



Kenai City Council - Regular Meeting

November 06, 2024 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

****Telephonic/Virtual Information on Page 3****

Agenda

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. **Election of Vice Mayor**
4. Approval of the Agenda and Consent Agenda (*Public comments on Consent Agenda Items limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED ADMINISTRATIVE REPORTS

C. SCHEDULED PUBLIC COMMENTS (*Public comments limited to ten (10) minutes per speaker*)

D. UNSCHEDULED PUBLIC COMMENTS (*Public comments limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

E. PUBLIC HEARINGS

1. **Resolution No. 2024-43** - Authorizing the Use of the Equipment Replacement Fund and Awarding a Contract for the Purchase of Datacenter Equipment. (Administration)
2. **Resolution No. 2024-44** - Amending the City of Kenai Schedule of Rates, Charges, and Fees by Establishing an Annual Locker Rental Fee While Continuing to Provide Free Day-Use Lockers. (Administration)
3. **Resolution No. 2024-45** - Authorizing a Contract Extension for Employee Health Care Effective January 1, 2025. (Administration)
4. **Resolution No. 2024-46** - Establishing the 2025 City Council Regular Meeting Schedule. (City Clerk)
5. **Resolution No. 2024-47** - Approving a Lease of Airport Reserve Lands Described as Lot Four Block One FBO Subdivision with Crowley Fuels, LLC, on a Non-Standard Lease Form. (Administration)

F. MINUTES

1. *Regular Meeting of October 16, 2024. (City Clerk)

G. UNFINISHED BUSINESS

H. NEW BUSINESS

- [1.](#) ***Action/Approval** - Bills to be Ratified. (Administration)
- [2.](#) ***Action/Approval** - Confirmation of Mayoral Nomination for a Partial Term Appointment of Sharon Fisher to the Parks & Recreation Commission. (Gabriel)
- [3.](#) ***Ordinance No. 3440-2024** - Accepting and Appropriating a Grant from the State of Alaska Department of Education and Early Development, Division of Library, Archives, and Museums for the Purchase of Library Materials. (Administration)
- [4.](#) ***Ordinance No. 3441-2024** - Accepting and Appropriating a Donation from Hilcorp Energy Company to Assist with the Annual Area-Wide Senior Thanksgiving Dinner. (Administration)
- [5.](#) ***Ordinance No. 3442-2024** - Amending Kenai Municipal Code Section KMC 23.55.020 – Compensation Structure by Grade for Employees in the Classified Service, to Amend the Effective Date a Step Increase Occurs and KMC 23.55.030 Qualification Pay, to Clarify Annual Leave and Holiday Pay Calculations and Correct an Error to Building Plans Examiner Recognition Pay. (Administration)
- [6.](#) ***Ordinance No. 3443-2024** - Amending Kenai Municipal Code Section 14.30.030 – General Provisions, to Update the Most Recent Version of the “Flood Insurance Study”. (Administration)
- [7.](#) **Action/Approval** - Mayoral Liaison Nominations for Appointment to Commissions and Supervisory Sub-Committee. (Gabriel)

I. COMMISSION REPORTS

1. Council on Aging Commission
2. Airport Commission
3. Harbor Commission
4. Parks and Recreation Commission
- [5.](#) Planning and Zoning Commission
6. Beautification Commission

J. REPORT OF THE MAYOR**K. ADMINISTRATION REPORTS**

1. City Manager
2. City Attorney
- [3.](#) City Clerk

L. ADDITIONAL PUBLIC COMMENTS

1. Citizens Comments (*Public comments limited to five (5) minutes per speaker*)
2. Council Comments

M. EXECUTIVE SESSION**N. PENDING ITEMS****O. ADJOURNMENT**

P. INFORMATION ITEMS

The agenda and supporting documents are posted on the City's website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk's Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk's Office at 907-283-8231.

Registration is required to join the meeting remotely through Zoom. Please use the following link to register:

<https://us02web.zoom.us/meeting/register/tZYodO2ggTlqGNZMLq2LEUQA3QY8vU6uuCYE>



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2024-43**

A RESOLUTION AUTHORIZING THE USE OF THE EQUIPMENT REPLACEMENT FUND AND AWARDING A CONTRACT FOR THE PURCHASE OF DATACENTER EQUIPMENT.

WHEREAS, the City issued a formal Invitation to Bid for FY25 Datacenter Equipment on October 4, 2024 with the following Bids received on October 23, 2024,

BIDDER	BID TOTAL
AlxTel, Inc	\$66,929.93
Insight Public Sector	\$72,778.00
ODP Business Solutions, LLC	\$64,275.00
Taza Supplies Inc	\$78,600.00
Zones, LLC	\$71,620.86

; and,

WHEREAS, ODP Business Solutions, LLC was found to be the lowest responsive bidder; and,

WHEREAS, the recommendation from City Administration is to award an agreement to ODP Business Solutions, LLC for \$64,275; and,

WHEREAS, the purchase includes new Dell server equipment; and,

WHEREAS, this is the first phase of a two-phase project to replace the datacenter equipment in FY25; and,

WHEREAS, the City's fiscal year 2025 budget included \$181,618 for this purchase and the Equipment Replacement Fund has the capacity to fund this purchase with sufficient funds remaining for phase two.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City Manager is authorized to execute a contract award to ODP Business Solutions, LLC in the amount of \$64,275 utilizing the City's Equipment Replacement Fund.

Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 6TH DAY OF NOVEMBER, 2024.


Henry Knackstedt, Vice Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Resolution No. 2024-43

Page 2 of 2

Approved by Finance: _____



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager

THROUGH: David Swarner, Finance Director

FROM: Dan Castimore, IT Manager

DATE: October 25, 2024

SUBJECT: Resolution No. 2024-43

The purpose of this memo is to recommend awarding a contract to ODP Business Solutions, LLC for the purchase of Datacenter Equipment utilizing the City's Equipment Replacement Fund.

The City advertised for bids through the Anchorage Daily News on October 6th and 9th, as well as on the City website. The following bids were opened on October 23, 2024.

BIDDER	BID TOTAL
AlxTel, Inc	\$66,929.93
Insight Public Sector	\$72,778.00
ODP Business Solutions, LLC	\$64,275.00
Taza Supplies Inc	\$78,600.00
Zones, LLC	\$71,620.86

This purchase is the first phase of a two-phase project to replace the server equipment in the City's datacenter. In this phase all of our dedicated servers are being replaced. The second phase will replace all of the equipment in our virtual server environment.

This equipment is being purchased to replace equipment that has reached the end of its useful life, and is being funded using the Equipment Replacement Fund.

Council's approval is respectfully requested.



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2024-44**

A RESOLUTION AMENDING THE CITY OF KENAI SCHEDULE OF RATES, CHARGES, AND FEES BY ESTABLISHING AN ANNUAL LOCKER RENTAL FEE WHILE CONTINUING TO PROVIDE FREE DAY-USE LOCKERS.

WHEREAS, the City of Kenai is committed to offering high-quality services and facilities for its residents and visitors, including locker access at certain city-owned recreational facilities; and,

WHEREAS, the City has historically provided lockers for public use free of charge, but a growing number of lockers have been permanently occupied by users for extended periods, limiting access for others; and,

WHEREAS, to better manage locker availability and ensure equitable access to lockers, administration recommends implementing an annual locker rental fee for long-term locker use while continuing to offer free day-use lockers for the public; and,

WHEREAS, the introduction of a fee for long-term locker rentals will help cover the costs of maintenance and upkeep while addressing the issue of lockers being monopolized for extended durations; and,

WHEREAS, the City Council has reviewed the proposed amendments to the City's Schedule of Rates, Charges, and Fees and finds the addition of an annual locker rental fee to be fair and appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That an annual fee of \$120.00 dollars will be added to the FY25 Fee Schedule and will be charged to each patron who wants to purchase long-term locker rental:

Parks and Recreation Fees

Multipurpose Facility	
hourly rate (reservation)	\$165.00
Kenai Recreation Center	
Weights/Cardio/Sauna - includes weight/cardio room, shower, sauna and gym. (When using the weight room, must be 16 or older unless accompanied by guardian)	
Day Pass: Adults	\$5.00
Day Pass: College Students, Veterans & Seniors (55 and older)	\$2.50
High School Students and younger	FREE
10 visit punch card: Adults	\$40.00
10 visit punch card: College Students, Veterans & Seniors (55 and older)	\$20.00
Monthly Pass: Adults	\$50.00
Monthly Pass: College Student, Veterans & Senior (55 and older)	\$25.00
City League Basketball (per team)	\$325.00
<u>Annual Locker Rental</u>	<u>\$120.00</u>
Racquetball & Wallyball Court Rentals - per hour and includes showers for participants.	

New Text Underlined; [DELETED TEXT BRACKETED]

Adult Racquetball or Wallyball	\$15.00
Racquetball or Wallyball Punch Card (10 hours all ages)	\$120.00
Facility Rental - per hour	
Gym	\$50.00
1/2 Gym	\$25.00
Parks/Gazebos/Gardens	
Picnic Shelter	
8:00 am - 3:00 pm	\$20.00
4:00 pm - 11:00 pm	\$20.00
Gazebo	
8:00 am - 3:00 pm	\$25.00
4:00 pm - 11:00 pm	\$25.00
Community Garden Plot (each)	\$20.00
Adopt-A-Bench (Maintenance included.) Bench, freight, and installation at actual cost.	Actual Cost
Personal Use Fishery	
Personal Use Fishery Day Use Parking	
5 am to Midnight (vehicle or up to two atv's)	\$22.05
Personal Use Fishery Overnight Parking	
Before noon of the first day to noon of the second day (vehicle or up to two atv's and one tent)	\$60.64
After noon of the first day to noon of the second day (vehicle or up to two atv's and one tent)	\$49.61
Personal Use Fishery Camping (one tent)	\$27.56
Personal Use Fishery Vehicle Drop Off (vehicle or up to two atv's per day)	\$11.03

Section 2. That this Resolution takes effect immediately upon passage

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 6TH DAY OF NOVEMBER, 2024.

ATTEST:

Henry Knackstedt, Vice Mayor

Michelle M. Saner, MMC, City Clerk



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager

FROM: Tyler Best, Parks and Recreation Director

DATE: October 28, 2024

SUBJECT: Resolution 2024-44 – Annual Locker Rental Fee

Historically, lockers at the Kenai Recreation Center have been offered free of charge. However, during the recent renovation of the facility's floors, staff had to move all the lockers and provided advance notice to locker users to remove personal belongings. Despite the department's efforts to notify users about the renovations and the need to clear lockers, many miscellaneous items were left behind. Staff removed over **100 pounds** of personal belongings from lockers that were not claimed, including old clothing, shoes, gym bags, and other miscellaneous items. This situation reflects an inefficient use of our locker space and impacts other facility users who would benefit from short-term, day-use access.

Implementing an annual locker rental fee while providing free day-use lockers is a reasonable and necessary step to improve locker usage at the Kenai Recreation Center. The proposed fee structure will balance the needs of long-term and short-term users, create a fairer system, and ensure the sustainable operation of these services for the public.

Your consideration is appreciated.



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2024-45**

A RESOLUTION AUTHORIZING A CONTRACT EXTENSION FOR EMPLOYEE HEALTH CARE EFFECTIVE JANUARY 1, 2025.

WHEREAS, as part of a comprehensive employee benefit package and pursuant to KMC 23.40.120 the City provides group life, medical, dental, and vision insurance to its employees; and,

WHEREAS, the City's current provider for group medical, dental, and vision is PREMERA Blue Cross Blue Shield of Alaska; and,

WHEREAS, the City worked with the City's health insurance broker to negotiate an extension of the City's contract with PREMERA to include plan changes which will reduce costs and improve the benefit value to employees and be effective on January 1, 2025; and,

WHEREAS, PREMERA Blue Cross Blue Shield of Alaska has provided a renewal quote for continuing group medical and vision coverage with a premium increase of 11.2% and dental coverage at a premium increase of 4.0%; and,

WHEREAS, the City's health care insurance broker and the administration recommends the City enter into a contract extension with PREMERA Blue Cross Blue Shield of Alaska to provide group medical, dental, and vision insurance to the employees of the City of Kenai effective January 1, 2025, for an estimated annual premium of \$2,785,163; and,

WHEREAS, sufficient funds are budgeted in the FY25 annual budget through June 30, 2025, and an amount sufficient to maintain the contract will be proposed in the FY26 annual budget; and,

WHEREAS, providing quality medical, dental, and vision insurance is a component of a comprehensive compensation package that allows the City to recruit and retain quality employees to provide the services of the City for its residents is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City Manager is authorized to execute a contract extension with PREMERA Blue Cross Blue Shield of Alaska to provide group medical, dental, and vision insurance to the employees of the City of Kenai, effective January 1, 2025, for an estimated annual premium of \$2,785,163.

Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 6TH DAY OF NOVEMBER, 2024.

Henry Knackstedt, Vice Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance:

A handwritten signature in blue ink, appearing to be 'DS', is written over a horizontal line.



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Terry Eubank, City Manager

FROM: Stephanie Randall Human Resources Director

DATE: October 22, 2024

SUBJECT: Resolution 2024-45 – Health Insurance Contract Extension

Resolution 2024-45 authorizes the City Manager to execute a contract extension for the City's employee group medical, dental, and vision insurance pursuant to KMC 23.40.120, effective January 1, 2025.

The City currently provides health insurance coverage to employees through Premiera Blue Cross Blue Shield of Alaska for an estimated annual premium of \$2,596,016. The current plan is a level-funded plan which offers flexibility and potential cost-savings – the City is eligible for a 50% refund of any premium amount in excess of actual claims, after the payment of preset plan administration costs, if the City renews the plan. Employees currently have one plan option which has a \$3,000 deductible. The current plan became effective on January 1, 2024 and expires on December 31, 2024, with an option for renewal.

During the FY24 budget process, the Council had a goal to improve sustainability and to maintain the quality of employee medical, dental, and life insurance while continuing toward an employee cost share of 15%. This process began in FY21, and the employee cost share increased by 1% each year until FY23. However, due to the significant cost savings achieved during FY23 and to maintain the City's competitiveness for recruitment and retention of employees, the plan to continue the 1% increase in the employee's cost share was temporarily paused. The employee's cost share of the current plan remains at 13%.

Administration worked with Parker Smith & Feek, the City's health insurance broker, to obtain a quote for renewal and analyze options to find cost-sustainable quality employee medical, dental, and vision insurance coverage for employees. The initial renewal quote from Premiera showed a 16.5% increase to current rates, with a 13.5% increase if the City did not request additional bids. The administration worked with Parker Smith & Feek to determine if additional proposals from other providers might result in competitive proposals. Based on the current experience of claims, it is unlikely that other companies would provide a lower cost option and the recommendation from Parker Smith & Feek was to accept the no bid offer. They were able to negotiate with Premiera to bring the total increase down to 11.2% over last years' contract.

The proposed plan will offer employees two options. The first option is identical to the current single-option plan, which has a \$3,000 deductible and provides employees with an employer-funded Health Reimbursement Arrangement (HRA). The HRA allows employees to request reimbursement for qualified medical expenses up to a maximum of \$2,800 for individual employee and \$5,600 for an employee with dependents. Any unused HRA funds revert back to the City at the end of the plan year. The second option has a \$4,000 deductible and provides employees with an employer-funded Health Savings Account (HSA). The HSA allows employees to use the account for eligible medical expenses with a City contribution of \$2,000 for an individual employee or \$4,000 for an employee with dependents in the first year of the plan. In subsequent years, the City's contribution to the employee's HSA account will be \$1,000 for an individual employee or \$2,000 for an employee with dependents. Unlike the HRA, the funds in the HSA belong to the employee and are fully portable. Not all employees are eligible to participate in HSA-qualified plans. However, offering an HSA option provides potential cost-saving opportunities to the City and employees as the plan has lower premiums and offers long-term savings opportunities to employees.

If the Council approves Resolution 2024-45, the administration can move forward with benefits open enrollment for employees.

Your consideration is appreciated.





Sponsored by: City Clerk

**CITY OF KENAI
RESOLUTION NO. 2024-46**

A RESOLUTION ESTABLISHING THE 2025 CITY COUNCIL REGULAR MEETING SCHEDULE.

WHEREAS, Kenai Municipal Code (KMC) 1.10.040(a) establishes that regular meetings of the Council will be on the first and third Wednesday of every month at a time set by resolution of the Council; and,

WHEREAS, Kenai Municipal Code 1.10.040(b) provides that on or before the last meeting in December the City Clerk will introduce a resolution, on behalf of the Council to establish the dates for the subsequent year's Council meetings; and,

WHEREAS, pursuant to Kenai Municipal Charter 2-6 City Council meetings may be canceled by the mayor due to lack of quorum or for an emergency, or by a majority of the Council members for any reason as long as there is at least one regular meeting each month and at least twenty regular meetings each calendar year; and,

WHEREAS, providing advanced notice of the meeting schedule to the public and administration by timely adoption of a calendar of meeting dates to include any canceled meetings is in the best interest of the City; and,

WHEREAS, the first meeting of 2025 falls on New Year's Day, a City holiday, and a Parks and Recreation Commission meeting is scheduled for the following day; and,

WHEREAS, canceling the first regular meeting of the City Council in January would allow for Council, administration, and residents to celebrate the holiday without disruption to regular Commission meeting schedule; and,

WHEREAS, canceling the second regular meeting of the City Council in July allows for Council, administration, and residents to participate in the personal use fishery and other seasonal activities.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City Council regular meeting schedule for 2025 as attached is hereby adopted, to include the exception that there will not be a meeting on the first Wednesday of January nor the third Wednesday in July.

Section 2. That this Calendar may be further amended by Council in accordance with the City Charter and Kenai Municipal Code.

Section 3. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 6TH DAY OF NOVEMBER, 2024.

Henry Knackstedt, Vice Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Shellie Saner, City Clerk

DATE: October 29, 2024

SUBJECT: **Resolution No. 2024-46** - Establishing the 2025 City Council Regular Meeting Schedule.

This Resolution is intended to establish a calendar for the regular meetings of the City Council in 2025, in accordance with KMC 1.10.040(b).

City Charter, allows that a meeting may be cancelled by the Mayor due to a lack of a quorum, for an emergency, or by a majority of council members for any reason as long as at least twenty regular meetings are held each year and at least one each month. The 2025 proposed meeting schedule includes at least one regular meeting each month and more than the minimum requirement of twenty regular meetings each year.

The proposes meeting scheduling sets meetings every first and third Wednesday of each month, except January and July based on the following:

- The first meeting in January falls on a recognized holiday and the Parks and Recreation Commission meeting is scheduled for the following day. Cancelling the first regular City Council meeting in January would allow for the Council, administration and residents to celebrate the holiday without disruption to the regular Commission meeting schedule.
- The second meeting of July, when the second meeting coincides with the peak season of the personal use dipnet fishery which consumes the full attention of the administration and is a busy time of the year for other residents.

The second meeting in November or the first meeting in December may be cancelled as it could coincide with the Alaska Municipal League conferences in Anchorage.

Your consideration is appreciated.

2025 City Council Meeting Schedule

Key

CITY COUNCIL

HOLIDAY - CITY OFFICES CLOSED

January						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
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**To be confirmed

February						
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November						
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December						
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Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2024-47**

A RESOLUTION APPROVING A LEASE OF AIRPORT RESERVE LANDS DESCRIBED AS LOT FOUR BLOCK ONE FBO SUBDIVISION WITH CROWLEY FUELS, LLC, ON A NON-STANDARD LEASE FORM.

WHEREAS, Crowley Fuels, LLC. (Crowley) entered into a lease with the City for Lot Four Block One FBO Subdivision for fuel storage and aircraft service in 2020; and,

WHEREAS, the Lease expired on June 30, 2024 and is currently in holdover status; and,

WHEREAS, Crowley applied for a new lease for the same property for a five-year term for fuel storage and distribution; and,

WHEREAS, Crowley intends to satisfy the development requirements for the new lease through electrical work and ground work easily meeting the \$7,500 threshold for a five-year term; and,

WHEREAS, administration and Crowley negotiated modified lease terms to the standard lease form primarily clarifying that above ground fuel storage not permanently attached to the ground are personal property of Crowley and requiring Crowley to remove all underground and above ground fuel storage at the end of the lease unless the City in its sole discretion chooses another option agreeable to Crowley; and,

WHEREAS, Kenai Municipal Code 21.10.140, Form of Lease, allows the City Manager to enter into a lease that deviates from the standard form when the City Manager believes the action is in the best interest of the City, the lease is approved as to form by the City Attorney and the Lease is approved by Resolution of the Council; and,

WHEREAS, on September 12, 2024 the Airport Commission recommended the City approve a lease with Crowley; and,

WHEREAS, entering into a new lease with Crowley to provide fuel for aviation use is in the best interest of the Airport and City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City Manager believes that utilizing the attached non-standard lease form is in the best interest of the City and the lease has been approved as to form by the City Attorney.

