

**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

TED STEVENS ANCHORAGE INTERNATIONAL AIRPORT

CONCOURSE C Amenities

Room SB2040

SAMPLE CONCESSION AGREEMENT ADA-32658

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Exhibits

- A Sheet 1 of 1, dated July 1, 2023
Property Drawing of Ted Stevens Anchorage International Airport
- B Sheet 1 of 1, dated March 2026
Premises Drawing showing Amenities Facility
- C Turnover and Facility Opening Dates (to be completed by Concessionaire)
- D Amenities Proposal (Items or Services to Offer/Sell) (to be completed by Concessionaire)
- E Hours of Operation Proposal (to be completed by Concessionaire)

**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

TED STEVENS ANCHORAGE INTERNATIONAL AIRPORT

**CONCOURSE C AMENITIES – ROOM SB2040
SAMPLE CONCESSION AGREEMENT ADA-32658**

THIS AGREEMENT is made this ___ day of _____, _____ between the State of Alaska, Department of Transportation and Public Facilities, Ted Stevens Anchorage International Airport (State), whose mailing address is PO Box 196960, Anchorage, Alaska 99519-6960 and whose physical address is South Terminal, Third Floor, Room C3980, 5000 W. International Airport Road, Anchorage, Alaska 99502, and _____ (Concessionaire) whose address is _____.

In consideration of the Facilities 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 Ted Stevens Anchorage International Airport (Airport), located in Anchorage, Alaska.
- B. In connection with the Ted Stevens Anchorage International Airport, the State owns the South Terminal building (Terminal).
- C. The State has determined it is necessary in the promotion and accommodation of air commerce and air transportation that the State develop and maintain a comprehensive Concession program for the Airport that will benefit air travelers and others.
- D. The State has determined that it is in its best interest to offer the non-exclusive right to sell and deliver Amenities in Concourse C of the Terminal.
- E. For the benefit of air travelers and others, and to generate revenue to the State to support the Airport, the State makes Concourse C space available for the sale of Amenities.
- F. The Concessionaire is the successful Proposer in a competitive process for the right and obligation to develop and maintain a Concourse C Amenities facility at the Airport.
- G. The Concessionaire hereby represents and warrants that it is able to provide the Concourse C Amenities concepts, facilities, and services offered in their proposal as

finally negotiated with the State, and is authorized by federal, State and local laws, codes, and regulations, as applicable, to provide such services at the Airport.

ARTICLE I
DEFINITIONS

The following definitions apply for this Agreement:

- A. Agreement: This Concession Agreement ADA-32658, together with and incorporating the exhibits, the Concessionaire’s proposal in response to the Request for Proposals (RFP), as finally negotiated with the State, and all other attachments and exhibits thereto, and all future amendments or supplements executed by the parties to this Concession Agreement ADA-32658.
- B. Agreement Year: Twelve (12) consecutive months beginning with the Effective Date of the Agreement as follows:

**[NUMBER OF YEARS AND DATES SUBJECT TO CHANGE IN FINAL
NEGOTIATED AGREEMENT]**

Agreement Year 1:	October 1, 2026 through September 30, 2027
Agreement Year 2:	October 1, 2027 through September 30, 2028
Agreement Year 3:	October 1, 2028 through September 30, 2029
Agreement Year 4:	October 1, 2029 through September 30, 2030
Agreement Year 5:	October 1, 2030 through September 30, 2031

- C. Airport: The real property and facilities of the Ted Stevens Anchorage International Airport, in Anchorage, Alaska, as they exist on the execution date of this Agreement, together with any future changes. The real property and facilities of the Ted Stevens Anchorage International Airport as they exist on July 1, 2023, are shown on Exhibit A of this Agreement.
- D. Airport Concession Disadvantaged Business Enterprise (ACDBE): A business certified by the State of Alaska, Department of Transportation and Public Facilities as a Disadvantaged Business Enterprise and as an Airport Concession Disadvantaged Business Enterprise as defined in 49 CFR Part 23. See pg. 6 of the RFP for more information.
- E. Amenities: Services, retail, merchandise, or food and beverage (sit down, carry out, grab and go, alcoholic beverages, etc.)
- F. Amenities Facility: A store or other facility on Premises designated by the State for the sale of Amenities approved by the State.

- G. Annual Guarantee: For each Agreement Year, the minimum amount the Concessionaire shall pay to the State in accordance with Article VI (Fees and Payments). This is typically calculated by square foot of the Amenities Facilities. The State may require an Annual Guarantee from the Concessionaire as part of this negotiated Concession Agreement or in the future of the Agreement.
- H. Build-Out Rent: The negotiated dollar amount per square foot of Premises the Concessionaire is required to temporarily pay the State in accordance with Article VI (Fees and Payments).
- I. Concessionaire Improvements: Collectively, all items located on and within the Premises, including the Concessionaire's construction, furniture, fixtures, and equipment. This includes items such as decorations, partitions, wiring, lighting, plumbing fixtures, stoves, refrigeration, HVAC, piping, finished ceilings, ventilation, ductwork, grills, floor and wall coverings, heaters, cabinets, merchandise and product display fixtures, lockers, and any other such equipment.
- J. Effective Date: As used in this Agreement, October 1, 2026, which is the date the Agreement begins. However, this contract is binding on the parties as of the date it is signed by the State.
- K. Facility Opening Date: The earlier of the date the Amenities Facility is officially open for business or is required under Exhibit C to be open for business.
- L. Gross Revenues: All revenue, 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.
1. The term "Gross Revenues" includes the following:
 - a. All Concessionaire sales for either cash or credit, which is collected or should have been collected, without any exclusions except those expressly permitted under this Agreement from any business conducted in whole or in part on the Airport, including any orders placed at or completed by delivery anywhere on the Airport, or through any delivery service under the rights granted under this Agreement.
 - b. Charges for all services performed in, on, or through the business, including electronic commerce, authorized or otherwise, conducted under this Agreement. This includes all other income and proceeds from or incidental to any business conducted in whole or in part in, on, or in connection with the rights granted under this Agreement.

- c. Goods, work, or services furnished by any person in lieu of payment in exchange for value received from the Concessionaire in connection with business or operations at or from the Airport.
 - d. Monies or the value of discounts received by the Concessionaire from vendors or suppliers in exchange for any promotions, sponsorships, or displays that are directly attributed to the utilization of the Amenities Facility.
2. Notwithstanding the foregoing, the term Gross Revenues excludes the following:
- a. The difference between the marked sale price and the actual sale price for discount sales.
 - b. The amount of any sales tax, so-called "luxury tax," consumer excise tax, gross receipts tax, or other similar tax imposed by a federal, State, local, or other government authority directly on any business conducted in whole or in part in, on, or in connection with the rights granted under this Agreement. The Concessionaire will properly account and record all taxes, if applicable.
 - c. Receipts from the sale of waste or scrap material that result from the Concessionaire's business authorized under this Agreement.
 - d. Receipts from the sale or trade-in value of Concessionaire-owned furniture, fixtures, or equipment used on the Premises and not considered stock-in-trade.
 - e. The value of merchandise, supplies, or equipment exchanged with or transferred to other business locations of the Concessionaire if the exchange or transfer is not made to avoid a sale by the Concessionaire under this Agreement.
 - f. Receipts from refunds of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers, or discounts the Concessionaire receives from these entities.
 - g. Receipts from the sale of uniforms or clothing to the Concessionaire's employees if sold at cost and the Concessionaire requires its employees to wear these items.
3. However, in calculating Gross Revenues, the Concessionaire shall not deduct any franchise, capital stock, income, or similar tax-based income or profits. The State will not credit or reduce the amount of the Concessionaire's Gross

Revenues that result from any illegal rebate, kickback, or hidden credit given or allowed to clients.

- M. Percentage Fees: The percentages of Gross Revenues the Concessionaire is required to pay to the State in accordance with Article VI (Fees and Payments).
- N. Premises: The Premises consist of those locations indicated on Exhibit B of this Agreement. Premises consists of Amenities Facility and Support Space if applicable.
- O. Proposal Deposit: The sum of five thousand dollars (\$5000.00) submitted by a proposer to the State in connection with its proposal for the Concession. Upon award, the Proposal Deposit of the successful proposer shall be retained by the State and applied as a credit toward fees due under the Concession Agreement, beginning on the Effective Date of the Concession Agreement, until fully exhausted.
- P. Request for Proposals (RFP): All documents issued by the State in connection with the Request for Proposals for Concession Agreement ADA-32658, including the Notice Inviting Proposals, Terms of Request and Instructions for Proposers, the Proposer's Affidavit and Request to Negotiate, the Concessionaire's Base Proposal, any addenda, all other documentation required in the RFP, and all information submitted by the Concessionaire with its proposal.
- Q. Support Space: Premises not contiguous to an Amenities Facility and provided for use by the Concessionaire for office, storage, preparation facilities, or other purposes other than sale of Amenities.
- R. Terminal: The domestic passenger terminal building, known as the South Terminal, at the Airport as shown on Exhibit A.
- S. Turnover Date: The date a space is turned over by the State to the Concessionaire for commencement of Concessionaire Improvements as notated in Exhibit C.

ARTICLE II

SCOPE OF AGREEMENT

The Concessionaire must perform all obligations and conduct all activities in compliance with this Agreement, and in compliance with all promises and representations made in the Concessionaire's associated proposal, including the RFP and all documents generated in the solicitation, negotiation, and award of this Agreement.

ARTICLE III
TERM

- A. The term of the Agreement is five (5) years. This Agreement is binding on the date it is signed on behalf of the State. The State grants the Concessionaire the rights listed in Article IV (Rights Granted and Obligations Undertaken) beginning on October 1, 2026, and ending on September 30, 2031 (Agreement Year).
- B. In order to avoid an interruption of service 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 Year or extended Agreement Term, as applicable, require the Concessionaire to continue beyond the end of the term to operate and manage this concession as set forth in this Agreement. The extension period, which shall be determined by the State, shall not exceed one (1) year from the expiration date of the immediately preceding Agreement Year or extended Agreement term, as applicable.

