 26, that it enters into and shall cause those businesses to similarly include the statements in further agreements:
 - a. "This agreement is subject to the requirements of the U. S. Department of Transportation's regulations, 49 CFR Part 23 and 49 CFR Part 26. The concessionaire or contractor 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, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23 or 49 CFR 26.”

- b. “The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 or 49 CFR Part 26, that it enters into and require those businesses to similarly include the statements in further agreements.”

ARTICLE VIII

OPERATION OF CONCESSION SERVICES

The Concessionaire's operation under this Agreement is a service to airline passengers and other users of the Airport. The Concessionaire acknowledges that the ability of the State to effectively compete with airports outside the State of Alaska and to promote tourism in the State of Alaska depends, in part, on the performance of the Concessionaire. Accordingly, the Concessionaire shall conduct its operation in a first-class, businesslike, efficient, courteous, accommodating manner, and will comply with the following:

A. General

1. The Concessionaire shall ensure that all requirements of the City, State and Federal laws, and regulations adopted by the City, State, Federal or any governmental legal authority and the rules and regulations promulgated by the State as same may be amended from time to time, are fully complied with at all times.
2. The Concessionaire's business shall be conducted in a manner so as to meet the needs of the Airport's patrons and the State and in a manner that will reflect positively upon the Concessionaire and the State. The Concessionaire shall offer quality services and equipment that are operational at all times, to provide first class service in a clean, attractive and pleasant atmosphere.
3. The Concessionaire shall generate revenue for the Airport by developing retail strategies that most efficiently meet customer demands and standards of performance that will allow the Concessionaire to operate efficiently while maximizing customer satisfaction.
4. The Concessionaire shall incorporate local and specialty items to the extent possible, and use creativity to allow adaptation to changes in passenger traffic, demographics, and trends in automated vending.
5. The Concessionaire may offer the State specialty vending machines, if available, that the Concessionaire believes will serve the needs of the traveling public. The State shall be the sole determinant on what serves the needs of the traveling public and the State's decision in this regard will be final.
6. The Concessionaire shall not permit any defacing of walls, floors and fixtures; keep all the premises free from trash and debris; and maintain and service all equipment at a high level of efficiency, reliability and appearance.

7. The Concessionaire shall neither commit nor allow any nuisance, noise or waste on the Airport or annoy, disturb or be offensive to other Airport users.
 8. The Concessionaire shall not use any space outside the Premises, but within the Airport, for sale, storage or any other undertaking, unless specifically leased from the State or subleased with the consent of the State for that purpose.
 9. The Concessionaire shall stock an inventory of merchandise of such size, character, and quality as will produce the maximum volume of gross revenue from the premises consistent with good practices.
 10. The Concessionaire shall ensure that it provides sufficient equipment, including vehicles, as necessary for efficient operation at the Airport.
 11. All delivery and installation costs shall be the responsibility of the Concessionaire.
- B. Business Development: The Concessionaire shall take all reasonable measures to maintain, develop, and increase its business at the Airport without diversion of any business to any entity or location not subject to this Agreement.
- C. Orderly Operations: The Concessionaire shall conduct all business in an orderly and peaceful manner without interfering with other tenants, users, or occupants of the Airport.
- D. Service Quality: The State desires to provide airline passengers and other users of the Airport with vending services that are of the highest quality. The Concessionaire shall maintain professional personnel who will provide a high standard of service to the public. Vending machines will be kept up-to-date with current standards and future improvements in technology and services that best meet the needs of the traveling public. While on duty, the personnel will present a neat and clean appearance, remain courteous at all times, and wear any and all badges or other identification cards that are mandated by the management of the Airport or any federal agency.
- E. Reasonable Pricing
1. The Concessionaire will furnish the services authorized under this Agreement to its customers on a fair, nondiscriminatory basis with reasonable prices to customers. All services provided by the Concessionaire shall be competitive in price to those services at off-airport locations within the Fairbanks area and other airports of similar size and operation.
 2. The Concessionaire shall, upon execution of this Agreement, provide Airport Leasing with a list of merchandise and services, including pricing, which the vending machine inventory will comprise of. Item prices and brand name selections shall not differ from those submitted unless agreed to in writing by Airport Leasing.
 3. All price changes (both positive and negative) for products must be submitted in writing to Airport Leasing at least thirty days prior to the effective date of the price change. The Concessionaire must provide at least one supporting document which shows why price changes are occurring. This may include, but is not

limited to, a certified invoice from the wholesaler where products are purchased, certified invoice or bill of sale from the product manufacturer, or a nationally recognized product publication which lists when and where price changes will occur.

4. During the term of this agreement, no less than one time per Agreement year, thirty (30) days after the end of each Agreement year, the Concessionaire shall conduct, or shall cause to be conducted, a vending machine price comparison of all current items. The price comparison shall compare the price of items sold in the Airport vending machines with the price of items sold in comparable vending machines off Airport property in the greater Fairbanks area.

F. Hours of Operation

1. The Concessionaire shall actively operate the concession to best serve the needs of Airline passengers, airport employees, and other users of the Airport. Unless otherwise approved by the State, the Concessionaire must maintain twenty-four (24) hour operation of all vending locations.
2. The Concessionaire must, within forty-eight (48) hours after notice to the Concessionaire by the State, repair or remove and replace any vending machine that is not operating reliably. Failure to complete the repair or replacement constitutes a breach and entitles the State to liquidated damages for each day from when the vending ceased to operate reliably. In the event that the State determines that any vending machine has for seventy-two (72) hours or more not been operating properly and reliably, the Concessionaire must, within forty-eight (48) hours after notice to the Concessionaire by the State, remove that vending machine. Failure to remove a non-operational machine within the time allowed will result in liquidated damages as defined in Article VI, Fees and Payments, Section E.

G. Maintenance

1. Concessionaire will clean and maintain the interior and exterior of the vending machines during the term of this Agreement, reasonable wear and tear excepted. Concessionaire will not permit or allow any portion of the Terminal building to be damaged or depreciated in value by any act or negligence of the Concessionaire its agents or employees.
2. The Concessionaire shall maintain the Premises in good repair, appearance, and in a safe condition at all times. At its own expense, the Concessionaire shall paint, repair, or replace its equipment as their condition may require. The Concessionaire shall take any action the State determines necessary for safety or to maintain the premises in good repair and appearance.
3. The Concessionaire shall pay for any lighting fixtures, extraordinary power use, or cleaning services required or caused by the Concessionaire which, in the State's determination, are beyond the scope of normal services provided by the State as described in Article XVII (State Services).

4. If the Concessionaire causes damage to the State or an Airport user due to inadequate maintenance by the Concessionaire or any of its equipment, fixtures, or systems, the Concessionaire shall repair the damage at its own expense. If the Concessionaire does not repair the damage, the State may, but is not obligated to, repair the damage and bill the Concessionaire for the State's costs. The Concessionaire shall pay the State within thirty (30) days of the billing date.

H. Signage

1. The Concessionaire shall not, without the prior written approval of the State in the form of an Airport Building Permit, construct, erect or place any signs in or on the Terminals or at the Airport other than an Airport-approved sign or marking on a vending machine providing information identifying the Concessionaire and concerning the services provided by that vending machine. The terms "sign" and "signs" as used herein shall mean advertising or promotional materials, billboards, notices, identification symbols, posters, electronic or static displays, information racks, decals, logos, or any similar device.
2. Prior to the construction, erection or placement of any sign, the Concessionaire shall submit to the State, for approval, drawings, sketches, electrical details, designs, elevations, dimensions, type, number, message and proposed location of such sign. Any restrictions, conditions or limitations with respect to any such sign as set forth in writing by the State will become conditions of this Agreement. The State will have the right to reject any sign proposed by the Concessionaire.
3. The Concessionaire is responsible for obtaining all permits and approvals that are required to comply with local, state, federal, City of Fairbanks and Airport policies, rules and regulations.
4. The Concessionaire shall follow all requirements of the State's Tenant Sign and Design Standards for the Airport.
5. No temporary hand-written signs are permitted.

- I. Business Solicitation: The Concessionaire shall only solicit business at the Airport authorized under this Agreement and shall not directly solicit customers outside of its Premises without the prior written consent of the State.