Section 2. That the City Manager is authorized to enter into a lease on behalf of the City with Crowley Fuels, LLC., for fuel storage and distribution, for a term of five years, for Lot Four, Block One FBO Subdivision, according to the official Plat thereof, filed under Plat No. 78-225, records of the Kenai Recording District, Third Judicial District, State of Alaska.

Section 3. That the non-standard lease form attached hereto is approved in its same or materially same form.

Section 4. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 6TH DAY OF NOVEMBER, 2024.

Henry Knackstedt, Vice Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

KENAI RECORDING DISTRICT

KENAI MUNICIPAL AIRPORT LEASE OF AIRPORT RESERVE LANDS

THIS LEASE AGREEMENT ("Lease") entered into this _____ day of _____, _____, 2024, by and between the CITY OF KENAI, 210 Fidalgo Avenue, Kenai, Alaska 99611-7794 ("Lessor"), and CROWLEY FUELS, LLC, whose address is 201 Arctic Slope Avenue, Anchorage, Alaska 99518 ("Lessee").

DEFINITIONS

For the purposes of this Lease, the following terms are defined as follows:

1. Airport — the Kenai Municipal Airport, including all the runways, taxiways, aprons, water lanes, water taxiways, and all City-owned real estate located within the boundaries of the Airport Reserve as defined in KMC 21.05.030.
2. Airport Manager — the official to whom the City Manager of the City has delegated the authority and responsibility of managing and directing the activities of the Airport. "Airport Manager" includes that person's authorized representative.
3. City — the City of Kenai, its elected officials, officers, employees or agents.
4. City Manager — the official to whom the Kenai City Council has delegated the responsibility of managing and directing all activities of the City.
5. Contamination — the unpermitted presence of any released Hazardous Substance.
6. Environmental Law — any applicable federal, state, or local statute, law, regulation, ordinance, code, permit, order, decision, judgment of any governmental entity relating to environmental matters, including littering and dumping.
7. FAA — the Federal Aviation Administration.
8. Hazardous Substance — any substance that is defined under an Environmental Law as hazardous waste, hazardous substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product, or oil.
9. KMC — the Kenai Municipal Code.

10. Permanent Improvements - A fixed addition or change to land that is not temporary or portable, including a building, building addition, retaining wall, storage tank, earthwork, fill material, gravel, pavement, and remediation of contamination for which the applicant is not responsible. Permanent Improvements shall not include any above ground fuel storage containers, dispensing containers or apparatus not fixed to the ground.

ARTICLE I PREMISES LEASED

A. PREMISES: In consideration of Lessee's payment of the rents and performance of all the covenants of this Lease, the City leases to the Lessee, and the Lessee leases from the City, the following described property ("Premises") in the Kenai Recording District, Third Judicial District, State of Alaska and located on the Airport, to wit:

Lot Four (4), Block One (1), FBO Subdivision, according to the official plat thereof, filed under Plat No. 78-225, records of the Kenai Recording District, Third Judicial District, State of Alaska.

B. NO WARRANTY: Except as may be provided in this Lease, the City makes no specific warranties, expressed or implied, concerning the condition of the Premises including, survey, soils, wetlands, access, and suitability or profitability for any use including those authorized by this Lease, its environmental condition, or the presence or absence of Hazardous Substances in, on, and under the surface. The Lessee takes the Premises on an "as is" basis and without warranty, subject to any and all of the covenants, terms, and conditions affecting the City's title to the Premises.

ARTICLE II RIGHTS AND USES

A. AUTHORIZED USES:

1. USE OF PREMISES: The City authorizes the Lessee to use the Premises for the following purposes only:

Fuel Storage and Distribution

2. CONTINUOUS OPERATIONS: Unless the City approves otherwise in writing, the Lessee will operate on the Premises on a continuous basis, uninterrupted by any period of closure over 15 consecutive days. The Lessee will give the City written notice before closing the Lessee's business on the Premises for more than 10 consecutive days. The notice must state the reason for the closure and the date on which the Lessee will re-open for business. This provision does not apply to any period during which the Lessee is unable to operate its business as a result of an act or directive of the City, or as a result of a closure of the Airport or loss of the Lessee's buildings on the Premises due to fire or natural disaster.

B. RIGHTS RESERVED TO THE CITY:

1. **RIGHT TO GRANT TO OTHERS:** The City reserves the right to grant to others any rights and privileges not specifically granted to the Lessee on an exclusive basis. The rights and privileges granted to the Lessee in this Lease are the only rights and privileges granted to the Lessee by this Lease.
2. **EASEMENTS:** The City reserves the right to make grants to third parties or reserve to the City easements or rights of way through, on, or above the Premises. The City will not grant or reserve any easement or right of way that unreasonably interferes with the Lessee's authorized uses of the Premises.
3. **INGRESS, EGRESS AND INSPECTION:** The City reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including buildings, for the purpose of inspection or environmental testing at any time. Except in the case of an emergency, all inspections and environmental testing will be coordinated with the Lessee to minimize interference with the Lessee's authorized uses of the Premises.
4. **RIGHT OF FLIGHT:** There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport.

C. **PROHIBITED USES:** Unless specifically authorized by this Lease or an amendment to this Lease, the following are prohibited:

1. Any use of the Premises other than those authorized in this Lease.
2. Any use of the Premises that is in violation of a City Ordinance or an Airport regulation.
3. The outside storage on the Premises of junk, salvage aircraft or vehicle parts, non-operational support equipment, unused or damaged equipment or material, or solid waste or debris unless allowed pursuant to a conditional use permit under KMC 14.20.
4. The disposal on the Premises or the Airport of waste materials generated by the Lessee, including any Hazardous Substance, slash, overburden, and construction waste.
5. The stripping, wasting, or removing any material from the Premises without the prior written approval of the City.
6. Erecting structures or allowing growth of natural objects that would constitute an obstruction to air navigation, or allowing any activity on the Premises that would interfere with or be a hazard to the flight of aircraft, or interfere with air navigation or communication facilities, serving the Airport.
7. Any use or activity that is prohibited by applicable law or regulation.

ARTICLE III TERM & HOLDOVER

A. TERM: The initial term of this Lease is for five (5) years, from the ____ day of _____, 2024, to the ____ day of _____, 2029.

B. HOLDOVER: If the Lessee holds over and remains in possession of the Premises after the expiration, cancellation or termination of this Lease, the holding over will not operate as an extension of the term of this Lease, but only creates a month-to-month tenancy, regardless of any rent payments accepted by the City. The Lessee's and City's obligations for performance under this Lease will continue during the month-to-month tenancy. The City or Lessee may terminate the Lessee's holdover with ten days' advance written notice.

ARTICLE IV RENTS AND FEES

A. RENT: The initial rent for the Premises is **\$8,216.32** per year, as established by the City pursuant KMC 21.10.090 and as subject to annual adjustment on July 1 of each year under Article V of this Lease, plus applicable sales tax. The rent shall be payable in equal monthly installments, payable in advance on or before the anniversary date of the term of this Lease and thereafter at monthly intervals. All payments required by this Lease must be made in U.S. dollars.

1. Rent Credit: A rent credit may be applied for a maximum of five years of Lease payments as provided in KMC 21.10.100 (as effective at the time this Lease is executed). Once the work is completed and value determined, a credit will be applied to the Lease payments, prorated as necessary for the successive five years.

B. RENT PRORATED: Rent for any period less than one month shall be prorated on the basis of the rent payable under this Lease in last full month previous to the prorating.

C. ADDITIONAL RENT: In addition to the rent specified in (a) of this Article, Lessee agrees to pay to the appropriate parties all levies, assessments, and charges as follows:

1. Taxes pertaining to the leasehold interest of the Lessee.
2. Sales tax now enforced or levied in the future, computed upon rent payable in monthly installments.
3. All taxes and assessments levied in the future by the City, as if Lessee was the legal owner of record of the Premises.

D. PAYMENTS: The Lessee shall make checks, bank drafts, or postal money orders payable to the City of Kenai and deliver payments to City of Kenai, Finance Department, 210 Fidalgo Avenue, Suite 200, Kenai, Alaska 99611-7794 or any other address the City may designate in writing to the Lessee.

E. INTEREST: Beginning the day after payment is due, all unpaid rents, charges, and fees required under this Lease will accrue interest at the rate of eight percent (8.0%) per annum. Interest on disputed amounts will not be charged to the Lessee if the dispute is resolved in the Lessee's favor.

F. **LATE PAYMENT PENALTY:** In addition to any interest payable under provision (E) of this Article, each time the Lessee fails to pay any rent or fee by the date required in this Lease, the City will charge, and the Lessee shall pay an administrative penalty of ten percent (10.0%) of the amount due and unpaid.

G. **COURTESY BILLINGS:** Lessee acknowledges that any billing statement issued by the City is provided only as a courtesy. The Lessee is obligated to pay all monthly rents when due, regardless of whether or not the Lessee receives a billing statement from the City.

H. **LIEN AGAINST LESSEE:** Any rent, charge, fee, or other consideration which is due and unpaid at the expiration, termination, or cancellation of this Lease will be a lien against the Lessee's property, real or personal.

I. **PAYMENT OF CITY'S COSTS:** The Lessee will pay all reasonable actual expenses, costs, and attorney fees City may incur, with or without formal action, to enforce, defend, or protect this Lease or City's rights under this Lease, including any expense incurred with respect to environmental compliance, bankruptcy or any proceeding that involves the Lessee, the Lease, the Premises, or improvements or personal property on the Premises. The Lessee will make payment within 30 days of the date of each notice from City of any amounts payable under this provision.

J. **PAYMENT FOR SPECIAL SERVICES:** Lessee agrees to pay the City a reasonable fee for any special services or facilities the City agrees to perform, which the City is not otherwise obligated by this Lease to provide and which the Lessee requests from the City in writing.

ARTICLE V ADJUSTMENT OF RENT AND FEES

A. **RENT OR FEE ADJUSTMENT:** The City shall adjust rent or fees payable by the Lessee under Article IV or other provisions of this Lease on July 1 of each year of the Lease as provided in KMC 21.10.090 (as effective at the time this Lease is executed) and shall make any other adjustments to rent as allowed for in KMC 21.10.090.

B. No rent or fee change shall be effective until 30 days after the date of the City's written notice to the Lessee. If the Lessee believes that any changed rent exceeds the fair market rent for the Premises, the Lessee may appeal a rent change to the City as provided in KMC 21.10.090.

ARTICLE VI ASSIGNMENT & SUBLETTING

A. **INVALID WITHOUT CITY'S CONSENT:** The Lessee may not assign, sublet, or grant a security interest in, by grant or implication, the whole or any part of this Lease, the Premises, or any improvement on the Premises without the written consent of the City. Any proposed assignment, sublease, or security interest must be written and must be submitted to the City bearing the original, notarized signature of all parties. The Lessee may submit unsigned draft documents for the City's conceptual review. However, the City's conceptual approval of a draft document may not be construed as the City's consent to any assignment, sublease, or security interest. All provisions in this Lease extend to and bind the assignees and sub-lessees of the Lessee.

B. NO WAIVER OF CONSENT: The City's consent to one assignment, sublease, or security interest will not waive the requirement for the Lessee to obtain the City's consent to any other assignment, sublease, or security interest.

C. ASSIGNEE / LESSEE OBLIGATIONS: An assignment must include a provision stating that the assignee accepts responsibility for all of the assignor's (Lessee's) obligations under this Lease, including environmental liability and responsibility. However, unless the City specifically releases the Lessee in writing, the City may hold the Lessee responsible for performing any obligation under this Lease which an assignee fails to perform.

D. OCCUPANCY BEFORE CITY CONSENT: An assignee or sub-lessee may not occupy the Premises before the City consents to the assignment or sublease in writing.

E. CONFLICT OF PROVISIONS: In the event of a conflict between this Lease and an assignment or a sublease, the terms of this Lease control.

F. LESSEE NOT RELIEVED OF OBLIGATIONS: The City's consent to any sublease does not relieve or otherwise alter the Lessee's obligations under this Lease.

G. SECURITY ASSIGNMENTS AND FINANCING:

1. Subject to the requirements of (A) of this Article VI, the Lessee may assign a security interest in this Lease. The security interest may be in the form of a mortgage, deed of trust, assignment or other appropriate instrument, provided
 - a. the security interest pertains only to the Lessee's leasehold interest;
 - b. the security interest does not pertain to or create any interest in City's title to the Premises; and
 - c. the documents providing for the security interest are acceptable to the City.
2. If the assignment of a security interest to which the City has consented shall be held by an established lending or financial institution, including a bank, an established insurance company and qualified pension or profit sharing trust, and the lending institution acquires the Lessee's interest in this Lease as a result of a foreclosure action or other remedy of the secured party, or through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, the lending institution may transfer its interest in this Lease to a nominee or a wholly-owned subsidiary corporation with the prior written consent of the City, provided, the transferee assumes all of the covenants and conditions required to be performed by the Lessee (including payment of any monies owed by Lessee to the City under the Lease). In the event of such a transfer, the lending institution shall be relieved of any further liability under this Lessee.
3. A holder of a security interest in this Lease consented to by the City shall have, and be subrogated to, any and all rights of the Lessee with respect to the curing of any default of this Lease by Lessee.

4. Unless other set forth in this Article, a holder of a security interest consented to by the City that takes possession of this Lease shall not be released from the obligations and liabilities of this Lease unless the holder assigns its leasehold estate to an assignee who is financially capable and otherwise qualified to undertake to perform and observe the conditions of this Lease and the City consents to the assignment. The City's consent will not be unreasonably withheld.

ARTICLE VII MAINTENANCE, SNOW REMOVAL & UTILITIES

A. MAINTENANCE:

1. At no cost to the City, the Lessee will keep the Premises and all improvements on the Premises clean, neat and presentable, as reasonably determined by the City.
2. At no cost to the City, the Lessee will provide for all maintenance and services at the Premises as may be necessary to facilitate the Lessee's compliance with this Lease and the Lessee's use of the Premises.
3. The Lessee shall comply with all regulations or ordinances of the City that are promulgated for the promotion of sanitation. At no cost to the City, the Lessee shall keep the Premises in a clean and sanitary condition, and control activities on the Premises to prevent the pollution of water.
4. The Lessee agrees to comply with all decisions and directions of the City's Airport Manager regarding maintenance and operation of the Airport. and the use of the Airport by the Lessee.

B. SNOW REMOVAL:

1. At no cost to the City, the Lessee is responsible for snow removal on the Premises. The Lessee shall dispose of snow in an off-Premises location approved in writing by the City or provide suitable snow storage within the boundaries of the Premises in accordance with all applicable federal and state laws. At the request of the Airport Manager, the Lessee shall submit a snow removal plan for the Premises to the Airport Manager for review. Upon approval of the Lessee's plan by the Airport Manager, the Lessee shall conduct all snow removal operations on the Premises in accordance with the approved plan.

Lessee shall not deposit snow on an apron, taxiway, safety area, or other aircraft-maneuvering surface provided for common use by others without the prior written approval of the Airport Manager.

2. Lessee agrees to not allow an accumulation of snow on the Premises that would cause interference with adjoining leaseholders or other users of the Airport.

C. UTILITIES: Unless specifically provided otherwise in this Lease, the Lessee shall, at no cost to the City, provide for all utilities at the Premises necessary to facilitate the Lessee's use of the Premises.

ARTICLE VIII OPERATIONS

A. **OPERATIONS ON THE AIRPORT:** The Lessee will ensure that the Lessee, its employees, guests, contractors, sub-lessees, and vendors that perform any activity or function authorized under this Lease shall do so in a manner that ensures the safety of people, the protection of public health and the environment, and the safety and integrity of the Airport and the Premises.

B. **LESSEE'S CONTROL AND RESPONSIBILITY:**

1. The Lessee will assume full control and sole responsibility as between Lessee and City for the activities of the Lessee, the Lessee's personnel and employees, and anyone else acting by, on behalf of, or under the authority of the Lessee on the Airport, including the Premises.
2. The Lessee will immediately notify the City of any condition, problem, malfunction or other occurrence within the Lessee's knowledge that threatens the safety of people or the Airport, harm to public health or the environment, or the safety or integrity of the Premises.

C. **RADIO INTERFERENCE:** Upon written notice by the City, the Lessee 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.

D. **WILDLIFE:** The Lessee acknowledges that a concentration of birds or other wildlife on an airport constitutes a significant hazard to aircraft operations. The Lessee agrees to keep the Premises clean of fish slime, fish waste, or any other material that might attract birds or other wildlife. The Lessee accepts full responsibility to maintain the Premises, control operations, and take all reasonable measures to prevent a concentration of birds or other wildlife on the Premises.

E. **PARKING:** The Lessee will provide adequate vehicle, equipment, and aircraft parking space on the Premises for Lessee's business or activities, or confine parking to such other places on the Airport as may be approved or designated in writing by the Airport Manager.

ARTICLE IX ENVIRONMENTAL PROVISIONS

A. **HAZARDOUS SUBSTANCE:**

1. The Lessee will conduct its business and/or operation on the Premises in compliance with all Environmental Laws and permits. If Hazardous Substances are handled on the Premises, the Lessee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling Hazardous Substances in accordance with all applicable federal, state and local laws.
2. Lessee will promptly give the City notice of proceeding to abate or settle matters relating to the presence of a Hazardous Substance on the Premises or from

Lessee's operations on the Airport. The Lessee will allow the City to participate in any such proceedings.

B. ENVIRONMENTAL INDEMNIFICATION: If Contamination of the Premises or other property by a Hazardous Substance occurs due to the Lessee's operations on the Premises the Lessee will indemnify, defend, and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, including, but not limited to, sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees, which arise during or after the term of this Lease as a result of such Contamination. This indemnification of the City by Lessee includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, monitoring, or restorative work required by any federal, state, or local governmental agency because of a Hazardous Substance being present in the soil or groundwater or under the Premises or other properties affected by the Contamination due to the Lessee's operations on the Premises.

C. REMEDIATION:

1. In the event of a Hazardous Substance spill on the Premises during the term of this Lease and not due to the Lessor or the Lessor's agents, the Lessee will immediately notify the City and the Alaska Department of Environmental Conservation and act, promptly, at its sole expense, to contain the spill, repair, any damage, absorb and clean up the spill area, and restore the Premises to a condition satisfactory to the City and otherwise comply with the applicable portions of any Environmental Law.
2. In addition to any notices required by this Lease, the Lessee will immediately notify and copy the City in writing of any of the following:
 - a. Any permit, enforcement, clean up, lien, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to an Environmental Law;
 - b. Any claim made or threatened by any person against the Lessee or arising from the Lessee's operations authorized by this Lease, relating to damage, contribution, compensation, loss or injury resulting, from, or claimed to result from any Hazardous Substances in, on, or under the Airport; or
 - c. Any report made by, or on behalf of, the Lessee to any environmental agency arising out of or in connection with any Hazardous Substances in, on, or removed from the Premises, including any complaints, notices, warnings, or asserted violations.
3. Remediation and restoration of the contaminated area must meet all applicable state and federal regulations and must meet the requirements of all governing regulatory authorities.

D. ENVIRONMENTAL AUDIT: The Lessee will provide the City with all investigative data, test results, reports, and any other information gathered or analyzed as part of or in relation to any environmental assessment, characterization or audit on the Premises or the Airport that Lessee performs or causes to be performed after the starting date of this Lease. The Lessee will

submit the data, result, report or information to the City within 60 days following the date on which it becomes available to the Lessee.

E. **RELEASE OF LESSEE:** The City releases the Lessee from liability to the City for Contamination and the presence of Hazardous Substances that existed prior to the commencement date of this Lease unless caused or materially contributed to by the Lessee.

F. **SURVIVAL OF OBLIGATIONS:** The obligations and duties of the City and Lessee under Article IX of this Lease shall survive the cancellation, termination or expiration of this Lease.

ARTICLE X INDEMNIFICATION & INSURANCE

A. INDEMNIFICATION:

1. The Lessee will indemnify, save harmless, and defend the City, its officers, agents, and employees from and against any and all third-party liabilities, losses, suits, administrative actions, claims, awards, judgments, fines, demands, damages, injunctive relief or penalties of any nature or kind to the full extent of the loss or obligation for property damage, personal injury, death, violation of any regulation or grant agreement, or any other injury or harm resulting from or arising out of any acts or commission of or omission by the Lessee, Lessee's agents, employees, customers, invitees or arising out of the Lessee's occupation or use of the Premises demised or privileges granted, and to pay all costs connected therewith. This indemnification of the City by the Lessee shall include sums paid in settlement of claims, attorney fees, consultant fees, expert fees, or other costs and expenses, directly or indirectly arising from, connected to or on account of this Lease as it relates to the Lessee, the Lessee's activities at or relating to the Premises, or any act or omission by the Lessee, or by any of Lessee's officers, employees, agents, contractors or sub-lessees. These indemnity obligations are in addition to, and not limited by, the Lessee's obligation to provide insurance, and shall survive the expiration or earlier termination of this Lease.
2. The City shall give the Lessee prompt notice of any suit, claim, action or other matter affecting the City to which Paragraph 1, above, may apply, 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 City shall have the right, at its option or at the request of the Lessee, to participate cooperatively in the defense of, and settlement negotiations regarding, any such matter, without relieving the Lessee of any of its obligations under this provision.
3. As to any amount paid to others for personal injury or property damage arising out of the City's acts or omissions, notwithstanding Paragraph 1 of this section, the Lessee and the City shall reimburse each other according to the principles of comparative fault. If liability to a third party is subject to apportionment according to comparative fault under this provision, the Lessee and the City shall seek in good faith to achieve non-judicial agreement as to apportionment of fault as between themselves. This apportionment of liability between the City and the Lessee shall not be construed to affect the rights of any person who is not a party to this Lease.