ARTICLE IV
RIGHTS GRANTED AND OBLIGATIONS UNDERTAKEN

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

- A. The Concessionaire shall have the non-exclusive right and obligation to develop, implement, and maintain a Concourse C Amenities program as described in their proposal; the design, quality, and content of which must be approved by the State. Under this program, the Concessionaire shall establish, operate, service, and maintain a high quality, professionally designed Amenities Facility.
- B. The Concessionaire shall have the right to occupy the Premises for purposes of conducting business under this Agreement. The Concessionaire, its officers, contractors, suppliers, service personnel, guests, patrons, and invitees shall have the right to enter, exit, and occupy the Premises to the extent authorized under and subject to the Airport's security rules and any rules or directives by the U.S. Department of Homeland Security, Transportation Security Administration (TSA), or the Federal Security Director for the Airport.
- C. The Concessionaire shall have the right to construct and install on the Premises fixtures, equipment, and other improvements necessary to operate the business authorized under this Agreement, subject to compliance with the terms and conditions of an approved Airport Building Permit for each project as required under 17 AAC 42.280.

- D. The Concessionaire shall have the right to subcontract or joint venture for operation of the facility, subject to prior written consent by the State. Such subcontract or joint venture agreement must require, at a minimum, strict compliance with the provisions of this Agreement. The Concessionaire agrees that it is responsible for the performance of its subcontractors and joint venture partners under this Agreement. The Concessionaire agrees to initiate and take all corrective action should a subcontractor or joint venture partner fail to comply with its contract with the Concessionaire or any provision of this Agreement. The failure of a subcontractor or joint venture partner to comply with the provisions of this Agreement shall constitute a default by the Concessionaire under this Agreement, entitling the State to terminate this Agreement in accordance with the provisions herein.
- E. Although these rights and obligations will not diminish during the term of this Agreement, the specific areas in which the Concessionaire is authorized to exercise the rights may, in the State's sole discretion, diminish or expand as provided for in this Agreement.
- F. Reservations:
1. The rights granted in this Article do not include the right to:
 - a. Sell any service, food, beverage, snack items, merchandise, products, or any other amenity not included on the approved list for the Amenities Facility or concept as described in the proposal and notated in Exhibit D.
 - b. Exchange foreign currency except as needed to make change in sales transactions.
 - c. Operate any systems using the Airport's wireless technology or any system that infringes on the Airport's wireless technology. Concessionaires are responsible for installing and using their own wireless technology. 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.
 2. The Concessionaire may not sell any product or service that is not described in this Agreement without the advance written consent of the State. If a question or dispute arises as to the sale of any specific item or category of item, the Concessionaire may submit a written request to the State asking for a review and decision concerning the dispute. The State will deliver a written decision to the Concessionaire, and the decision of the State will be final.
 3. The State reserves the right to grant to others any rights or privileges not specifically and exclusively granted to the Concessionaire. The rights and

privileges granted to the Concessionaire under this Agreement are the only rights and privileges granted to the Concessionaire. The Concessionaire has no easements, rights, or privileges, express or implied, other than those specifically granted under this Agreement.

4. This Agreement does not grant the Concessionaire the right to provide or perform any business or commercial activity at the Airport other than as expressly stated in this Agreement, nor does it grant the Concessionaire the right to use the trademarks, symbols, trade names, or name of the State or of the Airport, either directly or indirectly, in connection with any production, promotion, service, or publication without the prior written consent of the State.

ARTICLE V **PREMISES**

- A. Room SB2040 (988 sq. ft), within Concourse C of the South Terminal, as shown on Exhibit B dated March 2026 and attached herein. The State will make the Premises available to the Concessionaire on the Turnover Date as listed on Exhibit C. 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, and that the State makes no representation that they are suitable for the Concessionaire's requirements herein.
- B. Subject to the provisions of Article XIII (Reduction of Space) and Article XIV (State Directed Relocation), the Premises designated in Exhibits B and C shall remain the same throughout the term of the Agreement, subject to the rights reserved to the State in this Agreement related to Premises relocation, reduction, and expansion. The Concessionaire may apply to occupy additional space in accordance with Article XII (Lease of Additional Space).
- C. The schedule of estimated dates for Premises availability and deadline for opening of the Amenities Facility is identified in Exhibit C. The Concessionaire shall (a) take possession of the Premises on the Turnover Date, (b) cause the initial improvements necessary and appropriate to commence operations in the Premises to be substantially completed on or before the Facility Opening Date, and (c) cause the Premises to be open for business on or before the Facility Opening Date. The Concessionaire acknowledges that all schedules, including those in Exhibit C, are subject to change. The State will attempt to minimize these impacts as practicable. In the event of any delay in Turnover of Premises, the sole remedy of the Concessionaire will be a corresponding extension of the respective Facility Opening Date.
- D. If a facility is not open and operating for service to the public by the applicable Facility Opening Date set forth in Exhibit C, the Concessionaire shall continue to pay such

build-out rent without interruption and may, at the State's sole discretion, be assessed liquidated damages in the amount of two hundred dollars (\$200) per day for each day thereafter until the Amenities Facility is open and operating for service to the public.

- E. The Concessionaire may request permission to expand the Amenities Facility permanently or seasonally via an application for an Airport Building Permit. The State agrees to negotiate in good faith with the Concessionaire to facilitate requests for expanded Amenities Facilities, but makes no representations that such requests will be approved. The State, in writing, will either accept or reject the request, and the Concessionaire agrees to abide by such decisions.
- F. The Concessionaire will have access to all power and data connections that are present in the facilities in the existing areas of the Terminal. The Concessionaire will be responsible, at Concessionaire's sole expense, for running any additional wiring or conduit to these locations if additional capacity is desired.
- G. The State has installed a Premises Wiring Distribution System (PWDS) in the Terminal, which provides a Structured Telecommunication System with a fiber optic backbone throughout the Airport. The Concessionaire is required to use the PWDS for its data and telecommunication needs wherever the PWDS exists on the Effective Date of this Agreement or is installed in the future. For any new build-out, the Concessionaire will not install wiring for any function that can be served by the PWDS.

ARTICLE VI

FEES AND PAYMENTS

[FEES BELOW SUBJECT TO PROPOSAL AND FINAL NEGOTIATED AGREEMENT]

- A. Concession and Rent Fees: The Concession and Rent Fees are made up of two (2) permanent components, and one (1) temporary component. The permanent components include: 1) Percentage Fees and 2) Additional Rent. For the rights and privileges granted under this Agreement, the Concessionaire shall pay the State each month a percentage of the Concessionaire's monthly gross revenues as described below (Percentage Fees). The Concessionaire shall also pay Additional Rent and temporary Build-Out Rent as described below. The State reserves the right to require and implement an Annual Guarantee for this Concession Agreement. Basic utility expenses (electricity and heating/cooling) are included in the Concession and Rent Fees. However, the State reserves the right to charge Concessionaire an additional rent should the Concessionaire install lighting or equipment that increases utility usage beyond that which, in the reasonable determination of the State, is considered normal and customary for an Amenities Facility of the applicable size and use.

NOTE: Annual Guarantee: The State may require an Annual Guarantee from the Concessionaire as part of this negotiated Concession Agreement or in the future of the Agreement.

1. Percentage Fees: The Concessionaire will pay the State a percentage of the Concessionaire's monthly Gross Revenues; the percentage to be applied to Gross Revenues for a particular month will be determined as indicated below:
 - a. Services and Food & Non-Alcoholic Beverages: _____ percent (XX%) (minimum) of Gross Revenues **(successful proposer's commitment inserted at time of award) (10% minimum in RFP)**
 - b. Retail and Alcoholic Beverages: _____ percent (XX%) (minimum) of Gross Revenues **(successful proposer's commitment inserted at time of award) (15% minimum in RFP)**
2. Additional Rent: In addition to paying the Percentage Fees specified above, the Concessionaire shall also pay monthly the negotiated terminal rent and electrical costs for any Concessionaire Support Space occupied each month. Support Space includes office, storage, preparation facilities, and other Premises occupied by the Concessionaire for purposes other than Amenities Facilities. Any monthly electrical costs will be separately metered or otherwise measured by the State's usage measurement program (e.g. PowerLogic). Concessionaire will also pay for any other lighting, power, or cleaning services caused by the Concessionaire which, in the reasonable determination of the State, are beyond the scope of normal services provided by the State.
3. Build-Out Rent: In addition to the Percentage Fees and Additional Rent specified above, the Concessionaire shall also temporarily pay the negotiated dollar amount of \$[TBD] per square foot of the Premises **(successful proposer's commitment inserted at time of award)**. Build-Out Rent shall commence on the Effective Date (or such other date as may be established by the State in writing) and shall continue without interruption until the date the Concessionaire opens the Premises for service to the public, as determined by the State.

NOTE: Natural Gas Requirement – Food & Beverage Concessions. For any construction occurring after the Effective Date, the Concessionaire operating a Food & Beverage concession shall utilize natural gas-fired appliances and equipment, in lieu of electric appliances and equipment, for cooking and related uses, to the extent such appliances and equipment are reasonably available and can be properly vented as installed. The Concessionaire shall arrange for separate metering and shall pay the natural gas utility directly for all natural gas consumed. To the extent any natural gas used by the Concessionaire is billed to the State, and the State is able to measure or reasonably estimate such usage, the State's cost for such natural gas shall be reimbursed by the Concessionaire, without mark-up, as Additional Rent.

B. Payments to the State:

1. The Concessionaire will pay the Percentage Fee of total Gross Revenues for each month of operation during the first Agreement Year while the Annual Guarantee is waived. This first payment is due on or before November, 20, 2026.
2. Beginning the second Agreement Year the Concessionaire will pay the prorated monthly amount of the Annual Guarantee by the first day of each month until total cumulative Annual Guarantee and Percentage Fee payments have met or exceeded the Annual Guarantee.
3. The Concessionaire will pay the prorated monthly amount of the Additional Rent by the first day of each month. This first payment is due on or before the first day of the first month of operation.
4. By the twentieth (20th) day of each month, the Concessionaire will pay any additional amount necessary to satisfy the required Percentage Fee for the previous month as calculated in Section A.2 of this Article and reported on the monthly certified activity report (CAR) for that previous month. The first payment under this paragraph is due on or before the twentieth (20th) day following the first month of operation.
5. The Concessionaire will make payments in United States of America currency either in cash or by check, bank draft, money order, or electronic payment payable to the State of Alaska. The Concessionaire will submit payments free from any claim, demand, setoff, or counterclaim of any kind against the State to Airport Accounting via email: dot.aia.finance@alaska.gov or mail: Ted Stevens Anchorage International Airport, P.O. Box 196960, Anchorage, Alaska 99519-6960. The State must receive payments on or before the due date.
6. Electronic Funds Transfers: The State reserves the right to require by written notice that the Concessionaire make all payments of a specified amount or greater by electronic funds transfer, and the Concessionaire agrees to make all payments subject to that requirement in the manner directed in the notice. For payment to be submitted with a CAR under Paragraph 3 above, a copy of a receipt or other evidence of the fund transfer request must accompany the submittal of the report.

