

# INVITATION TO BID 20-046B

MATANUSKA-SUSITNA BOROUGH  
PURCHASING DIVISION

PALMER, ALASKA



BIDDING AND CONTRACT DOCUMENTS FOR  
**LITIGATION GUARANTEES**

**OPENING DATE & TIME: OCTOBER 9, 2019 @ 3:00 PM**

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**ADVERTISEMENT**

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**MATANUSKA-SUSITNA BOROUGH**  
**350 East Dahlia Ave.**  
**Palmer, Alaska 99645**  
**ADVERTISEMENT**

VENDOR	ACCOUNT #	DATE FOR ADVERTISEMENT
Anchorage Daily News	MATA 0070	September 19, 2019
<b>TYPE OF AD:</b>	<input type="checkbox"/> Display	<input checked="" type="checkbox"/> Classified
		<input type="checkbox"/> Public Information

The material herein must be printed in its entirety on the dates shown above. Affidavit of publication is required prior to payment.

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**MATANUSKA-SUSITNA BOROUGH**  
**BID #20-046B**  
**Litigation guarantees**

The Matanuska-Susitna Borough (MSB) requires the services of qualified firms to provide litigations guarantees for delinquent real property tax and local improvement properties. Awards will be made to multiple firms, see scope of services for more detail.

Bid documents are available beginning **September 18, 2019** from the Purchasing Division, Matanuska-Susitna Borough, 350 E. Dahlia Ave., Palmer, AK 99645. For information call (907) 861-8601, Fax (907) 861-8617, or e-mail [Purchasing@matsugov.us](mailto:Purchasing@matsugov.us). This bid document may be available on the internet under [www.matsugov.us](http://www.matsugov.us).

Deadline for Questions:       **October 2, 2019 @ 5:00 PM**

Bids open:                       **October 9, 2019 @ 3:00 PM in the Purchasing Division**

Bids must be received in the Purchasing Division prior to the time fixed for opening of the bids to be considered. Time of receipt will be determined by the time stamp in the Purchasing Division.

Each sealed bid must be received before the date and time due and must be marked with the appropriate Bid Number to be considered.

Persons needing accommodation in order to participate should contact the borough ADA coordinator at (907) 861-8404.

The Matanuska-Susitna Borough reserves the right to accept or reject any or all bids, waive any and all technicalities or informalities it deems appropriate. Award of this project is subject to the availability of funding.

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Page 1 of 1	Approved by: Signature on File
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DEPARTMENT ACCOUNT NUMBER: 100.120.119 422.000

**SECTION II**

**INSTRUCTIONS TO BIDDERS**

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## **INSTRUCTIONS TO BIDDER**

### **01. EXAMINATION OF DOCUMENTS AND SITE**

Before submitting a bid, the Bidder is encouraged to:

- Carefully examine and acquaint themselves with all portions of the bid and specifications.
- Fully inform themselves of existing conditions and limitations.
- Include in their proposal sums sufficient to cover all items required by the Contract, and shall rely entirely upon their own examination in making their proposal. The submission of a proposal shall be taken as prima facie evidence of compliance with this paragraph.
- If material required for bid purposes by these documents is absent, the Bidder is required to notify the Purchasing Officer.
- Any interested party submitting a bid/proposal on Matanuska-Susitna Borough (MSB) projects should first review the MSB Debarment/Suspension List. This listing is available off of the MSB Purchasing Division web page. Any submission of a bid/proposal, with participation or involvement of an individual, company, firm or corporation on this list will render the bid/proposal as non-responsible.

### **02. INTERPRETATION**

Bidders shall notify the Purchasing Officer promptly of any error, omission, or inconsistency that may be discovered during examination of the Bidding Documents and the proposed construction site. Requests from Bidders for interpretation or clarification of the Bidding Documents shall be made in writing, email, or fax to the Purchasing Officer and shall arrive at least five (5) working days prior to the date for opening Bids. Any questions received after this date may not be answered. Oral questions may be presented at a prebid conference if one is provided for in the Bidding Documents. Interpretations, corrections, or changes, if any, to the Bidding Documents shall be made by Addendum. Bidders shall not rely upon interpretations, corrections, and changes made in any other manner, including orally, at the prebid conference. Interpretations, corrections, and changes shall not be binding unless included in an Addendum. All Addenda issued during the time of bidding shall become part of the Agreement Documents. Questions or requests for clarifications shall be directed to the borough's Purchasing Officer. Questions or requests for clarification directed to any other member of the borough staff, or consultants may be grounds for rejection of bid as being irregular.