J. Airport/TSA/FAA Compliance Plan

1. The Concessionaire shall comply with all applicable responsibilities of the Airport Security Program, the Airport Certification Manual, and the Airport Emergency Plan and Airport Operational Orders required by 49 CFR Part 1542 and 14 CFR Part 139 and any other applicable regulation. The Concessionaire shall procure any identification badges required by the Federal Aviation Administration ("FAA") or the TSA or the Airport necessary to perform the rights and obligations under this Agreement. The Concessionaire is solely responsible if the FAA, TSA or the State find the Concessionaire at fault for any fine that results from a Concessionaire's violation of the Airport Security Program, the Airport Certification Manual, the Airport Emergency Program, 49 CFR Part 1542 and 14 CFR 139 by the Concessionaire, its agents, officers, suppliers, guests, customers, or employees while at the Airport.

2. Any penalty imposed on the State that results from a violation of the Airport's Security Program, Certification Manual, Airport Operational Orders, Emergency Program, or any applicable local, state or federal regulation, caused in whole or in part by the Concessionaire or by any of Concessionaire's agents or personnel, including any officer or employee, or anyone else acting by, on behalf of, or under the authority of the Concessionaire, will, as between the State and the Concessionaire, be the sole responsibility of the Concessionaire, and will be reimbursed to the State within thirty (30) days of written demand if the State pays the penalty.
- K. Advertising: The Concessionaire shall have the limited ability to promote itself and its services on its Premises; however, the Concessionaire may advertise at the Airport only under a contract with the State's display advertising concessionaire.

ARTICLE IX PERFORMANCE BOND

- A. Performance Bond: The Concessionaire will submit a performance bond to guarantee performance of all obligations and payment of all sums due under this Agreement. The amount of the performance bond shall be two thousand dollars (\$2,000.00). The Concessionaire will keep a performance bond in at least that amount in effect throughout the term of this Agreement.
1. The State may increase or revise the amount of the performance bond by written demand. The State will base any such increase or revision on reasonable and justifiable grounds.
 2. The State will accept a bond in the form of a cash deposit, a time certificate of deposit, a performance bond, an annual renewable bond, or an irrevocable letter of credit, all subject to State approval.
 3. The State will base its approval of the form of the bond on certainty of the assurance that the Concessionaire's failure to make timely payments or comply with any requirement of the Agreement will readily allow the State to attach and collect the full amount of the bond.
- B. Release of Bond: The State will release the bond only by written authorization after the Concessionaire has met all Agreement obligations. Neither cancellation nor expiration of this Agreement constitutes a release or discharge of the bond.

ARTICLE X AUDITS, REPORTS, BOOKS, AND RECORDS

- A. Maintenance of Books and Records
1. To provide a satisfactory basis to confirm the accuracy of the Concessionaire's Certified Activity Reports, the Concessionaire shall establish and maintain books and records that concern the business authorized under this Agreement in accordance with generally accepted accounting principles. The Concessionaire's books and records must, in the determination of the State, enable the Concessionaire to report accurately, and the State to check easily, payments due the State under this Agreement.

2. As used in this Agreement, "books and records" include, without limitation, general ledgers, revenue journals, register tapes, cashier reports, daily or periodic summary reports, daily and monthly reports, computer terminal tapes, computer disks or other media (including, but not limited to, unedited computer generated printed material if access to the computer tapes or disks are unavailable), bank deposit slips, bank statements, credit/debit card service statements, tax reports to federal, state and local agencies (but not including state or federal income tax reports) and contractual Agreements with third parties (including subcontractors and joint venture partners) on the Airport that contract for services with the Concessionaire.
3. The Concessionaire shall preserve all books and records of business conducted under this Agreement for the longer of six (6) months after completion of an audit by the State or five (5) years after the end of the Agreement year to which the books and records pertain. However, if the State objects to any report or statement, the Concessionaire will preserve all books and records containing information relevant to that report or statement until resolution of the objection is confirmed in writing by the State.
4. The State, or its designee(s), shall have access to the above referenced records at all times regardless of the media in which the information is stored.

B. Audit

1. The Concessionaire shall permit the State to inspect, copy, and audit the Concessionaire's books, records, and supporting data related to this Agreement at the State's request during regular business hours. The Concessionaire shall either transport the necessary books and records to a location at the Airport for inspection, copying, or audit, or perform the audit at the location where the Concessionaire books and records are located. The State reserves the right to perform the audit, at its own expense, at the location where the books and records are located if the State desires. If the Concessionaire fails to transport the books and records to a location at the Airport within thirty (30) days after request by the State, the State reserves the right to perform the audit at the location where the Concessionaire maintains the records, subject to the Concessionaire paying expenses as provided for in Section B.2 of this Article.
2. If the Concessionaire's place of business and record keeping is outside Fairbanks, Alaska, and if the Concessionaire elects to have the State perform the audit at that location, or the State elects to perform the audit at that location because the Concessionaire has failed to provide the books and records within thirty (30) days as required in Section B.1 above, the Concessionaire will pay the State for the audit costs incurred. Audit costs include round-trip air and ground transportation from the auditor's duty station to the location where the Concessionaire maintains the books and records, as well as per diem at the then-current State of Alaska rate for each day of travel and on-site audit work. Audit costs do not include the salary and benefit costs of the auditors. After the audit, the State will bill the Concessionaire for the costs incurred and the State will support the billing with a copy of the travel authorization form used by the State. The Concessionaire shall pay these costs within thirty (30) days of the State's billing date.

3. The Concessionaire shall provide all information requested by the auditor in a timely manner. If the auditor does not specify a deadline to submit requested information, the term "timely manner" shall mean "not more than thirty (30) days."
4. Such audits are to be limited to once per annum, unless a significant discrepancy or change occurs. These may include, but are not limited to: change of management at Concessionaire; significant drop-off in revenue from one month to the next; complaints related to billing from customers and vendors of the Concessionaire.

C. Concession Underpayments

1. If any State inspection or audit of the Concessionaire's books and records discloses a Concessionaire underpayment, the Concessionaire shall pay, within thirty (30) days of the billing date, any underpayment disclosed by the audit plus:
 - a. interest at the rate specified in Article VI (Fees and Payments);
 - b. any actual costs and attorney fees that the State incurs to collect the underpayment;
 - c. if the underpayment is more than five thousand dollars (\$5,000) in any fiscal year, all audit costs that the State incurs, including salary and benefit costs of the auditor.
2. If the State collects the difference through litigation, the Concessionaire shall pay the State the State's full costs and attorney's fees incurred to collect the underpayment. Further, the Concessionaire is liable for the full costs and attorney's fees if the State finds it necessary to take legal action either to levy the performance bond under Article IX (Performance Bond) or take other action necessary to collect money the Concessionaire owes to the State.

D. Financial Information: Within sixty (60) days after the end of each Agreement year during this Agreement, the Concessionaire shall furnish the State with a true and accurate statement that reflects the Concessionaire's total Transactions, by type, derived from business transacted under this Agreement during the preceding Agreement year. An independent certified public accountant must certify and sign this special purpose statement as true and correct.

E. Period for Objection: If the State does not object to the contents of any report or statement furnished by the Concessionaire within five (5) years after the date the report or statement is furnished to the State, the State will consider the contents of the report or statement correct unless the State establishes that the report or statement was fraudulently prepared. If the State objects to any report or statement, the Concessionaire shall preserve all books until the objection is resolved.

F. Additional Supporting Data

1. The Concessionaire shall furnish the State with other financial or statistical reports that the State may occasionally request regarding the concession. This Section does not require the Concessionaire to submit data that is either

confidential business information or trade secrets unless reasonably related to determining compliance with this Agreement, and the State provides for protection of such information from public disclosure.

2. The Concessionaire shall provide all information requested by the State in a timely manner. If the auditor does not specify a deadline to submit requested information, the term "timely manner" shall mean "not more than thirty (30) days."
- G. Public Information: All books, figures, records, reports, statements, or similar items the Concessionaire submits to the State are public records and available for public inspection, except as may be provided under the previous section.