D. Certified Activity Reports:

1. On or before the twentieth (20th) day of each month during this Agreement, beginning on the twentieth (20th) day following the first month of operation (unless such day is an official State of Alaska holiday, then the first business day thereafter), the Concessionaire shall deliver a CAR to Airport Accounting

via email: dot.aia.finance@alaska.gov or mail: Ted Stevens Anchorage International Airport, PO Box 196960, Anchorage, Alaska 99519-6960.

2. The Concessionaire shall submit the CAR in a form that is acceptable to the State and that reflects the Concessionaire's Gross Revenues for the Amenities Facility broken out by any State-approved Percentage Fee category for both the previous calendar month and for the Agreement year-to-date in terms of United States of America currency. ACDBE Gross Revenues shall be clearly and separately identified.
 3. If the Concessionaire does not remit the required CAR and any required Monthly Percentage Fee payment to the State by the twentieth (20th) day of the month the report and payment are due, the Concessionaire shall pay to the State an administrative fee of fifty dollars (\$50) per late CAR or payment per day until both the report and payment are provided to the State.
 4. Any amendment to a previously submitted CAR must be filed in a format prescribed by the State, accurately restate all information on the previously submitted report, and specifically identify each item that has been amended. For any activity reported on the amended CAR for which Concessionaire has not made all required payment, Concessionaire must submit payment in the manner described in Section B.3 of this Article on the same day Concessionaire submits the amended CAR. Any material amendment to a previously submitted CAR will invalidate any timely submittal of an original CAR; if the amended CAR is submitted after the deadline for that CAR, then the late fee described in Section D.3 of this Article will apply from the deadline date to the date the State receives the amended CAR. Any amendment to a previously submitted CAR that results in a change of five percent (5%) or more in total charges payable from total charges payable under the originally submitted CAR is considered a "material" amendment.
- E. 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 fees.
- F. Liquidated Damages:
1. Time is of the essence in meeting the requirements of all Articles of this Agreement. Without waiving any of its other legal or equitable remedies, the State shall have the right to assess, and Concessionaire must then pay to the State, liquidated damages in an amount not to exceed two hundred dollars

(\$200) per day per occurrence for failure to timely comply with the requirements of all Articles of this Agreement and the RFP, unless a different liquidated damages amount is indicated in writing in this Agreement related to a specific Article or Section of this Agreement. The Concessionaire and the State stipulate that any such assessment shall not be construed as a penalty; rather, the Concessionaire and the State stipulate that actual damages resulting from violations of this Agreement and the RFP will be hard to ascertain and that two hundred dollars (\$200) per day per occurrence is a reasonable forecast of the damages likely to occur in the event of a breach.

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 seventy-two (72) 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 seventy-two (72) hours to remedy and, as such, will be reasonable when considering requests for additional time to cure deficiencies. The Concessionaire must submit a 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 Concessionaire shall pay any assessment of liquidated damages by the State within ten (10) days of receipt of an invoice for such damages. The Concessionaire may protest any assessment of liquidated damages under 17 AAC 42.910.
- G. 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. The State has any lien rights allowed by law. Either the State or its authorized agent may provide enforcement.
- H. 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.
- I. Proposal Deposit: The State shall apply the five thousand dollars (\$5000.00) Proposal Deposit as a credit toward fees due under the Concession Agreement, beginning on the Effective Date of the Concession Agreement, until fully exhausted.

- J. Airport Identification Badge Fees: The Concessionaire will pay all fees associated with the issuance of an Airport Identification Badge for each badge issued during the term of this Agreement. The Airport Identification Badge fees are due at the time of service for each transaction. 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.
- K. Other Fees: The State reserves the right to impose and collect charges and fees from the Concessionaire for the following:
1. The use of parking and tenant employee parking on the Airport; and
 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 Concourse C Amenities concession services; and
 4. Extraordinary lighting, power, or cleaning services caused by Concessionaire which, in the determination of the State, are beyond what would be considered normal and customary for concession locations of a specified size and use.

ARTICLE VII
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES
PARTICIPATION

- A. State Policy: It is State of Alaska policy that Airport Concession Disadvantaged Business Enterprises (ACDBEs) have the maximum opportunity to participate in the performance of Airport concession contracts.
- B. Concessionaire's Obligation:
1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, creed, 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.
 2. The Concessionaire will comply with all applicable laws and regulations that concern the fair and equitable treatment of ACDBEs 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 ACDBE participation arrangement the Concessionaire enters into under this Agreement. An ACDBE contract goal has not been set for this contract,

however, the Lessor encourages the use of diverse small businesses to the greatest extent practicable. The requirements of 49 CFR part 23 apply to this contract. It is the policy of the Lessor to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Lessor encourages participation by all Lessees and Permittees operating under 17 AAC 45 regardless of business size or ownership.

3. Reporting Requirements: The Concessionaire shall provide a separate report of gross revenues and purchases attributable to ACDBE certified suppliers to the Leasing Office upon request, but no less than once annually.

ARTICLE VIII

OPERATION OF CONCESSION SERVICES

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

A. General:

1. The Concessionaire shall conduct all business in an orderly and peaceful manner without interfering with other tenants, users, or occupants of the Airport.
2. The Concessionaire shall ensure that it and any joint venture partner or subcontractor shall at all times fully comply with all applicable requirements of federal, State, and local laws and regulations. The rules and regulations promulgated by the State as same may be amended from time to time.
3. The Concessionaire shall not install or operate any coin, card, token, or otherwise activated vending machines or devices of any kind or type without the prior written approval of the State.
4. 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 equip, organize, and efficiently manage the Premises to provide first-class service in a clean, attractive, and pleasant atmosphere.
5. The Concessionaire shall not permit any defacing of walls, floors, or fixtures; shall not permit loitering; must keep the Premises free from trash and debris;

and must maintain and service all equipment at a high level of efficiency, reliability, and appearance.

6. The Concessionaire shall neither commit nor allow any nuisance, noise, or waste on the Airport or annoy, disturb, or harass other users of the Airport. This includes, but is not limited to playing music or advertisements that can be heard outside of the Premises.
7. 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 for that purpose.
8. The Concessionaire shall ensure that it provides sufficient equipment, including vehicles, as necessary for efficient operation at the Airport.
9. The Concessionaire shall make an itemized receipt available for each sales transaction that clearly identifies the Concessionaire and the Airport by name.
10. The Concessionaire must accept at least three (3) major credit cards for payments with no minimum charge level.

B. Business Development:

1. The Concessionaire shall take all reasonable measures to maintain, develop, and increase its business at the Airport.
2. The Concessionaire shall not divert any business, or by its own action, cause or allow any diversion of sales or other business, from the Terminals or the Airport.

C. Advertising:

1. 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 separate contract with the State or the State's display advertising concessionaire. A limited opportunity to promote concession offerings at the Airport may be available on the Airport's website on substantially similar terms as that opportunity is provided to other concessionaires, but is not guaranteed.
2. The Concessionaire shall not distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising in solicitation of business.

3. The Concessionaire shall not use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Premises (such as searchlights, barkers, or loudspeakers).

D. Merchandise and Service Quality:

1. The State desires to provide travelers and other Airport users with amenities, merchandise, facilities, food and beverage and services of the highest quality. The Concessionaire must only offer amenities, merchandise, facilities, food and beverage and services of the highest quality, subject to the continuing review and approval of the State.
2. The Concessionaire will offer a selection of Amenities and merchandise in accordance with Exhibit D and will maintain sufficient inventories to accommodate customer demand. The State agrees that the selection of Amenities products and brands, as well as sizes of merchandise are at the Concessionaire's discretion subject to disapproval by the State if, in its sole reasonable determination, any item offered is deemed inadequate or not in good taste considering the public nature of the Airport. However, the products listed in Exhibit D are a requirement of the Agreement. All amenities, merchandise, facilities, food and beverage and services are subject to review, modification, and disapproval by the State if, in its sole determination, the items or services offered are deemed inadequate or not within the rights granted under this Agreement. The State agrees to meet with the Concessionaire in the case of any disapproval, but the Concessionaire acknowledges that the State's decision is final.
3. The Concessionaire shall not significantly change the product mix of the Amenities Facility as described in Exhibit D without the written consent of the State.
4. The State, in its sole discretion, reserves the right to direct the Concessionaire to add or delete items from the product lists provided in Exhibit D.

E. Maintenance Requirements:

1. The Concessionaire is responsible for, and must provide, ongoing day-to-day maintenance of its Premises at the Airport, including janitorial services and trash collection. Trash and other refuse items are subject to the disposal requirements of the State.
2. The public nature of this program places unusual priority on the maintenance process and it is important that the Concessionaire have an effective maintenance plan and adequate maintenance staff and equipment. The Concessionaire must maintain the Premises in good repair and appearance

and in a safe condition at all times, both in areas exposed or accessible to the public, and in nonpublic areas such as storage, kitchen, and utility areas, to ensure that neither the condition nor operation of the Premises or the Concessionaire's facilities or equipment adversely affect or pose unnecessary risk to any person, property, or Terminal system. The Concessionaire's maintenance plan, staff, and equipment must specifically provide for active maintenance of all of the Concessionaire's kitchen facilities and equipment. The Concessionaire shall do, or cause to be done, without delay, all those things which, in the determination of the State, are necessary or desirable in the interest of safety or to maintain the Premises in good repair and appearance. If the State determines, through routine inspection of the Terminal systems or otherwise, that any of the Concessionaire's facilities or operations have resulted in unnecessary potential for or actual damage to any Terminal system, the State will notify the Concessionaire in writing of the State's findings and assessment of actual or potential damage to any Terminal system. The Concessionaire is required to respond to the State in writing within twenty (20) days of receipt of the notice from the State, documenting a plan to rectify the situation. If Concessionaire fails to rectify the situation within the time period documented (without receiving an extension of time from the State) it must pay to the State liquidated damages in an amount not to exceed two hundred dollars (\$200) per day per occurrence until the source of the potential or actual damage is cured and any actual damage is repaired.