4. The Lessee shall give the City prompt notice of any suit, claim, action or other matter affecting the City 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.

B. **INSURANCE:** At no expense to the City, the Lessee will obtain and keep in force during the term of this Lease, insurance of the type and limits required by this provision. Where specific limits are set, they will be the minimum acceptable limits. If the Lessee's policy contains higher limits, the City will be entitled to coverage to the extent of the higher limits. At the time insurance is obtained by the Lessee, all insurance shall be by a company/corporation rated "A-" or better by A.M. Best. The following policies of insurance are required with the following minimum amounts:

1. Commercial General Liability, including Premises, all operations, property damage, products and completed operations, and personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. If this Lease authorizes the Lessee to engage in the sale or the commercial dispensing or storage of aviation fuel, the policy must not exclude of Lessee's fuel handling activities. This policy must name the City as an additional insured.
2. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles used by the Lessee.
3. Workers Compensation Insurance. The Lessee will provide and maintain, for all employees, coverage as required under AS 23.30.045, and, where applicable, any other statutory obligations. The policy must waive subrogation against the City.
4. The Lessee will provide the City with proof of insurance coverage in the form of an insurance policy or a certificate of insurance, together with proof that the premiums have been paid, showing the types and monetary limits of coverage secured. All insurance required by this provision must provide that the City be notified at least 30 days prior to any termination, cancellation, or material change in the insurance coverage.

If the Lessee's insurance coverage lapses or is canceled, Lessee will immediately, upon written notice by the City, halt all operations on the Airport, including the Premises. The Lessee will not resume operations until the City receives evidence that the Lessee has obtained current insurance coverage meeting the requirements of this Lease.

5. The City may, at intervals of not less than five years from the beginning date of the term of this Lease and upon written notice to Lessee, revise the insurance requirements required under this Lease. City's determination to revise the insurance requirements will be based on the risks relative to the Lessee's operations, any insurance guidelines adopted by the City, and any applicable law.
6. If the Lessee subleases all or any portion of the Premises under the provisions of this Lease, the Lessee will require the sub-lessee to provide to the insurance coverage required of the Lessee under this Article X.

ARTICLE XI LAWS & TAXES

A. **COMPLIANCE WITH LAW:** Lessee shall comply with all applicable laws, ordinances, and regulations of public authorities now or hereafter in any manner affecting the Airport, the Premises or the sidewalks, alleys, streets, and ways adjacent to the Premises, or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances, and regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Lessee agrees to hold City financially harmless:

1. From the consequences of any violation of such laws, ordinances, and/or regulations; and
2. From all claims for damages on account of injuries, death, or property damage resulting from such violation.

B. **UNLAWFUL ACTIVITY:** The Lessee shall not permit any unlawful use, occupation, business, or trade to be conducted on the Premises contrary to any law, ordinance, or regulation, including zoning ordinances, rules and regulations.

C. **LICENSES AND PERMITS:** The Lessee will obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises, and pay other fees and charges assessed under applicable law. Nothing in this Lease prevents the Lessee from challenging any taxes or special assessments to the appropriate authority.

D. **LITIGATION:** The Kenai Municipal Code, including regulations promulgated thereunder, and the laws of the State of Alaska will govern in any dispute between the Lessee and City. If a dispute continues after exhaustion of administration remedies, any lawsuit must be brought in the courts of the State of Alaska, in Kenai, Alaska.

E. **LESSEE TO PAY TAXES:** Lessee shall pay all lawful taxes and assessments which, during the term of this Lease may become a lien upon or which may be levied by the State, Borough, City, or any other tax levying body, upon any taxable possessory right which Lessee may have in or to the Premises or improvements on the Premises by reason of its use or occupancy or the terms of this Lease provided, however, that nothing in this provision shall prevent Lessee from contesting any increase in a tax or assessment under any applicable law, ordinance, or regulation.

F. **PARTIAL INVALIDITY:** If any term, provision, condition, or part of this Lease is declared by a court of competent jurisdiction to be invalid or unconstitutional, the remaining terms, provisions, conditions, or parts shall continue in full force and effect as though the declaration had not been made.

ARTICLE XII LEASE TERMINATION

A. **CANCELLATION:** The City may, after 30 days' written notice to the Lessee, cancel this Lease and recover possession of the Premises if any of the following violations occur, unless the violation is cured within the 30 days after written notice from the City of the violation:

1. The Lessee fails to pay when due the rents, additional rents, charges, or other sums specified in this Lease, including any increases made under this Lease.
2. The Lessee's check for payment of any sum due under this Lease is returned for insufficient funds.
3. The Lessee uses or authorizes the use of the Premises for any purpose not authorized by this Lease.
4. The Lessee fails to fully perform and comply with any provision in this Lease.
5. The Lessee violates a provision of the Kenai Municipal Code applicable to this Lessee.
6. The court enters a judgment of insolvency against the Lessee.
7. A trustee or receiver is appointed for the Lessee's assets in a proceeding brought by or against the Lessee, or the Lessee files a voluntary petition in bankruptcy.
7. Failure by the Lessee to comply with any land development or Additional Improvement construction required by this Lease.

B. ENTRY AND RE-ENTRY: In the event that the Lease should be terminated in accordance with this Article XII, or by summary proceedings or otherwise, or upon the Lessee's abandonment of the Premises or a portion of the Premises, the City or its agents, servants, or representatives may, immediately or any time thereafter, re-enter, and resume possession of the Premises or portion thereof, and remove all persons and property therefrom, without being liable for any damages therefore. No re-entry by the City shall be deemed an acceptance of a surrender of the Lease.

C. CONTINUING OBLIGATIONS UNTIL PREMISES VACATED: The Lessee will continue to pay City rent after the expiration, termination, or cancellation of this Lease and to abide by the Lease obligations, including providing proof of insurance coverage, through the date Lessee relinquishes possession of and completely vacates the Premises. City will consider the Premises completely vacated if the Lessee has

1. Remediated any environmental contamination for which the Lessee is responsible;
2. Restored the Premises to its original condition, less reasonable wear and tear, or as otherwise provided for in this Lease.

D. REASONABLE CURE:

1. In the case of a violation that cannot be reasonably cured within 30 days, a notice of cancellation issued by the City to the Lessee under this Article is stayed if, within the 30-day notice period, the Lessee begins and continues expeditious action to cure the violation. The City will determine if a violation cannot be reasonably cured within 30 days and what constitutes expeditious action.

In the case where, in City's sole determination, Lessee's violation is considered an imminent threat to the Airport, public health or safety, or the environment, City will

direct the Lessee to stop the activity immediately and may reduce the period to cure the violation, or the City may correct the violation pursuant to (E) of this Article.

E. RIGHT OF CITY TO PERFORM:

1. If, after 30 days following written notice, the Lessee fails or refuses to perform any action required by this Lease, the City will have the right, but not the obligation, to perform any or all such actions required by this Lease at the sole expense of the Lessee. The City will not take action if the Lessee begins and continues expeditious action to perform any action required by this Lease that cannot be reasonably completed within 30 days. The City will, at its sole discretion, determine what constitutes expeditious action and if an action cannot be reasonably performed in 30 days. The City will submit to the Lessee an invoice for the expenses incurred by the City in the performance by the City of any required action. The Lessee will pay the amount of each invoice within 30 days from issuance.
2. If Lessee fails or refuses to perform any action that has been deemed an imminent threat the City will have the right, but not the obligation, to perform any or all such actions required to expeditiously correct the imminent threat. Lessee shall reimburse the City for any cost, including legal fees and administrative costs reasonably incurred by the City in acting to correct the imminent threat violation.

F. WAIVER: A waiver by the City of any default by the Lessee of any provision of this Lease will not operate as a waiver of any subsequent default. The waiver by the City of any provision in this Lease cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the City. The City's failure to insist upon the strict performance by the Lessee of any provision in this Lease is not a waiver or relinquishment for the future, and the provision will continue in full force.

G. AIRPORT CLOSURE:

1. If the City closes the Airport to aircraft operations for sixty days or less, this Lease will remain in full force and effect without adjustment
2. If the City closes the Airport to aircraft operations for more than sixty days, but not permanently, and this Lease is for aviation or direct aviation support uses, the Lessee may, upon written notice to the City, either terminate the Lease or retain the Lease and receive a fifty (50%) percent rent reduction or credit for that portion of the closure that exceeds sixty days.
3. If the City permanently closes the Airport to aircraft operations and
 - a. this Lease is for aviation or direct aviation support uses, the Lessee may terminate this Lease by written notice to the City; or
 - b. this Lease is for non-aviation uses, the Lessee may request in writing to have the Lease terminated. The City will consider the Lessee's request in light of the City's best interest and either terminate the Lease, or deny the Lessee's request in writing.

H. **DISASTERS:** The Lessee or City may cancel this Lease upon written notice to the other party if:

1. the Premises becomes unusable through no fault of either party and performance under this Lease becomes impossible; or the Airport becomes unusable through no fault of either party and the performance under this Lease becomes impossible.

If the Lessee elects in writing that it will continue to operate after notice from City to Lessee that the Airport has become unusable, the Lessee's obligations under the Lease will continue, but City shall be under no obligation to continue to perform.

Causes for termination of the Lease under this provision (H) include acts of God, the public enemy, and the United States.

I. **NATIONAL EMERGENCY:** If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Lease as a result of the national emergency.

J. **SURRENDER ON TERMINATION:** Except as provided otherwise in this Article XII, Lessee shall, on the last day of the term of this Lease (including any extension or renewal thereof) or upon any earlier termination of this Lease, surrender and deliver up the Premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by or for loans to City.

K. **OWNERSHIP AND DISPOSITION OF IMPROVEMENTS:**

1. **Ownership of Permanent Improvements:** Lessee-owned Permanent Improvements on the Premises, excluding site development materials constructed, placed, or purchased by the Lessee, remain the Lessee's property as long as this Lease remains in effect, including any period of extension or holdover with the consent of the Lessor. Site Development Materials means materials used for site development, including geotextile, fill, gravel, paving, and pavement reinforcement materials.

Disposition of Site Development Materials: The Lessee acknowledges that, once placed by the Lessee, the removal from the Premises of site development materials can damage the Premises, adversely affect surface water drainage patterns, and destabilize adjacent structures. When placed on the Premises by the Lessee, site development materials, including building pads, parking areas, driveways, and similar structures:

- a. become a part of the realty and the property of the City;
- b. unless otherwise directed by the Lessor, must be maintained by the Lessee throughout the term of this Lease, including any extensions and periods of holdover; and

- c. may not be removed by the Lessee without the prior written approval of the Lessor.
- 2. Disposition of Personal Property and Permanent Improvements Other Than Site Development Materials:
 - a. Specifically, notwithstanding any other provision of this Lease, Lessee must remove all underground and above ground fuel storage tanks and fuel dispensing containers from the Premises upon expiration, termination or cancellation of this lease, unless Lessor in its sole discretion allows Lessee to decommission the fuel storage tanks or fuel dispensing containers, or make other arrangements at the Lessor's sole discretion.
 - b. With regard to improvements other than fuel storage tanks, or fuel dispensing containers, unless the Lessor otherwise directs as provided below, when this Lease expires, terminates, or is cancelled and is neither extended nor followed by a successive lease, the departing Lessee may do one or more of the following:
 - i. remove Lessee-owned Permanent Improvements from the Premises, remediate any Contamination for which the Lessee is responsible, and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the expiration, cancellation, or termination date of this Lease.
 - ii. with written approval from the Lessor, sell Lessee-owned Permanent Improvements to the succeeding lessee, remove all personal property, remediate any Contamination for which the Lessee is responsible and leave the Premises in a clean and neat physical condition acceptable to the Lessor within 60 days after notice from the Lessor that the Lessor has approved an application for a lease of the Premises by another person or such longer period specified in the notice, but in no event more than 180 days after the expiration, termination, or cancellation date of this Lease. Nothing in this provision shall require the Lessee to vacate the Premises or remove any personal property prior to the expiration, cancellation or termination of the Lease;
 - iii. elect to have the Lessor sell Lessee-owned Permanent Improvements at public auction as provided below, remediate any Contamination for which the Lessee is responsible, and restore the Premises to a clean and neat physical condition acceptable to the Lessor. If the Lessor sells Lessee-owned Permanent Improvements under this Paragraph for removal from the Premises, the departing Lessee's obligation under this Paragraph continues until the Premises are remediated and restored to a clean and neat physical condition acceptable to the Lessor after the improvements have been removed.

- c. If the departing Lessee elects to have the Lessor sell Lessee-owned Permanent Improvements at public auction per this Section, the Lessee shall, within 30 days after the expiration, cancellation, or termination of this Lease:
 - i. submit to the Lessor a written request and authorization to sell the Lessee-owned Permanent Improvements by public auction;
 - ii. provide to the Lessor an executed conveyance document transferring clear title to the Lessee-owned Permanent Improvements to the successful bidder at the public auction, along with authorization to the Lessor, as agent for the Lessee for purposes of the sale only, to endorse the name of the successful bidder on the conveyance document upon receipt of payment of the successful bid price; and
 - iii. before the date of the public auction, remove all personal property, remediate any Contamination for which the Lessee is responsible and leave the Premises in a neat and clean physical condition acceptable to the Lessor.
- d. When selling Lessee-owned Permanent Improvements at public auction for the departing Lessee, the Lessor will establish the terms and conditions of the sale. The Lessor shall pay the Lessee any proceeds of the sale of the Lessee-owned Permanent Improvements, less the administrative costs of the public auction and any financial obligation the Lessee owes to the Lessor under this Lease. Payment will be made within a reasonable time after the Lessor completes the sale transaction and receives the proceeds, but not to exceed 60 days. If all or a portion of the Lessee-owned Permanent Improvements do not sell at public auction, the Lessee will remove those Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the auction.
- e. If the Lessee shows good cause to the Lessor and if it is not inconsistent with the best interest of the City, the Lessor will grant an extension of time that is sufficient to allow the Lessee to remove or sell Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor.
- f. The Lessor will, by written notice, direct the departing Lessee to remove Lessee-owned Permanent Improvements from the Premises, to remediate, consistent with applicable law, any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor if the Lessor determines in writing:
 - i. that the continued presence of the Lessee-owned Permanent Improvements on the Premises violate any written Airport program

- or plan required for compliance with applicable federal, state, or local law;
 - ii. that the continued presence of the Lessee-owned Permanent Improvements on the Premises is not in the best interest of the City; or that the Lessee-owned Permanent Improvements present a hazard to public health or safety.
- g. The departing Lessee to whom the Lessor has issued direction under Paragraph e of this Section shall comply with the Lessor's direction within 60 days after issuance of the direction and at no cost to the Lessor. If the departing Lessee shows good cause to the Lessor, continues to work diligently to comply with Lessor's direction, and if it is not inconsistent with the best interest of the City, the Lessor will allow in writing a longer period that is sufficient to allow the Lessee to comply with the Lessor's direction. A departing Lessee who fails to comply with a direction issued by the Lessor under Paragraph e of this Section, shall, within 30 days of being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal fees and administrative costs, to enforce the Lessor's direction or to remove and dispose of unremoved Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises.
- h. If the departing Lessee does not timely remove or sell the Lessee-owned Permanent Improvements on the Premises in accordance with the requirements of this Section, any remaining Lessee-owned Permanent Improvements and any remaining personal property of the departing Lessee will be considered permanently abandoned. The Lessor may sell, lease, demolish, dispose of, remove, or retain the abandoned property for Airport use as the Lessor determines is in the best interest of the City. The departing Lessee shall, within 30 days after being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate and restore the Premises.
- i. After the expiration, termination, or cancellation of the Lease, including any holdover, the departing Lessee loses all right to occupy or use the Premises without the express or implied consent of the Lessor. Except as the Lessor notifies the departing Lessee otherwise in writing, the Lessor consents to the departing Lessee's continued use and occupancy of the Premises to diligently accomplish the requirements of this Section. Until the departing Lessee relinquishes possession of and completely vacates the Premises and notifies the Lessor in writing that it has relinquished and vacated the Premises, the departing Lessee shall perform the following as if the Lease were still in effect, pay rent to the Lessor;
- i. maintain the Premises;

- ii. provide the Lessor with evidence of each insurance coverage, if any, required under the Lease; and
 - iii. cease using the Premises other than to diligently accomplish the requirements of this Section, and to comply with the other requirements of the Lease.
- j. A departing Lessee will not be considered to have relinquished possession and completely vacated the Premises until
 - i. the departing Lessee has:
 - (a) remediated, consistent with applicable law, any Contamination for which the Lessee is responsible; and
 - (b) restored the Premises to a clean and neat physical condition acceptable to the Lessor; and
 - ii. either
 - (a) removed all of the Lessee's Permanent Improvements and personal property from the Premises or sold the Lessee-owned Permanent Improvements and personal property to a succeeding Lessee under the provisions of this Lease; or
 - (b) transferred title to the Lessee's Permanent Improvements and personal property that remain on the Premises to the Lessor.

ARTICLE XIII GENERAL COVENANTS

A. **USE OF THE AIRPORT:** Except as provided herein, any regular use of Airport lands or facilities without the written consent of the City is prohibited. This prohibition shall not apply to use of areas designated by the City for specified public uses, such as passenger terminals, automobile parking areas. and streets.

B. **COSTS AND EXPENSES:** Costs and expenses incident to this Lease, including but not limited to recording costs, shall be paid by Lessee.

C. **CARE OF THE PREMISES:** The Lessee shall keep the Premises clean and in good order at the Lessee's own expense, allowing no damage, waste, nor destruction thereof, nor removing any material therefrom, without written permission of the City. At the expiration of the term fixed, or any earlier termination of the Lease, the Lessee will peaceably and quietly quit and surrender the Premises to the City.

D. **CONSTRUCTION APPROVAL AND STANDARDS:** Any building construction on the Premises by the Lessee must be compatible with its surroundings and consistent with the uses authorized under this Lease, as determined by the City. The Lessee must obtain the City's written approval before placing fill material, beginning any land development, or constructing or

demolishing any improvements on the Premises, and before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation, together with specifications or any other information the City reasonably requires. Further, the Lessee will submit to City evidence of the Lessee's compliance with Federal Aviation Administration regulation 14 CFR Part 77.

E. **LEASE SUBORDINATE TO AIRPORT FINANCING REQUIREMENTS:** Lessee agrees that City may modify this Lease to meet revised requirements for Federal or State grants, or to conform to the requirements of any revenue bond covenant. However, the modification shall not act to reduce the rights or privileges granted the Lessee by this Lease, nor act to cause the Lessee financial loss.

F. **RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION:** City hereby agrees and covenants that the Lessee, upon paying rent and performing other covenants, terms, and conditions of this Lease, shall have the right to quietly and peacefully hold, use, occupy, and enjoy the Premises, except that the following shall not construed as a denial of the right of quiet or peaceable possession:

1. Any inconvenience caused by public works projects in or about the Premises; and
2. Any other entries by the City on the Premises reserved or authorized under other provisions of this Lease.

G. **NO PARTNERSHIP OR JOINT VENTURE CREATED:** It is expressly understood that the City shall not be construed or held to be a partner or joint venture of Lessee in the conduct of the Lessee's activities or business on the Premises. The relationship between the City and the Lessee is, and shall at all times remain, strictly that of landlord and tenant, respectively.

H. **DISCRIMINATION:** The Lessee will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The Lessee recognizes the right of the City to take any action necessary to enforce this provision, including actions required pursuant to any federal or state law.

I. **AFFIRMATIVE ACTION:** If required by 14 CFR Part 152, subpart E, the Lessee will undertake an affirmative action program to ensure that no person will be excluded from participating in any employment activities offered by the Lessee on the grounds of race, creed, color, national origin, or sex. No person may be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by subpart E. The Lessee further agrees that it will require its sub-organization(s) provide assurance to the City to the same effect that they will also undertake affirmative action programs and require assurances from their sub-organization(s) as required by 14 CFR, Part 152, subpart E.

Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to title 49, code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulation may be amended.

J. **INTEGRATION, MERGER, AND MODIFICATION:** This Lease sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this Lease is effective unless in writing and signed on behalf of the City and the Lessee.