ARTICLE XI

CONSTRUCTION, REMODELING, AND REFURBISHMENT

- A. Any Concessionaire alteration, construction, or improvement of the Premises will be neat, presentable, and compatible with the architecture of the Terminal, as determined by the State, and performed at no cost to the State or concession fee credit from the State.
- B. Before constructing any improvement on the Premises, the Concessionaire shall obtain the written approval of the State in the form of an Airport Building Permit that includes all the required attachments and detailed drawings of the proposed construction. At the State's request, the Concessionaire shall also submit architectural renderings of the proposed improvement with samples of materials and colors.
- C. The State will review the proposed construction and provide the Concessionaire written approval or disapproval.
- D. The Concessionaire shall deliver detailed as-built drawings to the State within thirty (30) days after completing construction. The as-built drawings must show the location and dimensions of any structural, mechanical, electrical, or plumbing improvements the Concessionaire places or constructs on the Premises.
- E. The State installed a Premises Wiring Distribution System (PWDS) in the Terminal. The Concessionaire shall be required to use the PWDS for operations in the Terminal Building at Fairbanks International Airport.

ARTICLE XII

LEASE OF ADDITIONAL SPACE

If the Concessionaire requests additional space in the Terminal for administrative, storage or other purposes, and the State determines that suitable space is available, the State will lease the space subject to public notice and other requirements of law concerning the lease of Airport Terminal space under a separate Agreement.

ARTICLE XIII

REDUCTION OF SPACE

- A. If the Concessionaire determines that it is not economically feasible to continue operations in any portion of the Premises authorized under this Agreement, the

Concessionaire may submit a written request to discontinue operations in that area or to reduce the area at that location and surrender this space to the State. The Concessionaire shall demonstrate in writing, to the State's satisfaction, that discontinuing operations in this area is in the State's best interest. The State may require that the Concessionaire provide financial, statistical, or other data to support the request for a reduction of the Premises. Any decision to reduce space rests solely with the State and the Concessionaire shall abide by the State's decision. Any decision by the State to reduce the space used by the Concessionaire will not reduce the fees the Concessionaire pays to the State.

- B. If the State approves the Concessionaire's request to discontinue operations in an area of the Premises, the State may, in its sole discretion, either allow the Concessionaire to use the area for other purposes related to the business authorized under this Agreement or require the Concessionaire to vacate the space and surrender it to the State.
- C. The State reserves the right, in its sole discretion, to reduce the area authorized under this Agreement if the State determines that it is in its best interest to do so.

ARTICLE XIV **STATE DIRECTED RELOCATION**

The Concessionaire acknowledges that the State may require the relocation of the Premises, in whole or in part, if the State, in its sole discretion determines that relocation is necessary to meet the needs of the traveling public or is in the best interest of the Airport.

- A. **State Responsibilities:** The State, at its sole expense, will provide floor space with interior permanent improvements including floors, ceiling, carpeting, lighting, electrical, wall finishes, heating, ventilation, and permanent fixtures similar to those in the space from which the State requires the Concessionaire to relocate.
- B. **Concessionaire Responsibilities:** The Concessionaire, at its sole expense, will relocate all non-permanent fixtures, furnishings and equipment to the new lease space; 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 State when the new space is completed.
- C. The State and the Concessionaire shall perform their respective obligations in an expeditious manner, excluding any delay beyond the control of either party. The State will attempt to provide a new lease space that is equal to or better than the area the State requires the Concessionaire to vacate. However, the State is not responsible for any financial loss the Concessionaire may incur because of relocation under this Article unless the loss is the result of a breach by the State of its obligations under this Article.

ARTICLE XV **PERSONNEL**

- A. **Local Contact:** The Concessionaire must designate a local point of contact, responsible for the up-keep, stocking, and scheduling of service to the machines. This contact information must remain current at all times.
- B. **Conduct:** It is the intent of the parties hereto that the Concessionaire's employees, subcontractors and joint venture partners maintain a high degree of professionalism with

respect to this Agreement. All of the Concessionaire's employees shall be neat in appearance and courteous in manner while on the Airport for purposes related to this Agreement.

- C. Applicable Rules: The Concessionaire agrees that it will be responsible for ensuring that these employees abide by all laws, rules, and regulations applicable to the Airport. The Concessionaire shall be responsible for any requirements of the Federal Aviation Administration, the Transportation Security Administration, the State, or other regulating agencies regarding employee background checks and badging.
- D. Meetings: The Concessionaire shall attend all meetings requested by the State throughout the term of this Agreement. Based upon the matter to be discussed, the State will reasonably designate which employee(s) of Concessionaire shall attend each meeting and the Concessionaire shall ensure that each designated employee attends.
- E. Deliveries: The Concessionaire shall monitor the movement of deliveries to avoid conflict with other Airport functions and shall coordinate its use of the curbside loading areas at the Terminal, if necessary, with the use by other tenants or licensees of the State, and with the State. The Concessionaire shall be responsible for the return of all pallets, storage containers and other equipment belonging to its suppliers.

ARTICLE XVI

STATE'S RIGHTS OF ACCESS AND INSPECTION

A. Inspection

1. The State, by its officers, employees, agents, representatives, and contractors, may at all reasonable times enter and inspect the Premises or observe the Concessionaire's performance of its obligations under this Agreement, or take any action that the State is obligated to take under this Agreement.
2. The Concessionaire shall not claim nor will the State provide any fee abatement if the State exercises this right. The State will take all reasonable steps to minimize interference with the Concessionaire's activity on the Premises except for an emergency.

B. Access

1. The Concessionaire shall provide emergency telephone numbers where the State may reach the Concessionaire or the Concessionaire's agent on a twenty-four (24) hour basis.
2. The State reserves the right to enter the Premises to repair, replace, alter, install, or maintain any mechanical, electrical, plumbing, heating, cooling, ventilation, fire protection, telecommunication, or other system necessary to the proper functioning of the terminal without liability to the Concessionaire for any damage to the Premises.
3. As a result of any entry under this Section, the State is liable only for its own negligence and for returning the Premises to their former condition using standard materials. Any State repair, replacement, alteration, installation, or

maintenance will not unreasonably interfere with the Concessionaire's use of the Premises. Nothing in this Section in any way relieves the Concessionaire of any obligation to maintain its lease space and improvements.

4. At any time during this Agreement, the State, by its agents and employees, whether or not accompanied by prospective concessionaires, occupiers, or users of the Premises, may enter the Premises to exhibit, view, or photograph any part of the Premises. A State official, after advance coordination with the Concessionaire, will accompany any prospective concessionaire that request to measure or photograph the Premises.

ARTICLE XVII STATE SERVICES

A. State Services

1. The State will maintain Airport electrical, public address, plumbing, and heating systems in good condition and repair. However, the State may decline to maintain any system installed by the Concessionaire and may charge the Concessionaire for any repair resulting from the Concessionaire's negligence. The Concessionaire shall pay the State within thirty (30) days of the billing date for any such repair charge.
2. The State will throughout the term hereof, maintain and repair all elevators and escalators at the Airport and shall maintain access to the Premises, subject to temporary shutdown for maintenance and repair. However, the State may, at any time, temporarily or permanently close, consent to or request the closing of any roadway or other right-of-way for such access, ingress or egress, whether inside or outside the Premises, so long as a means of access, ingress or egress reasonably equivalent to that formerly provided, and not adverse to the Concessionaire's continued use and enjoyment of the Premises, is reasonably substituted and is concurrently made available.
3. The Concessionaire understands and agrees that at times there may be inconvenience caused by construction or renovations of the Premises and roadways, and the Concessionaire hereby releases and discharges the State from any and all claims, demands or causes of action which the Concessionaire now or at any time hereafter may have against the State arising or alleged to arise out of the closing of any right-of-way or other area used as such, whether within or without of the Premises, so long as the State makes available a means of free access, ingress or egress reasonably equivalent if available to that existing prior to each such modification, if any.

- B. Hold Harmless: The Concessionaire waives any claim and holds the State harmless for damages that may arise out of or result from any failure or interruption of utility services furnished by or through the State that includes, but not limited to, stoppage in electrical energy, space heating, or the failure or interruption of any public or passenger convenience.

ARTICLE XVIII
LAWS AND TAXES

This Agreement is subject to all State of Alaska laws and regulations, including those relating to leasing facilities and granting privileges at State of Alaska Airports.

