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|--|---------------------------------|
| Date of Action: 1.26.15 | |
| Approved <input checked="" type="checkbox"/> | Denied <input type="checkbox"/> |
| By: <i>Tomita</i> | |

CITY COUNCIL ACTION MEMORANDUM

AM No. 15-11: Direction to Administration to prepare an RFP for General Legal Services.

Originator: Kristie Smithers, City Clerk and April Dwyer, Purchasing and Contracting Officer
 Date: 1/6/2015 *AS* *AD* Agenda of: 1/26/2015

| Route to: | Department Head | Signature | Date |
|-----------|---|--------------------|-----------|
| X | Chief of Police | | |
| X | Public Works Director | <i>[Signature]</i> | 1/14/15 |
| X | Recreation & Cultural Services Director | <i>[Signature]</i> | 1/20/15 |
| X | Finance Director | <i>[Signature]</i> | 1-14-2015 |
| X | Deputy Administrator | <i>[Signature]</i> | 1/14/2015 |
| X | City Clerk | <i>[Signature]</i> | 1.14.15 |

Reviewed by Mayor Bert L. Cottle: *[Signature]* 01:16:2015

Fiscal Impact: yes or no **Funds Available:** yes or no

Attachments: Draft RFP (28 pages)

Summary Statement. On July 31, 2015, the current general legal services contract with Denali Law Group will expire. The last time the City Council went out for RFP for attorney services was in 2009. We are fortunate that our Purchasing and Contracting Officer, April Dwyer, will be preparing the RFP and all related items in regard to the contract bidding and award.

RFP Review. In the past, an RFP Evaluation Committee consisting of five members scored all of the responsive firms using the scoring criteria outlined in the RFP. The top three firms were then forwarded to the Council for an interview.

The RFP deadline is scheduled for April 1st, therefore the evaluation review time will take place from April 2nd – 17th, with the results of the Committee’s top three firms announced on April 22nd.

Interviews. Keeping this timeframe in mind, a Special City Council meeting will need to be set between April 28th and May 15th. In the past, the interviews were scheduled during the normal work day to begin at 8:30 or 9 a.m. The format for the special meeting follows:

- 8:30 a.m. Council to Organize Interview Process
- 9:15 a.m. to 9:45 a.m.** **Firm Interview**
- 9:45 a.m. to 10 a.m. Council Review/Break
- 10 a.m. to 10:30 a.m.** **Firm Interview**
- 10:30 a.m. to 10:45 a.m. Council Review/Break

| | |
|--------------------------|--|
| 10:45 a.m. to 11:15 p.m. | Firm Interview |
| 11:15 p.m. to 11:30 p.m. | Council Review/Break |
| 11:30 p.m. to ? | Executive Session to Select Attorney with lunch provided; last time the meeting adjourned at approximately 1 p.m. |

Interview Questions. Each Council Member will prepare at least one question to ask each firm. Council may wish to discuss the questions at a prior meeting or prior to the first interview. A sample of the interview process is shown below:

- Firm to give a brief introduction; usually no more than 3-minutes.
- At least one question is asked by each Council Member; each Council Member asks the same question and the time limit to the response is set depending on the question asked. Previously the question and answer period has been about 20-minutes.
- Firm gives closing remarks; approximately five-minutes.
- Council Members score the firm using the score sheet, provided by purchasing.

Selection. After interviews are complete, the Council will then enter into Executive Session to discuss the firms and make their selection. A motion will be made after the Council exits Executive Session to make the final selection. An AM will then be brought forward awarding the contract.

Recommendation. Direct Administration to distribute an RFP for General Legal Services. Appoint the Deputy Administrator, Finance Director, Public Works Director, City Clerk, and Council Member O'Barr as the RFP Review Committee. And, confirm the date and time of the interviews by the City Council to be determined at a later time.

CITY OF WASILLA

•Purchasing•

290 East Herning Avenue • Wasilla • Alaska • 99654-7091

• Telephone 907-373-9047 • Fax 907-373-9046 •



REQUEST FOR PROPOSAL

No. 0302-0-2015/AD

General Counsel Legal Services

RELEASE DATE

March 2, 2015

SUBMISSION DEADLINE

April 01, 2015 @ 4:00 pm

City Hall, Purchasing Department

A company or individual that submits a bid MUST be a recognized planholder by obtaining bid documents through the City's website www.cityofwasilla.com/purchasing or directly from the City of Wasilla in electronic format or hard copy.

Failure to be a recognized planholder will be cause for the bid to be deemed non-responsive.

For additional information, please contact:

April Dwyer, Purchasing Officer

(907) 373-9047

RFP 0302-0-2015/AD

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**See Section 8, for instructions on submitting proposals.
Use this page as the first page of the proposal.
See Section 11, Submission Checklist.**

Company Name _____ Contact Person _____

Address _____ City _____ State _____ Zip _____

Telephone (____) _____ Fax (____) _____ Federal Tax ID No. _____

E-Mail Address: _____

I have read, understand, and agree to all terms and conditions herein. Date _____

Signed _____ Print Name & Title _____

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Attachment A

Certification of indemnification and compliance with terms and condition of RFP

Attachment B

Reference Questionnaire

Attachment C

Contract for Professional Services

A Request for Proposals process is different from an Invitation to Bid. The City expects Proposers to propose creative, competitive solutions to the agency's stated problem or need, as specified below. The City reserves the right to limit the Scope of Services prior to award, if deemed in the best interest of the City of Wasilla.