K. **RIGHT TO ADOPT RULES:** City reserves the right to adopt, amend, and enforce reasonable rules and regulations governing the Airport, including the Premises. The City shall not be liable to Lessee for any diminution or deprivation of possession, or of Lessee's rights under this Lease, on account of the exercise of the City's authority reserved under this provision. Furthermore, the Lessee shall not be entitled to terminate the whole or any portion of the leasehold estate created under this Lease, by reason of the exercise of the City's authority reserved under this provision, unless the exercise thereof so interferes with Lessee's use and occupancy of the Premises as to constitute a termination, in whole or in part, of this Lease by operation of law under the laws of the State of Alaska and of the United States made applicable to the states.

L. **LESSEE'S OBLIGATION TO PREVENT AND REMOVE LIENS:** Lessee will not permit any liens including, but not limited to, mechanics', laborers', or materialmen's liens obtainable or available under the then existing laws, to stand against the Premises or improvements on the Premises for any labor or material furnished to Lessee or claimed to have been furnished to Lessee or to the Lessee's agents, contractors, or sub-lessees, in connection with work of any character performed or claimed to have been performed on the Premises or improvements by or at the direction or sufferance of Lessee. Provided, however, the Lessee shall have the right to provide a bond as contemplated by Alaska law and contest the validity or amount of any such lien or claimed lien. Upon a final determination of the lien or claim for lien, the Lessee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Lessee's own expense.

M. **CONDEMNATION:** In the event the Premises or any part thereof shall be condemned and taken for a public or a quasi-public use, then upon payment of any award or compensation arising from the condemnation or taking, the City and the Lessee shall make a good faith effort to agree upon

1. the division of the proceeds;
2. the abatement in rent payable during the term or any extension of the term of this Lease; and
3. other adjustments as the parties may agree upon as being just and equitable under all the circumstances.

If, within thirty days after the award has been paid into Court, the City and Lessee are unable to agree upon what division, abatement in rent, and other adjustments as are just and equitable, the dispute shall be determined by arbitration.

N. **SUCCESSORS IN INTEREST:** This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, subject to such specific limitations on assignment as are provided for in this Lease.

O. **NOTICES:**

1. Any notices required by this Lease must be in writing and must be delivered personally or mailed by certified or registered mail in a prepaid envelope. A mailed notice
 - a. must be addressed to the respective party at the address written on the first page of this Lease or to the latest address designated in accordance with (2) of this provision (O); and
 - b. shall be deemed delivered on the date it is deposited in a U.S. general or branch post office.

The City or the Lessee may, from time to time, designate a new address at which they will receive notices by providing the other party with written notice at least 15 days prior to the effective date of the change. An address change notice must be delivered according to the procedure set out in (1) of this provision (O).

P. **RETENTION OF RENTAL:** In the event the City terminates this Lease because of any breach by the Lessee, the City shall retain any unused balance of the rental payment last made by the Lessee City as partial or total liquidated damages for the breach.

Q. **FIRE PROTECTION:** The Lessee will take all reasonable precautions to prevent, and take all necessary action to suppress destructive or uncontrolled fires and comply with all laws, regulations, and rules promulgated and enforced by the City for fire protection on the Airport.

R. **PERSONAL USE OF MATERIALS:** No interest in coal, oil, gas or any other mineral, or in any deposit of stone or gravel valuable for extraction or utilization is included in the Premises or in the rights granted by this Lease. The Lessee shall not sell or remove from the Premises for use elsewhere any timber, stone, gravel, peat moss, topsoil or any other material valuable for building or commercial purposes.

S. **APPROVAL OF OTHER AUTHORITIES:** The granting of this Lease by the City does not relieve the Lessee of the responsibility to obtain any license or permit as may be required by federal, state, or local law.

T. **EXECUTION BY THE PARTIES:** This Lease is of no effect unless signed by the Lessee, or a duly authorized representative of Lessee, and an authorized representative of the City.

U. **CAPTIONS:** The captions of the provisions of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of any provision.

V. **RIGHTS OF CONSTRUCTION:** This Lease is intended to make public property available for private use, while at all times protecting the public interest to the greatest extent possible. Following the rule that transfers of interest in public property are to be strictly construed in favor of the public property landlord, all rights granted to the Lessee under this Lease will be strictly construed, and all rights of the City and the protections of the public interest will be liberally construed.

W. **LESSEE ACKNOWLEDGEMENT:** The Lessee acknowledges that the Lessee has read this Lease and fully understands its terms, that the Lessee has been fully advised or has had the opportunity of advice by separate legal counsel, and voluntarily executes this Lease. Lessee also

acknowledges and agrees that the rule of interpretation under which a document is construed against the drafter will not apply to this Lease.

X. **APPROVAL BY LESSOR:** Any approval required of the Lessor by this Lease will not be unreasonably withheld. The Lessor's approval does not waive the Lessee's legal responsibility or liability to comply with all applicable federal and state laws and regulations.

ARTICLE XIV SURVEY, IMPROVEMENTS AND PERFORMANCE BOND

A. **SURVEY:** The Lessee is solely responsible, at its sole expense, to confirm or establish the physical location of the boundaries of the Premises prior to beginning any construction thereon, including clearing grubbing, back-filling and environmental sampling. Any survey of the Premises shall be performed by a land surveyor registered in the State of Alaska. The Lessee shall furnish the City with a copy of the plat of any survey performed on the Premises by, or on behalf of, the Lessee.

B. **IMPROVEMENTS:**

1. **REQUIRED IMPROVEMENTS:** At no cost to the City, Lessee agrees to complete land development and construction of Additional Improvements including upgrading on site underground electrical and removal of self-service aviation cardlock and underground storage tank, by no later than December 31, 2025, with an aggregate cost of at least \$7,500, excluding financing costs. In addition to the as-built drawings required by this Lease, the Lessee must submit to the City written evidence that the Lessee has completed the Additional Improvements on the Premises with an aggregate cost or investment of not less than \$7,500.

Lot developments will prevent unauthorized access to the airfield during and after site improvements. Structures are prohibited to encroach into the 100-foot building restriction line. Lessee is responsible for all snow removal, and snow may not touch the perimeter security fence or be piled to a height that would allow access to the airport.

The evidence of cost must be submitted to the City within sixty (60) days of the completion of the Additional Improvements, but by no later than March 31, 2026.

- a. Costs considered toward the aggregate cost of Additional Improvements include building construction, design, labor, materials, materials shipping, permits, equipment, soil testing, environmental baseline report, and environmental assessment directly related to the construction; premises and as-built surveys; site preparation, including excavation, geotextile fabric, filling, grading, fill material, gravel, and pavement, remediation of environmental contamination (unless Lessee caused or materially contributed to the contamination); and utility connection costs.
- b. The cost of Additional Improvements excludes:
 - i. work performed by the City and not reimbursed by the Lessee; and

- ii. work performed by the Lessee and reimbursed by the City.
- 2. **FAILURE TO COMPLETE ADDITIONAL IMPROVEMENTS:** If the Lessee fails to complete the required construction within the time allowed under (B)(1) of this Article, including any extensions granted, the City will execute against and the Lessee will forfeit, any bond or other guarantee given by the Lessee and, as applicable, City will:
 - a. initiate cancellation of the Lease; or
 - b. reduce the term of the Lease to a period that is consistent with the portion of the required construction timely completed.
- 3. **APPEARANCE:** When completed, all improvements on the Premises must be neat, presentable, and compatible with the authorized use of the Premises under this Lease, as determined by the City.
- 4. **CITY APPROVAL REQUIRED:** The Lessee must first obtain the City's written approval before beginning any land development, construction or demolition of any improvements on the Premises, or before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation. Further, the Lessee will submit to City evidence of the Lessee's compliance with the FAA regulation 14 CFR Part 77.
- 5. **CITY APPROVAL WITHHELD:** The City's approval of any construction, alteration, modification, or renovation will not be withheld unless
 - a. the Lessee fails to demonstrate adequate financial resources to complete the project;
 - b. the project plans, specifications, and agency approvals are incomplete;
 - c. the proposed project would result in a violation of an applicable ordinance, regulation, or law;
 - d. the proposed project would interfere with or is incompatible with the safety, security, maintenance, or operation of the airport;
 - e. the proposed project violates the Airport Master Plan;
 - f. the proposed project violates the terms of the Lease, zoning ordinances, or the City's Comprehensive Plan;
 - g. the project plans do not make sufficient provision for drainage, aircraft, vehicle, and equipment parking, or for snow storage; or
 - h. the proposed project does not conform to generally recognized engineering principles or applicable fire or building codes.

6. **DEMOLITION:** Prior to any demolition of any structure(s) on the Premises, Lessee will deliver to City a written scope of work that, at a minimum, lists the structure(s) that are to be demolished and the timeframe for demolition and removal of the debris from the Airport. City will review Lessee's scope for demolition and issue Lessee written approval for the work to be done.
 7. **BUILDING SETBACK:** No building or other permanent structure may be constructed or placed within twenty feet of any lot of the Premises without City's prior written approval. In addition, no building or other permanent structure may be constructed or placed within twenty feet of any boundary line of the Premises which fronts on a landing strip, taxiway, or apron.
 8. **AS-BUILT DRAWINGS:** Within sixty days after completion of construction or placement of improvements upon the Premises, the Lessee will deliver to the City a copy of an as-built drawing, acceptable to the City, showing the location and dimensions of the improvements, giving distances to all Premises' boundaries. If the Lessee constructs underground improvements, the Lessee will appropriately mark the surface of the land with adequate surface markers. The type, quantity, and distance between such markers will be subject to approval of the City.
 9. **AIRPORT SECURITY FENCING:** If any construction by the Lessee requires a realignment or alteration of an existing security fence on the Premises or boundary of the Premises, the Lessee agrees to realign or alter the fence in a manner approved in writing by the Airport Manager. Anytime the fence must be breached to allow the Lessee to complete improvement construction or fence modifications, the Lessee shall, at the Lessee's sole expense place temporary barriers to maintain the security of the Airport, as determined by the Airport Manager. If damage occurs to a security fence on the Premises or boundary of the Premises in connection with the Lessee's use or occupation of the Premises, the Lessee shall promptly repair the fence to the satisfaction of the Airport Manager.
 10. **DAMAGE TO IMPROVEMENTS:** If Lessee's Additional Improvements on the Premises are damaged or destroyed, Lessee will cause the Additional Improvements to be repaired or rebuilt, and restored to normal function within two years following the damage or destruction. If the Lessee fails to timely rebuild or restore the Additional Improvements, the City may, at its sole discretion, either reduce the term of this Lease commensurate with the estimated value of the Lessee's remaining, fully functional Additional Improvements on the Premises, or cancel this Lease.
 11. **DAMAGE NEAR EXPIRATION:** If Lessee's Additional Improvements are damaged to the extent that more than 50% of the space is unusable and the damage occurs within five years of the expiration of the term of this Lease, Lessee may remove the damaged Additional Improvements, restore the Premises and terminate this Lease.
- C. **PERFORMANCE BOND (Optional):** Prior to beginning the construction of Additional Improvements required under (1) of this Article, the Lessee shall submit to the City a performance bond,

deposit, or other security in the amount of \$ **performance bond not applicable.** The form of the bond or other security shall be subject to the City's approval.

D. NOTICE OF CONSTRUCTION: The Lessee agrees to notify the City in writing three days prior to commencing any construction project valued in excess of \$1,000.00 on the Premises. The Lessee agrees to assist in the posting of a notice of non-responsibility and maintenance of the notice on the Premises during construction. Lessee agrees that in the event the Lessee fails to notify the City as required by this provision (D), the Lessee shall indemnify the City against any materialmen's liens as defined in AS 34.35.050 which arise as a result of construction on the Premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, the day and year stated in the individual acknowledgments below.

<p>LESSEE:</p> <p>By: _____</p> <p style="text-align: center;">Lessee Name Date</p> <p>Its: _____</p>	<p>LESSOR:</p> <p>By: _____</p> <p style="text-align: center;">Lessor Name Date</p> <p>Its: _____</p>
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ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2024,
 _____ (Name/Title) of Crowley Fuels, LLC being personally
 known to me or having produced satisfactory evidence of identification, appeared before me and
 acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of
 said corporation.

Notary Public for Alaska

My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

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

Notary Public for Alaska

My Commission Expires: _____

ATTEST:

Michelle Saner, City Clerk

SEAL:

Approved as to Lease Form:

Scott Bloom, City Attorney

AFTER RECORDING RETURN TO:

City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Scott Bloom, City Attorney and Terry Eubank, City Manager

DATE: November 1, 2024

SUBJECT: Resolution No. 2024-47, Crowley Fuels LLC., Airport Lease

Crowley Fuels, LLC., (Crowley) entered into a lease with the City for Lot Four Block One FBO Subdivision for fuel storage and aircraft service in 2020. The lease expired on June 30, 2024 and is currently in a holdover status. Crowley applied for a new five-year lease for the property. The lease was advertised and subjected to competition consistent with City Code, without any other interest. The Airport Commission recommends that the Council approve a lease with Crowley to provide fuels services on the Airport.

In order for Crowley to secure a five-year lease term, City Code requires a minimum of \$7,500 in permanent improvements to the property which Crowley has agreed to meet through site work and some electrical work to the property. Crowley and administration have negotiated terms of the standard lease form to primarily address Crowley's concerns that their above ground fuel containers are not considered to be real property as they are not permanently attached to the ground, and administration's concern that Crowley commit to removing all fuel tanks at the end of the Lease term unless a different option is chosen by the City. Other housekeeping and technical changes to the standard lease form were negotiated. A document is attached to this memorandum that shows all the changes from the City's Standard Airport Lease Form.

To meet the interests of the Crowley and administration in regards to this Lease, administration recommends Council approve a non-standard lease form pursuant to KMC 21.10.140 which allows the City Manager to enter into a lease that deviates from the standard form when the City Manager believes the action is in the best interest of the City, the lease is approved as to form by the City Attorney and the Lease is approved by Resolution of the Council. In this case The City Manager believes the action is in the best interest of the City and the Lease form is approved by the City Attorney.

Your consideration is appreciated.

KENAI RECORDING DISTRICT

KENAI MUNICIPAL AIRPORT LEASE OF AIRPORT RESERVE LANDS

THIS LEASE AGREEMENT ("Lease") entered into this _____ day of _____, _____, 2024, by and between the CITY OF KENAI, 210 Fidalgo Avenue, Kenai, Alaska 99611-7794, ("Lessor"), and CROWLEY FUELS, LLC, whose address is 201 Arctic Slope Avenue, Anchorage, Alaska 99518 ("Lessee").

DEFINITIONS

For the purposes of this Lease, the following terms are defined ~~in KMC Sections 21.05.030 and 21.10.015 (effective as of the date of execution of the lease) as follows:~~ as follows:

1. Airport — the Kenai Municipal Airport, including all the runways, taxiways, aprons, water lanes, water taxiways, and all City-owned real estate located within the boundaries of the Airport Reserve as defined in KMC 21.05.030.
2. Airport Manager — the official to whom the City Manager of the City has delegated the authority and responsibility of managing and directing the activities of the Airport. "Airport Manager" includes that person's authorized representative.
3. City — the City of Kenai, its elected officials, officers, employees or agents.
4. City Manager — the official to whom the Kenai City Council has delegated the responsibility of managing and directing all activities of the City.
5. Contamination — the unpermitted presence of any released Hazardous Substance.
6. Environmental Law — any applicable federal, state, or local statute, law, regulation, ordinance, code, permit, order, decision, judgment of any governmental entity relating to environmental matters, including littering and dumping.
7. FAA — the ~~abbreviation for the~~ Federal Aviation Administration.
8. Hazardous Substance — any substance that is defined under an Environmental Law as hazardous waste, ~~Hazardous Substance~~ hazardous substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product, or oil.

9. KMC — the ~~abbreviation for the~~ Kenai Municipal Code.
10. Permanent ~~Improvement~~ — ~~al~~improvements - A fixed addition or change to land that is not temporary or portable, including a building, building addition, ~~gravel fill, pavement, retaining wall, retaining wall, storage tank, earthwork, fill material, gravel, pavement, and remediation of contamination for which the applicant is not responsible.~~ Permanent Improvements shall not include any above ground fuel ~~storage container~~stanks, dispensing containers or apparatus not fixed to the ground.
11. ~~storage tank, well, and remediation of contamination for what the lessee is not responsible.~~

ARTICLE I

PREMISES LEASED

B.A. PREMISES: In consideration of Lessee's payment of the rents and performance of all the covenants of this Lease, the City leases to the Lessee, and the Lessee leases from the City, the following described property ("Premises") in the Kenai Recording District, Third Judicial District, State of Alaska and located on the Airport₁ to wit:

Lot Four (4), Block One (1), FBO Subdivision, according to the official plat thereof, filed under Plat No. 78-225, records of the Kenai Recording District, Third Judicial District, State of Alaska.

C.B. NO WARRANTY: Except as may be provided in this Lease, the City makes no specific warranties, expressed or implied, concerning the condition of the Premises including, survey, soils, wetlands, access, and suitability or profitability for any use including those authorized by this Lease, its environmental condition, or the presence or absence of Hazardous Substances in, on, and under the surface. The Lessee takes the Premises on an "as is" basis and without warranty, subject to any and all of the covenants, terms, and conditions affecting the City's title to the Premises.

ARTICLE II RIGHTS AND USES

A. AUTHORIZED USES:

1. USE OF PREMISES: The City authorizes the Lessee to use the Premises for the following purposes only:

Fuel Storage and Distribution
2. CONTINUOUS OPERATIONS: Unless the City approves otherwise in writing, the Lessee will operate on the Premises on a continuous basis, uninterrupted by any period of closure over 15 consecutive days. The Lessee will give the City written notice before closing the Lessee's business on the Premises for more than 10 consecutive days. The notice must state the reason for the closure and the date

on which the Lessee will re-open for business. This provision does not apply to any period during which the Lessee is unable to operate its business as a result of an act or directive of the City, or as a result of a closure of the Airport or loss of the Lessee's buildings on the Premises due to fire or natural disaster.

B. RIGHTS RESERVED TO THE CITY:

1. **RIGHT TO GRANT TO OTHERS:** The City reserves the right to grant to others any rights and privileges not specifically granted to the Lessee on an exclusive basis. The rights and privileges granted to the Lessee in this Lease are the only rights and privileges granted to the Lessee by this Lease.
2. **EASEMENTS:** The City reserves the right to make grants to third parties or reserve to the City easements or rights of way through, on, or above the Premises. The City will not grant or reserve any easement or right of way that unreasonably interferes with the Lessee's authorized uses of the Premises.
3. **INGRESS, EGRESS AND INSPECTION:** The City reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including buildings, for the purpose of inspection or environmental testing at any time. Except in the case of an emergency, all inspections and environmental testing will be coordinated with the Lessee to minimize interference with the Lessee's authorized uses of the Premises.
4. **RIGHT OF FLIGHT:** There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport.

C. PROHIBITED USES: Unless specifically authorized by this Lease or an amendment to this Lease, the following are prohibited:

1. Any use of the Premises other than those authorized in this Lease.
2. Any use of the Premises that is in violation of a City Ordinance or an Airport regulation.
3. The outside storage on the Premises of junk, salvage aircraft or vehicle parts, non-operational support equipment, unused or damaged equipment or material, or solid waste or debris unless allowed pursuant to a conditional use permit under KMC 14.20.
4. The disposal on the Premises or the Airport of waste materials generated by the Lessee, including any Hazardous Substance, slash, overburden, and construction waste.
5. The stripping, wasting, or removing any material from the Premises without the prior written approval of the City.

6. Erecting structures or allowing growth of natural objects that would constitute an obstruction to air navigation, or allowing any activity on the Premises that would interfere with or be a hazard to the flight of aircraft, or interfere with air navigation or communication facilities, serving the Airport.
7. Any use or activity that is prohibited by applicable law or regulation.

ARTICLE III TERM & HOLDOVER

- A. TERM: The initial term of this Lease is for five (5) years, from the ____ day of _____, 2024, to the ____ day of _____, 2029.
- B. HOLDOVER: If the Lessee holds over and remains in possession of the Premises after the expiration, cancellation or termination of this Lease, the holding over will not operate as an extension of the term of this Lease, but only creates a month-to-month tenancy, regardless of any rent payments accepted by the City. The Lessee's and City's obligations for performance under this Lease will continue during the month-to-month tenancy. The City or Lessee may terminate the Lessee's holdover with ten days' advance written notice.