A. Laws

1. At no expense to the State, the Concessionaire shall comply with all federal, State of Alaska, 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.
2. The State is not 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 State's exercise of any authority.
3. The Concessionaire shall comply with any State of Alaska and federal regulation governing hazardous substances, including hazardous wastes, and any State instructions regarding environmental concerns, 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. The Concessionaire shall properly handle spills of hazardous substances. The Concessionaire shall immediately notify the State of any spill that occurs as well as the action taken. The Concessionaire shall provide the State copies of any written spill or other reports regarding action taken as soon as the reports are available. With respect to any such occurrence, the Concessionaire shall indemnify, defend, save, and hold the State and its employees harmless from any loss, claim, suit, or judgment.

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

C. Disputes: The laws of the State of Alaska, including the requirement for exhaustion of remedies under 17 AAC 42.910 and 920, will govern in any dispute between the parties. The parties will bring any request for judicial review after exhaustion of administrative remedies, and all claims, if any, subject to direct judicial determination, before the courts of the State of Alaska in the Fairbanks venue district.

D. Claims: The Concessionaire shall notify the State of any claim, demand, or lawsuit arising out of the Concessionaire's rights granted or the operations authorized under this Agreement. At the State's request, the Concessionaire shall 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 XIX
ADDITIONAL FEES AND CHARGES

- A. The Concessionaire shall pay the State, within thirty (30) days, any additional fees and charges where the State has paid any sum or sums, or has incurred any obligations or expenses for which the Concessionaire has agreed, either expressly or by implication, to pay or reimburse the State herein or if the State incurs any obligations or expenses because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of its obligations under this Agreement. Such payments may include all interest, costs, damages, and expenses reasonably related to such sums so paid or expenses so incurred.
- B. The Concessionaire shall also pay to the State within ten (10) days after the last day of each month this Agreement exists, all other fees, charges and sums as a result of any utility and service charges, and any other expenses incurred by the State on account of the Concessionaire for which the State is entitled to reimbursement whether express or implied herein, and such other fees, charges, levies as are prescribed or contemplated hereunder.
- C. The State will have a lien upon all removable fixtures and other trade fixtures of the Concessionaire placed at the Airport, to the extent permitted by law, for the purpose of securing the payment of all sums of money which may be due to the State from the Concessionaire under this Agreement.

ARTICLE XX
INDEMNIFICATION AND INSURANCE

- A. Indemnification
 - 1. The Concessionaire shall indemnify, defend, and hold the State, its agents, and employees harmless from and against any and all liability, loss, suit, obligation, claim, judgment, fine, demand, damage, penalty, property damage or personal injury of whatever kind, including sums paid in settlements of claims, attorney fees, consultant fees, expert fees, or costs incurred arising directly or indirectly from or connected with this Agreement, the Concessionaire's use and occupation of the Premises, the Concessionaire's operations and employees, customers, or sublessees.
 - 2. If any mechanics' liens or other liens or orders for the payment of money shall be filed against the Premises, or any portion thereof, by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or for the Concessionaire, or for or by reason of any change, alteration or addition or the cost or expense thereof, or any contract relating thereto, or against the State as owner thereof, the Concessionaire shall within thirty (30) days cause the same to be canceled and discharged of record, by bond or otherwise at the election and expense of the Concessionaire, and shall also defend on behalf of the State, at the Concessionaire's sole cost and expenses, and vacation, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens or orders.

3. Without limiting the foregoing, this indemnification obligation includes payment of all costs of any investigation of site conditions, or any cleanup, abatement, remediation, removal or restorative work required by the Agreement, or by any federal, State, or local government agency with appropriate jurisdiction because of hazardous substances present in the soil or groundwater on or under the Premises or other affected land which contamination the Concessionaire caused, materially contributed to, or assumed under assignment.
4. Notwithstanding the other paragraphs of this Article, if more than sixty percent (60%) of the legal cause of the loss or obligation is due to the State's negligence or willful misconduct, the loss or obligations is to be apportioned between the Concessionaire and the State according to comparative fault. The Concessionaire and the State will seek, in good faith, to agree to an apportionment of the loss or obligation independent of litigation.

B. Insurance

1. At no expense to the State, the Concessionaire shall secure and keep adequate insurance in force during this Agreement to protect the State and the Concessionaire. Where specific limits are stipulated, they are the minimum acceptable limits. If the Concessionaire's insurance policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
 - a. Commercial general liability insurance with coverage limits not less than \$1,000,000 combined single limit per occurrence where generally applicable, including 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. All-risk property insurance for the Concessionaire's furnishings, fixtures, improvements, and equipment equal to the full replacement cost.
2. By no later than May 15, 2020, the Concessionaire shall provide the State with proof that it will have continuous insurance coverage in the form of an insurance policy or a certificate of insurance, together with proof of premium payment. All insurance required by this Article must meet the following requirements:
 - a. Name the State as additional insured for commercial general liability insurance.
 - b. Provide the State notification at least thirty (30) days before any termination, cancellation, or material change in insurance coverage.
 - c. Include a waiver of subrogation for worker's compensation insurance, auto liability, and all-risk property insurance so that the insurer waives all rights of subrogation against the State for payments made under the policy.

3. The insurance coverage requirement does not relieve the Concessionaire of any other obligation under this Agreement. The State may revise the amount or type of required insurance by written notice. The State will base any such revision on reasonable grounds.

ARTICLE XXI
CANCELLATION BY STATE

- A. Breach of Agreement: The State may cancel this Agreement and recover possession of the Premises by giving the Concessionaire thirty (30) days advance written notice if any of the following events occur, unless the breach is cured within the thirty (30) days:
1. The Concessionaire does not pay any rent, fee, penalty, or other charge when due under this Agreement.
 2. A check for any payment is returned for insufficient funds.
 3. The Concessionaire uses the Premises for purposes not authorized under this Agreement.
 4. A petition in bankruptcy is filed by or against the Concessionaire.
 5. A court enters a judgment of insolvency against the Concessionaire.
 6. A trustee or receiver is appointed for the Concessionaire's assets in a proceeding brought by or against the Concessionaire.
 7. 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 sixty (60) days.
 8. The Concessionaire fails to operate the business authorized under this Agreement on a continuous basis without the State's advance written approval.
 9. The Concessionaire does not meet the State's DBE goal without adequately documenting to the State's satisfaction its good faith efforts to do so.
 10. The cessation or deterioration of any service that, in the State's determination, materially and adversely affects the service the Concessionaire is required to perform under this Agreement.
 11. The Concessionaire does not perform any provision or covenant under this Agreement.

A cancellation notice issued by the State under this Article is stayed if, within the thirty (30) day notice period, the Concessionaire begins and continues expeditious action to cure the breach in the case of a breach that is not reasonably curable within thirty (30) days. The determination of "expeditious action" and "not reasonably curable" is at the State's sole discretion.

The Concessionaire shall not construe any waiver by the State of any default on the part of the Concessionaire in the performance of any provision, covenant, or condition to be performed, kept, or observed by the Concessionaire as a waiver by the State at any time thereafter of any other default or subsequent default in performance of any provision, covenant, or condition of this Agreement. After a State waiver of default in one or more instances, the State is not required to provide notice to the Concessionaire to restore or revive time as of the essence under this Agreement.

- B. State's Right of Reentry: As an additional remedy, on giving written notice of cancellation, the State has the right to reenter any part of the Premises on the effective date of cancellation without further notice of any kind, remove any persons, 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 State
1. On or after cancellation of this Agreement or on reentry, the State 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 a period of time the same as or different from the balance of the time remaining under this Agreement, and on terms and conditions the same as or different from those set forth under this Agreement.
 2. The State may also repair or make any structural or other change in the Premises that are necessary, in the State's sole determination, to maintain the suitability of the Premises for uses similar to those granted under this Agreement without affecting, altering, or diminishing the obligations of the Concessionaire under this Agreement. The State will charge the Concessionaire the cost of these repairs and the Concessionaire shall pay these charges within thirty (30) days of the billing date.
- D. Ownership of Equipment and Improvements: If the State cancels this Agreement for cause, all of the Concessionaire's title and interest in furnishings, fixtures, equipment, and improvements installed in the terminal under this Agreement, other than a vending machine, vest in the State. The State may dispose of these items as it sees fit.
- E. Survival of Concessionaire's Obligations: If the State cancels this Agreement for cause, all of the Concessionaire's payment obligations under this Agreement will thereby immediately be accelerated and due without reducing any and all other damages to which the State may be entitled by law for the entire balance of the term, subject to the State's obligation to mitigate damages. The State may issue notices of amounts due, reviewable only under the protest and appeal procedures of 17 AAC 42.910 and 920, and 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.