1. OVERVIEW OF PROJECT

The City of Wasilla (hereinafter referred to as the "City") is seeking proposals for general counsel legal services. It is the intention of the City through this solicitation to enter into a contract with a general counsel that will serve the Mayor, City Council and City Staff in various capacities. The City reserves the right to enter into contracts with attorneys other than the general counsel should it be deemed in its best interest. This Request for Proposal (RFP) for general counsel legal services is restricted to the City only and proposals with respect to other agencies or projects shall not be submitted. Proposals are invited from any State of Alaska licensed attorney-at-law or law firm. Firms must be qualified to represent the City in all State of Alaska Courts, U.S. District Court, and before the Ninth Circuit Court of Appeals. This RFP is subject to local bidder preference per Wasilla Municipal Code 5.08.190.

2. ACRONYMS/DEFINITIONS

For the purposes of this RFP, the following acronyms/definitions will be used:

| | |
|-----------------------------|---|
| <i>AAC</i> | Alaska Administrative Code |
| <i>City</i> | The City of Wasilla and any department identified herein. |
| <i>City Staff</i> | Any City of Wasilla department head or their designee |
| <i>Contractor</i> | The organization/individual that is awarded and has an approved contract with the City of Wasilla for the services identified in this RFP. |
| <i>Department</i> | Any City of Wasilla department including the Office of the City Clerk, Finance, Public Works, Wasilla Police Department, etc. |
| <i>Evaluation Committee</i> | An independent committee comprised of a majority of City officers or employees established to evaluate and score proposals submitted in response to the RFP pursuant to WMC 5.08.120. |
| <i>Proposer/Vendor</i> | The company submitting a proposal in response to this RFP. |
| <i>May</i> | Indicates something that is not mandatory but permissible. |
| <i>RFP</i> | Request for Proposal - a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection under WMC 5.08.120. |
| <i>Shall/Must</i> | Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive. |

Should

Indicates something that is recommended but not mandatory. If the proposer fails to provide recommended information, the City may, at its sole option, ask the proposer to provide the information or evaluate the proposal without the information.

WMC

Wasilla Municipal Code

3. SCOPE OF SERVICES

It is the intention of the City of Wasilla to enter into an agreement with a qualified law firm to provide general counsel legal services on behalf of the City at a fixed hourly rate. The qualified attorney or firm will provide contract legal services to the City of Wasilla for all regular council meetings and any special meetings deemed necessary by the Mayor and/or City Council. The FY 2015 budgeted amount for legal services for the City of Wasilla was \$84,200.

- 3.1. SERVICES TO BE PROVIDED - The legal services will include, but not be limited to, the following:
 - 3.1.1. Provide legal counsel per WMC 2.24 for the City Council, Mayor and the City Staff on issues that routinely come up in normal day to day operation of the City. The Mayor and/or City Council may find that, from time to time, there exist special circumstances that require outside legal counsel.
 - 3.1.2. Prepare legal documents such as deeds, easements, ordinances, resolutions and legal opinions as needed. Provide limited representation in court, negotiate on the City's behalf and handle other legal matters that may arise.
 - 3.1.3. Be reasonably accessible for consultation by the City Council, Mayor and the City Staff.
 - 3.1.4. To draft opinion letters regarding, among other subjects, the interpretation of the City code, state and federal laws, and policies.
 - 3.1.5. To perform other such duties as may be prescribed for the Firm by ordinance or by direction of the Mayor and/or City Council.
 - 3.1.6. The Firm must work effectively with the Mayor, City Council, and City Staff, and also with other public agencies with which the City has legal relations.
 - 3.1.7. The Firm will be required to assist with all appeals as provided per Wasilla Municipal Code.
 - 3.1.8. The Firm may be requested to attend at least two meetings per month.
- 3.2. MINIMUM QUALIFICATIONS -- The minimum qualifications required to respond to this RFP are as follows:
 - 3.2.1. The Firm must be a member in good standing of the State of Alaska Bar Association.
 - 3.2.2. The Firm must have at least five years professional experience as legal counsel for an entity such as a city, municipality, borough or state government.
 - 3.2.3. The Firm must be experienced and proficient in legal matters affecting the City, to include without limitation, federal and state constitutional law, federal and state non-constitutional law, Alaska Statute Title 29, Matanuska-Susitna Borough Code, and Wasilla Municipal Code.

4. **STATEMENT OF QUALIFICATIONS (SOQ) REQUIREMENTS**

To achieve a uniform review process and obtain the maximum degree of comparability, the SOQ submitted in response to this RFP must be no more than twenty (20) pages in length (excluding letter of transmittal, resumes, title page(s), index/table of contents, attachments, dividers or other forms, if required). Please provide the name, address, phone number, fax number, website URL for your firm and any other firm or firms that you would team with on this matter, together with the name, address, phone, fax and email for the person whom the Purchasing Officer should contact in regard to the RFP. If you propose to team with another firm, please provide the same information requested in this Statement for that firm. Please detail each of the following points in your Proposal:

4.1. Table of Contents (clearly identify the materials by section and page number).

4.2. Letter of Transmittal (Limited to two (2) pages).

Briefly state your firm's understanding of the services to be performed and make a positive commitment to provide the services as specified.