It is the Bidders sole responsibility to ascertain that they have received all Addenda issued by the Purchasing Office. Addendum will be issued by facsimile, e-mail, and/or U.S. Mail. All Addenda must be acknowledged in the space provided on the Bid Form. If no Addendum has been issued, leave blank or write or type "N/A" on the Bid Form in the space provided.

### **03. PREPARATION AND SUBMISSION OF BIDS**

The Bidder with their usual signature must sign each Bid in longhand, preferably in blue ink. Bids shall be submitted on the bid forms supplied and must be manually signed. Bids shall be submitted in a sealed envelope with the Invitation Number plainly marked on bottom left corner. Bids may be faxed only if specifically stated in bid documents.

Where required on the Bid, Bidders must quote on all items and they are warned that failure to do so may disqualify the Bid. When quotations on all items are not required, Bidders shall insert the words "no bid" in the space provided for any item where no quotation is made. If erasures or other changes appear on the forms, the person signing the Bid must initial each such erasure or change.

Bids shall specify a unit or lump sum price, typed or written in ink in figures, for each bid item called for. In case of error in the extension of prices, the unit price will govern. Bids may be rejected if they show any omissions, alteration of the forms, additions not called for, conditional or alternate bids not called for, qualified bids, or irregularities of any kind.

#### **04. DIRECTIONS FOR DELIVERY OF BIDS**

Envelopes containing the bid, must be sealed, addressed and marked indicating bid number, bid name, and bid opening time and date, and delivered to:

Matanuska-Susitna Borough  
Purchasing Division of Capital Projects  
350 East Dahlia Avenue  
Palmer Alaska 99645-6488

#### **05. BIDDERS CHECK LIST**

A checklist is provided on the Submittal Page as a courtesy to prospective bidders. The checklist may not be all inclusive; it is the Bidder's responsibility to make sure they comply with all requirements within the solicitation documents.

#### **06. RECEIPT AND OPENING OF BIDS**

Bids shall be submitted to the Purchasing Division at or before the date and time of opening specified in the Invitation to Bid and the exact date and time of receipt of Bids will be recorded. Late Bids will not be considered. Time of Bid receipt will be determined by time stamp of the Purchasing Division.

Facsimile or other electronic transmitted bids will not be considered. Modification by facsimile of Bids already submitted will be considered if received by the Purchasing Officer at or prior to the time of Bid opening fixed in the Invitation to Bid. Facsimile modifications shall not reveal the amount of the original or revised Bid.

No liability will attach to the Borough for the premature opening of, or the failure to open, a Bid not properly addressed and identified.

Bids may be withdrawn on written or facsimile request received from Bidder prior to the time specified for Bid opening.

If more than one Bid is offered by any one party, by or in the name of their clerk, partner, or other person, all such Bids will be rejected. A party who has quoted prices to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a Bid directly for the work.

#### **08. MODIFICATIONS**

No oral or telephone modifications of any bid submitted will be considered.

#### **09. WITHDRAWAL OF BID**

Bidders may withdraw their proposal either personally or by written request at any time prior to the time set for the bid opening. No bid may be withdrawn or modified after the time set for the opening thereof.

## **10. EVIDENCE OF QUALIFICATIONS**

Upon request of the Owner, a Proposer's whose proposal is under consideration for the award of the Agreement shall submit promptly to the Owner satisfactory evidence of the Proposer's financial resources, their experience, their performance in completing other projects of a similar nature and the organization and equipment they have available for the performance of the Agreement.