The amount of damages for the time subsequent to cancellation is the sum of the following:

1. Title to all furnishings, fixtures, equipment, and improvements, other than a vending machine, as provided in Section D. of this Article.

2. The amount by which the percentage fee under this agreement, applied to the projected vending revenues that it is reasonably probable that the concessionaire would have received if no cancellation had occurred. However, the State will offset this amount by any fees the State receives from a succeeding Concessionaire. At the discretion of the State, the State may calculate the average vending revenue by dividing the Concessionaire's total vending revenue before the cancellation by the total number of days the Concessionaire operated the business under this Agreement to determine the daily vending revenue percentage due the State. However, if the State determines that the Concessionaire has not been operating long enough in sufficient compliance with this Agreement to establish reasonable average daily vending revenue from compliant year-round operation, the State may use any other reasonable methods to determine the same. In either case, the State will then multiply this average daily vending revenue amount by the number of days remaining through May 31, 2025.
3. The liquidated damages specified in this Agreement for any unapproved closure before the effective date of cancellation.

The Concessionaire acknowledges that the damages specified in this section do not affect the State's right to damages if cancellation occurs before the Concessionaire receives any revenues under this Agreement.

- F. Waiver of Redemption and Damages: 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 State obtains or retains possession of the Premises in any lawful manner. The Concessionaire acknowledges that if the manner or method employed by the State to gain possession of the Premises gives rise to a cause of action to the Concessionaire for forcible entry and detainer under the laws of the State of Alaska, the total maximum amount of damages to which the Concessionaire may be entitled is the sum of one dollar (\$1). 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.
- G. Surrender of Possession on Cancellation: The Concessionaire shall yield possession of the Premises to the State on the cancellation date 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 State, reasonable use and wear-and-tear accepted. The Concessionaire shall cooperate with the State and any replacement Concessionaire to facilitate an efficient transfer.

ARTICLE XXII

CANCELLATION BY CONCESSIONAIRE

- A. The Concessionaire may cancel this Agreement by giving the State sixty (60) days advance written notice if any of the following events occur:
 1. The permanent abandonment of the Airport by all passenger airlines or the removal of all airline passenger service from the Airport for a period of at least ninety (90) consecutive days.

2. 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 ninety (90) consecutive days.
 3. 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 ninety (90) consecutive days.
- B. The Concessionaire must, within a maximum of five (5) calendar days after the end of the Concessionaire's sixty (60) day advance written notice period, remove all of its personal property, vending machines, furniture, and fixtures, if applicable from the Premises. The Concessionaire acknowledges that as part of the consideration for this Agreement, all property remaining on the Premises after these five (5) calendar days becomes the sole property of the State, with full title vested in the State unless the property is contaminated with any hazardous substance or is rejected by the State by written notice to the Concessionaire in or the property's automatic vesting would violate an applicable statute or regulation. The State may remove, modify, sell, or destroy the property as it sees fit. The Concessionaire shall pay the State for any cost the State incurs in property removal and disposal within thirty (30) days of the billing date.

ARTICLE XXIII

SUBSEQUENT CONTRACT

- A. Subsequent Contract Award: The Concessionaire acknowledges that on the expiration or cancellation of this Agreement, the State may award any subsequent vending contract by any legal means then available to the State.
- B. Transition Schedule at Expiration or Concessionaire Cancellation
1. The Concessionaire understands that it is neither practical nor possible for the State to predict the exact transition schedule and procedure to best serve the needs of the traveling public and the State at the expiration or Concessionaire cancellation of this Agreement.
 2. The State will provide the Concessionaire a written notice of the transition plan determined by the State to best serve the needs of the traveling public and the State at least sixty (60) days before turning the business over to a succeeding Concessionaire.
 3. The Concessionaire shall diligently execute the transition plan determined by the State, abide by its time schedule, and cooperate with the State and the succeeding Concessionaire in carrying out the transition plan. In any dispute between the Concessionaire and the succeeding Concessionaire during the transition period, the Concessionaire shall abide by the decision of the State.
- C. Amortization and Ownership
1. At the expiration of this Agreement, the State may, in any combination, assume title to, direct the concessionaire to remove, or allow the Concessionaire to sell to

the succeeding concessionaire, all or specific furnishings, fixtures, and equipment located in or on the Premises.

2. The sale price shall be equal to any unamortized balances of the furnishings, fixtures, and equipment to be sold. For reimbursement and purchase issues covered by this Agreement, the Concessionaire shall amortize all furnishings, fixtures, and equipment from the earliest acquisition, installation or use, over a five-year period using the straight-line method.
3. Ownership of Concessionaire's vending machines shall remain vested in the Concessionaire at the expiration of this Agreement.

ARTICLE XXIV ASSIGNMENT OR SUBCONTRACT

- A. **Prohibition:** The Concessionaire shall not mortgage, hypothecate, nor otherwise encumber or assign the concession rights created under this Agreement, in whole or in part, without the advance written consent of the State under 17 AAC 42.260-275, as applicable. Any attempt to assign, mortgage, hypothecate, or encumber the concession rights in violation of this Article is void and will confer no right, title, or interest in nor to this Agreement, on any assignee, mortgagee, encumbrancer, pledgee, lienholder, subtenant, successor, or purchaser.
- B. **Approval by State:** The Concessionaire shall submit three copies of any proposed assignment or subcontract to the State for advance written approval. Each copy must bear the original notarized signature of all parties. All covenants and provisions of this Agreement extend to and bind the legal representatives, successors, and assignees of the parties.
- C. **Merger, Consolidation, or Reorganization:** The State 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.

ARTICLE XXV GENERAL COVENANTS

- A. **Execution by State:** This Agreement is not effective until signed by the Commissioner, Department of Transportation and Public Facilities, or a designated representative.
- B. **Approval by State:** The State will not unreasonably withhold any approval required under this Agreement.
- C. **Notices:** Either party will deliver any notice required under this Agreement either by hand, registered mail, certified mail, or by a reliable overnight delivery service to the appropriate party at the address on page one of this Agreement or to any other address that the parties subsequently designate in writing. All notice periods that begin by notice given by the State begin on the date the notice is mailed.

- D. Modification: The Concessionaire acknowledges that the State may modify this Agreement to meet the revised requirements of federal or State grants, to operate the Airport, or to conform to the requirements of any revenue bond covenant to which the State of Alaska is a party. The State may make these modifications without formal amendment. However, a modification may not reduce the rights or privileges granted the Concessionaire under this Agreement or cause the Concessionaire financial loss.
- E. Interrelationship of Provisions: All provisions of this Agreement and the associated bid 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.
- F. Validity of Parts: The remaining parts of this Agreement continue in full force if any part is declared invalid by a court of competent jurisdiction.
- G. Holding Over: If the Concessionaire holds over after this Agreement expires, the holding over does not operate as a renewal or extension of the rights granted under this Agreement, but, to the extent the State consents, creates a month-to-month tenancy, regardless of any payment accepted by the State. The Concessionaire's obligations to perform under this Agreement will continue until the State terminates the month-to-month tenancy. The State may terminate the tenancy at any time by giving the Concessionaire at least ten (10) calendar days written notice. Unless otherwise mutually agreed by both parties, payment for any holdover period shall be the same fee structure described in Article VI (Fees and Payments) of this Agreement.
- H. Radio Interference: At the State's request, the Concessionaire shall 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. The Concessionaire may not install or use wireless technology without the written consent of the State and the receipt of an approved Airport Building Permit.
- I. Discrimination: The Concessionaire shall not discriminate on the grounds of race, color, creed, 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 State law. The Concessionaire recognizes the right of the State to take any action necessary to enforce this covenant, including actions required by any federal or State law.
- J. Affirmative Action: The Concessionaire shall undertake any affirmative action program required by 14 CFR, Part 152, Subpart E to insure that the Concessionaire shall not exclude any person 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 shall not exclude any person on these grounds from the participation in or the receipt of the service or benefit 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 State that they will also undertake affirmative action programs and require assurances from their sub-organizations, as required by 14 CFR, Part 152, Subpart E.
- K. National Emergency: The State is not liable for the inability to perform any part of this Agreement that results from national emergency declared by the federal government.