Give the name(s) of the person(s) who are authorized to make representations for your firm, their titles, address, and telephone numbers.

Include the information requested in Section 4.3.5 and Section 5.

The letter must be signed by a corporate officer or other individual who has the authority to bind the firm.

4.3. Statement of Qualifications which shall, at a minimum address the following areas:

4.3.1. **Firm Experience:** The firm's demonstrated experience, abilities, and past performance in handling municipal matters – be specific. Provide detailed professional and educational qualifications of key staff. Include quality, depth and range of experience(s) and expertise with representation of a small municipal government. Please list any other information that relates directly to the firm's ability to perform the requested services. In particular, the City is interested in the firm's caseload over the last 10 years in the following areas of law: Municipal zoning, Police Liability, Ordinance prosecution, Land use appeals, Civil rights, Premises liability, Public employment labor law, Condemnation, Pension and tax matters, Ordinance drafting, and Contracts.

4.3.2. **Primary Attorney:** Provide detailed professional and educational qualifications of the primary attorney proposed for the City. Include quality, depth and range of experience(s) and expertise with representation of a small municipal government including the following areas of law: Municipal zoning, Police Liability, Ordinance prosecution, Land use appeals, Civil rights, Premises liability, Public employment labor law, Condemnation, Pension and tax matters, Ordinance drafting and, Contracts.

4.3.3. **Legal Approach:** Describe the organizational structure of the firm and the proposed method of performing the defined services. Such description should include, at a minimum, identification of principal counsel, supervising counsel and staff to be assigned to particular matters, identification of available administrative resources, and the general workflow and means of communication with the City.

4.3.4. **Reference:** The names and current telephone numbers of five (5) Alaskan client references who are familiar with the firm's experience and the experience of the primary attorney in the areas described in Section 3. See Attachment B for instructions and the required form.

4.3.5. **Conflicts:** A list of all matters and/or cases where the firm currently represents an individual or entity with interests adverse to the City; include in the letter of transmittal.

5. FIRM BACKGROUND AND REFERENCES

- 5.1. PRIMARY FIRM INFORMATION - Firms must provide a company profile. Information shall be provided in the letter of transmittal and include the following:
- 5.1.1. Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation. An out-of-state or out-of-City firm must become duly qualified to do business in the City by acquiring a City of Wasilla business license and other licenses as required by the State of Alaska.
 - 5.1.2. Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the firm or in which the firm has been judged guilty or liable. **This is a mandatory disclosure.**
 - 5.1.3. Location(s) of the company offices and location of the office servicing any City of Wasilla account(s).
 - 5.1.4. Number of employees both locally and nationally.
 - 5.1.5. Location(s) from which employees will be assigned.
 - 5.1.6. Name, address and telephone number of the firm's point of contact for a contract resulting from this RFP.
 - 5.1.7. Company background/history and why firm is qualified to provide the services described in this RFP.
 - 5.1.8. Length of time firm has been providing services described in this RFP to the public and/or private sector. Please provide a brief description.
 - 5.1.9. Has the firm ever been engaged under contract by any State or Municipal agency located within the State of Alaska? If "Yes," specify when, for what duties, and for which agency.
 - 5.1.10. Is the firm or any of the firm's employees employed by the City, any of its political subdivisions or by any other government? If "Yes," is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?
 - 5.1.11. Has the firm ever been engaged under contract with a union? If "Yes," specify when, for what duties, and for which union.
 - 5.1.12. Resumes for key staff to be responsible for performance of any contract resulting from this RFP.
- 5.2. REFERENCES - Firms shall provide a minimum of five (5) references from similar clients performed for private, state and/or large local government clients within the last three years. Firms are required to submit Attachment B, Reference Form to the business references they list. The business references must submit the Reference Form directly to the Purchasing Officer. It is the firm's responsibility to ensure that the completed forms are received by the Purchasing Officer on or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, will

adversely affect the firm's score in the evaluation process. The City may contact any or all business references for validation of information submitted.

5.3. INDEPENDENT COUNSEL INFORMATION

5.3.1. Does this proposal include the use of independent counsel? If yes, firm must:

5.3.1.1. Identify specific independent counsel to be utilized and the specific requirements of this RFP for which each proposed independent counselor will perform services.

5.3.1.2. Provide the same information for any proposed independent counsel as requested in the Primary Firm Information section.

5.3.1.3. References as specified above must be provided for any proposed independent counsel.

5.3.1.4. The City requires that the awarded firm provide proof of payment to any independent counsel used for this project. Proposals shall include a plan by which the City will be notified of such payments.

6. COST

SEALED STATEMENT –The sealed cost fee statement shall contain all pricing information relative to the services as described in this RFP. The City is not responsible for expenses incurred in preparing and submitting the technical proposal or the sealed dollar cost fee proposal. Such costs should not be included in the proposal.

6.1. Proposals will state the following cost information:

6.1.1. An hourly cost for services to be provided for each task of the contract.

6.1.2. Travel time costs including, cost per hour for travel, time to travel to one meeting located at 290 E. Herning Avenue, Wasilla, Alaska; and total annual cost to the City for travel time to attend 24 meetings per year at 290 E. Herning Avenue, Wasilla, Alaska.