ARTICLE IV RENTS AND FEES

- A. RENT: The initial rent for the Premises is **\$8,216.32** per year, as established by the City pursuant KMC 21.10.090 and as subject to annual adjustment on July 1 of each year under Article V of this Lease, plus applicable sales tax. ~~The rent shall be payable annually in advance of the first day of each year of the term of this Lease. The rent shall be payable~~All payments required by this Lease must be made in U.S. dollars. If the annual rent exceeds \$2,400, the Lessee may, upon written notice to the City, choose to pay the rent in equal monthly installments, payable in advance on or before the anniversary date of the term of this Lease and thereafter at monthly intervals. All payments required by this Lease must be made in U.S. dollars. No conversion of the payment schedule from annual to monthly shall result in the City receiving less rent than it would have received had the conversion not taken place.
1. Rent Credit: A rent credit may be applied for a maximum of five years of ~~lease~~Lease payments as provided in KMC 21.10.100 (as effective at the time this ~~lease~~Lease is executed). Once the work is completed and value determined, a credit will be applied to the ~~lease~~Lease payments, prorated as necessary for the successive five years.
- B. RENT PRORATED: ~~Rental~~Rent for any period less than one ~~year~~month shall be prorated on the basis of the rent payable under this Lease in last full ~~year~~month previous to the prorating.
- C. ADDITIONAL RENT: In addition to the rent specified in (a) of this Article, Lessee agrees to pay to the appropriate parties all levies, assessments, and charges as follows:
1. Taxes pertaining to the leasehold interest of the Lessee.
 2. Sales tax now enforced or levied in the future, computed upon rent payable in monthly installments ~~whether the Lessee pays rent under this Lease on a monthly or annual basis.~~

3. All taxes and assessments levied in the future by the City, as if Lessee was the legal owner of record of the Premises.

D. PAYMENTS: The Lessee shall make checks, bank drafts, or postal money orders payable to the City of Kenai and deliver payments to City of Kenai, Finance Department, 210 Fidalgo Avenue, Suite 200, Kenai, Alaska 99611-7794 or any other address the City may designate in writing to the Lessee.

E. INTEREST: Beginning the day after payment is due, all unpaid rents, charges, and fees required under this Lease will accrue interest at the rate of eight percent (8.0%) per annum. Interest on disputed amounts will not be charged to the Lessee if the dispute is resolved in the Lessee's favor.

F. LATE PAYMENT PENALTY: In addition to any interest payable under ~~Provision~~provision (E) of this Article, each time the Lessee fails to pay any rent or fee by the date required in this Lease, the City will charge, and the Lessee shall pay an administrative penalty of ten percent (10.0%) of the amount due and unpaid.

G. COURTESY BILLINGS: Lessee acknowledges that any billing statement issued by the City is provided only as a courtesy. The Lessee is obligated to pay all monthly rents ~~and fees~~ when due, regardless of whether or not the Lessee receives a billing statement from the City.

H. LIEN AGAINST LESSEE: Any rent, charge, fee, or other consideration which is due and unpaid at the expiration, termination, or cancellation of this Lease will be a lien against the Lessee's property, real or personal.

I. PAYMENT OF CITY'S COSTS: The Lessee will pay all reasonable actual expenses, costs, and attorney fees City may incur, with or without formal action, to enforce, defend, or protect this Lease or City's rights under this Lease, including any expense incurred with respect to environmental compliance, bankruptcy or any proceeding that involves the Lessee, the Lease, the Premises, or improvements or personal property on the Premises. The Lessee will make payment within 30 days of the date of each notice from City of any amounts payable under this provision.

J. PAYMENT FOR SPECIAL SERVICES: Lessee agrees to pay the City a reasonable fee for any special services or facilities the City agrees to perform, which the City is not otherwise obligated by this Lease to provide and which the Lessee requests from the City in writing.

ARTICLE V ADJUSTMENT OF RENT AND FEES

A. RENT OR FEE ADJUSTMENT: The City shall adjust rent or fees payable by the Lessee under Article IV or other provisions of this ~~lease~~Lease on July 1 of each year of the ~~lease~~Lease as ~~proved~~provided in KMC 21.10.090 (as effective at the time this ~~lease~~Lease is executed) and shall make any other adjustments to rent as allowed for in KMC 21.10.090.

B. No rent or fee change shall be effective until 30 days after the date of the City's written notice to the Lessee. If the Lessee believes that any changed rent exceeds the fair market rent for the Premises, the Lessee may appeal a rent change to the City as provided in KMC 21.10.090.

ARTICLE VI ASSIGNMENT & SUBLETTING

A. **INVALID WITHOUT CITY'S CONSENT:** The Lessee may not assign, sublet, or grant a security interest in, by grant or implication, the whole or any part of this Lease, the Premises, or any improvement on the Premises without the written consent of the City. Any proposed assignment, sublease, or security interest must be written and must be submitted to the City bearing the original, notarized signature of all parties. The Lessee may submit unsigned draft documents for the City's conceptual review. However, the City's conceptual approval of a draft document may not be construed as the City's consent to any assignment, sublease, or security interest. All provisions in this Lease extend to and bind the assignees and sub-lessees of the Lessee.

B. **NO WAIVER OF CONSENT:** The City's consent to one assignment, sublease, or security interest will not waive the requirement for the Lessee to obtain the City's consent to any other assignment, sublease, or security interest.

~~C.~~ **ASSIGNEE / LESSEE OBLIGATIONS:** An assignment must include a provision stating that the assignee accepts responsibility for all of the assignor's (Lessee's) obligations under

~~D.C.~~ this Lease, including environmental liability and responsibility. However, unless the City specifically releases the Lessee in writing, the City may hold the Lessee responsible for performing any obligation under this ~~lease~~ Lease which an assignee fails to perform.

~~E.D.~~ **OCCUPANCY BEFORE CITY CONSENT:** An assignee or sub-lessee may not occupy the Premises before the City consents to the assignment or sublease in writing.

~~F.E.~~ **CONFLICT OF PROVISIONS:** In the event of a conflict between this Lease and an assignment or a sublease, the terms of this Lease control.

~~G.F.~~ **LESSEE NOT RELIEVED OF OBLIGATIONS:** The City's consent to any sublease does not relieve or otherwise alter the Lessee's obligations under this Lease.

~~H.G.~~ **SECURITY ASSIGNMENTS AND FINANCING:**

1. Subject to the requirements of (A) of this Article VI, the Lessee may assign a security interest in this Lease. The security interest may be in the form of a mortgage, deed of trust, assignment or other appropriate instrument, provided
 - a. the security interest pertains only to the Lessee's leasehold interest;
 - b. the security interest does not pertain to or create any interest in City's title to the Premises; and
 - c. the documents providing for the security interest are acceptable to the City.
2. If the assignment of a security interest to which the City has consented shall be held by an established lending or financial institution, including a bank, an established insurance company and qualified pension or profit sharing trust, and the lending institution acquires the Lessee's interest in this Lease as a result of a

foreclosure action or other remedy of the secured party, or through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, the lending institution may transfer its interest in this Lease to a nominee or a wholly-owned subsidiary corporation with the prior written consent of the City, provided, the transferee assumes all of the covenants and conditions required to be performed by the Lessee (including payment of any monies owed by Lessee to the City under the ~~lease~~Lease). In the event of such a transfer, the lending institution shall be relieved of any further liability under this Lessee.

3. A holder of a security interest in this Lease consented to by the City shall have, and be subrogated to, any and all rights of the Lessee with respect to the curing of any default of this Lease by Lessee.
4. Unless other set forth in this Article, a holder of a security interest consented to by the City that takes possession of this Lease shall not be released from the obligations and liabilities of this Lease unless the holder assigns its leasehold estate to an assignee who is financially capable and otherwise qualified to undertake to perform and observe the conditions of this Lease and the City consents to the assignment. The City's consent will not be unreasonably withheld.

ARTICLE VII MAINTENANCE, SNOW REMOVAL & UTILITIES

A. MAINTENANCE:

1. At no cost to the City, the Lessee will keep the Premises and all improvements on the Premises clean, neat and presentable, as reasonably determined by the City.
2. At no cost to the City, the Lessee will provide for all maintenance and services at the Premises as may be necessary to facilitate the Lessee's compliance with this Lease and the Lessee's use of the Premises.
3. The Lessee shall comply with all regulations or ordinances of the City that are promulgated for the promotion of sanitation. At no cost to the City, the Lessee shall keep the Premises in a clean and sanitary condition, and control activities on the Premises to prevent the pollution of water.
4. The Lessee agrees to comply with all decisions and directions of the City's Airport Manager regarding maintenance and operation of the Airport. and the use of the Airport by the Lessee.

B. SNOW REMOVAL:

1. At no cost to the City, the Lessee is responsible for snow removal on the Premises. The Lessee shall dispose of snow in an off-Premises location approved in writing by the City or provide suitable snow storage within the boundaries of the Premises in accordance with all applicable federal and state laws. At the request of the Airport Manager, the Lessee shall submit a snow removal plan for the Premises to the Airport Manager for review. Upon approval of the Lessee's plan by the Airport

Manager, the Lessee shall conduct all snow removal operations on the Premises in accordance with the approved plan.

Lessee shall not deposit snow on an apron, taxiway, safety area, or other aircraft-maneuvering surface provided for common use by others without the prior written approval of the Airport Manager.

2. Lessee agrees to not allow an accumulation of snow on the Premises that would cause interference with adjoining leaseholders or other users of the Airport.

C. UTILITIES: Unless specifically provided otherwise in this Lease, the Lessee shall, at no cost to the City, provide for all utilities at the Premises necessary to facilitate the Lessee's use of the Premises.

ARTICLE VIII OPERATIONS

A. OPERATIONS ON THE AIRPORT: The Lessee will ensure that the Lessee, its employees, guests, contractors, sub-lessees, and vendors that perform any activity or function authorized under this Lease shall do so in a manner that ensures the safety of people, the protection of public health and the environment, and the safety and integrity of the Airport and the Premises.

B. LESSEE'S CONTROL AND RESPONSIBILITY:

1. The Lessee will assume full control and sole responsibility as between Lessee and City for the activities of the Lessee, the Lessee's personnel and employees, and anyone else acting by, on behalf of, or under the authority of the Lessee on the Airport, including the Premises.
2. The Lessee will immediately notify the City of any condition, problem, malfunction or other occurrence within the Lessee's knowledge that threatens the safety of people or the Airport, harm to public health or the environment, or the safety or integrity of the Premises.

C. RADIO INTERFERENCE: TheUpon written notice by the City, the Lessee 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.

~~D.~~ WILDLIFE: The Lessee acknowledges that a concentration of birds or other wildlife on an airport constitutes a significant hazard to aircraft operations. The Lessee agrees to keep the Premises clean of fish slime, fish waste, or any other material that might attract birds or

E.D. other wildlife. The Lessee accepts full responsibility to maintain the Premises, control operations, and take all reasonable measures to prevent a concentration of birds or other wildlife on the Premises.

F.E. PARKING: The Lessee will provide adequate vehicle, equipment, and aircraft parking space on the Premises for Lessee's business or activities, or confine parking to such other places on the Airport as may be approved or designated in writing by the Airport Manager.

ARTICLE IX ENVIRONMENTAL PROVISIONS

A. HAZARDOUS SUBSTANCE:

1. The ~~lessee~~Lessee will conduct its business and/or operation on the Premises in compliance with all ~~environmental laws~~Environmental Laws and permits. If ~~hazardous substances~~Hazardous Substances are handled on the Premises, the Lessee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling Hazardous Substances in accordance with all applicable federal, state and local laws.
2. Lessee will promptly give the City notice of proceeding to abate or settle matters relating to the presence of a Hazardous Substance on the Premises or from Lessee's operations on the Airport. The Lessee will allow the City to participate in any such proceedings.

B. ENVIRONMENTAL INDEMNIFICATION: If Contamination of the Premises or other property by a Hazardous Substance occurs ~~from due to~~ the Lessee's operations on the Premises the Lessee will indemnify, defend, and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, including, but not limited to, sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees, which arise during or after the term of this Lease as a result of such Contamination. This indemnification of the City by Lessee includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, monitoring, or restorative work required by any federal, state, or local governmental agency because of a Hazardous Substance being present in the soil or groundwater or under the Premises or other properties affected by the Contamination due to the Lessee's operations on the Premises.

C. REMEDIATION:

1. In the event of a Hazardous Substance spill on the Premises during the term of this Lease and not due to the Lessor or the Lessor's agents, the Lessee will immediately notify the City and the Alaska Department of Environmental Conservation and act, promptly, ~~at~~ its sole expense, to contain the spill, repair, any damage, absorb and clean up the spill area, ~~and~~ restore the Premises to a condition satisfactory to the City and otherwise comply with the applicable portions of any ~~environmental law~~Environmental Law.
2. In addition to any notices required by this Lease, ~~the~~ the Lessee will immediately notify and copy the City in writing of any of the following:
 - a. Any permit, enforcement, ~~clean up~~, lien, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to an Environmental Law;
 - b. Any claim made or threatened by any person against the Lessee or arising from the Lessee's operations authorized by this Lease, relating to damage, contribution, ~~compensation~~, loss or injury resulting, ~~from~~ or claimed to result from any Hazardous Substances in, on, or under the Airport; or

- c. Any report made by, or on behalf of, the Lessee to any environmental agency arising out of or in connection with any Hazardous Substances in, on, or removed from the Premises, including any complaints, notices, warnings, or asserted violations.
- 3. Remediation and restoration of the contaminated area must meet all applicable state and federal regulations and must meet the requirements of all governing regulatory authorities.
- D. ENVIRONMENTAL AUDIT: The Lessee will provide the City with all investigative data, test results, reports, and any other information gathered or analyzed as part of or in relation to any ~~Environmental Assessment~~ environmental assessment, characterization or audit on the Premises or the Airport that Lessee performs or causes to be performed after the starting date of this Lease. The Lessee will submit the data, result, report or information to the City within 60 days following the date on which it becomes available to the Lessee.
- E. RELEASE OF LESSEE: The City releases the Lessee from liability to the City for Contamination and the presence of Hazardous Substances that existed prior to the commencement date of this leaseLease unless caused or materially contributed to by the Lessee.
- F. SURVIVAL OF OBLIGATIONS: The obligations and duties of the City and Lessee under Article IX of this leaseLease shall survive the cancellation, termination or expiration of this leaseLease.

ARTICLE X INDEMNIFICATION & INSURANCE

A. INDEMNIFICATION:

- 1. The Lessee will indemnify, save harmless, and defend the City, its officers, agents, and employees from and against any and all third-party liabilities, losses, suits, administrative actions, claims, awards, judgments, fines, demands, damages, injunctive relief or penalties of any nature or kind to the full extent of the loss or obligation for property damage, personal injury, death, violation of any regulation or grant agreement, or any other injury or harm resulting from or arising out of any acts or commission of or omission by the Lessee, Lessee's agents, employees, customers, invitees or arising out of the Lessee's occupation or use of the ~~premises~~ Premises demised or privileges granted, and to pay all costs connected therewith. This indemnification of the City by the Lessee shall include sums paid in settlement of claims, attorney fees, consultant fees, expert fees, or other costs and expenses, directly or indirectly arising from, connected to or on account of this Lease as it relates to the Lessee, the Lessee's activities at or relating to the Airport ~~Premises~~, or any act or omission by the Lessee, or by any of Lessee's officers, employees, agents, contractors or sub-lessees. These indemnity obligations are in addition to, and not limited by, the Lessee's obligation to provide insurance, and shall survive the expiration or earlier termination of this Lease.
- 2. The Lessee ~~City~~ shall give the City ~~Lessee~~ prompt notice of any suit, claim, action or other matter affecting the City to which Paragraph 1, above, may apply, 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 City shall have the right, at its option or at the request of the Lessee, to participate cooperatively in the defense of, and settlement negotiations regarding, any such matter, without relieving the Lessee of any of its obligations under this provision.

3. As to any amount paid to others for personal injury or property damage with respect to which an act or omission of the City is a legal cause arising out of the City's acts or omissions, notwithstanding Paragraph 1 of this section, the Lessee and the City shall reimburse each other according to the principles of comparative fault. If liability to a third party is subject to apportionment according to comparative fault under this provision, the Lessee and the City shall seek in good faith to achieve non-judicial agreement as to apportionment of fault as between themselves. This apportionment of liability between the City and the Lessee shall not be construed to affect the rights of any person who is not a party to this Lease.
4. The Lessee shall give the City prompt notice of any suit, claim, action or other matter affecting the City 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.

B. INSURANCE: At no expense to the City, the Lessee will obtain and keep in force during the term of this Lease, insurance of the type and limits required by this provision. Where specific limits are set, they will be the minimum acceptable limits. If the Lessee's policy contains higher limits, the City will be entitled to coverage to the extent of the higher limits. At the time insurance is obtained by the Lessee, all insurance shall be by a company/corporation rated "A-" or better by A.M. Best. The following policies of insurance are required with the following minimum amounts:

1. Commercial General Liability, including Premises, all operations, property damage, products and completed operations, and personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. If this ~~lease~~Lease authorizes the Lessee to engage in the sale or the commercial dispensing or storage of aviation fuel, the policy must not exclude of Lessee's fuel handling activities. This policy must name the City as an additional insured.
2. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles used by the Lessee.
3. Workers Compensation Insurance. The Lessee will provide and maintain, for all employees, coverage as required under AS 23.30.045, and, where applicable, any other statutory obligations. The policy must waive subrogation against the City.
4. The Lessee will provide the City with proof of insurance coverage in the form of an insurance policy or a certificate of insurance, together with proof that the premiums have been paid, showing the types and monetary limits of coverage secured. All insurance required by this provision must provide that the City be notified at least 30 days prior to any termination, cancellation, or material change in the insurance coverage.

If the Lessee's insurance coverage lapses or is canceled, Lessee will immediately, upon written notice by the City, halt all operations on the Airport, including the Premises. The Lessee will not resume operations until the City receives evidence that the Lessee has obtained current insurance coverage meeting the requirements of this Lease.

5. The City may, at intervals of not less than five years from the beginning date of the term of this Lease and upon written notice to Lessee, revise the insurance requirements required under this Lease. City's determination to revise the insurance requirements will be based on the risks relative to the Lessee's operations, any insurance guidelines adopted by the City, and any applicable law.
6. If the Lessee subleases all or any portion of the Premises under the provisions of this Lease, the Lessee will require the sub-lessee to provide to the insurance coverage required of the Lessee under this Article X.

ARTICLE XI LAWS & TAXES

A. **COMPLIANCE WITH LAW:** Lessee shall comply with all applicable laws, ordinances, and regulations of public authorities now or hereafter in any manner affecting the Airport, the Premises or the sidewalks, alleys, streets, and ways adjacent to the Premises, or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances, and regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Lessee agrees to hold City financially harmless:

1. From the consequences of any violation of such laws, ordinances, and/or regulations; and
2. From all claims for damages on account of injuries, death, or property damage resulting from such violation.

B. **UNLAWFUL ACTIVITY:** The Lessee shall not permit any unlawful use, occupation, business, or trade to be conducted on the Premises contrary to any law, ordinance, or regulation, including zoning ordinances, rules and regulations.

C. **LICENSES AND PERMITS:** The Lessee will obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises, and pay other fees and charges assessed under applicable law. Nothing in this Lease prevents the Lessee from challenging any taxes or special assessments to the appropriate authority.

D. **LITIGATION:** The Kenai ~~municipal code~~ Municipal Code, including regulations promulgated thereunder, and the laws of the State of Alaska will govern in any dispute between the Lessee and City. If a dispute continues after exhaustion of administration remedies, any lawsuit must be brought in the courts of the State of Alaska, in Kenai, Alaska.

E. **LESSEE TO PAY TAXES:** Lessee shall pay all lawful taxes and assessments which, during the term of this Lease may become a lien upon or which may be levied by the State, Borough, City, or any other tax levying body, upon any taxable possessory right which Lessee may have in or to the Premises or improvements on the Premises by reason of its use or

occupancy or the terms of this Lease provided, however, that nothing in this provision shall prevent Lessee from contesting any increase in a tax or assessment under any applicable law, ordinance, or regulation.

F. PARTIAL INVALIDITY: If any term, provision, condition, or part of this Lease is declared by a court of competent jurisdiction to be invalid or unconstitutional, the remaining terms, provisions, conditions, or parts shall continue in full force and effect as though the declaration had not been made.

ARTICLE XII LEASE TERMINATION

A. CANCELLATION: The City may, after 30 days' written notice to the Lessee, cancel this Lease and recover possession of the Premises if any of the following violations occur, unless the violation is cured within the 30 days after written notice from the City of the violation:

1. The Lessee fails to pay when due the rents, additional rents, charges, or other sums specified in this Lease, including any increases made under this Lease.
2. The Lessee's check for payment of any sum due under this Lease is returned for insufficient funds.
3. The Lessee uses or authorizes the use of the Premises for any purpose not authorized by this Lease.
4. The Lessee fails to fully perform and comply with any provision in this Lease.
5. The Lessee violates a provision of the Kenai Municipal Code applicable to this Lessee.
6. The court enters a judgment of insolvency against the Lessee.
7. A trustee or receiver is appointed for the Lessee's assets in a proceeding brought by or against the Lessee, or the Lessee files a voluntary petition in bankruptcy.
7. Failure by the Lessee to comply with any land development or permanent improvementAdditional Improvement construction required by this Lease.

B. ENTRY AND RE-ENTRY: In the event that the Lease should be terminated in accordance with this Article XII, or by summary proceedings or otherwise, or upon the Lessee's abandonment of the Premises or a portion of the Premises, the City or its agents, servants, or representatives may, immediately or any time thereafter, re-enter, and resume possession of the Premises or portion thereof, and remove all persons and property therefrom, without being liable for any damages therefore. No re-entry by the City shall be deemed an acceptance of a surrender of the Lease.