3. Lighting other than standard terminal lighting will be the responsibility of the Concessionaire. The Concessionaire, at its sole cost, is responsible for replacing all bulbs, ballasts, and other lighting fixtures in or on its Premises as needed.
4. The Concessionaire shall not place any loads upon the floor, walls, or ceiling which endanger the structure or obstruct walkways, passageways, stairways, or escalators, in front of, within, or adjacent to the Premises.
5. In the event, upon regular inspection of the Airport facilities, due to public comment, or by other observation, Airport staff become aware of a service level problem relating to the Concessionaire's facilities, Airport staff will notify the Concessionaire by e-mail or other written form regarding the deficiency. Such repair or maintenance as is necessary shall be performed by the Concessionaire within seventy-two (72) hours of notification, except as provided in the following paragraph.
6. If a needed repair or maintenance that is the subject of a notification as described in the preceding paragraph involves a major repair or replacement, the Concessionaire will notify the State in writing as to the expected delivery/repair date and time. If possible, the Concessionaire shall remove the damaged or defective fixture or equipment and post a temporary "Under

Construction” notice, which preserves the visual integrity and safety of the area. Any permission from the State for an extended repair shall be requested and granted or denied in writing.

7. If the State notifies the Concessionaire that a deficiency represents a health and/or safety risk and the Concessionaire fails to respond immediately, the State may, in its sole discretion, take action as is deemed necessary by the State to eliminate the immediate hazard or risk of liability. In such case, the Concessionaire shall reimburse the State for any costs the State incurs.
8. Damage or injury to any Airport user or the State, caused in whole or in part due to the unsafe condition or inadequate maintenance of any Concessionaire-installed equipment, fixture, or system shall be paid for by the Concessionaire.

F. Signage:

1. Other than State-approved signage at and identifying a facility by name and/or concept, this Agreement grants the Concessionaire no other signage rights. However, the State may approve additional signage that the State, in its sole discretion, determines to be in the best interest of the State. 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. 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 (including those identified in Section F.1 above), 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 shall become conditions of this Agreement. The State shall have the right to reject any sign proposed by the Concessionaire.
3. The Concessionaire is responsible to obtain any permits or other approvals that are required to comply with federal, State, local, and Airport policies, rules, and regulations.
4. No temporary hand-written signs are permitted within the Concession Premises, or elsewhere in the Terminals or on the Airport.

G. Street Pricing Plus Ten Percent:

The actual prices charged by the Concessionaire, including any subcontractor, to the public for food and beverages must not exceed ten percent (10%) more than the average price of like items of comparable size and quality sold at the Concessionaire's or subcontractor's other food and beverage facilities within a twenty-five (25) mile radius of the Airport. Comparison facilities will be subject to approval by the State in its reasonable discretion after consultation with the Concessionaire and may change throughout the Agreement term as deemed appropriate by the State. Price comparisons may be conducted from time- to-time by the State or by the Concessionaire, however, a report of any comparison performed by the Concessionaire and a statement of any proposed price adjustments shall be provided to the State not less than seven (7) days prior to implementation of the price adjustments.

H. Non-Discriminatory Pricing: The Concessionaire shall operate the Amenities Facility authorized under this Agreement in a fair, equal, and nondiscriminatory manner, and shall charge a fair, reasonable, and nondiscriminatory price to all customers. The Concessionaire, however, may make or give to similar types of customers, or other special category customers, discounts or rebates that are not illegally discriminatory.

I. Hours of Operation:

1. The Concessionaire shall actively operate the concession to best serve the needs of airline passengers, employees, and other users of the Terminal. Unless otherwise approved by the State, the Concessionaire must maintain the hours of operation specified in Exhibit E. Any change in operating hours requested by the Concessionaire must be approved by the State in writing before the change in hours occurs.
2. The State may require a change in operating hours if, in its written determination, a change is desirable to provide better service to the traveling public or other users of the Airport.
3. Except in the event of an emergency, the Concessionaire must obtain the written approval of the State before the Amenities Facility is closed during scheduled operating hours for repair, maintenance, construction, or other reason.
4. The State may require the Concessionaire to pay liquidated damages in the amount of two hundred dollars (\$200) for every day the Facility is closed when it is scheduled to be open. These damages will be in addition to normal fees due the State under this Agreement.

- J. Foreign Currency: The Concessionaire may accept foreign currency as payment for retail sales. No other foreign currency exchange with customers, airline crewmembers, or passengers is authorized by this Agreement. The exchange rates used by the Concessionaire in foreign currency exchange transactions must be posted in full view of customers at the Concessionaire's cash register locations. Regardless of exchange rates used by the Concessionaire to make change with customers, for purposes of gross revenue accounting under this Agreement all foreign currency received by the Concessionaire shall be stated at its prevailing value at Wells Fargo National Bank in Anchorage (phone: 907-265-2732) on the date of receipt.
- K. Customer Comments:
1. The Concessionaire shall respond in writing to all written customer or public comments received by the State and forwarded to the Concessionaire, regarding the management, operation, and content of the concession under this Agreement. The Concessionaire shall provide such written responses within seven (7) days of receipt of a comment from the State. The Concessionaire shall provide a copy of such written responses to customers to the State contemporaneously with the delivery of such response to the customer.
 2. The Concessionaire shall coordinate responses to major or significant complaints, such as any complaint threatening legal action or alleging a violation of law, with the State prior to responding in writing. The Concessionaire shall use its best professional judgment in assessing when the State should be notified in advance of a proposed response to a complaint, but shall provide such notice if it believes a reasonable facility manager would desire such notice.
- L. Collection of Bad Checks and Debts: The Concessionaire will have full responsibility to collect bad checks, uncollectable credit card charges, disputed credit card charges, or debts from customers, suppliers, vendors, etc. The inability of the Concessionaire, or its agent, to successfully collect any bad checks, chargebacks, or debts will not reduce Gross Revenues by such amount.
- M. Business Solicitation: The Concessionaire shall not solicit business in the public areas of the terminal or on Airport property. Business may be conducted only on the Premises authorized under this Agreement.
- N. Automated Accounting Equipment: The Concessionaire must install and use automated accounting equipment acceptable to the State to record all transactions accurately and completely. 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.

- O. Federal Regulations: The Concessionaire will comply with all federal regulations related to the operation of the concession.
- P. Security Program:
1. The Concessionaire shall comply with all applicable responsibilities of the Airport Security Program, the Airport Certification Manual, and the Airport Emergency Program required by 49 CFR Part 1542 and 14 CFR Part 139. The Concessionaire shall procure any identification badges required by the Federal Aviation Administration (FAA), the TSA, or the State 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 violation of the Airport Security Program, the Airport Certification Manual, the Airport Emergency Program, 49 CFR Part 1542, or 14 CFR Part 139 by the Concessionaire, its agents, officers, suppliers, guests, customers, or employees.
 2. Any penalty imposed on the State that results from a violation of the Airport's Security Program, Certification Manual, Operational Orders, Emergency Program, or any applicable federal, State or local regulation, caused by the Concessionaire or by any of the 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.
- Q. Proprietary Rights: The Airport reserves the right to enter into any marketing or revenue producing agreements which grant exclusive advertising or sponsorship rights for certain products, brands, or services ("official brands") at the Airport. Accordingly, to the extent permitted by law, the Concessionaire shall not sell, serve, advertise, promote, or display at the Airport within or outside its Premises any products, brands, or services that compete with designated official brands. If the Airport enters into any marketing or revenue-producing concession agreement that the Concessionaire reasonably determines will materially impair the concession opportunity under this Agreement, the Concessionaire shall present its reasonable determination to the State in writing, with appropriate supporting documentation. If, despite the Concessionaire's written presentation, the State continues to require the restriction against sale, advertising, promotion, or display of products or brands, and the restriction is reasonably documented to materially impair this concession opportunity, the Concessionaire shall have the option to terminate its operations at the Airport.
- R. Ted Stevens Anchorage International Airport is a non-smoking facility. Smoking and vaping are permitted only in designated areas.

ARTICLE IX
PERFORMANCE GUARANTEE

- A. Performance Guarantee: By the Facility Opening Date, the Concessionaire will submit and maintain in effect a performance guarantee in the amount of five thousand dollars (\$5,000.00), to ensure performance of all obligations and payment of all sums due under this Agreement. The Concessionaire will keep a performance guarantee 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 guarantee by written demand. The State will base any such increase or revision on reasonable and justifiable grounds.
 2. The State will accept a performance guarantee in the form of a money order, certified check, cashier's check, or other irrevocable instrument drawn on a financial institution located in the United States of America, payable to the State of Alaska.
 3. The State will base its approval of the form of the performance guarantee on certainty of the assurance that the Concessionaire's failure to make timely payments or comply with any requirement of this Agreement will readily allow the State to attach and collect the full amount of the performance guarantee.
- B. Release of Performance Guarantee: The State will release the performance guarantee 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 CARs, the Concessionaire will 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) at the Airport that contract for services with the Concessionaire and are directly related to the business carried out by the Concessionaire at the Airport.

3. The Concessionaire will 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 by the Concessionaire, the Concessionaire will preserve all books and records containing information relevant to that report or statement until a resolution of the objection is confirmed in writing by the State.
4. Upon thirty (30) days' written notice, 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. Upon thirty (30) days' written notice, the Concessionaire will 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 State may either require the Concessionaire to 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 maintains the records.
2. If the Concessionaire's place of business and recordkeeping is outside Anchorage, Alaska, and if the Concessionaire requests that the State (but not if the State elects to) perform the audit at that location, 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 will 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 the Concessionaire; significant drop-off in revenue from one month to the next; complaints related to billing from clients of the Concessionaire; and/or a discrepancy between the posted copy and billing summary.