7. PAYMENT

7.1. Payment for the contracted service will be within 30 days upon receipt of invoice and the using department's approval.

7.2. Payment tied to an hourly rate or on an "as needed basis." The City generally pays for services billed on a monthly basis, upon receipt of an invoice and using agency approval.

7.3. Firms may propose an alternative payment option; alternative payment options must be listed on Attachment A of the RFP. Alternative payment options will be considered if deemed in the best interest of the City, project or service solicited herein. The City does not issue payment prior to receipt of goods or services.

8. SUBMITTAL INSTRUCTIONS

8.1. In lieu of a pre-proposal conference, the City will accept questions and/or comments in writing, received either by mail, facsimile or e-mail regarding this RFP as follows:

8.1.1. Questions must reference the identifying RFP number and be addressed to the City of Wasilla, Attn: Purchasing Officer, 290 E. Herning Avenue, Wasilla, AK 99654 or emailed to: adwyer@ci.wasilla.ak.us. The deadline for submitting questions is March 16, 2015, at 4:00 p.m., Alaska Standard Time. All questions and/or comments will be addressed in writing and responses mailed or emailed to prospective firms on or about March 20, 2015. Please provide company name, address, phone number, email address and contact person when submitting questions.

8.2. RFP Timeline

| Task | Date/Time |
|---|--------------------------------------|
| RFP Release | March 2, 2015 |
| Last day for written questions | March 16, 2015 @ 4:00 p.m. |
| Response to all written questions | March 20, 2015 @ 4:00 p.m. |
| Deadline for submission | April 1, 2015 @ 4:00 p.m. |
| Evaluation period | April 2, 2015 – April 17, 2015 |
| Notice to finalist(s) | April 22, 2015 |
| Interview(s) (if required) | April 28, 2015 – May 15, 2015 |
| Contract Negotiation (if necessary) | May 18, 2015 – May 22, 2015 |
| Selection/Announcement of Successful Firm | June 8, 2015 |
| Presentation to City Council for Approval | June 22, 2014 |
| Commence Work | August 1, 2015 through July 31, 2018 |
| <i>Note: These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective proposers.</i> | |

NOTE: These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective firms.

- 8.3. SUBMITTALS - Proposers shall submit one (1) original proposal marked “MASTER” and five (5) identical copies to:

City of Wasilla,
 Attn: Purchasing Officer
 290 E. Herning Avenue
 Wasilla, AK 99654-7091

Proposals shall be clearly labeled in a sealed envelope or box as follows:

REQUEST FOR PROPOSAL NO.: 0302-0-2015/AD
PROPOSAL SUBMISSION DEADLINE: April 1, 2015 at 4:00 p.m.
 FOR: General Counsel Legal Services

- 8.4. RECEIPT - Proposals must be received at the above-referenced address no later than 4:00 p.m., Alaska Daylight Savings Time. Proposals that do not arrive by proposal opening time and date WILL NOT BE ACCEPTED. Proposers may submit their proposal any time prior to the above stated deadline.
- 8.5. ERRORS - The City will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared. Facsimile, e-mail or telephone proposals will NOT be considered; however, at the City’s discretion, a proposal may be submitted all or in part on electronic media, as requested within the RFP document. Proposals may be modified by facsimile, e-mail or written notice, provided such notice is received prior to the opening of the proposals. Proposers may transmit proposal modifications by facsimile or

- email at their own risk. The City will not be responsible for any error or failure in facsimile or email transmission or receipt.
- 8.6. DISCREPANCIES - If discrepancies are found between two or more copies of the proposal, the master copy will provide the basis for resolving such discrepancies. If one copy of the proposal is not clearly marked "MASTER," the City may reject the proposal. However, the City may at its sole option, select one copy to be used as the master.
 - 8.7. FORMAT - For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined within this RFP, and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. Exceptions to this will be considered during the evaluation process.
 - 8.8. DOCUMENTATION - If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.
 - 8.9. FORMAT - Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
 - 8.10. DETAILS - Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.
 - 8.11. SIGNATURE - The proposal must be signed by the individual(s) legally authorized to bind the company.
 - 8.12. CITY CONTACT - For purposes of addressing questions concerning this RFP, the sole contact will be the Purchasing Officer. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP will not answer questions or otherwise discuss the contents of this RFP with any prospective companies or their representatives. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
 - 8.13. REVIEW - Proposers who believe proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Purchasing Officer. To be considered, a request for review must be received no later than the deadline for submission of questions.
 - 8.14. RESPONSE - The Purchasing Officer shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the RFP.
 - 8.15. RESPONSE DETAIL - Administrative review of technical or contractual requirements shall include the reason for the request, supported by factual information, and any proposed changes to the requirements.
 - 8.16. CHANGES - If a proposer changes any material RFP language, proposer's response may be deemed non-responsive.
 - 8.17. LICENSING - Proposers are cautioned that some services may contain licensing requirement(s). Proposers shall be proactive in verification of these requirements prior to proposal submittal. Proposals, which do not contain evidence of the proposer's possession of the requisite licensure, may be deemed non-responsive.