C. CONTINUING OBLIGATIONS UNTIL PREMISES VACATED: The Lessee will continue to pay City rent after the expiration, termination, or cancellation of this leaseLease and to abide by the leaseLease obligations, including providing proof of insurance coverage, through the date Lessee relinquishes possession of and completely vacates the Premises. City will consider the Premises completely vacated if the Lessee has

1. Remediated any environmental contamination for which the Lessee is responsible;
2. Restored the Premises to its original condition, less reasonable wear and tear, or as otherwise provided for in this Lease.

D. REASONABLE CURE:

1. In the case of a violation that cannot be reasonably cured within 30 days, a notice of cancellation issued by the City to the Lessee under this Article is stayed if, within the 30-day notice period, the Lessee begins and continues expeditious action to cure the violation. The City will determine if a violation cannot be reasonably cured within 30 days and what constitutes expeditious action.

In the case where, in City's sole determination, Lessee's violation is considered an imminent threat to the ~~airport~~Airport, public health or safety, or the environment, City will direct the Lessee to stop the activity immediately and may reduce the period to cure the violation, or the City may correct the violation pursuant to (E) of this Article.

E. RIGHT OF CITY TO PERFORM:

1. If, after 30 days following written notice, the Lessee fails or refuses to perform any action required by this Lease, the City will have the right, but not the obligation, to perform any or all such actions required by this Lease at the sole expense of the Lessee. The City will not take action if the Lessee begins and continues expeditious action to perform any action required by this Lease that cannot be reasonably completed within 30 days. The City will, at its sole discretion, determine what constitutes expeditious action and if an action cannot be reasonably performed in 30 days. The City will submit to the Lessee an invoice for the expenses incurred by the City in the performance by the City of any required action. The Lessee will pay the amount of each invoice within 30 days from issuance.
2. If Lessee fails or refuses to perform any action that has been deemed an imminent threat the City will have the right, but not the obligation, to perform any or all such actions required to expeditiously correct the imminent threat. Lessee shall reimburse the City for any cost, including legal fees and administrative costs reasonably incurred by the City in acting to correct the imminent threat violation.

F. WAIVER: A waiver by the City of any default by the Lessee of any provision of this Lease will not operate as a waiver of any subsequent default. ~~If the City waives a default, the City is not required to provide notice to the Lessee to restore or revive any term or condition under this Lease.~~ The waiver by the City of any provision in this Lease cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the City. The City's failure to insist upon the strict performance by the Lessee of any provision in this Lease is not a waiver or relinquishment for the future, and the provision will continue in full force.

G. AIRPORT CLOSURE:

1. If the City closes the ~~airport~~Airport to aircraft operations for sixty days or less, this Lease will remain in full force and effect without adjustment

2. If the City closes the Airport to aircraft operations for more than sixty days, but not permanently, and this Lease is for aviation or direct aviation support uses, the Lessee may, upon written notice to the City, either terminate the Lease or retain the Lease and receive a fifty (50%) percent rent reduction or credit for that portion of the closure that exceeds sixty days.
3. If the City permanently closes the Airport to aircraft operations and
 - a. this Lease is for aviation or direct aviation support uses, the Lessee may terminate this ~~agreement~~Lease by written notice to the City; or
 - b. this Lease is for non-aviation uses, the Lessee may request in writing to have the Lease terminated. The City will consider the Lessee's request in light of the City's best interest and either terminate the Lease, or deny the Lessee's request in writing.

H. **DISASTERS:** The Lessee or City may cancel this ~~lease~~Lease upon written notice to the other party if:

1. the Premises becomes unusable through no fault of either party and performance under this ~~lease~~Lease becomes impossible; or the Airport becomes unusable through no fault of either party and the performance under this ~~lease~~Lease becomes impossible.

If the Lessee elects in writing that it will continue to operate after notice from City to Lessee that the Airport has become unusable, the Lessee's obligations under the Lease will continue, but City shall be under no obligation to continue to perform.

Causes for termination of the ~~lease~~Lease under this provision (~~GH~~) include acts of God, the public enemy, and the United States.

I. **NATIONAL EMERGENCY:** If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Lease as a result of the national emergency.

J. **SURRENDER ON TERMINATION:** Except as provided otherwise in this Article XII, Lessee shall, on the last day of the term of this Lease (including any extension or renewal thereof) or upon any earlier termination of this Lease, ~~surrender and deliver up the premises~~Premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by ~~and/or~~ for loans to City.

K. **OWNERSHIP AND DISPOSITION OF IMPROVEMENTS:**

1. Ownership of Permanent Improvements: Lessee-owned Permanent ~~improvements~~Improvements on the Premises, excluding site development materials, constructed, placed, or purchased by the Lessee, remain the Lessee's property as long as this Lease remains in effect, ~~including any period of extension~~

or holdover with the consent of the Lessor. Site Development Materials means materials used for site development, including geotextile, fill, gravel, paving, and pavement reinforcement materials.

Disposition of Site Development Materials: The Lessee acknowledges that, once placed by the Lessee, the removal from the Premises of site development materials can damage the Premises, adversely affect surface water drainage patterns, and destabilize adjacent structures. When placed on the Premises by the Lessee, site development materials, including building pads, parking areas, driveways, and similar structures:

- a. become a part of the realty and the property of the City ~~of Kenai~~;
- b. unless otherwise directed by the Lessor, must be maintained by the Lessee throughout the term of this Lease, including any extensions and periods of holdover; and
- c. may not be removed by the Lessee without the prior written approval of the Lessor.

2. Disposition of Personal Property and Permanent Improvements Other Than Site Development Materials:

a. Specifically, notwithstanding any other provision of this Lease, Lessee must remove all underground and above ground fuel storage tanks and fuel dispensing containers from the Premises upon expiration, termination or cancellation of this lease, unless Lessor in its sole discretion allows Lessee to decommission the fuel storage tanks or fuel dispensing containers, or make other arrangements at the Lessor's sole discretion.

a-b. With regard to improvements other than fuel storage tanks, or fuel dispensing containers, Uunless the Lessor otherwise directs as provided below, when this Lease expires, terminates, or is cancelled and is neither extended nor followed by a successive lease, the departing Lessee may do one or more of the following:

- i. remove Lessee-owned Permanent Improvements from the Premises, remediate any Contamination for which the Lessee is responsible, and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the expiration, cancellation, or termination date of this Lease.
- ii. with written approval from the Lessor, sell Lessee-owned Permanent Improvements to the succeeding lessee, remove all personal property, remediate, any Contamination for which the Lessee is responsible and leave the Premises in a clean and neat physical condition acceptable to the Lessor within 60 days after notice from the Lessor that the Lessor has approved an application for a lease of the Premises by another person or such longer period specified in the notice, but in no event more than 180 days after the

expiration, termination, or cancellation date of this Lease; Nothing in this provision shall require the Lessee to vacate the Premises or remove any personal property prior to the expiration, cancellation or termination of the Lease;

- iii. elect to have the Lessor sell Lessee-owned Permanent Improvements at public auction as provided below, remediate any Contamination for which the Lessee is responsible, and restore the ~~premises~~Premises to a clean and neat physical condition acceptable to the Lessor. If the Lessor sells Lessee-owned Permanent Improvements under this Paragraph for removal from the Premises, the departing Lessee's obligation under this Paragraph continues until the Premises are remediated and restored to a clean and neat physical condition acceptable to the Lessor after the improvements have been removed.

b.c. If the departing Lessee elects to have the Lessor sell Lessee-owned Permanent Improvements at public auction per this Section, the Lessee shall, within 30 days after the expiration, cancellation, or termination of this Lease:

- i. submit to the Lessor a written request and authorization to sell the Lessee-owned Permanent Improvements by public auction;
- ~~ii.~~ provide to the Lessor an executed conveyance document transferring clear title to the Lessee-owned Permanent Improvements to the successful bidder at the public auction, along with authorization to the Lessor, as agent for the Lessee for
- ~~iii.~~ii. purposes of the sale only, to endorse the name of the successful bidder on the conveyance document upon receipt of payment of the successful bid price; and
- ~~iv.~~iii. before the date of the public auction, remove all personal property, remediate any Contamination for which the Lessee is responsible and leave the Premises in a neat and clean physical condition acceptable to the Lessor.

c.d. When selling Lessee-owned Permanent Improvements at public auction for the departing Lessee, the Lessor will establish the terms and conditions of the sale. The Lessor shall pay the Lessee any proceeds of the sale of the Lessee-owned Permanent Improvements, less the administrative costs of the public auction and any financial obligation the Lessee owes to the Lessor under this Lease. Payment will be made within a reasonable time after the Lessor completes the sale transaction and receives the proceeds, but not to exceed 60 days. If all or a portion of the Lessee-owned Permanent Improvements do not sell at public auction, the Lessee will remove those Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and restore the

Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the auction.

d.e. If the Lessee shows good cause to the Lessor and if it is not inconsistent with the best interest of the City ~~of Kenai~~, the Lessor will grant an extension of time that is sufficient to allow the Lessee to remove or sell Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor.

e.f. The Lessor will, by written notice, direct the departing Lessee to remove Lessee-owned Permanent Improvements from the Premises, to remediate, consistent with applicable law, any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor if the Lessor determines in writing:

i. that the continued presence of the Lessee-owned Permanent Improvements on the Premises ~~are not consistent with~~ violate any written Airport program or plan required for compliance with applicable federal, state, or local law;

~~ii.~~ that the continued presence of the Lessee-owned Permanent Improvements on the Premises is not in the best interest of the City ~~of Kenai~~; or

~~iii.~~ ii. that the Lessee-owned Permanent Improvements present a hazard to public health or safety.

f.g. The departing Lessee to whom the Lessor has issued direction under Paragraph e of this Section shall comply with the Lessor's direction within 60 days after issuance of the direction and at no cost to the Lessor. If the departing Lessee shows good cause to the Lessor, continues to work diligently to comply with Lessor's direction, and if it is not inconsistent with the best interest of the City ~~of Kenai~~, the Lessor will allow in writing a longer period that is sufficient to allow the Lessee to comply with the Lessor's direction. A departing Lessee who fails to comply with a direction issued by the Lessor under Paragraph e of this Section, shall, within 30 days of being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal fees and administrative costs, to enforce the Lessor's direction or to remove and dispose of unremoved Lessee-owned ~~improvements~~ Permanent Improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises.

g.h. If the departing Lessee does not timely remove or sell the Lessee-owned Permanent Improvements on the Premises in accordance with the requirements of this Section, any remaining Lessee-owned Permanent Improvements and any remaining personal property of the departing Lessee will be considered permanently abandoned. The Lessor may sell, lease, demolish, dispose of, remove, or retain the abandoned property for

Airport use as the Lessor determines is in the best interest of the City ~~of Kenai~~. The departing Lessee shall, within 30 days after being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate and restore the Premises.

~~h.i.~~ After the expiration, termination, or cancellation of the Lease, including any holdover, the departing Lessee loses all right to occupy or use the ~~premises~~Premises without the express or implied consent of the Lessor. Except as the Lessor notifies the departing Lessee otherwise in writing, the Lessor consents to the departing Lessee's continued use and occupancy of the Premises to diligently accomplish the requirements of this Section. Until the departing Lessee relinquishes possession of and completely vacates the Premises and notifies the Lessor in writing that it has relinquished and vacated the Premises, the departing Lessee shall perform the following as if the ~~lease~~Lease were still in effect, pay rent to the Lessor;

- i. maintain the ~~premises~~Premises;
- ii. provide the Lessor with evidence of each insurance coverage, if any, required under the Lease; and
- iii. cease using the ~~premises~~Premises other than to diligently accomplish the requirements of this Section, and to comply with the other requirements of the Lease.

~~h.j.~~ A departing Lessee will not be considered to have relinquished possession and completely vacated the Premises until

- i. the departing Lessee has:
 - (a) remediated, consistent with applicable law, any Contamination for which the Lessee is responsible; and
 - (b) restored the Premises to a clean and neat physical condition acceptable to the Lessor; and
- ii. either
 - (a) removed all of the Lessee's Permanent Improvements and personal property from the ~~premises~~Premises or sold the Lessee-owned Permanent Improvements and personal property to a succeeding Lessee under the provisions of this Lease; or
 - (b) transferred title to the Lessee's Permanent Improvements and personal property that remain on the ~~premises~~Premises to the Lessor.

ARTICLE XIII GENERAL COVENANTS

A. **USE OF THE AIRPORT:** Except as provided herein, any regular use of Airport lands or facilities without the written consent of the City is prohibited. This prohibition shall not apply to use of areas designated by the City for specified public uses, such as passenger terminals, automobile parking areas, and streets.

B. **COSTS AND EXPENSES:** Costs and expenses incident to this ~~lease~~Lease, including but not limited to recording costs, shall be paid by Lessee.

C. **CARE OF THE PREMISES:** The Lessee shall keep the Premises clean and in good order at the Lessee's own expense, allowing no damage, waste, nor destruction thereof, nor removing any material therefrom, without written permission of the City. At the expiration of the term fixed, or any earlier termination of the Lease, the Lessee will peaceably and quietly quit and surrender the ~~premises~~Premises to the City.

D. **CONSTRUCTION APPROVAL AND STANDARDS:** Any building construction on the Premises by the Lessee must be compatible with its surroundings and consistent with the uses authorized under this Lease, as determined by the City. The Lessee must obtain the City's written approval before placing fill material, beginning any land development, or constructing or demolishing any improvements on the Premises, and before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation, together with specifications or any other information the City reasonably requires. Further, the Lessee will submit to City evidence of the Lessee's compliance with Federal Aviation Administration regulation 14 CFR Part 77.

E. **LEASE SUBORDINATE TO AIRPORT FINANCING REQUIREMENTS:** Lessee agrees that City may modify this Lease to meet revised requirements for Federal or State grants, or to conform to the requirements of any revenue bond covenant. However, the modification shall not act to reduce the rights or privileges granted the Lessee by this Lease, nor act to cause the Lessee financial loss.

F. **RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION:** City hereby agrees and covenants that the Lessee, upon paying rent and performing other covenants, terms, and conditions of this Lease, shall have the right to quietly and peacefully hold, use, occupy, and enjoy the Premises, except that the following shall not construed as a denial of the right of quiet or peaceable possession:

1. Any inconvenience caused by public works projects in or about the Premises; and
2. Any other entries by the City on the Premises reserved or authorized under other provisions of this Lease.

G. **NO PARTNERSHIP OR JOINT VENTURE CREATED:** It is expressly understood that the City shall not be construed or held to be a partner or joint venture of Lessee in the conduct of the Lessee's activities or business on the Premises. The relationship between the City and the Lessee is, and shall at all times remain, strictly that of landlord and tenant, respectively.

H. **DISCRIMINATION:** The Lessee will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The Lessee recognizes the right of the City to take any action necessary to enforce this provision, including actions required pursuant to any federal or state law.

I. **AFFIRMATIVE ACTION:** If required by 14 CFR Part 152, subpart E, the Lessee will undertake an affirmative action program to ensure that no person will be excluded from participating in any employment activities offered by the Lessee on the grounds of race, creed, color, national origin, or sex. No person may be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by subpart E. The Lessee further agrees that it will require its sub-organization(s) provide assurance to the City to the same effect that they will also undertake affirmative action programs and require assurances from their sub-organization(s) as required by 14 CFR, Part 152, subpart E.

Tenant shall use the ~~premises~~Premises in compliance with all other requirements imposed by or pursuant to title 49, code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulation may be amended.

J. **INTEGRATION, MERGER, AND MODIFICATION:** This Lease sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this Lease is effective unless in writing and signed on behalf of the City and the Lessee.

K. **RIGHT TO ADOPT RULES:** City reserves the right to adopt, amend, and enforce reasonable rules and regulations governing the Airport, including the Premises. The City shall not be liable to Lessee for any diminution or deprivation of possession, or of Lessee's rights under this Lease, on account of the exercise of the City's authority reserved under this provision. Furthermore, the Lessee shall not be entitled to terminate the whole or any portion of the leasehold estate created under this Lease, by reason of the exercise of the City's authority reserved under this provision, unless the exercise thereof so interferes with Lessee's use and occupancy of the Premises as to constitute a termination, in whole or in part, of this Lease by operation of law under the laws of the State of Alaska and of the United States made applicable to the states.

L. **LESSEE'S OBLIGATION TO PREVENT AND REMOVE LIENS:** Lessee will not permit any liens including, but not limited to, mechanics', laborers', or materialmen's liens obtainable or available under the then existing laws, to stand against the Premises or improvements on the Premises for any labor or material furnished to Lessee or claimed to have been furnished to Lessee or to the Lessee's agents, contractors, or sub-lessees, in connection with work of any character performed or claimed to have been performed on the Premises or improvements by or at the direction or sufferance of Lessee. Provided, however, the Lessee shall have the right to provide a bond as contemplated by Alaska law and contest the validity or amount of any such lien or claimed lien. Upon a final determination of the lien or claim for lien, the Lessee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Lessee's own expense.

M. **CONDEMNATION:** In the event the Premises or any part thereof shall be condemned and taken for a public or a quasi-public use, then upon payment of any award or compensation arising

from the condemnation or taking, the City and the Lessee shall make a good faith effort to agree upon

1. the division of the proceeds;
2. the abatement in rent payable during the term or any extension of the term of this Lease; and
3. other adjustments as the parties may agree upon as being just and equitable under all the circumstances.

If, within thirty days after the award has been paid into Court, the City and Lessee are unable to agree upon what division, abatement in rent, and other adjustments as are just and equitable, the dispute shall be determined by arbitration.

N. **SUCCESSORS IN INTEREST:** This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, subject to such specific limitations on assignment as are provided for in this Lease.

O. **NOTICES:**

1. Any notices required by this Lease must be in writing and must be delivered personally or mailed by certified or registered mail in a prepaid envelope. A mailed notice
 - a. must be addressed to the respective party at the address written on the first page of this Lease or to the latest address designated in accordance with (2) of this ~~Provision~~provision (O); and
 - b. shall be deemed delivered on the date it is deposited in a U.S. general or branch post office.

The City or the Lessee may, from time to time, designate a new address at which they will receive notices by providing the other party with written notice at least 15 days prior to the effective date of the change. An address change notice must be delivered according to the procedure set out in (1) of this ~~Provision~~provision (O).

P. **RETENTION OF RENTAL:** In the event the City terminates this Lease because of any breach by the Lessee, the City shall retain any unused balance of the rental payment last made by the Lessee City as partial or total liquidated damages for the breach.

Q. **FIRE PROTECTION:** The Lessee will take all reasonable precautions to prevent, and take all necessary action to suppress destructive or uncontrolled fires and comply with all laws, regulations, and rules promulgated and enforced by the City for fire protection on the Airport.

R. **PERSONAL USE OF MATERIALS:** No interest in coal, oil, gas or any other mineral, or in any deposit of stone or gravel valuable for extraction or utilization is included in the Premises or in the rights granted by this ~~lease~~Lease. The Lessee shall not sell or remove from the Premises for use elsewhere any timber, stone, gravel, peat moss, topsoil or any other material valuable for building or commercial purposes.

S. APPROVAL OF OTHER AUTHORITIES: The granting of this ~~lease~~Lease by the City does not relieve the Lessee of the responsibility to obtain any license or permit as may be required by federal, state, or local law.

T. EXECUTION BY THE PARTIES: This Lease is of no effect unless signed by the Lessee, or a duly authorized representative of Lessee, and an authorized representative of the City.

U. CAPTIONS: The captions of the provisions of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of any provision.

V. RIGHTS OF CONSTRUCTION: This Lease is intended to make public property available for private use, while at all times protecting the public interest to the greatest extent possible. Following the rule that transfers of interest in public property are to be strictly construed in favor of the public property landlord, all rights granted to the Lessee under this Lease will be strictly construed, and all rights of the City and the protections of the public interest will be liberally construed.

W. LESSEE ACKNOWLEDGEMENT: The Lessee acknowledges that the Lessee has read this Lease and fully understands its terms, that the Lessee has been fully advised or has had the opportunity of advice by separate legal counsel, and voluntarily executes this Lease. Lessee also acknowledges and agrees that the rule of interpretation under which a document is construed against the drafter will not apply to this Lease.

X. APPROVAL BY LESSOR: Any approval required of the Lessor by this Lease will not be unreasonably withheld. The Lessor's approval does not waive the Lessee's legal responsibility or liability to comply with all applicable federal and state laws and regulations.

ARTICLE XIV SURVEY, IMPROVEMENTS AND PERFORMANCE BOND

A. SURVEY: The Lessee is solely responsible, at its sole expense, to confirm or establish the physical location of the boundaries of the Premises prior to beginning any construction thereon, including clearing grubbing, back-filling and environmental sampling. Any survey of the Premises shall be performed by a ~~Land Surveyor~~land surveyor registered in the State of Alaska. The Lessee shall furnish the City with a copy of the plat of any survey performed on the Premises by, or on behalf of, the Lessee.

