



AM No. 12-38: AWARDING A THREE (3) YEAR CONTRACT TO UNIVERSAL FLOOR CARE INC FOR JANITORIAL SERVICES IN THE AMOUNT OF \$81,561 FOR YEAR ONE, WITH YEAR TWO (2) AND THREE (3) ADJUSTED BY THE CONSUMER PRICE INDEX (CPI).

Agenda of: September 26, 2012

Date: September 25, 2012

Originator: April Dwyer, Purchasing/Contracting Officer

Route to:	Department	Signature	Date
X	Public Works Director		9/25/12
X	Finance Director		9.25.12
X	Interim Deputy Administrator		9/25/12
X	City Clerk		9/26/12
X	Rec & Cultural Services Director		

REVIEWED BY MAYOR VERNE E. RUPRIGHT:

FISCAL IMPACT: yes \$81,561 Funds Available Yes or No

Account name/number/amount:

City Hall	001.4330.433.40.20	\$24,192
Wasilla Police Department	001.4210.420.40.20	\$19,344
City Shop	001.4330.433.40.20	\$3,684
Dorothy G Page Museum	001.4510.451.40.20	\$5,520
Wasilla Meta Rose Library	001.4550.455.40.20	\$17,280
Meta Rose Square	001.4332.433.40.20	\$11,520
	Year One (1)	\$81,561
	Year Two (2)	\$81,561 + CPI
	Year Three (3)	\$81,561 + CPI

Attachments: Universal Floor Care Inc. Cost Proposal & Signature Page (2 pages)
RFP 0831-0-2012/AD Janitorial Services Score Sheet (1 Page)
Contract for Janitorial Services (10 pages)

SUMMARY STATEMENT: In accordance with WMC 5.08.108 on August 31, 2012 the City of Wasilla issued a Request for Proposals, RFP-0831-0-2012/AD for Janitorial Services. Five (5) proposals were received and reviewed. Three (3) proposals were deemed non-responsive and two (2) proposals were evaluated and scored by a committee, consisting of the Library Director, Museum Curator, WPD Administrative Assistant, and PW Clerk. The two companies reviewed were Universal Floor Care Inc. and Alaska Professional Janitorial. Universal Floor Care Inc. received the highest score, of 243 points and is being recommended for contract award.

STAFF RECOMMENDATION: Adopt AM No. 12-38

Date: 10/5/12	Approved:	Denied:	Initials: JS	Comments:
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This pricing information is hereby provided in accordance with the terms and conditions of this Request for Proposal. I have read, understand, and agree to all terms and conditions herein.

Company Name: Universal Floor Care, Inc.

Contact Name: Mary E. Callison E-Mail Address: mary_callison@ufc-inc.net

Address: 351 N. Popes Road

City: Palmer State: Alaska Zip: 99645

Telephone (907) 746-5116 Fax () _____ Federal Tax ID No.: 27-2543238

Signed _____

Print Name & Title Mary E. Callison

Date September 17, 2012

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 

EXCEPTIONS: Attached additional sheets if necessary.

Proposals received from:

	CBM AY Corporation	Alaska Professional Janitorial	ABM Building Value	C's Services	Universal Floor Care Inc
1. Date/Time proposal received	9/17/12 @ 1:45pm	9/17/12 @ 12:45pm	9/17/12 @ 1:55pm	9/17/12 @ 1:55pm	9/17/12 @ 1:57pm
2. Is there (1) original proposal marked "MASTER"?	Yes	Yes	Yes	Yes	Yes
3. Is there (4) copies excluding cost proposal?	No, there are 3.	Yes	no, all copies have cost included	no, all copies have cost included	Yes
4. Is the Cost Proposal separate from Narrative Proposal?	No	Yes	No	No	Yes
5. Is page 2 of 45 completed?	Yes	Yes	Yes	Yes	Yes
6. Are pages 28-31 completed and attached? If not presented in the RFP format, is all information provided?	Yes	Yes	Yes	Yes	Yes
7. Certification of Compliance (attachment A) included?	Yes	Yes	Yes	Yes	Yes
8. Is a company profile provided?	Yes	Yes	Yes	Yes	Yes
	NON RESPONSIVE		NON RESPONSIVE	NON RESPONSIVE	

Scoring:

1. Firm experience & Firm stability (25 points)
2. Number of years experience in Janitorial business
3. Number of years direct experience with gov't entity
4. Methodology/Approach (40 points)

The methodology and approach should describe the philosophy that will be used in servicing the City's Janitorial requirements. It should also focus on safety and training for the employees. The company should highlight its strengths and describe the methodology they will use in performing the duties required of the contract and should identify areas where they can add value.
5. Reference Questionnaire Responses (Maximum of 10 points)

Each positive response = 2.5 points

	Alaska Professional Janitorial	Universal Floor Care
1. Firm experience & Firm stability (25 points)	38	58
2. Number of years experience in Janitorial business		
3. Number of years direct experience with gov't entity	110	145
4. Methodology/Approach (40 points)		
5. Reference Questionnaire Responses (Maximum of 10 points)	10	40
Total Score	158	243

4. Cost (35 points)

The lowest total cost is assigned 35 points. The next highest rate is given a score based upon the following:
 (lowest rate/highest rate = composite factor)
 The composite factor is then multiplied times 35 points and the result is the points assigned to that proposal.