- 8.18. SUBMITTAL REQUIREMENT - Proposals shall be submitted in two (2) distinct parts - the narrative/technical proposal and the cost proposal. **The narrative/technical proposal must not include cost and pricing information.** While Technical and Cost proposals may be shipped together (i.e., in the same box/envelope), each proposal, inclusive of the master and requisite number of copies, must be bound or packaged separately.

9. PROPOSAL EVALUATION AND AWARD PROCESS

- 9.1. Proposals shall be consistently evaluated and scored on a 100 point scale in accordance with WMC 5.08.120 based upon the following criteria listed:
- 9.1.1. **Firm Experience – 10 points**
Identify the number of years of direct experience with a government entity, caseload history and experience as described in Section 4.3.1.
 - 9.1.2. **Primary Attorney – 25 points**
Identify the primary attorney and the number of years they have provided legal counsel for a government entity and include their caseload history and experience as described in Section 4.3.2.
 - 9.1.3. **Legal Approach – 10 points**
The Firm should highlight the firm’s strengths and the strengths of the primary attorney. The firm should suggest innovations that can be applied to the services to help make government more efficient. Firms should also state their philosophy in representing government, and their view of a proper attorney/client relationship when representing a governmental body and include the organizational structure as described in Section 4.3.3.
 - 9.1.4. **Communication – 30 points**
This will be based upon the written proposal of each firm and a verbal interview of the top three firms, if interviews are conducted.
 - 9.1.5. **Fee Structure – 15 points**
Hourly fee(s), travel costs, staff fees, etc. The more reasonable the cost, the higher the number of points assigned, as stated in Section 6.1.
 - 9.1.6. **Reference Questionnaire Responses – 10 points**
Points will be awarded for each reference questionnaire received up to a maximum of five responses. See Attachment B for instructions and the required form.

Note: Conflict of interest, financial stability and response from Section 5.1.2. will be scored on a pass/fail basis.

Proposals shall be kept confidential until a contract is awarded.

- 9.2. The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any firm to clarify any response; contact any current users of a firm’s services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the City of Wasilla WMC 5.08.020 and 5.08.120.
- 9.3. Each firm must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or

investigations pending which involves the firm or in which the firm has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The City reserves the right to reject any proposal based upon the firm's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures per WMC 5.08.160.

- 9.4. Clarification may, at the City's sole option, be conducted with firms who submit proposals determined to be acceptable and competitive per WMC 5.08.120. Firms shall be accorded fair and equal treatment with respect to any opportunity. There shall be no disclosure of any information derived from proposals submitted by competing firms.
- 9.5. A Notification of Intent to Award shall be issued in accordance with WMC 5.08.120 and 5.08.160. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Mayor and/or City Council. Negotiations shall be confidential and not subject to disclosure to competing firms unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the City, upon written notice to all firms, may negotiate a contract with the next highest scoring firm or withdraw the RFP.
- 9.6. Any contract for more than \$30,000 resulting from this RFP shall not be effective unless and until approved by the City Council (WMC 5.08.070).

10. TERMS AND CONDITIONS

- 10.1. This contract shall remain in effect for an initial time period of three (3) years, after which it may then be renewed for a total of two (2) one (1) year renewals. At the city's option, such renewals may vary in length of time, provided that this does not conflict with and/or exceed the original term of the contract.
- 10.2. All contract periods and/or any renewals shall be based upon:
 - 10.2.1. Satisfactory service and performance having been provided by the contractor in accordance to this scope of services.
 - 10.2.2. Being mutually agreed to in writing within two months prior to the expiration date of the contract.
- 10.3. City Termination for Non-appropriation. The continuation of this Contract beyond the current year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Wasilla City Council and/or federal sources. The City may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from City, State, and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- 10.4. Performance of the proposer may be rated semi-annually following contract award and then annually for the term of the contact by the using City department in six categories: customer service; timeliness; quality; technology; flexibility; and pricing. The proposer will be notified in writing of its rating.
- 10.5. In accordance with WMC 5.08.190, this request for proposal is subject to the local proposer preference authorized by WMC 5.08.190, thus the city will reduce the proposal proposed by each local proposer by two and on-half (2-1/2) percent before evaluating bid or proposal prices for purposes of contract award. The reduction authorized is applied only for bid or proposal evaluation, and is not applied to the awarded contract price. A local proposer is a person who holds current Alaska, Matanuska-Susitna Borough, and City of Wasilla business licenses, submits a proposal under the name which appears on its current Alaska, Matanuska-

Susitna Borough and City of Wasilla business licenses, and has maintained a place of business within the city staffed by the proposer or an employee of the proposer for a period of at least six months immediately preceding the date of submission of the proposal.

- 10.6. This procurement is being conducted in accordance with WMC Title 5.08.
- 10.7. The City reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the City to do so.

The City reserves the right to waive informalities and minor irregularities in proposals received.