C. Concession Underpayments:

1. If any State inspection or audit of the Concessionaire's books and records discloses a Concessionaire underpayment, the Concessionaire will 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; and
 - c. if the underpayment is more than one percent (1.0%) of Gross Revenues 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 will pay the State the State's full costs and attorney fees incurred to collect the underpayment. Further, the Concessionaire is liable for the full costs and attorney fees if the State finds it necessary to take legal action either to levy the performance bond under Article IX (Performance Guarantee) 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 will furnish the State with a true and accurate statement that reflects the Concessionaire's Gross Revenues derived from business transacted under this Agreement during the preceding Agreement year. An independent certified public accountant or chief financial officer of the Concessionaire 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 will preserve all books until the objection is resolved.

F. Additional Supporting Data:

1. The Concessionaire will furnish the State with other financial or statistical reports that the State may occasionally request regarding the Agreement. 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. Adoption of the Concourse C Amenities Facility:

1. The Concessionaire shall, except as otherwise provided in this Agreement, implement the Concourse C Amenities Facility in accordance with Exhibit D, as subsequently refined or otherwise modified and accepted by the State.
2. The Concessionaire will abide by all applicable building code requirements and understands that the Concourse C Amenities Facility is subject to further modification and refinement during the Airport Building Permit process. Approval of an Airport Building Permit that entails variation from the Concourse C Amenities Facility constitutes the State’s acceptance of the variation only if expressly stated as such in the Airport Building Permit and then only for the project specifically approved. No general refinement or modification of the Concourse C Amenities Facility will be deemed accepted by the State unless expressly stated in a written supplement to this Agreement, signed by both parties. An approved Airport Building Permit is required prior to the start of any construction, including any construction related to the Concourse C Amenities Facility submitted with the Concessionaire’s proposal.

B. Capital Investment:

1. The Concessionaire is required to make the necessary capital investment to develop the proposed Amenities Facility. The capital investment for build-out of the Amenities Facility is deemed to include the date by which that build-out must be completed, as defined in Exhibit C of the Agreement. This capital investment is defined as including the following items only:
 - a. Directly contracted construction costs with a Contractor;
 - b. Furniture, fixtures, and equipment purchased specifically for use in the facility; and
 - c. Administrative or overhead expenditures (including consulting, architectural, and engineering fees) not to exceed fifteen percent (15%) of the total approved cost of the unit project as defined above.
2. Statement of Expenditures: Within one hundred eighty (180) days after the State's acceptance of any construction, the Concessionaire shall provide the State with a statement, certified by the Concessionaire's chief financial officer, of those costs that the Concessionaire incurred for capital investment. This statement must be supported by receipted invoices evidencing payments for these costs. The certified statement is subject to review and audit by the State.
3. Amortization: Approval of an Airport Building Permit does not constitute approval of furnishings, fixtures, equipment, or other improvements to be amortized under this Agreement. The Concessionaire shall provide a detailed list to the State of all furnishings, fixtures, equipment, and other improvements that it intends to amortize under this Agreement. The State shall approve or reject furnishings, fixtures, equipment, and other improvements to be amortized under this Agreement. The State shall render its decision in writing to the Concessionaire. The Concessionaire shall amortize all approved furnishings, fixtures, equipment, and other improvements over a five (5-) year period using the straight-line method.

C. General Construction Requirements:

1. Any Concessionaire alteration, construction, or improvement of the Premises must be in conformity with the State's Terminal Construction Standards. Alterations, construction, or improvements must 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.
2. Before constructing any improvement on the Premises, the Concessionaire must obtain the written approval of the State in the form of an Airport Building

Permit that includes all required attachments and detailed drawings of the proposed construction. At the State's request, the Concessionaire will also submit architectural renderings of the proposed improvement with samples of materials and colors.

3. The State will review the proposed construction and provide the Concessionaire written approval or disapproval.
 4. The Concessionaire will deliver detailed as-built drawings to the State within one hundred eighty (180) 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. The State may require the Concessionaire to pay liquidated damages in the amount of fifty dollars (\$50) for every day the as-built drawings are late.
 5. The Concessionaire is required to use the PWDS described in Article V (Premises), Section E for all operations on the Premises as the State makes the PWDS available to the Concessionaire.
- D. Routine Refurbishment: The Concessionaire agrees that at its own expense it will paint or replace wall coverings, worn carpeting, furnishings, fixtures, or other items as their conditions may require, as reasonably necessary to maintain a professional quality appearance throughout the term of this Agreement, or at the State's request. To monitor, assess, and accomplish this requirement, the Concessionaire must establish an adequate preventive maintenance program that is subject to review by the State. Refurbishment must be accomplished in a way that minimizes negative impacts to customers, employees, and other users of the Terminal.
- E. Ownership of Improvements:
1. On expiration of this Agreement, title to all improvements required under the original terms of this Agreement, together with all other fully amortized improvements, vest in the State, except to the extent the State directs the Concessionaire to remove the improvements.
 2. It is intended that all improvements required under this Agreement as originally executed will be fully amortized during the Agreement Year of this Agreement. Beyond those originally required improvements, the State agrees to either purchase, whether by payment or offset credit against rents or fees, or to require reimbursement to the Concessionaire by a succeeding concessionaire, the remaining unamortized portions of any improvements, subject to the improvements having been:
 - a. approved by the State under an Airport Building Permit;

- b. expressly acknowledged in the Airport Building Permit to be beyond the requirements of this Agreement; and
 - c. expressly acknowledged in the Airport Building Permit to be subject to purchase or reimbursement under this Agreement.
3. On cancellation of this Agreement, title to all improvements vests in the State as described under Article XXI (Cancellation by State).

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 to the Concessionaire subject to public notice and other requirements of law concerning the lease of Airport Terminal space.

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 will be required to 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 will abide by the State's decision. However, after thirty (30) days' written notice to the State, the Concessionaire may surrender to the State Support Space that the Concessionaire no longer needs.
- 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. In the event that the Concessionaire requests to discontinue operations in an area of the Premises, and the State grants its permission, there will be no buy-out of any improvements to that area, and title to any improvements therein constructed will immediately vest in the State, unless the State requests the Concessionaire to remove such improvements. If the State requests removal of any improvements and the Concessionaire fails to do so within a reasonable period of time, as so determined by the State, then the State may cause such improvements to be removed and may charge the Concessionaire for the expense of the removal, plus a 25% administrative charge.

- 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. If the State reduces the area of Concessionaire's Premises, the Concessionaire's Annual Guarantee obligation will adjust consistent with the reduced square footage of Amenities Facility space, and the Concessionaire's Additional Rent will adjust consistent with the reduced square footage of Support Space, as applicable. In the event that the State directs the Concessionaire to discontinue operations in an area of the Premises, the State will buy out the unamortized portions of any improvements to that area that cannot reasonably be removed by the Concessionaire.

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 State. The following responsibilities apply if the State requires relocation of any Premises applicable under this Article:

- A. State Responsibilities: The State, at its sole expense, will provide new lease 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 will perform their respective obligations in an expeditious manner, excluding any delay beyond the control of either party. The State will attempt to provide new lease space that is equal to or better than the area the State requires the Concessionaire to vacate. If the State-Directed Relocation reduces the area of the Concessionaire's Premises, and if applicable, the Concessionaire's Annual Guarantee obligation will adjust consistent with the reduced square footage of the Amenities Facility space, and the Concessionaire's Additional Rent will adjust consistent with the reduced square footage of Support Space, as applicable. In the event that the State directs the Concessionaire to discontinue operations in an area of the Premises, the State will buy out the unamortized portions of any improvements to that area that cannot reasonably be removed by the Concessionaire. 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**

The Concessionaire will maintain adequate staff at the Airport and will use the utmost skill and diligence in the operation of its business.

A. Manager:

1. The Concessionaire will at all times during the term of this Agreement maintain and identify to the State a qualified, competent, and experienced local supervising manager (“manager”) vested with full authority to accept all notices regarding the operation of the concession business authorized under this Agreement, including the quality and prices of merchandise and the appearance, conduct, and demeanor of the Concessionaire’s agents, contractors, and employees.
2. The Concessionaire’s manager will be responsible for the general day-to-day operations under this Agreement and shall serve as the primary Concessionaire point of contact for the State for the Concourse C Amenities concession at the Airport.
3. The Concessionaire’s manager must maintain a duty station in the Airport and remain reasonably available during regular business hours.
4. The manager must have the ability to respond to any issues at the Airport within a twenty-four (24) hour period from first notice.
5. The Concessionaire shall provide the State with written notice within ten (10) days of the Effective Date indicating the name, telephone numbers, email address, and business address of the manager.
6. The manager will place a responsible subordinate in charge at all times during the manager’s absence from the Airport.
7. If the State is not satisfied with the Concessionaire’s selected manager (or replacement manager) or responsible subordinate, or at any time the State is not satisfied with the Concessionaire’s manager’s (or replacement manager’s) performance during the term of this Agreement, the State may notify the Concessionaire in writing setting forth the State’s complaints. Within twenty (20) days of receipt of any such notice, the Concessionaire shall respond in writing detailing the corrective action taken to resolve the State’s concerns. If the State is still not satisfied, the State and the Concessionaire shall negotiate in good faith to achieve a mutually acceptable resolution to the issue.

8. If during the term of this Agreement the Concessionaire desires to change managers, it may do so only after having notified the State in writing and received the State's prior written approval of the proposed replacement manager. The notice shall include the name, telephone numbers, email address, and business address of the new manager and the effective date of the appointment.

B. Other Personnel:

1. The Concessionaire shall provide an adequate number of trained employees, supervisors, and managers necessary to perform the duties and meet the customer service standards required herein. It is the intent of the State that the Concessionaire's employees, subcontractors, and joint venture partners maintain a high degree of professionalism.
2. While on duty, the Concessionaire's personnel will display identification badges at all times.
3. All of the Concessionaire's employees shall be neat in appearance and courteous in manner. 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 will not permit personnel on or about the Premises to use offensive or otherwise inappropriate language, to act in a loud, boisterous, or otherwise improper way, or to solicit business in an inappropriate manner, as determined by the State.
4. The Concessionaire shall be responsible for any requirements of the FAA, TSA, the State, or other regulating agencies regarding employee background checks and badging.