TOTAL

A Contract Between the City of Wasilla and Universal Floor Care Inc.

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

And

Universal Floor Care Inc.
351 N Popes Road
Palmer, AK 99645
(907) 746-5116

WHEREAS, WMC 5.08.030 authorizes 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 Mayor and/or Wasilla City Council.
2. DEFINITIONS. "City" means the City of Wasilla and any city agency identified herein. "Independent Contractor" means Universal Floor Care Inc. which is an 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 November 1, 2012 thru October 31, 2015, unless sooner terminated by either party as specified in paragraph (15).
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 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:

ATTACHMENTS:

- a. City Request for Proposal #0831-0-2012/AD (pages 1 through 45) dated 8/31/2012.
- b. City of Wasilla City Council Action Memorandum
- c. Universal Floor Care Inc. Proposal to Provide Janitorial Svc-Technical Proposal
- d. Universal Floor Care Inc. Proposal to Provide Janitorial Svc-Cost Proposal

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph (5) at a total maximum cost of \$ 6,796.80 per month for year one (1) as specified in the Universal Floor Care Proposal to Provide Janitorial Services – Cost Proposal dated September 17, 2012 for the scope of services as described in the referenced RFP on pages 5 through 19. The City does not agree to reimburse Contractor for any other expenses except those submitted in a change order. 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.
9. **WITHHOLDING.** The City may withhold from a progress payment for any of the following reasons:
 - a. Defective Work;
 - b. Claims made directly against the City alleging an act or omission on the part of the Contractor, Subcontractors, or their agents in connection with the Work
 - c. Damage to the City;
 - d. Reimbursements for Work done by the City because of any failure to carry out the Work in accordance with the Contract Documents;
 - e. Liquidated damages; or
 - f. Claims by suppliers, laborers, or the Alaska Department of Labor.The amount of any withholding for items (a)-(d) shall be the reasonable value of the Work or remedy to be accomplished as estimated by the City, without regard to bid amount or cost to the Contractor. The amount of withholding for items (e) or (f) shall be in accordance with the claimed amount or the applicable contract provisions. No interest shall accrue or be paid on sums that the Contract Documents authorize the City to withhold from payment.
10. **PAYMENT OF CLAIMANTS.** As soon as practical following receipt of a claim against the Contractor from any material man, laborer, supplier, or the Alaska Department of Labor, the City will be forward a copy of the claim to the Contractor by certified mail. Within twenty-one (21) days after the date the City mails the copy of the claim, the Contractor shall notify the City by Certified Mail that the claim is contested or provide proof that the claim has been satisfied. If the Contractor contests the claim, the Contractor shall describe in detail how the claimant was paid or why the claimant should not be paid and furnish the 3-point statement described hereafter. If the Contractor does not respond as provided above, the City may deduct the amount of the claim from any amount due the Contractor, and pay the claimant. The City may withhold the amount of a disputed claim from any amount due the Contractor, and will pay the amount only either as (i) authorized in writing by the Contractor and the claimant, or (ii) as directed by order of a court of competent jurisdiction. Claimants are not intended beneficiaries of this section, and shall have no recourse against the City for any failure by the City to pay a claim.

11. 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.

12. CONTRACT TERMINATION.

- a. General Termination. This contract may be terminated by the City for any reason upon thirty (30) days written notice prior to the date such termination is effective.
- b. 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.
- c. 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:
- d. 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
 - i. 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
 - ii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

- iii. If the City materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
 - iv. 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
 - v. 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.
 - vi. 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.
 - vii. 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:
 - viii. 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;
 - ix. 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;
 - x. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - xi. Contractor shall preserve, protect and promptly deliver into City possession all proprietary information in accordance with paragraph (21).
13. 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.
14. 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.
15. 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.

16. 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.
17. 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.
18. 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 Liability Insurance
 - ii. Minimum Limit required: \$1,000,000 Each Claim
 - iii. Retroactive date: Prior to commencement of the performance of the contract
 - iv. Discovery period: Three (3) years after termination date of contract.
 - v. 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 insureds for all liability arising from the Contract.
 - ii. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
 - iii. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
 - iv. 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 Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the City to evidence the insurance policies and coverages 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 Underlying 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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 XXX 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.
24. 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.
25. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:
- a. 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. 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. 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.)
26. 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.
27. 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.
28. 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.

29. **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.
30. **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.

_____ Date _____

APPROVED:

_____ Date _____
 City of Wasilla
 Verne Rupright, Mayor

Subscribed and sworn to before me this _____ day of _____, 20____.

_____ Notary Public for the State of _____

My commission expires _____