- 10.8. The City reserves the right to reject any or all proposals received prior to contract award (WMC 5.08.170).
- 10.9. The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Wasilla after all factors have been evaluated (WMC 5.08.160).
- 10.10. Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Officer's attention as soon as possible so that corrective addenda may be furnished to prospective proposers.
- 10.11. Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the proposer's standard contract language. The omission of these documents renders a proposal non-responsive.
- 10.12. Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 10.13. Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 10.14. Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered per WMC 5.08.120(D). Proposers transmit proposal withdrawals by facsimile at their own risk. The City will not be responsible for any error or failure in facsimile transmission or receipt.
- 10.15. The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other company or prospective company. Collaboration among competing companies about potential proposals submitted pursuant to this RFP is prohibited and may disqualify the proposer.
- 10.16. No attempt may be made at any time to induce any company or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 10.17. Prices offered by a Proposer in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded company agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded company for implementation of their proposal.
- 10.18. The City is not liable for any costs incurred by proposers prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the

- company in responding to the RFP, are entirely the responsibility of the company, and shall not be reimbursed in any manner by the City.
- 10.19. All proposals submitted become the property of the City and will be returned only at the City's option and at the company's request and expense. The master copy of each proposal shall be retained for official files and will become public record after the award of a contract. If a company wishes individual pages which contain actual business proprietary information to be held confidential, each page shall be marked and an explanation furnished of its proprietary nature. In addition to marking individual pages, the proposal cover will also be annotated with the words "THIS PROPOSAL CONTAINS PROPRIETARY INFORMATION." Confidential and Proprietary information is not meant to include any information which, at the time of disclosure, is generally known by the public and/or competitors.
 - 10.20. A proposal submitted in response to this RFP must identify any utilization of independent counsel, and outline the contractual relationship between the awarded company and each independent counsel. An official of each proposed independent counsel must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the independent counsel has read and will agree to abide by the awarded company's obligations.
 - 10.21. The awarded firm will be the sole point of contract responsibility. The City will look solely to the awarded company for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded company shall not be relieved for the non-performance of any or all independent counsel.
 - 10.22. The awarded firm must maintain, for the duration of its contract, insurance coverage including \$100,000 Employers Liability and Workers Compensation, Commercial Automobile Liability (\$1,000,000 per occurrence and aggregate). The firm shall have a minimum of \$1,000,000 (per claim) coverage in errors and omissions insurance or professional liability insurance. The City shall be named additional insured by separate endorsement. Carrier shall provide notice of any change in or limitation of coverage or of cancellation no less than 30 days prior to the effective date. Proof of worker's compensation coverage pursuant to statutory requirements and professional liability coverage (\$1,000,000) shall also be provided. All coverages shall be provided by a carrier authorized to transact business in Alaska and shall be primary. Work on the contract shall not begin until after the awarded company has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.
 - 10.23. Notwithstanding any other requirement of this section, the City reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the above-stated Insurance Schedule. It will be the awarded company's responsibility to recommend to the City alternative methods of insuring the contract. Any alternatives proposed by a company should be accompanied by a detailed explanation regarding the company's inability to obtain insurance coverage as described above. The City shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.
 - 10.24. Each firm must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting a proposal in response to this RFP, proposers affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same,

- in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a company's proposal. An award will not be made where a conflict of interest exists. The City will determine whether a conflict of interest exists and whether it may reflect negatively on the City's selection of a company. The City reserves the right to disqualify any company on the grounds of actual or apparent conflict of interest.
- 10.25. The City will not be liable for Federal, State, or Local excise taxes.
 - 10.26. Execution of Attachment A of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment C contract form and all terms and conditions therein, except such terms and conditions that the company expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.
 - 10.27. The City reserves the right to negotiate final contract terms with any company selected WMC 5.08.120(E). The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded company's proposal, together with any modifications and clarifications thereto that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded company's proposal, and the awarded company's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
 - 10.28. Firm understands and acknowledges that the representations above are material and important, and will be relied on by the City in evaluation of the proposal. Any company misrepresentation shall be treated as fraudulent concealment from the City of the true facts relating to the proposal.
 - 10.29. No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of the City.
 - 10.30. The City Attorney will not render any type of legal opinion regarding this transaction.
 - 10.31. Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. §1352.
 - 10.32. Supplies, services or equipment will not be purchased from companies that are known to be in violation of the Wasilla Municipal code without prior written approval from the Mayor per Administrative Policy No. 02-04.
 - 10.33. The City reserves the right to conduct a background inquiry of each company that may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories and reputation in the business community. By submitting a proposal to the City, the company consents to such an inquiry and agrees to make available to the City such books and records the City deems necessary to conduct the inquiry.

11. SUBMISSION CHECKLIST

Proposer should ensure that each item is addressed as per instructions in this RFP. This checklist is provided for company’s convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and not considered for contract award. Documents to be submitted with proposal:

| DOCUMENT | MASTER (One Copy – Sealed Separately) | NARRATIVE/TECHNICAL (Five Copies – Sealed Separately) |
|---|--|--|
| Page 2 of RFP – Completed and Signed | | |
| Attachment A – Completed and Signed | | |
| SOQ Narrative – Requested Information in Section 4 | | |
| Independent Counsel Information (if applicable) | | |
| Verification of Licensure | | |
| Certificate of Insurance | | |
| Cost Statement – Completed and Signed | | DO NOT INCLUDE |
| References for Primary Firm and Independent Counsel (if applicable) | Submitted Directly From References | Submitted Directly From References |

Attachment A

CERTIFICATION OF INDEMNIFICATION AND COMPLIANCE WITH TERMS AND CONDITIONS OF RFP

Submitted proposals are confidential until the contract is awarded and only specific parts of the proposal may be labeled a "trade secret." In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

This proposal contains proprietary information Yes _____ No _____

By signing below, I understand it is my responsibility as the company to act in protection of the labeled information and agree to defend and indemnify the City for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the City shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance and should be detailed below. Any exceptions **MUST** be documented.