C. Periodic Meetings: The Concessionaire shall attend all meetings requested by the State throughout the term of this Agreement. The State shall designate which officers and employees of the Concessionaire shall attend each meeting, and those officers and employees shall attend. The State recognizes that some of the Concessionaire's officers and employees who are actively involved with the Concourse C Amenities concession at this Airport may not reside in the State and, as such, the State shall exercise reasonable discretion when mandating attendance at meetings and make a concerted effort to host meetings with a virtual or call-in option.

D. Deliveries: The Concessionaire shall monitor the movement of deliveries to avoid conflict with other Airport functions and shall coordinate its use of the designated 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. Pallets, storage containers, and other equipment shall not be stored in public areas of the Terminal while awaiting return to suppliers, but must be kept in the Concessionaire's storage area(s). Concessionaire shall be responsible for adherence to all TSA rules and regulations and the Airport Security Program regarding deliveries, and the screening of any merchandise that must be delivered to or through the secure side of the Airport.

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 its rights to inspect the Premises or observe the Concessionaire's performance of its obligations under this Agreement. The State will take all reasonable steps to minimize interference with the Concessionaire's activity on the Premises, except in the case of an emergency as determined by the State.

B. Access:

1. The Concessionaire will provide emergency telephone numbers where the State may reach the Concessionaire or the Concessionaire's local supervising manager 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 for only its own negligence and for returning the Premises to its former condition using standard materials. To the extent practicable, 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 the term of 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 requests to measure or photograph the Premises.

ARTICLE XVII

STATE SERVICES

A. State Services:

1. The State will maintain the State owned and State installed 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 will pay the State within thirty (30) days of the billing date for any such repair charge.
2. The State shall throughout the term of this Agreement and, subject to temporary shutdown for maintenance and repair or for security purposes, maintain all elevators and escalators in the Terminal and shall, subject to the provisions of the Airport Security Program, maintain access to the Premises. However, the State may at any time temporarily or permanently close, consent to, or request the closing of any corridor, pathway, elevator, escalator, 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 substituted and is concurrently made available.
3. The Concessionaire understands and agrees that there shall be inconvenience caused by construction or renovations of the Terminal, Premises, or corridors, 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 is not limited to, stoppage in electrical energy, space heating, or the failure or interruption of any

public or passenger convenience unless caused by the intentional misconduct, recklessness, or gross negligence of the State.

ARTICLE XVIII **LAWS AND TAXES**

This Agreement is subject to all State of Alaska, Federal, and Local 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 will comply with all federal, State, and local laws, ordinances, regulations, and Airport rules, that are either now, or in the future, in force and 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 reduction 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 will comply with any State and federal regulation governing hazardous substances, including hazardous wastes, and with any State instructions regarding environmental concerns, regardless of whether based on specific law, regulation, or order of any governmental authority. The Concessionaire will properly handle spills of hazardous substances and assumes responsibility for any spill of oil, oil-based substance, or hazardous substance attributable to its operation under this Agreement. The Concessionaire will immediately notify the State of any spill that occurs as well as of the action taken. With respect to any such occurrence, the Concessionaire will indemnify, defend, save, and hold the State and its employees harmless from any loss, claim, suit, or judgment. The Concessionaire will provide to the State copies of any written spill or other reports regarding actions taken as soon as the reports are available.

- B. Taxes: The Concessionaire will obtain all necessary licenses and permits, pay all taxes (including any possessory interest tax, assessment, or similar charge) lawfully imposed on its business, and pay any other fee or charge assessed, levied, or liened against the Concessionaire, or against the Concessionaire's right of occupancy of Airport facilities under any applicable public statute, regulation, or ordinance. The Concessionaire will pay such taxes, assessments, and charges directly to the applicable taxing or assessing authority.

1. The Concessionaire will indemnify and defend the State from all costs that result directly or indirectly from any tax or assessment for which the Concessionaire is liable, including taxes, penalties, expenses, and reasonable attorney fees incurred by the State.
 2. At its own expense, the Concessionaire may contest the amount or validity of any tax or assessment or similar charge, or contest the inclusion of the space leased under this Agreement as taxable or assessable property, directly with the applicable taxing or assessing authority. The Concessionaire will indemnify the State for all taxes, penalties, costs, expenses, and reasonable attorney fees incurred by the State resulting directly or indirectly from any such tax contest.
 3. Upon termination or expiration of this Agreement, the Concessionaire will promptly pay in full all due and payable taxes and obtain release of all liens.
- C. Policies: The Concessionaire will comply with all applicable provisions of each Airport Certification Manual and Airport Security Program and with all Airport directives as set forth by the Airport Manager.
- D. Disputes: The laws of the State of Alaska, including the exclusive protest and appeal procedures of 17 AAC 42.910 and .920 will govern in any dispute between the parties. The parties will bring any appeal or lawsuit, if permitted, before the courts of the State of Alaska if any such dispute results in a lawsuit.
- E. Claims: The Concessionaire will 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 will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit that affects the rights granted to the Concessionaire under this Agreement.

ARTICLE XIX

MISCELLANEOUS PROVISIONS

A. General Civil Rights Provision

1. In all its activities within the scope of its airport program, the Concessionaire agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.
2. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

3. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.
4. The above provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the airport remains obligated to the Federal Aviation Administration.

Source:

https://www.faa.gov/airports/aip/procurement/federal_contract_provisions

- B. Compliance with Nondiscrimination Requirements During the performance of this contract, the Concessionaire, for itself, its assignees, and successors agrees as follows:
1. **Compliance with Regulations:** The Concessionaire will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 2. **Nondiscrimination:** The Concessionaire, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate.
 3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 4. **Information and Reports:** The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Concessionaire's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - (1) Withholding payments to the Concessionaire under the contract until the Concessionaire complies; and/or,
 - (2) Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Concessionaire may request the United States to enter the litigation to protect the interests of the United States.
7. The Concessionaire will undertake any affirmative action program as required by 14 CFR Part 152, Subpart E, or any superseding or substitute regulation, to ensure that no person is excluded from participating in any employment, contracting, or leasing activity on the grounds of race, color, religion, national origin, sex, age, or disability. The Concessionaire agrees that no person may be excluded on those grounds from participating in or receiving the services or benefits of any program or activity covered by the regulation. The Concessionaire will require its covered sub-organizations to provide assurance that they will also undertake affirmative action programs and require assurances from their sub-organizations, as required by 14 CFR Part 152.

Sources:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-23/subpart-A/section-23.9>

https://www.faa.gov/airports/aip/procurement/federal_contract_provisions

- C. Title VI List of Pertinent Nondiscrimination Acts and Authorities During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
 - Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq*).

- 28 CFR Part 35 (Nondiscrimination on the Basis of Disability in State and Local Government Services)
- 28 CFR Part 36 (Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities)

Source:

https://www.faa.gov/airports/aip/procurement/federal_contract_provisions

- D. Compliance with Nondiscrimination Requirements: During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest agrees as follows:
1. Compliance with Regulations: The Concessionaire will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 2. Nondiscrimination: The Concessionaire, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 4. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the

Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Concessionaire's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - i. Withholding payments to the Concessionaire under the contract until the Concessionaire complies; and/or
 - ii. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

E. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation

in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

2. With respect to this Agreement, in the event of breach of any of the above Non-discrimination covenants, The State will have the right to terminate the Concession Lease Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Concession Lease Agreement had never been made or issued.

Source:

https://www.faa.gov/airports/aip/procurement/federal_contract_provisions

F. Americans with Disabilities Act. Concessionaire agrees to comply with the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Concessionaire's compliance will include but not necessarily be limited to the following:

1. Concessionaire will not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, compensation, benefits, discipline, layoffs, and termination of employment.
2. No qualified individual with a disability may be excluded on the basis of disability from participation in or be denied the benefits of services, programs, or activities of Concessionaire.
3. Concessionaire will post a statement addressing the requirement of the ADA in a prominent place at the work site.
4. Where required by law, Concessionaire will comply with State's disable access requirements by bringing up to code and making accessible any areas of Leased Premises which deny access to disabled persons. All such improvements and alterations will be at the sole cost of Concessionaire.

Sources:

<https://www.ada.gov/resources/disability-rights-guide/>

<https://www.ecfr.gov/current/title-28/chapter-I/part-35>

<https://www.ecfr.gov/current/title-28/chapter-I/part-36?toc=1>

<https://www.ecfr.gov/current/title-49/subtitle-A/part-27>

<https://www.ecfr.gov/current/title-49/subtitle-A/part-37>

<https://www.ecfr.gov/current/title-49/subtitle-A/part-38?toc=1>

ARTICLE XX

ADDITIONAL FEES AND CHARGES

- A. The Concessionaire shall pay the State any additional fees and charges, within thirty (30) days of receipt of an invoice for such 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, or levies as are prescribed or contemplated hereunder.
- C. The State shall 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 XXI

INDEMNIFICATION AND INSURANCE

- A. Indemnification:
 - 1. The Concessionaire will indemnify, save harmless, and defend the State, its officers, agents, and employees from and against, to the full extent of the loss or obligation, property damage, personal injury, death, violation of any regulation or grant agreement, administrative action, claim, award, judgment,

fine, demand, damages, injunctive relief, penalty, or any other obligation, injury or harm of any nature or kind, including attorney fees, consultant fees, expert fees, or other costs and expenses directly or indirectly arising from, connected to, or on account of this Agreement as it relates to the Concessionaire, the Concessionaire's activities at or relating to the Airport, or any act or omission by the Concessionaire, or by any of its officers, employees, agents, contractors, or sublessees. However, the Concessionaire shall not be required to indemnify, save harmless, or defend the State, its officers, agents, or employees from or against their own sole negligence, gross negligence, or willful or intentional misconduct.