B. IMPROVEMENTS:

1. REQUIRED IMPROVEMENTS: At no cost to the City, Lessee agrees to complete land development and construction of ~~Permanent~~Additional Improvements including upgrading ~~of above-ground fuel storage tanks on site~~ underground electrical and removal of self-service aviation cardlock and underground storage tank, by no later than ~~December 31, 2025XXXXX~~, 2027, with an aggregate cost of at least ~~\$750,000~~7,500, excluding financing costs. In addition to the as-built drawings required by this Lease, the Lessee must submit to the City written evidence that the Lessee has completed the ~~land development and constructed improvements~~Additional Improvements on the Premises with an aggregate cost or investment of not less than ~~\$750,000~~7,500.

Lot developments will prevent unauthorized access to the airfield during and after site improvements:

Structures are prohibited to encroach into the 100-foot building restriction line:

Crowley Fuels, LLC. Is. Lessee is responsible for all snow removal, and snow may not touch the perimeter security fence or be piled to a height that would allow access to the airport.

The evidence of cost must be submitted to the City within thirty (30)sixty (60) days of the completion of the development and improvementsAdditional Improvements, but by no later than March 31, 2026XXXXX, 2027.

a. Costs considered toward the aggregate cost of permanent improvementsAdditional Improvements include building construction, design, labor, materials,

b.a. materials shipping, permits, equipment, soil testing, environmental baseline report, and environmental assessment directly related to the construction; premises and as-built surveys; site preparation, including excavation, geotextile fabric, filling, grading, fill material, gravel, and pavement, remediation of environmental contamination (unless Lessee caused or materially contributed to the contamination); and utility connection costs.

e.b. The cost of PermanentAdditional Improvements excludes:

- i. work performed by the City and not reimbursed by the Lessee; and
- ii. work performed by the Lessee and reimbursed by the City.

2. FAILURE TO COMPLETE ADDITIONAL IMPROVEMENTS: If the Lessee fails to complete the required construction within the time allowed under (bB)(1) of this Article, including any extensions granted, the City will execute against and the Lessee will forfeit, any bond or other guarantee given by the Lessee and, as applicable, City will:

- a. initiate cancellation of the leaseLease; or
- b. reduce the term of the leaseLease to a period that is consistent with the portion of the required construction timely completed.

3. APPEARANCE: When completed, all improvements on the Premises must be neat, presentable, and compatible with the authorized use of the Premises under this Lease, as determined by the City.

4. CITY APPROVAL REQUIRED: The Lessee must first obtain the City's written approval before beginning any land development, construction or demolition of any improvements on the Premises, or before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to

the City detailed drawings of the proposed development, alteration, modification, or renovation. Further, the Lessee will submit to City evidence of the Lessee's compliance with the FAA regulation 14 CFR Part 77.

5. CITY APPROVAL WITHHELD: The City's approval of any construction, alteration, modification, or renovation will not be withheld unless
 - a. the Lessee fails to demonstrate adequate financial resources to complete the project;
 - b. the project plans, specifications, and agency approvals are incomplete;
 - c. the proposed project would result in a violation of an applicable ordinance, regulation, or law;
 - d. the proposed project would interfere with or is incompatible with the safety, security, maintenance, or operation of the airport;
 - e. the proposed project ~~is inconsistent with~~violates the Airport Master Plan;
 - f. the proposed project ~~is inconsistent with~~violates the terms of the ~~lease~~Lease, zoning ordinances, or the City's Comprehensive Plan;
 - g. the project plans do not make sufficient provision for drainage, aircraft, vehicle, and equipment parking~~;~~ or for snow storage; or
 - h. the proposed project does not conform to generally recognized engineering principles or applicable fire or building codes.
6. DEMOLITION: Prior to any demolition of any structure(s) on the Premises, Lessee will deliver to City a written scope of work that~~;~~ at a minimum, lists the structure(s) that are to be demolished and the timeframe for demolition and removal of the debris from the Airport. City will review Lessee's scope for demolition and issue Lessee written approval for the work to be done.
7. BUILDING SETBACK: No building or other permanent structure may be constructed or placed within twenty feet of any lot of the Premises without City's prior written approval. In addition, no building or other permanent structure may be constructed or placed within twenty feet of any boundary line of the Premises which fronts on a landing strip, taxiway, or apron.
8. AS-BUILT DRAWINGS: Within sixty days after completion of construction or placement of improvements upon the Premises, the Lessee will deliver to the City a copy of an as-built drawing, acceptable to the City, showing the location and dimensions of the improvements, giving distances to all Premises' boundaries. If the Lessee constructs underground improvements, the Lessee will appropriately mark the surface of the land with adequate surface markers. The type~~;~~ quantity, and distance between such markers will be subject to approval of the City.

9. AIRPORT SECURITY FENCING: If any construction by the Lessee requires a realignment or alteration of an existing security fence on the Premises or boundary of the Premises, the Lessee agrees to realign or alter the fence in a manner approved in writing by the Airport Manager. Anytime the fence must be breached to allow the Lessee to complete improvement construction or fence modifications, the Lessee shall, at the Lessee's sole expense place temporary barriers to maintain the security of the Airport, as determined by the Airport Manager. If damage occurs to a security fence on the Premises or boundary of the Premises in connection with the Lessee's use or occupation of the Premises, the Lessee shall promptly repair the fence to the satisfaction of the Airport Manager.
10. DAMAGE TO IMPROVEMENTS: If Lessee's improvementsAdditional Improvements on the Premises are damaged or destroyed, Lessee will cause the improvementsAdditional Improvements to be repaired or rebuilt, and restored to normal function within two years following the damage or destruction. If the Lessee fails to timely rebuild or restore the improvementsAdditional Improvements, the City may, at its sole discretion, either reduce the term of this Lease commensurate with the estimated value of the Lessee's remaining, fully functional improvementsAdditional Improvements on the Premises, or cancel this Lease.
11. DAMAGE NEAR EXPIRATION: If Lessee's improvementsAdditional Improvements are damaged to the extent that more than 50% of the space is unusable and the damage occurs within five years of the expiration of the term of this Lease, Lessee may remove the damaged improvementsAdditional Improvements, restore the Premises and terminate this Lease.

C. PERFORMANCE BOND (Optional): Prior to beginning the construction of permanent improvementsAdditional Improvements required under (1) of this Article, the Lessee shall submit to the City a performance bond, deposit, or other security in the amount of \$ **performance bond not applicable.** The form of the bond or other security shall be subject to the City's approval.

~~D. SURRENDER ON TERMINATION: Lessee shall, on the last day of the term of this Lease or upon any earlier termination of this Lease, surrender and deliver upon the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City. Upon the end of the term of this Lease, including any extension or renewal, or any earlier termination thereof, title to the buildings, improvements and building equipment shall automatically vest in City without requirement of any deed, conveyance, or bill of sale thereon. However, if City should require any such document in confirmation hereof, Lessee shall execute, acknowledge, and deliver the same and shall pay any charge, tax, and fee asserted or imposed by any and all governmental unites in connection herewith.~~

E.D. NOTICE OF CONSTRUCTION: The Lessee agrees to notify the City in writing three days prior to commencing any construction project valued in excess of \$1,000.00 on the Premises. The Lessee agrees to assist in the posting of a notice of non-responsibility and maintenance of the notice on the Premises during construction. Lessee agrees that in the event the Lessee fails to notify the

City as required by this ~~Provision (f)~~provision (D), the Lessee shall indemnify the City against any materialmen's liens as defined in AS 34.35.050 which arise as a result of construction on the ~~premises~~Premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, the day and year stated in the individual acknowledgments below.

LESSEE:	LESSOR:
By: _____ Lessee Name _____ Date _____ Its: _____	By: _____ Less oree Name _____ Date _____ Its: _____

City of Kenai

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

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

(Name/Title) of Crowley Fuels, LLC being personally
known to me or having produced satisfactory evidence of identification, appeared before me and
acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of
said corporation.

Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

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

Notary Public for Alaska
My Commission Expires: _____

ATTEST:

Michelle Saner, City Clerk

SEAL:

Approved as to Lease Form:

Scott Bloom, City Attorney

AFTER RECORDING RETURN TO:

City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611

**KENAI CITY COUNCIL – REGULAR MEETING
OCTOBER 16, 2024 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
VICE MAYOR HENRY KNACKSTEDT, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai City Council was held on October 16, 2024, in City Hall Council Chambers, Kenai, AK. Vice Mayor Knackstedt called the meeting to order at approximately 6:00 p.m.

1. Pledge of Allegiance

Vice Mayor Knackstedt led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Henry Knackstedt, Vice Mayor
Phil Daniel
Alex Douthit

Brian Gabriel, Mayor (*remote participation*)
Deborah Sounart
Victoria Askin

A quorum was present.

Also in attendance were:

Terry Eubank, City Manager
Scott Bloom, City Attorney
David Swarner, Finance Director
Tyler Best, Parks and Recreation Director
Dave Ross, Police Chief
Shellie Saner, City Clerk

3. Certification of the October 1, 2024 Election Results

The City Clerk read the results of the October 1, 2024 election as follows:

Candidates	Polls	Absentee / Questioned	Total Votes
SOUNART, Deborah F.	397	74	471
KISENA, Sovala	332	74	406
Write-In	32	5	37

MOTION:

Council Member Askin **MOVED** to certify the results of the October 1, 2024 Election as presented. Council Member Douthit **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

[Clerk's Note: Reelected Council Member Sounart and newly elected Council Member Kisenra were administered their oath of office for a term beginning on October 21, 2024.]

4. Agenda Approval

MOTION:

Council Member Askin **MOVED** to approve the agenda and consent agenda. Council Member Daniel **SECONDED** the motion.

The items on the Consent Agenda were read into the record.

Vice Mayor Knackstedt opened the floor for public comment on consent agenda items; there being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED ADMINISTRATIVE REPORTS - None.

C. SCHEDULED PUBLIC COMMENTS - None.

D. UNSCHEDULED PUBLIC COMMENTS

Marion Nelson, Kenai Fine Art Center Board Member provided an update on current events and activities at the center; the recent First Friday show; and the annual Mural Project.

Samantha Springer, Executive Director of the Kenai Chamber of Commerce and Visitor Center reported that approximately \$30,000 was brought in during the 39th Annual Fund Raiser; the team is now setting up the maze for the Haunted Chamber and volunteers are still needed.

E. PUBLIC HEARINGS

1. **Ordinance No. 3439-2024** - Increasing Estimated Revenue and Appropriations in the General Fund and Municipal Roadway Improvements Capital Fund to Provide Supplemental Funding for the 2024 Lilac Lane Roadway Project. (Administration)

MOTION:

Council Member Daniel **MOVED** to enact Ordinance No. 3439-2024. Council Member Askin **SECONDED** the motion.

Vice Mayor Knackstedt opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

It was reported the Lilac Lane remediation project encountered larger than expected bury pits, which required additional excavation; the project has been completed; and this ordinance seeks additional funding to cover the costs associated with the additional excavation.

VOTE:

YEA: Daniel, Gabriel, Askin, Douthit, Sounart, Knackstedt

NAY: None

MOTION PASSED.

F. MINUTES

1. *Regular Meeting of October 2, 2024. (City Clerk)

G. UNFINISHED BUSINESS - None.

H. NEW BUSINESS

1. *Action/Approval - Bills to be Ratified. (Administration)

Approved by the consent agenda.

2. *Action/Approval - Non-Objection to Renewal of a Club Liquor License for Fraternal Order of Eagles #3525, DBA Fraternal Order of Eagles #3525- License No. 337 (City Clerk)

Approved by the consent agenda.

3. Action/Approval - Confirmation of Mayoral Nomination of Student Representatives to City Council, Beautification Commission and Airport Commission. (Gabriel)

MOTION:

Council Member Daniel **MOVED** to confirm the Mayor Nominations for Student Representatives. Council Member Sounart **SECONDED** the motion.

It was reported that current policy requires Juniors or Seniors; during the initial recruitment only one sophomore applied; the application period was extended and only two additional applications were received from sophomores for Commission seats; having no Juniors or Seniors who applied Mayor Gabriel nominated the sophomore applicants for confirmation by City Council.

UNANIMOUS CONSENT was requested on the motion.

VOTE: Motion **APPROVED**; without objection.

I. COMMISSION / COMMITTEE REPORTS

1. Council on Aging Commission

Meeting cancelled, next meeting November 14, 2024.

2. Airport Commission

Meeting cancelled, next meeting November 14, 2024.

3. Harbor Commission

No report, next meeting November 12, 2024.

4. Parks and Recreation Commission

Council Member Sounart reported on the October 3, 2024 work session and meeting, next meet November 7, 2024.

5. Planning and Zoning Commission

Meeting cancelled, next meeting October 23, 2024.

6. Beautification Commission

Meeting cancelled, next meeting January 9, 2025.

J. REPORT OF THE MAYOR

Mayor Gabriel reported on the following:

- Thanked Vice Mayor Knackstedt for filling in.
- Congratulated reelected Council Member Sounart and newly elected Council Member Kisenia.
- Reminded everyone to vote in the upcoming General Election.

K. ADMINISTRATION REPORTS

1. City Manager - City Manager Eubank reported on the following:
 - New Controller Jennifer Anderson started this week.
 - New Public Works Director Lee Frey and New Planning Director Kevin Buettner start next week.
 - Currently recruiting for Public Works Assistant Director, two police officers, a public safety dispatcher, recreation center attendant and a temporary equipment operator.
 - Land sale has been delayed until November, with a potential further delay until spring.
 - Updated health insurance will be presented at the next council meeting, with plans to offer both HRA and HSA plans.
 - The sheet pile wall, to protect bluff properties has been installed by the owners. The City purchased the property, which facilitated the ability for those property owners to install protect their properties.
 - Toured the Cooper Landing Bypass project with Vice Mayor Knackstedt.
2. City Attorney - No report.
3. City Clerk - City Clerk Saner reported on the following:
 - Absentee In-Person voting for the November 5, 2024 General Election will begin on Monday, October 21, 2024 at the State of Alaska, Division of Elections new Kenai Office located in the Old Kenai Mall.

L. ADDITIONAL PUBLIC COMMENTS

1. Citizen Comments (*Public comments limited to (5) minutes per speaker*)
2. Council Comments

Council Member Douthit noted that the Chamber Fundraiser was a lot of fun and wished everyone a Happy Halloween.

Council Member Sounart thanked the residents for supporting her in her reelection; stated that she is excited to be a part of the City; and congratulated newly elected Council Member Kisena.

Council Member Asking congratulated both Council Member Sounart and Council Member Kisena on their election; noted the decorations at the Chamber Fundraiser were amazing; and reminded everyone to vote.

Council Member Daniel noted that the Chamber Fundraiser was a good time and congratulated Council Member Sounart and Council Member Kisena on their election.

Vice Mayor Knackstedt congratulated Council Member Sounart and Council Member Kisena on their election; reported on his participation at the Pumpkin Festival; and provided information regarding the Cooper Landing Bypass Project.

M. EXECUTIVE SESSION - None.**N. PENDING ITEMS - None.****O. ADJOURNMENT****P. INFORMATIONAL ITEMS**

1. Ice Donation Request Letter

There being no further business before the Council, the meeting was adjourned at 6:47 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of October 16, 2024.

Michelle M. Saner, MMC
City Clerk

*** The student representative may cast advisory votes on all matters except those subject to executive session discussion. Advisory votes shall be cast in the rotation of the official council vote and shall not affect the outcome of the official council vote. Advisory votes shall be recorded in the minutes. A student representative may not move or second items during a council meeting.*

PAYMENTS OVER \$35,000.00 WHICH NEED COUNCIL RATIFICATION
COUNCIL MEETING OF: NOVEMBER 6, 2024

VENDOR	DESCRIPTION	DEPARTMENT	ACCOUNT	AMOUNT
PERS	PERS	VARIOUS	LIABILITY	105,719.46

INVESTMENTS

VENDOR	DESCRIPTION	MATURITY DATE	AMOUNT	Effect. Int.
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KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Shellie Saner, City Clerk

DATE: October 29, 2024

SUBJECT: **Action/Approval** - Confirmation of Mayoral Nomination for a Partial Term Appointment of Sharon Fisher to the Parks & Recreation Commission

A vacancy currently exists on the Parks & Recreation Commission; an application was received and is attached for consideration.

Pursuant to Kenai Municipal Code 1.90.020, members are nominated by the Mayor and confirmed by the City Council. Mayor Gabriel has requested Council confirmation of the following appointment:

- Sharon Fisher for appointment to a partial term ending on December 31, 2025.

Your consideration is appreciated.



Commission Application

Application for Appointments to the Airport, Beautification, Council on Aging, Harbor, Parks & Recreation, and Planning and Zoning Commissions

First Name: *

Sharon

Last Name: *

Fisher

Residence Address: *

If appointed, select items approved for publication on City Website:

☐ Primary Phone

☐ Home Phone

☒ Email

Mailing Address: *

Mailing City: *

Kenai

Mailing State: *

Alaska

Mailing Zip: *

99611

Primary Phone: *

Home Phone:

E-mail *

ak.kyaker@outlook.com

Are you a Resident of the City of Kenai? *

☒ Yes

☐ No

If resident, how long?

1.75 Years in Kenai and nearly 50 years in surrounding area

Name of Spouse:

Name of Employer:

First Student

Commission Membership Requirements:

Airport Commission: The Airport Commission has four designated seats and three at-large seats. ***If applying for the Airport Commission, be sure and select the Seat you are applying for in the next column.***

Beautification, Harbor and Parks & Recreation Commissions: May at the discretion of the Council have up to two non-resident members.

Council on Aging Commission: Members need only to reside on the Kenai Peninsula and 51% of whom must be 55-years or older.

Planning & Zoning Commission: May have 1 member that is not a resident of the City if that member has controlling ownership in a business physically located in the City.

Commission in which you are interested: *

Parks and Recreation Commission

Why do you want to be involved with this Commission?

I have enjoyed and used the Kenai parks for many years and appreciate the beauty they add to the city. I think it is valuable that residents be actively involved in the development of the community they live and work in and to have a say of what they would like their community to look like.

List Current Organization Memberships:

Kenai Historical Society Board of Directors, Kenai Peninsula Historical Association Board of Directors

List Past Organization Memberships:

Kenai Performers Board of Directors (and Costumer Crew)

What background, experience or other credentials do you possess to bring to the Commission?

Page 86

I have long been involved in the local historical organizations and well understand the importance of portraying the amazing history of this area for residents and visitors alike to enjoy and to learn from. I have many years of interest in local flora and fauna and would bring that knowledge into the planning and development ideas this commission might pursue.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3440-2024**

AN ORDINANCE ACCEPTING AND APPROPRIATING A GRANT FROM THE STATE OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, DIVISION OF LIBRARY, ARCHIVES, AND MUSEUMS FOR THE PURCHASE OF LIBRARY MATERIALS.

WHEREAS, the Kenai Community Library received the FY2025 Public Library Assistance (PLA) grant of \$5,171 from the State of Alaska, Department of Education and Early Development, Division of Library, Archives and Museums; and,

WHEREAS, this award supplements the original grant of \$1,829 (see ORD 3433-2024) for a total of \$7,000; and,

WHEREAS, the funds will be used to purchase library materials; and,

WHEREAS, it is in the best interest of the City of Kenai to accept and appropriate these grant funds for the purpose intended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept this grant in the amount of \$5,171 and to execute grant agreements and to expend the grant funds to fulfill the purpose and intent of the grant agreement and this Ordinance.

Section 2. That the following budget revision is authorized:

General Fund:

Increase Estimated Revenues –	
State Grants - Library	<u>\$5,171</u>

Increase Appropriations –	
Library - Books	<u>\$5,171</u>

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.


Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 20TH DAY OF NOVEMBER, 2024.

ATTEST:

Henry Knackstedt, Vice Mayor

Michelle M. Saner, MMC, City Clerk

Approved by Finance:  _____

Introduced:	November 6, 2024
Enacted:	November 20, 2024
Effective:	November 20, 2024



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager

FROM: Katja Wolfe, Library Director

DATE: October 24, 2024

SUBJECT: **Ordinance No. 3440-2024** - Accepting and Appropriating a Grant From the State of Alaska Department of Education and Early Development, Division of Library, Archives and Museums For The Purchase Of Library Materials

The Alaska State Library has awarded the Kenai Community Library a supplemental FY25 Public Library Assistance (PLA) grant of \$5,171. Between this award and the original grant award of \$1,829 (see ORD 3433-2024), the Library has received the full PLA grant amount of \$7,000 for FY 2025.

To receive the funds, the library must meet various eligibility requirements, including maintaining a collection, providing Interlibrary Loan and reference services, offering children's programming, and the library director's participation in continuing education. The grant funds will be used for purchasing library materials.