YES _____ NO _____ SIGNATURE _____
Company Officer

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

EXCEPTION SUMMARY FORM

| RFP SECTION NUMBER | RFP PAGE NUMBER | PROPRIETARY INFORMATION AND/OR EXCEPTION (PROVIDE A DETAILED EXPLANATION) |
|--------------------|-----------------|---|
| | | |
| | | |
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| | | |

Attachment B

REFERENCE QUESTIONNAIRE

The City of Wasilla, as a part of the RFP process, requires proposing companies to submit a maximum of five (5) business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing company is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the City of Wasilla, Purchasing Officer by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of the response.



CITY OF WASILLA

• Purchasing Department •
290 East Herning Avenue • Wasilla • Alaska • 99654-7091
• Telephone 907-373-9047 • Fax 907-373-9046 •

RFP # 0302-0-2015/AD GENERAL COUNSEL LEGAL SERVICES REFERENCE QUESTIONNAIRE FOR:

(Name of proposer requesting reference)

This form is being submitted to you for completion as a business reference for the proposer listed above. This form is to be returned to the City of Wasilla, Purchasing Officer, via facsimile at (907) 373-9046 or e-mail adwyer@ci.wasilla.ak.us, no later than April 1, 2015 at 4:00 p.m., and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the City of Wasilla Purchasing Officer by telephone (907) 373-9047 or by e-mailing adwyer@ci.wasilla.ak.us. When contacting us, please be sure to include the RFP number listed at the top of this page.

CONFIDENTIAL INFORMATION WHEN COMPLETED

| | |
|---------------------------------|--|
| Company providing reference: | |
| Contact name and title/position | |
| Contact telephone number | |
| Contact e-mail address | |

****Please provide detailed explanations and examples for each score given****

1. In what capacity have you worked with this firm in the past?
COMMENTS:

2. How would you rate this firm's knowledge and expertise?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS (provide an explanation for the rating):
3. How would you rate the firm's flexibility relative to changes in the project scope and timelines?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS (provide an explanation for the rating):
4. How would you rate the dynamics/interaction between the firm and your staff?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS (provide an explanation for the rating):
5. What is your level of satisfaction with hard-copy materials produced by the firm?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS (provide an explanation for the rating):

6. Who were the company's principal representatives involved in your project and how would you rate them individually? Comment on the skills, knowledge, behaviors or other factors on which you based the rating.
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating: _____

Name: _____ Rating: _____

COMMENTS (provide an explanation for the rating):

7. How satisfied are you with the services provided by the proposer?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS (provide an explanation for the rating):

8. With which aspect(s) of this proposer's services are you most satisfied?

9. With which aspect(s) of this proposer's services are you least satisfied?

10. Would you recommend this proposer's services to your organization again?

Attachment C

CONTRACT FOR PROFESSIONAL SERVICES

Between

City of Wasilla
290 E. Herning Avenue
Wasilla, AK 99654
Ph: (907) 373-9047 Fax: (907) 373-9046

And

WHEREAS, WMC 5.08.030 authorizes elective the mayor or the mayor's designee to engage, subject to the approval of the City Council, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor are both necessary and in the best interests of the City of Wasilla;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Wasilla City Council.
2. DEFINITIONS. "City" means the City of Wasilla and any city agency identified herein. "Independent Contractor" means a person or entity that performs services and/or provides goods for the City under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. CONTRACT TERM. This Contract shall be effective from August 1, 2015 through July 31, 2018, unless sooner terminated by either party as specified in paragraph (10). This Contract may be extended for two (2) additional one (1) year terms, upon the written agreement of both parties.
4. NOTICE. Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or email with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any City specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:
ATTACHMENT A: City Request for Proposal 0302-0-2015/AD General Legal Counsel Services
ATTACHMENT B: City of Wasilla City Council Action Memorandum #
ATTACHMENT C: Technical and Cost Proposal
6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) in accordance with this RFP's scope of work at a total maximum cost per month of \$ _____. The City does not agree to reimburse Contractor for any other expenses. Any intervening end to appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.
7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.
8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the City is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the City no later than July 15 of the same year. A billing submitted after July 15, which forces the City to process the billing as a stale claim, will subject the Contractor to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the City of processing the billing as a stale claim and that this amount will be deducted from the payment due to the Contractor.