2. The Concessionaire shall give the State prompt notice of any suit, claim, action, or other matter affecting the State to which any portion of this Section may apply, or otherwise arising out of the Concessionaire's rights granted or the operations authorized under this Agreement, together with a copy of any letter by an attorney on behalf of a complainant, any complaint filed in court, and any notice or complaint by any regulatory agency. The Concessionaire shall also use counsel reasonably acceptable to the State and the Alaska Department of Law in carrying out its defense obligations under paragraph 1 of this Section. The State shall also have the right, at its option, to participate cooperatively in the defense of and settlement negotiations regarding any such matter without relieving the Concessionaire of any of its obligations under this provision. These indemnity obligations are in addition to, and not limited by, the Concessionaire's obligation to provide insurance, and shall survive the expiration or earlier termination of this Agreement. At the State's request, the Concessionaire will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit that affects the rights granted to the Concessionaire under this Agreement.
3. If any mechanics' liens or other liens or orders for the payment of money are 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, any vacation, suit, or proceeding which may be brought thereon or for the enforcement of such lien, liens, or orders.
4. 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 this 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 properties.

5. Notwithstanding the other paragraphs of this Article, if a portion of the legal cause of the loss or obligation is due to the State's negligence or willful misconduct, the loss or obligation is to be apportioned between the Concessionaire and the State according to comparative fault. The Concessionaire and the State are to seek in good faith to agree to an apportionment of the loss or obligation without or independent of litigation.

B. Insurance:

1. At no expense to the State, the Concessionaire will 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 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 used in connection with this Agreement, with coverage limits not less than \$500,000 per person, \$1,000,000 per occurrence, and \$100,000 property damage.
 - d. All-risk property insurance for the Concessionaire's furnishings, fixtures, improvements, and equipment equal to the full replacement cost.
2. Prior to beginning its operations at the Airport, the Concessionaire will 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 notification to the State 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 XXII
CANCELLATION BY STATE

A. Breach of Agreement:

1. 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) day notice period (or such longer period if a cure is not possible within thirty (30) days, provided that the cure is promptly commenced by the Concessionaire and diligently carried through to completion):
 - a. The Concessionaire does not pay any rent, fee, penalty, or other charge when due under this Agreement.
 - b. A check for any payment 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 sixty (60) days.
 - h. The Concessionaire fails, without the State's advance written approval, to operate the business authorized under this Agreement on a continuous basis.
 - i. The Concessionaire does not meet any ACDBE requirement as required by the FAA, without adequately documenting to the State's satisfaction its good faith efforts to do so.
 - j. 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.
 - k. The Concessionaire does not perform any provision or covenant under this Agreement and the nonperformance or noncompliance is a material failure of the performance to which the State is entitled under this Agreement.
 - l. The Concessionaire's noncompliance with the non-discrimination provisions of this contract, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate.
2. 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.
 3. The Concessionaire will 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. The waiver of any right or obligation under this Agreement is neither effective nor binding on the Concessionaire unless it is in writing and signed on behalf of the State.
- 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 termination or 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 will pay these charges within thirty (30) days of the billing date.

D. Ownership of Equipment and Improvements: If the State cancels this Agreement due to a Breach of Agreement as specified in Section A, above, all of the Concessionaire's title and interest in furnishings, fixtures, equipment, and improvements installed in the Terminal under this Agreement vest in the State. The State may dispose of these items as it sees fit. However, in the event the State directs in writing that the Concessionaire remove all or specifically identified portions of the Concessionaire's installed furnishings, fixtures, equipment, or improvements, the Concessionaire shall do so at the Concessionaire's sole expense, and title to such property removed at the State's direction will not vest in the State.

E. Survival of Concessionaire's Obligations: If the State cancels this Agreement for cause due to a Breach of Agreement as specified in Section A above, all of the Concessionaire's percentage 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 only to any obligation of the State to mitigate damages. The State may issue invoices for 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 as provided in Section D of this Article.
2. The liquidated damages specified in this Agreement will apply for any closure or removal from service of the Facility resulting from the Concessionaire's willful or intentional breach of this Agreement.

The Concessionaire acknowledges that the damage calculation specified in Paragraph 2 of this Section does not impair the State's right to damages if cancellation occurs before the Concessionaire receives any Gross 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 in 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 will 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 excepted. The Concessionaire will cooperate with the State and any replacement Concessionaire to facilitate an efficient transfer.

ARTICLE XXIII 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 sixty (60) 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.
 4. A material default of the State for failure to perform any material obligation as required by this Agreement and that remains uncured ninety (90) days after written notice by the Concessionaire.
- 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, equipment, furniture, and fixtures 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, or the property's automatic vesting would violate any applicable law or regulation. The State may remove, modify, sell, or destroy the property as it sees fit. The Concessionaire will pay the State for any cost the State incurs in property removal and disposal within thirty (30) days of the billing date. There will be no buy-out of any portion of Concessionaire's investment by the State in the event that this Agreement is cancelled by the Concessionaire pursuant to this Article.

ARTICLE XXIV **SUBSEQUENT CONTRACT**

- A. Subsequent Contract Award: The Concessionaire acknowledges that on the expiration or cancellation of this Agreement, the State may award any subsequent Concourse C Amenities 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 will 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 will abide by the decision of the State.
 4. 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 specifically identified furnishings, fixtures, and equipment located in or on the Premises. 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 over not more than a five (5)-year period using the straight-line method. To any extent that the Concessionaire amortizes improvements at the Airport for tax purposes, that method by a more rapid method than stated in this Agreement, that method will also be used to calculate reimbursement and purchase issues.
- C. At the expiration of this Agreement, all fully amortized furnishings, fixtures, and equipment will vest in the State except for any furnishings, fixtures, and equipment the State directs the Concessionaire to remove or that is contaminated with a hazardous substance. If the Concessionaire does not remove any furniture, fixtures, or equipment within five (5) calendar days after expiration if directed to do so by the State, the State may remove, sell, modify, or destroy these items as it sees fit. The Concessionaire will, within thirty (30) days after the State invoices the Concessionaire, reimburse the State for any costs the State incurs in removal and disposal of any furniture, fixtures, or equipment that were removed by the State after the Concessionaire's failure to do so.

ARTICLE XXV

ASSIGNMENT OR SUBLEASE

- A. Prohibition: The Concessionaire will 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, or 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 will 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. However, the State reserves the right to, in its sole reasonable judgment, determine whether the level of service under this Agreement will not be diminished due to such assignment, and to withhold its consent if it reasonably believes that a reduction of service to the public will occur.
- D. Transfer of Interest: For purposes of this Article, any single or cumulative transfer of more than fifty percent (50%) interest in a partnership, limited liability company or corporation is an assignment of an interest subject to approval by the State under this Article.

ARTICLE XXVI **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: Unless otherwise requested, all required notices, requests, consents, and approvals will be delivered by electronic mail (email) to the email address or addresses provided by the respective Parties. Each email communication or attached document will be considered delivered when it is dispatched by the sender to each of the email addresses specified by the recipient, unless the sender receives an automatic notification that the email has not been received within two hours of dispatch for all provided email addresses.

If automatic notification of email non-delivery is received by the sender for all provided email addresses, or the sender has a good faith belief that the emails are not being delivered, the sending party will first attempt to contact the receiving party by telephone and verify email addresses and delivery of the relevant notice. If the sending party cannot readily contact and verify delivery, the sending party will deliver the notice in writing and served personally, or send by registered or certified mail, or by a nationally or internationally recognized courier service (e.g., DHL, FedEx, UPS) and with proof of delivery.

Upon request from either Party required notices, requests, consents, and approvals shall be delivered in writing and served personally, or sent by registered or certified mail, or by a nationally or internationally recognized courier service (e.g., DHL, FedEx, UPS) and with proof of delivery. Delivery of notices shall be to the following addresses:

DOT&PF: As applicable to the Airport:

Email Address: dot.aia.leasing@alaska.gov
Ted Stevens Anchorage International Airport
Leasing & Property Management
P.O. Box 196960
Anchorage, Alaska 99519-6960
Facsimile number: 907-266-2458
Concessionaire:

Name: xxx
Email: xxx

Name: xxx
Email: xxx

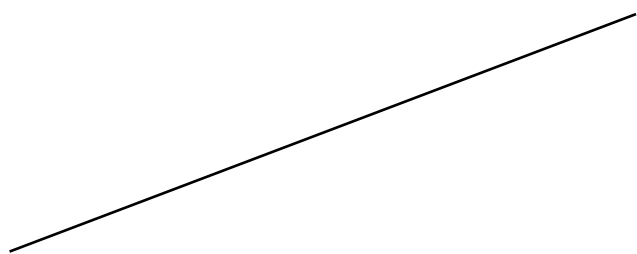
All notice periods that begin by notice given by the State or the Concessionaire begin on the date the notice is received.

- 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 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.
- 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, in addition to any continued operation required by the State under Article III (Term), Section B, 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 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. 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. Airport Access: Municipality of Anchorage Traffic Codes prohibits commercial vehicle traffic on West Northern Lights Boulevard for commercial vehicles with a gross weight of 11,000 pounds or more. The Concessionaire and all the Concessionaire's contractors and subcontractors shall comply with these Codes and limit access to the Airport via International Airport Road for all commercial vehicles that exceed 11,000 pounds. Violation of this provision shall constitute a violation of this Agreement and may subject the Concessionaire to fines.
- J. 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.
- K. Surrender of Possession: The Concessionaire will 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.
- L. 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 by the Concessionaire unless it is expressly stated as a waiver in writing signed on behalf of the State.
- M. 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.

- N. 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 unamortized State-approved improvements placed on the Airport by the Concessionaire, according to the provisions of the then current Alaska Administrative Code.
- O. 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 will have, hold, and enjoy peaceful and uninterrupted use of the Premises subject to any and all rights reserved or granted to the State under this Agreement.
- P. Proposal Documents: The Notice Inviting Proposals, Terms of Request and Instructions to Proposers, Proposer's Affidavit and Request to Negotiate, Term Sheet, Base and/or Extended Base Proposal, responses to the Specific Evaluation Criteria, any addenda and all other documentation required in the RFP, and all information submitted by the Proposer with their proposal are part of this Agreement and each party will fully perform all provisions of these documents.
- 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. Entire Agreement: This Agreement, including any amendment, and any item listed under Section P 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 (Modification) of this Article.
- S. 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.