Your consideration is appreciated.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3441-2024**

AN ORDINANCE ACCEPTING AND APPROPRIATING A DONATION FROM HILCORP ENERGY COMPANY TO ASSIST WITH THE ANNUAL AREA-WIDE SENIOR THANKSGIVING DINNER.

WHEREAS, annually the Kenai Senior Center hosts a Thanksgiving Dinner that is open to seniors from all over the Central Peninsula; and,

WHEREAS, the City received a donation from Hilcorp Energy Services in the amount of \$5,000 for the purchase of food and supplies for the dinner; and,

WHEREAS, it is in the best interest of the City of Kenai to accept and appropriate this donation for the purposes described above.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept a donation from Hilcorp Energy Company in the amount of \$5,000 and to expend the donated funds to fulfill the purpose and intent of the donation and this ordinance.

Section 2. That the estimated revenues and appropriations be increased as follows:

Senior Citizen Special Revenue Fund:

Increase Estimated Revenues –

Donations

\$5,000

Increase Appropriations –

Congregate Meals – Operating Supplies

\$5,000

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 20TH DAY OF NOVEMBER, 2024.

Henry Knackstedt, Vice Mayor

ATTEST:

Ordinance No. 3441-2024
Page 2 of 2

Michelle M. Saner, MMC, City Clerk

Approved by Finance: _____



Introduced:	November 6, 2024
Enacted:	November 20, 2024
Effective:	November 20, 2024



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager

FROM: Kathy Romain, Senior Center Director

DATE: October 22, 2024

SUBJECT: Ordinance No. 3441-2024 – Hilcorp Energy Services Donation

Hilcorp Energy Services has generously donated \$5,000 for the annual Areawide Senior Thanksgiving Dinner, which will be held on Friday, November 22, 2024. This marks the eleventh consecutive year that Hilcorp has funded this beloved event, and seniors in our community eagerly look forward to enjoying a warm meal together, served by dedicated Hilcorp employees who volunteer their time.

The Areawide Senior Thanksgiving Dinner has a rich history, beginning in 1976 when a Homemakers Club first provided and served the meal. Over the years, the tradition has been carried on by UNOCAL, Agrium, and Marathon Oil. Since 2012, Hilcorp has taken up the mantle, continuing to provide both funding and volunteers. We are grateful to live in a community that honors the elders who played a significant role in shaping Alaska into what it is today.

The donation will be used as follows:

Congregate Meals – Operating Supplies	\$5,000
Total Donation	\$5,000

Thank you for your consideration.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3442-2024**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE SECTION KMC 23.55.020 – COMPENSATION STRUCTURE BY GRADE FOR EMPLOYEES IN THE CLASSIFIED SERVICE, TO AMEND THE EFFECTIVE DATE A STEP INCREASE OCCURS AND KMC 23.55.030 QUALIFICATION PAY, TO CLARIFY ANNUAL LEAVE AND HOLIDAY PAY CALCULATIONS AND CORRECT AN ERROR TO BUILDING PLANS EXAMINER RECOGNITION PAY.

WHEREAS, pursuant to KMC 23.15.010, the City Manager prepares and recommends revisions and amendments to the personnel regulations as deemed necessary; and,

WHEREAS, Ordinance 3419-2024 amended sections of the personnel regulations related to compensation structure by grade, which created two additional double letter steps in the Salary Schedule and amendments to qualification pay; and,

WHEREAS, Ordinance 3419-2024 contained an error by way of additions or omissions to the Ordinance enacting Building Examiner Pay that failed to omit contradictory language; and,

WHEREAS, it is necessary to clarify and update the language in the personnel regulations to ensure that annual leave and holiday calculations are consistently applied for qualification pay and the effective date for step increases is clearly defined; and,

WHEREAS, amendments to adjust the step increase effective date, clarify qualification pay in annual leave and holiday calculations, and correct an error to recognition pay for Building Plans Examiner are necessary and in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Amendment of Section 23.55.020 of Kenai Municipal Code: That Kenai Municipal Code, Section 23.55.020 (b), Compensation Structure by Grade for Employees in the Classified Service, is hereby amended as follows:

23.55.020 Compensation Structure by Grade for Employees in the Classified Service.

- (a) Compensation structure by grade for employees in the classified service is hereby established in accordance with the most recent salary schedule effective upon enactment by City Council of the ordinance adopting a budget for the following fiscal year or by resolution.
- (b) On completion of the probationary period, each employee in the classified service shall be advanced one (1) step. At succeeding anniversary dates, subject to an evaluation of “Meets Expectations” or better, the employee may be advanced a step increment subject to City Manager approval effective on the first day of the payroll period following the date the increase occurs. The time period normally between Steps B to C to D to E to F is one (1) year. The time normally between Steps F to AA to BB to CC to DD to EE is two (2) years.

Section 2. Amendment of Section 23.55.030 of Kenai Municipal Code: That Kenai Municipal Code, Section 23.55.030 Qualification Pay is hereby amended as follows:

23.55.030 Qualification Pay.

New Text Underlined; [DELETED TEXT BRACKETED]

- (a) In recognition of professional development, personal time, and effort of the individual to achieve same, the following annual recognition entitlement is authorized, payable on a pro rata monthly basis.
- (b) When [T]this recognition entitlement [, EXCEPT SENIOR OFFICER PAY, INVESTIGATOR PAY, CERTIFIED MUNICIPAL CLERK PAY, PUBLIC WORKS ASSISTANT DIRECTOR PAY, AND DRIVER/OPERATOR PAY, IS NOT CONSIDERED WHEN CALCULATING] is calculated based on an employees' current range and step, it will be included in hourly rates for annual leave or holiday pay.

(1) Police Department.

- (i) Certification in accordance with State of Alaska Certification Standards as follows:

Intermediate Certification	An additional 2.25% of step A of the Police Officer range. Eligible grades are Police Officer and Police Sergeant.
Advanced Certification	An additional 3.75% of step A of the Police Officer range. Eligible grades are Police Officer, Police Sergeant, Police Lieutenant, and Police Chief.

- (ii) Recognition Pay for Qualified Senior Officers. Senior officer pay is for police officers who have completed five years of service with the City of Kenai subject to an overall evaluation rating of "Meets Expectations" or better, as follows:

An additional 5% of the employee's current range and step.

- (iii) Recognition pay for qualified field training officer personnel for officers temporarily assigned field training officer duties for eligible shifts only as follows:

Five percent (5%) increase of the employee's current range and step.

- (iv) Recognition pay for qualified "investigator" personnel for temporary assignment as an investigator when the assignment is the employee's primary assignment and the assignment has been approved by the City Manager or designee as follows:

Five percent (5%) increase of the employee's current range and step.

- (v) Recognition pay for qualified Public Safety Dispatcher personnel for employees temporarily assigned dispatcher training duties for eligible shifts only as follows:

An additional five percent (5%) of the employee's current range and step.

(2) Fire Department.

- (i) Recognition entitlement for an associate degree in fire science is four hundred eighty dollars (\$480.00) per year. Eligible grades are fire fighter, engineer, and captain.

- (ii) Recognition entitlements for EMT certification for eligible grades of fire fighter, engineer, captain, Fire Marshal, Deputy Fire Chief, and Fire Chief are as follows:

EMT/EMS Instructor	An additional one-half percent (0.5%) of step A of the Firefighter range.
--------------------	---

EMT III / Advanced Emergency Medical Technician (AEMT)

An additional two and one-quarter percent (2.25%) of Step A of the Fire Fighter range.

Paramedic	An additional five percent (5%) of the employee's current range and step (included AEMT pay).
-----------	---

- (iii) Recognition entitlements for driver/operator qualified personnel for eligible grades of fire fighter are as follows:

Driver/Operator Qualified An additional 5% of the employee's current range and step.

- (3) Water and Sewer Utility. Certification in accordance with the State of Alaska Certification Standards.

W & S II \$300/year

W & S III \$480/year

- (4) City Clerk's Office. Certification in accordance with International Institute of Municipal Clerks.

Certified Municipal Clerk An additional t[T]wo and one-half percent (2.5%) of [THE EMPLOYEE'S BASE PAY] the employee's current range and step.

- (5) Building Plans Examiner. Recognition Pay for certification in accordance with the International Code Council as a Building Plans Examiner beyond the basic requirements of the employee's position, which provides substantial cost savings or additional benefit to the City, upon recommendation by the Department Head and approval of the City Manager as follows:

An additional 2.25% [OF STEP A] of the employee's current range and step.

- (6) Public Works Assistant Director. Recognition pay for holding a license in accordance with the State of Alaska Professional Engineer (PE) license beyond the basic requirements of the employee's position, which provides substantial benefit to the City, upon recommendation by the department head and approval of the City Manager as follows:

An additional five percent (5%) of the employee's current range and step.

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 20TH DAY OF NOVEMBER, 2024.

Henry Knackstedt, Vice Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Introduced:	November 6, 2024
Enacted:	November 20, 2024
Effective:	December 20, 2024



KENAI

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MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager
Scott Bloom, City Attorney

FROM: Stephanie Randall, Human Resources Director

DATE: October 22, 2024

SUBJECT: **Ordinance No. 3442-2024 – Amending Kenai Municipal Code Title 23 Personnel Regulations**

Following the implementation of amendments made to the personnel code through Ordinance 3419-2024, a few areas need further review and clarification. The purpose of this memo is to provide background and justification for the proposed amendments to the City of Kenai's personnel code, specifically Sections 23.55.020(b) and 23.55.030(b) of the Kenai Municipal Code (KMC). These amendments ensure the equitable and consistent application of personnel regulations, improve efficiency, and make housekeeping changes to correct errors.

The following amendments to clarify and update key sections of the personnel code:

Section 1. This section amends 23.55.020(b) which sets the time for step increases to be applied. When this section was last updated, employees were paid on a monthly basis. Currently, employees are paid bi-weekly, and this amendment will update the effective date of pay increases to align with the current payroll practices of the finance department. Under the amendment, pay increases will take effect on the first day of the payroll period following the date an employee is eligible for a step increase. This will eliminate the need to manually adjust pay rates in the middle of a pay period, saving time for payroll staff and reducing the likelihood of errors.

Section 2. This section amends 23.55.030(b), which establishes qualification pay for employees in recognition of professional development, personal time, and effort for Police Department, Fire Department, Public Works, and Clerk's Office employees. The amendments to this section clarify annual leave and holiday pay calculations as they relate to recognition pay. Currently, when recognition pay is based on an employees' current range and step, it is included in the hourly rates for annual leave and holiday pay. If the recognition pay is flat amount that is the same for all employees eligible to receive the pay, annual leave and holiday pay are not included. The proposed amendment reflects the current practice and will reduce the potential for misunderstandings or disputes. The recommended change to the Certified Municipal Clerk and Building Plans Examiner qualification pay will align both of these with the other qualification pay in this section.

These amendments aim to ensure uniformity and clarify the City's compensation and classification structure, ensuring fairness, competitiveness, and alignment with industry standards.

Thank you for your consideration.





Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3443-2024**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE SECTION 14.30.030 – GENERAL PROVISIONS, TO UPDATE THE MOST RECENT VERSION OF THE “FLOOD INSURANCE STUDY”.

WHEREAS, the Council expressed its intent to participate in the National Flood Insurance Program (NFIP), via Resolution 2022-13; and,

WHEREAS, participation in the NFIP is a requirement for the City to work with the US Army Corps of Engineers to complete the City’s bluff erosion project; and,

WHEREAS, participating in the NFIP benefits affected property owners through the availability of more affordable flood insurance; and,

WHEREAS, the purpose of this ordinance is to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in flood hazard areas; and,

WHEREAS, the Federal Emergency Management Agency released a new Flood Insurance Study covering the Kenai Peninsula Borough and incorporated areas effective February 28, 2025 and it is in the best interest of the City to adopt the updated study; and,

WHEREAS, at its meeting on November 13, 2024, the Planning and Zoning Commission recommended _____.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Amendment of Section of Kenai Municipal Code Section 14.30.030: That Kenai Municipal Code, Section 14.30.030 General Provisions, Subsection (b) Basis for Establishing Flood Hazard Areas, is hereby amended as follows:

14.30.030 General Provisions.

(a) *Lands to Which This Chapter Applies.* This chapter shall apply to all flood hazard areas within the City of Kenai.

(b) *Basis for Establishing Flood Hazard Areas.* Flood hazard areas are identified as follows:

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study” applicable to the City of Kenai in its most recent adopted version ([OCTOBER 20, 2016], February 28, 2025 titled “Flood Insurance Study for the Kenai Peninsula Borough, Alaska and Incorporated Areas”) and any subsequent revisions thereto, with accompanying Flood Insurance Maps and revisions thereto. The Flood Insurance Study is on file at the City of Kenai administrative offices. The best available information for flood hazard area identification provided in this chapter will be the basis for regulation until a new FIRM is issued.

(c) *Warning and Disclaimer of Liability.* The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering

considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Kenai, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

- (d) *Noncompliance—Enforcement.* Structures and activities which are not permitted or allowed by this chapter are prohibited. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements shall be enforced by the remedies set forth in KMC Chapter [14.20](#) including any injunctive remedies allowed by law. Each day a violation continues is a separate violation.
- (e) *Abrogation and Greater Restrictions.* This chapter is not intended to repeal, abrogate, or impair any existing easements or deed restrictions. However, where this chapter is more stringent, it must be complied with.
- (f) *Interpretation.* In the interpretation and application of this chapter, all provisions are considered minimum requirements, liberally construed in favor of the City, and do not limit or repeal any other powers granted under State statutes.

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect February 28, 2025.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 20TH DAY OF NOVEMBER, 2024.

Henry Knackstedt, Vice Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Introduced:	November 6, 2024
Enacted:	November 20, 2024
Effective:	February 28, 2025



KENAI

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MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Terry Eubank, City Manager

FROM: Kevin Buettner, Planning Director

DATE: November 6, 2024

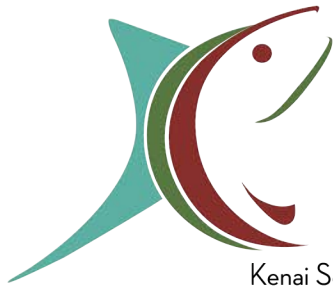
SUBJECT: **Ordinance 3443-2024** - Amending Kenai Municipal Code Section 14.30.030 – General Provisions, to Update the Most Recent Version of the “Flood Insurance Study”.

At their November 13, 2024 meeting, and in accordance with KMC 14.05.010 Duties and Powers, the Planning and Zoning Commission will review the proposed ordinance amending the KMC Section 14.30.030 – General Provisions. Areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study” are applicable to the City of Kenai. The latest Flood Insurance Study was completed in August 2024 and takes effect on February 28, 2025.

This amendment to the KMC is necessary to adopt the new Flood Insurance Study and its related hazard identification maps and to maintain participation in the National Flood Insurance Program (NFIP), which Council expressed their intent to participate in via Resolution 2022-13. Participation in the program also allows residents to purchase flood insurance at more affordable rates.

The commission may recommend council enact the ordinance, or propose council amend and enact it with modifications recommended by the commission, or to not enact the ordinance.

The commission is not making a final decision, so the commission action is not subject to appeal.



KENAI

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MEMORANDUM

TO: Mayor Gabriel and Council Members
FROM: Shellie Saner, City Clerk
DATE: October 30, 2024
SUBJECT: Liaison Nominations

Pursuant to KMC 1.90.010, “....*At the organizational meeting of Council, or as soon thereafter as practicable, the Mayor, after consultation with Council, shall nominate Council Members as a council liaison to any board, commission or committee.*”

The following individuals are being nominated pursuant to KMC 1.90.010. Your consideration is appreciated.

Council on Aging	Council Member Henry Knackstedt
Airport Commission	Council Member Phil Daniel
Harbor Commission	Council Member Sovala Kisená
Parks and Recreation Commission	Council Member Alex Douthit
Planning and Zoning Commission	Council Member Victoria Askin & Council Member Deborah Sounart
Beautification Committee	Council Member Victoria Askin & Council Member Deborah Sounart
Supervisory Sub-Committee	TBA

**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
OCTOBER 23, 2024 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
VICE CHAIR JEFF TWAIT, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai Planning & Zoning Commission was held on October 23, 2024, in City Hall Council Chambers, Kenai, AK. Vice Chair Twait called the meeting to order at approximately 7:00 p.m.

1. Pledge of Allegiance

Vice Chair Twait led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Jeff Twait, Vice Chair
Glenese Pettey
Stacie Krause

Gwen Woodard
Sonja Earsley
Diane Fikes

A quorum was present.

Absent:

Joe Halstead, Chair

Also in attendance were:

Kevin Buettner, Planning Director
Brandon McElrea, Planning Technician
Alex Douthit, City Council Liaison
Meghan Thibodeau, Deputy City Clerk

3. Approval of Agenda and Consent Agenda

Vice Chair Twait noted the following additions to the Packet:

Add Item F.1.

Public Hearing – Resolution No. PZ2024-22

- Public Comment

MOTION:

Commissioner Pettey **MOVED** to approve the agenda and consent agenda. Commissioner Woodard **SECONDED** the motion.

The items on the Consent Agenda were read into the record.

Vice Chair Twait opened the floor for public comment on consent agenda items; there being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

There being no objection; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a

Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. APPROVAL OF MINUTES

1. *Regular Meeting of September 25, 2024

Approved by the consent agenda.

C. SCHEDULED PUBLIC COMMENTS - None.

D. UNSCHEDULED PUBLIC COMMENTS - None.

E. CONSIDERATION OF PLATS - None.

F. PUBLIC HEARINGS

1. **Resolution No. PZ2024-22** – Granting a Conditional Use Permit to Operate a Crematory and Funeral Home Within the Existing Building on the Property Described as Lot 5A-1, Block 2, Valhalla Heights Subdivision Wisniewski Second Addition, Located at 5839 Kenai Spur Highway, Within the Limited Commercial (LC) Zoning District.

MOTION:

Commissioner Woodard **MOVED** to approve Resolution PZ2024-22. Commissioner Pettey **SECONDED** the motion.

Planning Technician McElrea provided an overview of the staff report as included in the packet and attached to Resolution No. PZ2024-22; he noted that the application was for a Conditional Use Permit (CUP) to continue operating a crematory and funeral home in order to expand a non-conforming use. The criteria for a CUP were reviewed; and it was reported that the application met the criteria for a CUP and City staff recommended approval subject to the following conditions:

1. Any development or use of the property shall comply with all applicable Federal, State of Alaska, and City regulations regardless of whether or not the requirements are listed as conditions for the approval of the Conditional Use Permit.
2. Upon request, the applicant or applicant's representative shall meet with City staff for an on-site inspection.

Applicant Timothy Grant Wisniewski explained the intended uses for the proposed expansion.

Vice Chair Twait opened the floor for public hearing; there being no one wishing to be heard, the public hearing period was closed.

Commissioners Pettey and Woodard spoke in support.

VOTE:

YEA: Krause, Pettey, Earsley, Woodard, Twait, Fikes

NAY: None

ABSENT: Halstead

MOTION PASSED WITHOUT OBJECTION.

Vice Chair Twait noted the 15-day appeal period.

G. UNFINISHED BUSINESS - None.

H. NEW BUSINESS - None.

I. REPORTS

1. Planning Director – Planning Director Buettner introduced himself to the Commission and thanked Planning Technician McElrea for acting as Interim Director; noted that he is looking forward to working with the City and Commission.
2. Commission Chair – No report.
3. Kenai Peninsula Borough Planning – Commissioner Fikes reported on recent actions of the Kenai Peninsula Borough Planning Commission.
4. City Council Liaison – Council Member Douthit reported on recent actions of the City Council.

J. ADDITIONAL PUBLIC COMMENT - None.**K. NEXT MEETING ATTENDANCE NOTIFICATION**

1. Next Meeting: November 13, 2024

Commissioner Krause noted she would be absent for the next two meetings.

L. COMMISSION COMMENTS AND QUESTIONS

Commissioners welcomed Director Buettner.

M. PENDING ITEMS – None.**N. ADJOURNMENT****O. INFORMATIONAL ITEMS – None.**

There being no further business before the Planning & Zoning Commission, the meeting was adjourned at 7:20 p.m.

I certify the above represents accurate minutes of the Planning & Zoning Commission meeting of October 23, 2024.

Meghan Thibodeau
Deputy City Clerk



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MEMORANDUM

TO: Mayor Gabriel and Council Members
FROM: Shellie Saner, City Clerk
DATE: October 28, 2024
SUBJECT: Report to Council – Destruction of Records

In accordance with the City of Kenai Public Records Management Schedule and Record Retention Policy, approved and adopted under Resolution No. 2017-22, the City Clerk's Office disposed of certain City Records on October 25, 2024, which were subject to disposal under the Schedule.

Clerk's Office	9 boxes
Finance Department	30 boxes
Fire Department	5 boxes
Human Resources	4 boxes
Lands	1 box
Legal Department	4 boxes
Public Works	1 box

The records were authorized for destruction by the respective department managers and the city attorney, as per KMC 10.30. A complete list of the above referenced obsolete records is available for review in the Clerk's Office.