- L. Surrender of Possession: The Concessionaire shall yield possession of the Premises to the State on the date of expiration or earlier cancellation 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 State, reasonable use and wear-and-tear excepted.
- M. No Waiver: If the State does not insist in any one or more instances on the strict performance by the Concessionaire of any provision or Article under this Agreement, it is not a waiver or relinquishment for the future, but the provision or Article will continue in full force. The State's failure to enforce any provision or Article in this Agreement is neither an enforceable waiver nor subject to reasonable reliance unless it is stated expressly as a waiver in writing and signed on behalf of the State.
- N. Disasters: If, in the determination of the State, fire, flood, earthquake or other casualty damages the Airport so extensively as to render it untenable, either party may elect to terminate this Agreement on thirty (30) days written notice to the other party. If this Agreement is terminated because of a disaster, the State will prorate the fees payable under this Agreement up to the time the Airport becomes untenable.
- O. Condemnation: This Agreement ends on the date the Concessionaire is required to leave the Airport if any proper authority condemns the Airport. The State is entitled to all condemnation proceeds. However, the State 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.
- P. Quiet Enjoyment: The State 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 shall have, hold, and enjoy peaceful and uninterrupted use of the Premises.
- Q. Bid Documents: All documents issued by the State, and all documents submitted by the Concessionaire, in connection with the Invitation to Bid for Concession Agreement ADA-90879, including the Notice Inviting Bids, Terms of Invitation, Instructions to Bidders, Bid Submittal Form, Bidder's Affidavit, Bidder's Questionnaire, Sample Concession Agreement and Supplemental Information as modified or supplemented by addenda, and all other documentation required in the ITB, and all information submitted by the Concessionaire with its bid.
- R. 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 both singular and plural, as appropriate.
- S. Entire Agreement: This Agreement, including any amendment, and any item 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 stipulated in Section D of this Article.
- T. Time: Time is of the essence in the performance of all rights and obligations of the parties to this Agreement.

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

STATE OF _____)
)ss.
)
(Judicial District or County)

Lessee: @Concessionaire

Signature: _____

By: _____

Title: _____

THIS IS TO CERTIFY that on this _____ day of _____, 2020, personally appeared _____, known to me to be the person named in and who executed the foregoing instrument, and who acknowledged before me that the foregoing instrument was freely and voluntarily executed with full authority for the uses and purposes set forth.

Notary Public in and for: _____

My Commission Expires: _____



STATE OF ALASKA)
)ss.
Fourth Judicial District)

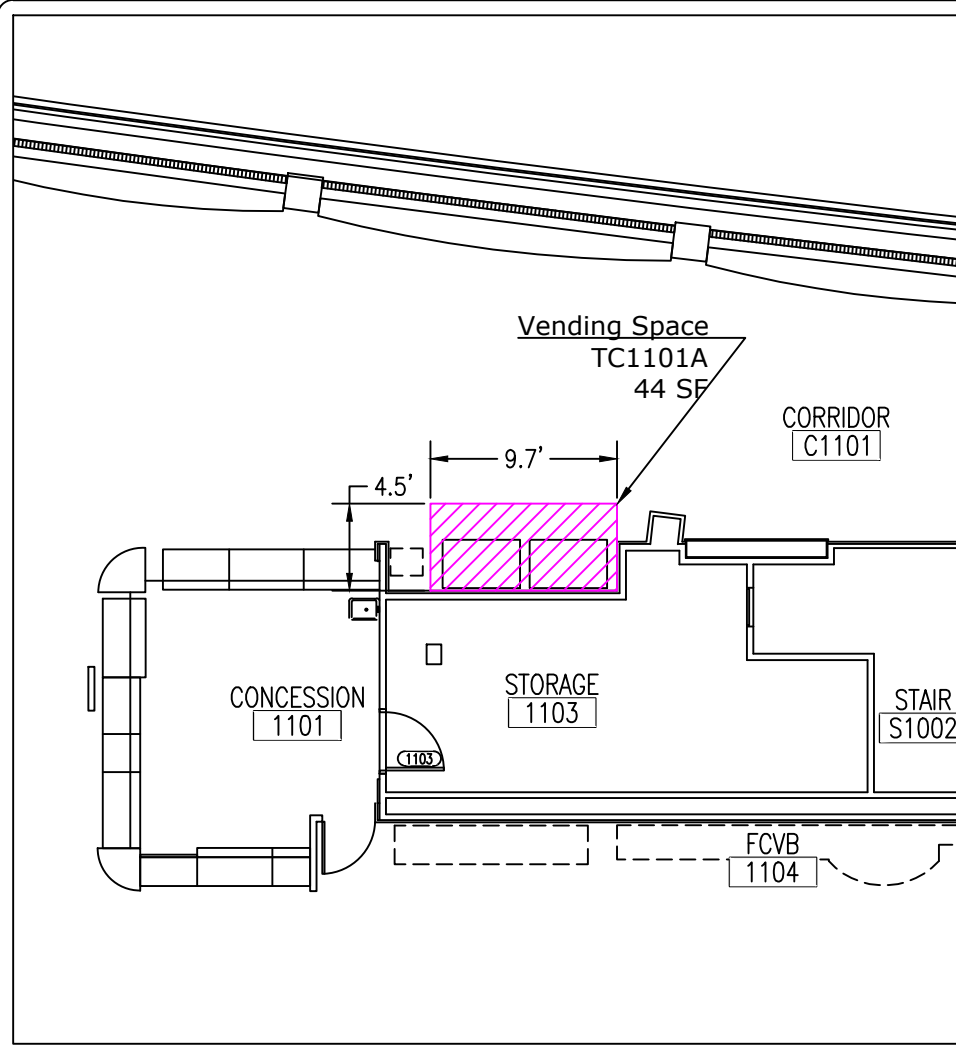
STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

Christel Burgess, Chief of Leasing
Fairbanks International Airport

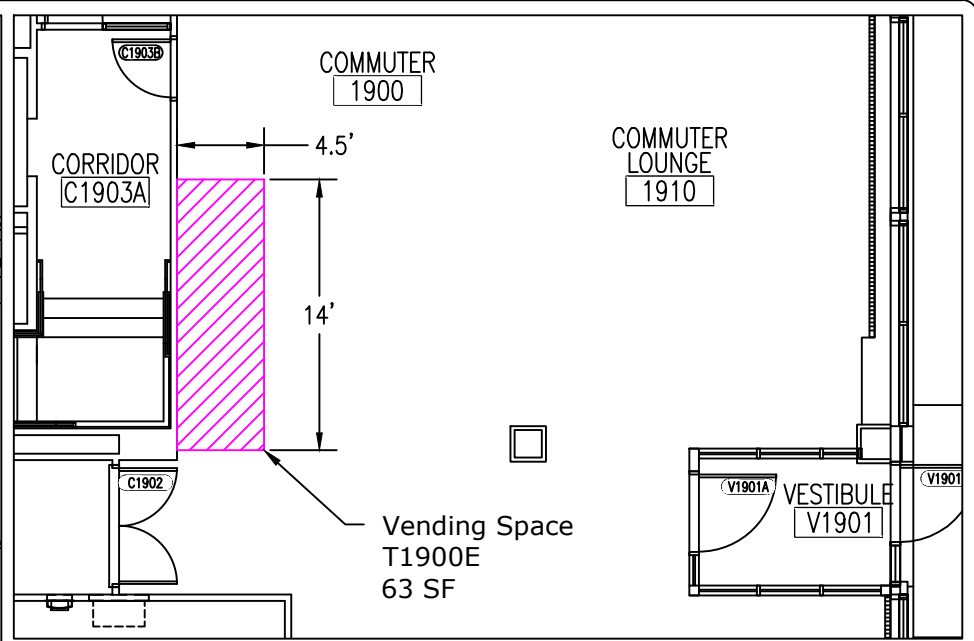
THIS IS TO CERTIFY that on this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Christel Burgess, known to me and to me known to be the Chief of Leasing, Fairbanks International Airport, Department of Transportation and Public Facilities, and who acknowledged before me that the foregoing instrument was freely and voluntarily executed on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes set forth and with full authority the State of Alaska to do so.