(If the Proposer is a partnership or joint venture, all general partners or ventures of the joint venture must sign. If the Proposer is a corporation, provide the signature of one or more authorized representatives as required obligating the corporation together with proof of authorization. If the Proposer is a limited liability company, provide the signature of the manager or, if there is no manager, provide the signature of a member of the company authorized to bind the company.)

(Corporate Seal if
a Corporation)

Name of Lessee

Signature

Signature

Printed Name

Printed Name

Title

Title

Signature

Signature

Printed Name

Printed Name

Title

Title

Signature

Signature

Printed Name

Printed Name

Title

Title

ACKNOWLEDGMENT

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

THIS IS TO CERTIFY that on this _____ day of _____, 2024, 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: _____

ACKNOWLEDGMENT

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

THIS IS TO CERTIFY that on this _____ day of _____, 2024, 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
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

STATE OF ALASKA)
)ss.
Third Judicial District)

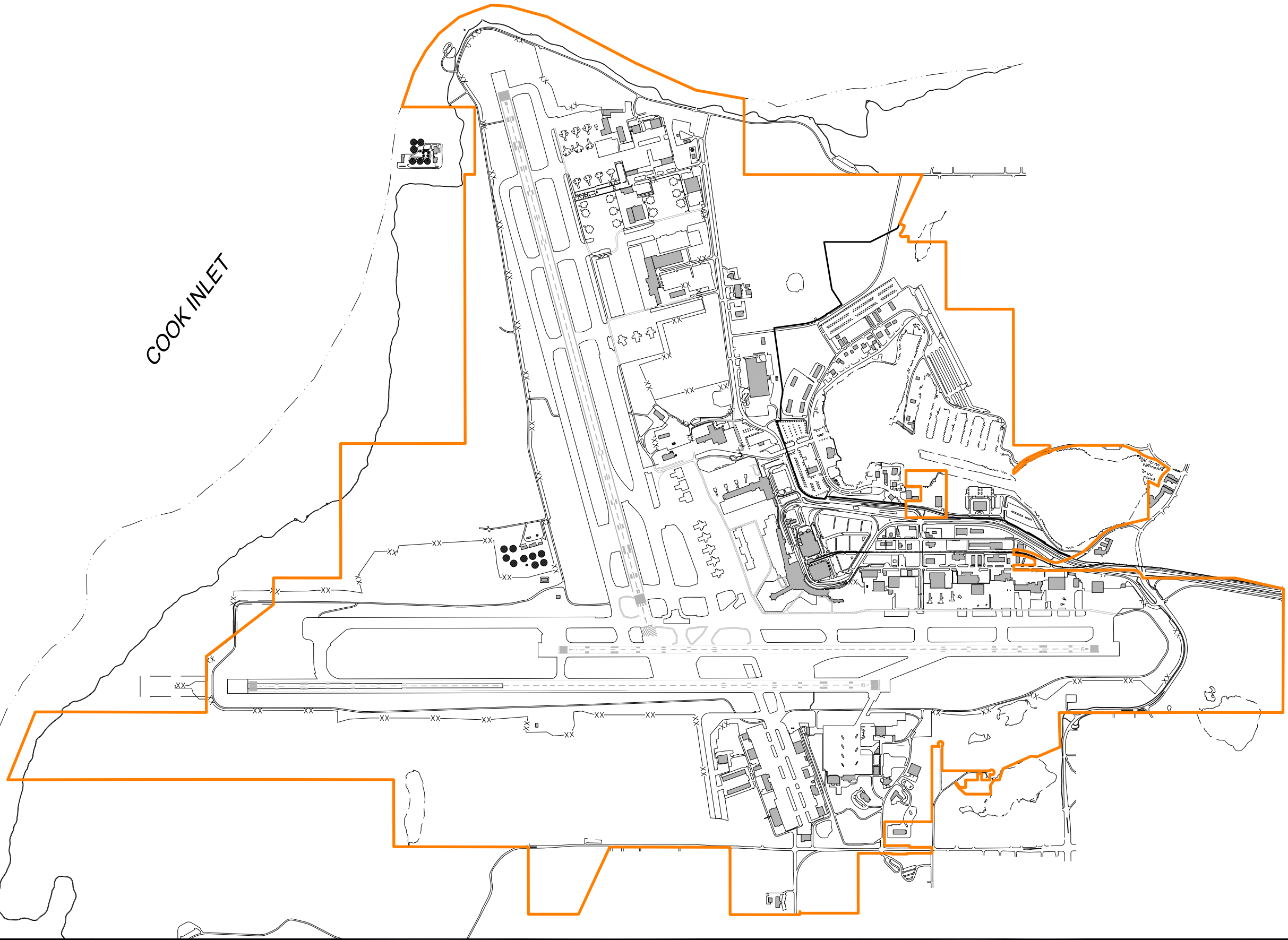
Craig Campbell
Airport Manager

THIS IS TO CERTIFY that on this ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, known to me and to me known to be the _____, 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: _____



COOK INLET



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SCALE IN FEET

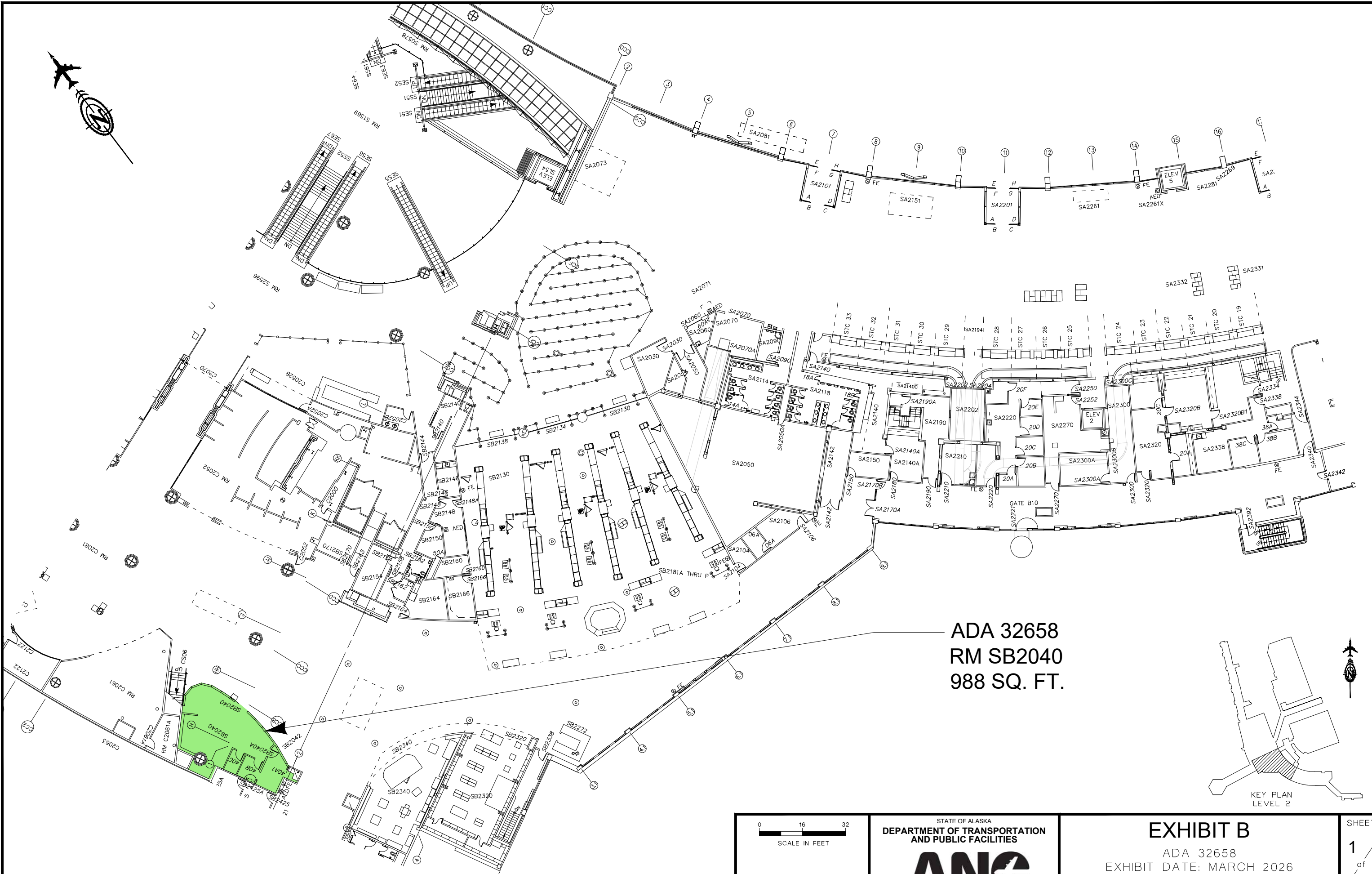
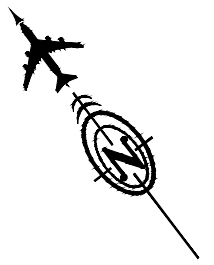
AIRPORT ENGINEERING

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

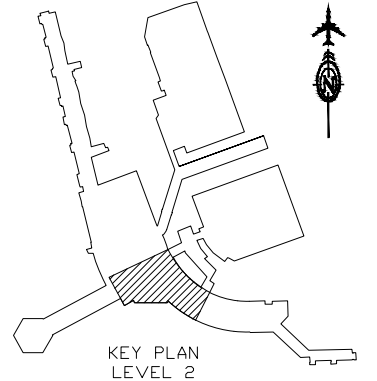


DATED: July 1, 2023

EXHIBIT A
ANC Property Drawing
2023 OAPT



ADA 32658
RM SB2040
988 SQ. FT.



KEY PLAN
LEVEL 2

0 16 32
SCALE IN FEET

AIRPORT ENGINEERING

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

ANE

EXHIBIT B
ADA 32658
EXHIBIT DATE: MARCH 2026

DRAFTED: **bb** CHECKED: APPROVED:

SHEET
1
of
1

EXHIBIT C

CONCOURSE C AMMENITIES
ROOM SB2040
CONCESSION AGREEMENT ADA-32658

TURNOVER AND FACILITY OPENING DATES

POST-SECURITY SPACE – Room SB2040 (988 sq. ft.)

Turnover Date: _____

Facility Opening Date: _____