9. INSPECTION & AUDIT.

- a. Books and Records. Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.
- b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by a City audit representative or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.
- c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the City, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

- a. City Termination for Non-appropriation. The continuation of this Contract beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the City Council, State Legislature and/or federal sources. The City may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from City, State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- b. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
 - i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the City materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
 - v. If it is found by the City that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City of Wasilla with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - vi. If it is found by the City that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- c. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- d. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
 - i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;

- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Contractor shall preserve, protect and promptly deliver into City possession all proprietary information in accordance with paragraph (21).
11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$165 per hour for City employed attorneys. The City may set off consideration against any unpaid obligation of Contractor to any City agency.
12. LIMITED LIABILITY. The City will not waive and intends to assert available liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any City breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the City's right to participate, the City from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.
15. INDEPENDENT CONTRACTOR. Contractor is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the City shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the City; (4) participation or contributions by either Contractor or the City to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the City. Contractor shall indemnify and hold City harmless from, and defend City against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither; Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the City. The City and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such.
16. INSURANCE SCHEDULE. Unless expressly waived in writing by the City, Contractor, as an independent contractor and not an employee of the City, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The City shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:
- a. Contractor has provided the required evidence of insurance to the Contracting Agency of the City, and
 - b. The City has approved the insurance policies provided by the Contractor.
 - c. Prior approval of the insurance policies by the City shall be a condition precedent to any payment of consideration under this Contract and the City's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the City to timely approve shall not constitute a waiver of the condition.
 - d. Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the City, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:
 - i. Final acceptance by the City of the completion of this Contract; or

- ii. Such time as the insurance is no longer required by the City under the terms of this Contract.
- e. Any insurance or self-insurance available to the City shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance or bond with an insurer meeting the requirements.
- f. *Workers' Compensation and Employer's Liability Insurance*
 - i. Contractor shall provide proof of worker's compensation insurance as required of Alaska Administrative Code Title 8.
 - ii. Employer's Liability insurance with a minimum limit of \$100,000 each employee per accident for bodily injury by accident or disease.
 - iii. If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
- g. *Commercial General Liability Insurance*
 - i. Minimum Limits required:
 - 1. \$1,000,000 General Aggregate
 - 2. \$1,000,000 Products & Completed Operations Aggregate
 - 3. \$1,000,000 Personal and Advertising Injury
 - 4. \$1,000,000 Each Occurrence
- h. *Business Automobile Liability Insurance*
 - i. Minimum Limit required: \$1,000,000 Each Occurrence for bodily injury and property damage. Coverage shall be for "any auto" (including owned, non-owned and hired vehicles). The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- i. *Professional Errors & Omissions Liability Insurance*
 - i. Minimum Limit required: \$1,000,000 per claim/\$1,000,000 aggregate
 - ii. Retroactive date: Prior to commencement of the performance of the contract
 - iii. Discovery period: Three (3) years after termination date of contract.
 - iv. A certified copy of this policy may be required.
- j. *Umbrella or Excess Liability Insurance*
 - i. May be used to achieve the above minimum liability limits.
 - ii. Shall be endorsed to city it is "As Broad as Primary Policy"
- k. *General Requirements:*
 - i. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, **the City of Wasilla, its officers, employees and immune contractors** shall be named as additional insured for all liability arising from the Contract.
 - ii. Bonding: Janitorial Services Bond of \$25,000.
 - iii. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insured.
 - iv. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insured clause.
 - v. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the City. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence.
- l. Policy Cancellation: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the City of Wasilla, c/o Purchasing/Contracting Officer, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown below.
- m. Approved Insurer: Each insurance policy shall be:
 - i. Issued by insurance companies authorized to do business in the State of Alaska or eligible surplus lines insurers acceptable to the City and having agents in Alaska upon whom service of process may be made, and

- ii. Currently rated by A.M. Best as "A-VII" or better.
 - n. *Evidence of Insurance*: Prior to the start of any Work, Contractor must provide the following documents to the contracting City:
 - i. Certificate of Insurance: The Accord 25 Certificate of Insurance form or a form substantially similar must be submitted to the City to evidence the insurance policies and coverage required of Contractor.
 - ii. Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26) , signed by an authorized insurance company representative, **must** be submitted to the City to evidence the endorsement of the City as an additional insured per General Requirements, Subsection a above.
 - iii. Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlier Schedule from the Umbrella or Excess insurance policy may be required.
 - o. Review and Approval: Documents specified above must be submitted for review and approval by the City prior to the commencement of work by Contractor. Neither approval by the City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the City or others, and shall be in addition to and not in lieu of any other remedy available to the City under this Contract or otherwise. The City reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.
 - p. **Mail all required insurance documents to the Contracting Agency identified on page one of the contract. Address the required insurance documents as ATTN: PURCHASING OFFICER.**
 - q. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any city, borough, state or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The City may set-off against consideration due any delinquent government obligation.
17. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
 18. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
 19. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the City.
 20. CITY OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into City possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the City. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark or copyright protection.
 21. PUBLIC RECORDS. Pursuant to WMC 5.08.120(F), information or documents received from Contractor may be open to public inspection and copying. The City will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with Section 9.18 of the RFP, provided that Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.
 22. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

23. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:
- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
 - c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
24. LOBBYING The parties agree, whether expressly prohibited by federal, State or local law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
- a. Any federal, state, county or local agency, legislature, commission, council or board;
 - b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
 - c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.
25. WARRANTIES.
- a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
 - b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the City. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.
26. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the Mayor and/or City Council and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.
27. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the City of Wasilla, without giving effect to any principle of conflict-of-interest that would require the application of the law of any other jurisdiction. Any civil action to enforce this Contract shall be brought in the trial courts for the State of Alaska at Palmer, Alaska.
28. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Mayor and/or City Council.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Date

APPROVED:

Bert L. Cottle, Mayor
City of Wasilla

Date