Notary Public in and for Alaska

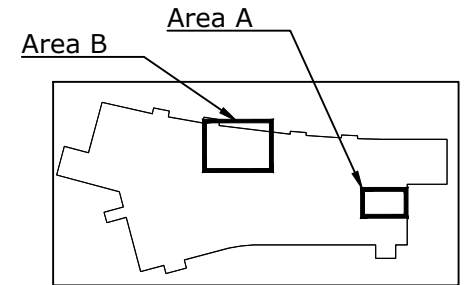
My Commission Expires: _____



1st Floor Area B



1st Floor Area A



1st Floor Key Plan

BY	DATE	REVISIONS

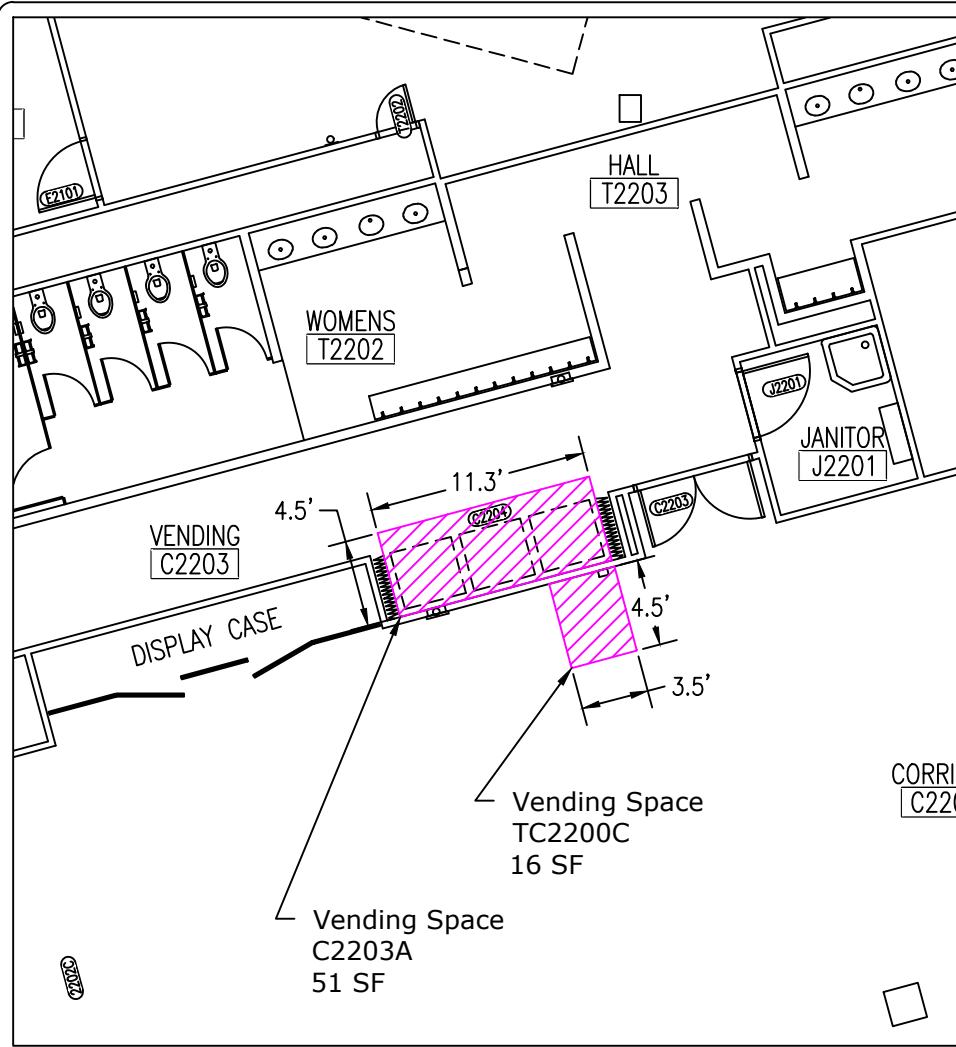
Vending Concession
Space TC1101A & T1900E
107 SF
ADA-90879



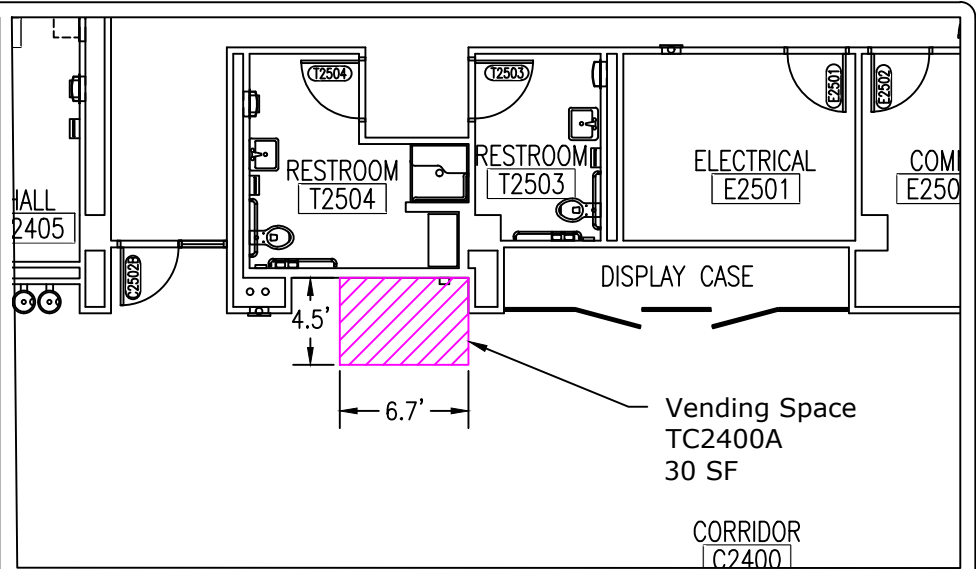
Exhibit A
Airport Terminal Layout – First Floor
February 2020



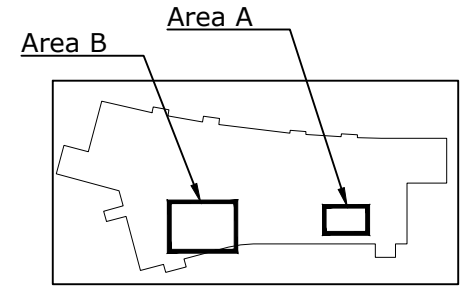
SHEET
1
OF
4



2nd Floor Area B



2nd Floor Area A



2nd Floor Key Plan

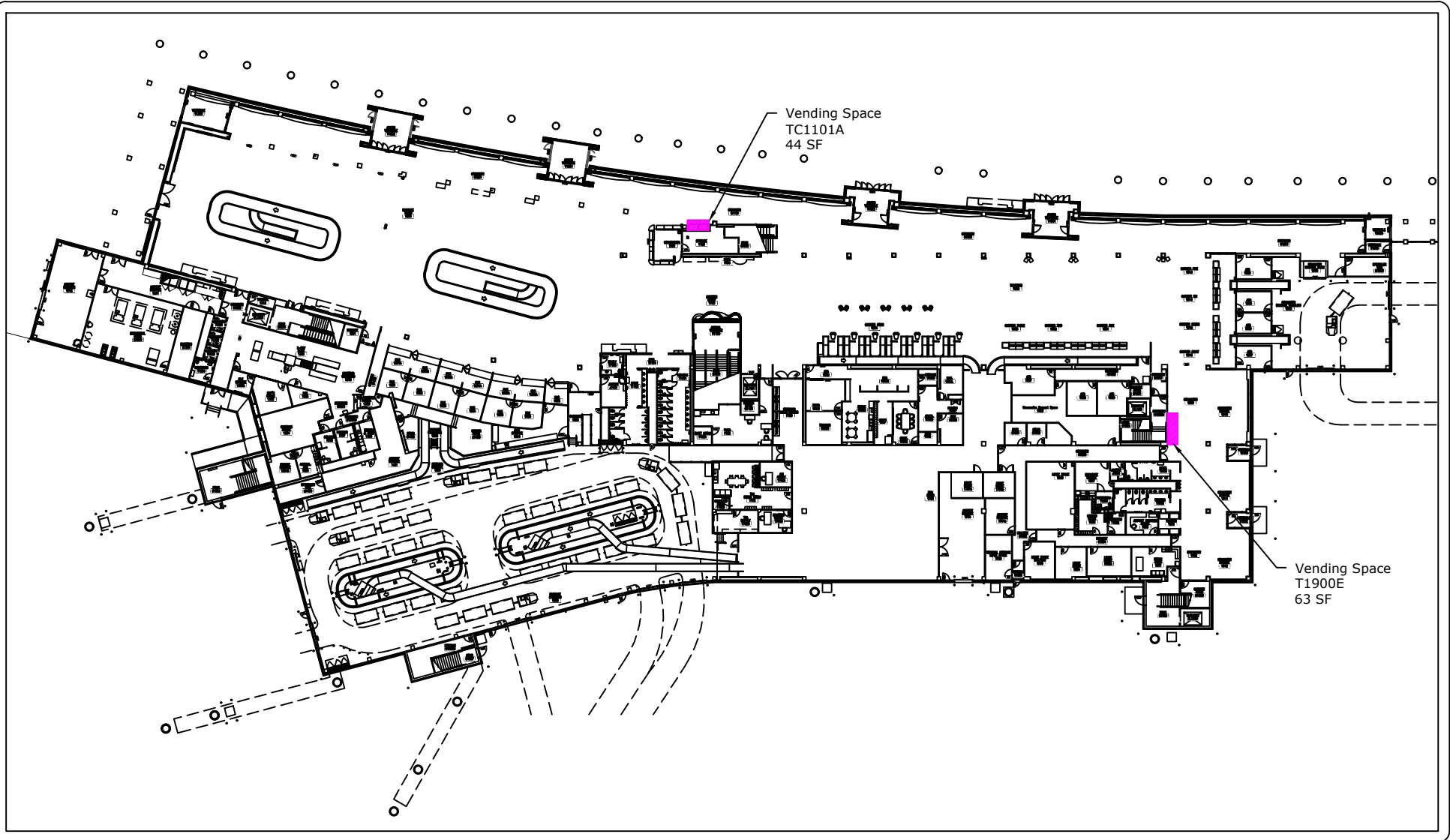
BY	DATE	REVISIONS

Vending Concession
 Space C2203A, TC2200C & TC2400A
 97 SF
 ADA-90879

Exhibit A
 Airport Terminal Layout – Second Floor
 February 2020



SHEET
 2 / 4
 OF
 4



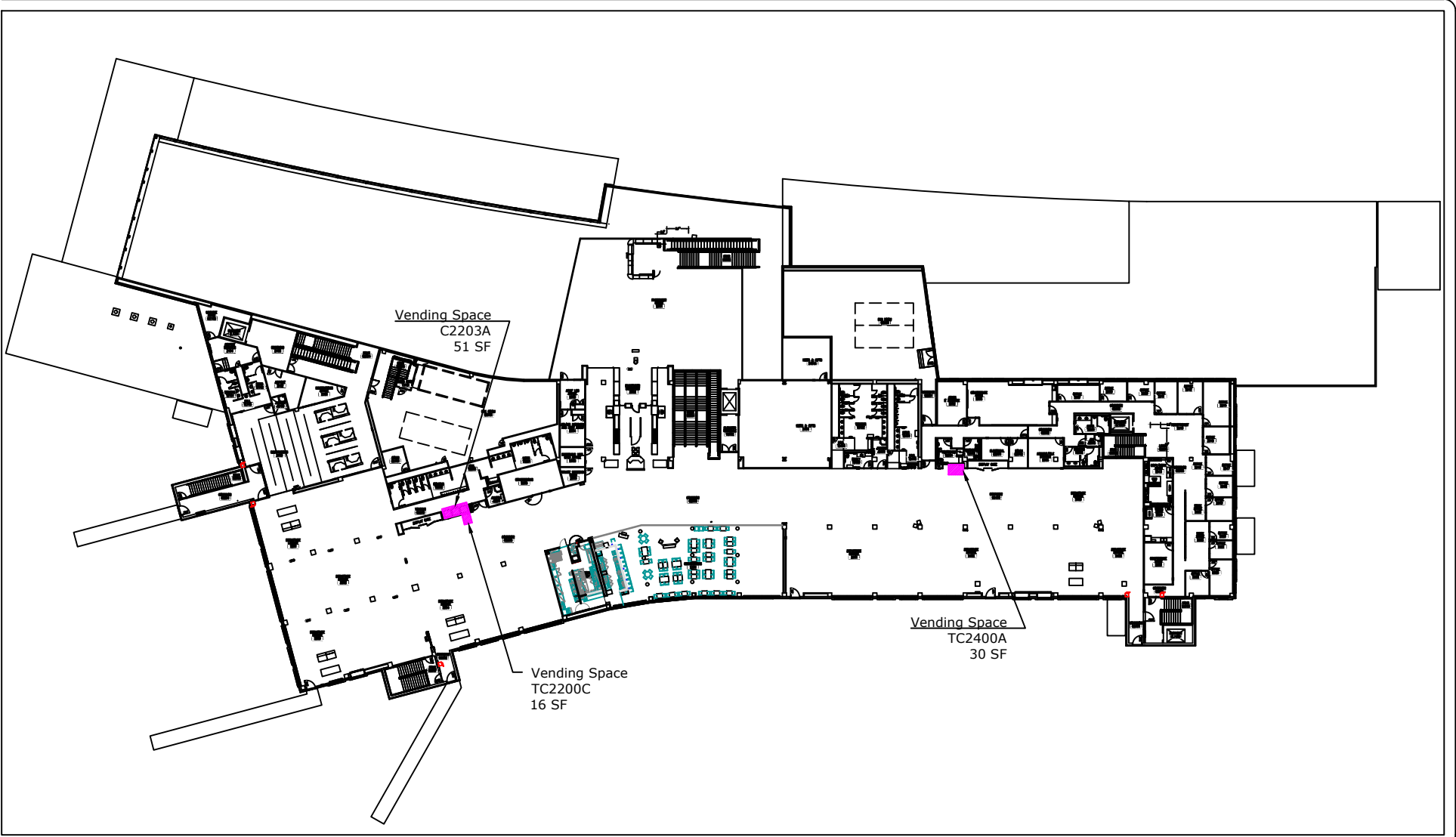
BY	DATE	REVISIONS

Vending Concession
ADA-90879

Exhibit B
Airport Terminal Layout – First Floor
February 2020



SHEET
3
OF
4



BY	DATE	REVISIONS

Vending Concession
ADA-90879

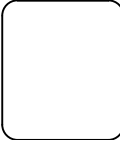


Exhibit B
Airport Terminal Layout – Second Floor
February 2020



SHEET
4
OF
4



CERTIFIED ACTIVITY REPORT

Vending Concession - ADA 90879
DUE on or before the 20th

MONTH

YEAR

(Minimum acceptable MAG Bid)

1st Floor Space No. TC1101A

MAG Bid \$ **25,000.00**

Machine No.
 Product:
 Gross Sales: \$

Monthly Minimum \$

Machine No.
 Product:
 Gross Sales: \$

Machine No.
 Product:
 Gross Sales: \$

1st Floor Space No. TC1900E

Machine No.
 Product:
 Gross Sales: \$

Machine No.
 Product:
 Gross Sales: \$

2nd Floor Space No. TC2400A

Machine No.
 Product:
 Gross Sales: \$

Machine No.
 Product:
 Gross Sales: \$

2nd Floor Space No. TC2200C

Machine No.
 Product:
 Gross Sales: \$

Machine No.
 Product:
 Gross Sales: \$

2nd Floor Space No. C2203A

Machine No.
 Product:
 Gross Sales: \$

Machine No.
 Product:
 Gross Sales: \$

Machine No.
 Product:
 Gross Sales: \$

Total Sales \$

If Total Sales times 35% is greater than MAG, payment due is Total Sales times 35%.

If Total Sales times 35% is less than MAG, payment due is MAG.

Payment Due: \$ **2,083.33**

I hereby certify that the above report is correct to the best of my knowledge.

Name: _____
 Title: _____

Date: _____
 Phone: _____