## **11. ACTION ON BIDS**

The Borough reserves the right to reject any and all Bids, and to waive any informalities and irregularities in Bidding or award of the Agreement.

Unless otherwise stated in the Bidding Documents, a purchase order, if awarded, shall be issued to the responsible Bidder who submits the lowest responsive Bid. When the Bidding Documents contain a base bid and alternates, the total of the base bid and the alternates to be awarded shall be used to determine the low Bidder.

When the Bidding Documents contain a base bid and additive alternates, the low Bidder will be determined by the total of the lowest base bid and any alternates to be awarded. Additive alternates will be exercised at the option of Owner. Owner may select all, none, or any combination of Alternates in any order. All bids shall be evaluated on the basis of the same alternates.

When the Bidding Documents contain deductive alternates, the low Bidder will be determined by the lowest base bid. If the lowest base bid exceeds the funds available, the low Bidder will be determined by the total of the base bid and any deductive alternates selected. Owner may select all, none, or any combination of Deductive Alternates in any order. All bids shall be evaluated on the basis of the same alternates.

The amount of the purchase order shall be the total sum of the amounts computed from the estimated quantities and unit prices and/or the lump sum awarded by the Purchasing Officer and specified in the Agreement.

On all Bids, Notice of Intent to Award or rejection will be given within sixty (60) days of Bid opening. The notice will be in writing and signed by the Purchasing Officer. A Notice of Intent to Award, and no other act of the Borough or its representatives, constitutes an acceptance of a Bid. The acceptance of a Bid shall bind the successful Bidder to perform on the resultant purchase order.

When vendors and/or contractors propose equal pricing (or tie bids), bids will be reviewed by the Purchasing Officer to determine responsiveness. If all requirements for the bid being responsive are met, then the award or recommendation of the award will be made in favor of the bid which received the earliest time stamp prior to bid opening.

## **12. PROTEST OF AWARD OF BID**

Within two days of service of the Purchasing Officer's determination of the apparent successful proposal, a proposer who wishes to protest the determination shall lodge a protest with the Purchasing Officer. The protest shall be in writing on a form provided by the Purchasing Officer. The protest shall describe with particularity the alleged errors in the award recommendation. The Purchasing Officer shall conduct a review and, within three working days of receipt of the protest, issue a determination. Full text of the protest and appeal procedures, as well as the protest form, can be downloaded from the Borough's web site at [www.matsugov.us](http://www.matsugov.us), selecting "Services", then selecting "Forms" under Forms and Documents, then selecting "Purchasing Forms". A copy can also be obtained by contacting the Purchasing Division at (907) 861-8601.



In order to receive notice of the apparent successful proposal, the proposer must provide the Borough with a fax number. It is the responsibility of the proposer to follow the selection process and stay apprised of the bid or proposal due date, the date notice of apparent successful proposer is issued and the period in which protests can be filed.

### **13. MATANUSKA-SUSITNA BOROUGH BUSINESS LICENSE**

Matanuska-Susitna Borough Code, Chapter 3.36, requires that all businesses conducting business within the boundaries of the Borough have a current business license issued by the Borough. Prior to any award as a result of this solicitation, the Contractor may be required to provide proof that they have a current Matanuska-Susitna Business License or proof that they have applied for one. Copies of this borough code and instructions on obtaining a business license may be obtained at the Collection Counter, Finance Department, or by calling 907-745-9632. MSB §3.36.010.

### **14. QUALIFIED AND RESPONSIBLE BIDDER**

The Borough reserves the right to require the Bidder to submit information pertaining to its products, service, reputation, experience, in order to determine, at the Borough's sole discretion, if the Bidder is a qualified vendor. Past dealings with the Borough and other government agencies will be considered in determining if the Bidder is a responsible vendor.

### **15. EXECUTION OF AGREEMENT**

The Bidder whose bid is accepted shall execute the Agreement and furnish the required insurance within ten (10) working days after notice of Intent to Award of the Agreement is issued. The Agreement shall be considered executed by the successful Bidder when the Agreement is signed by an authorized representative of the Bidder and the insurance certificate(s) are received by the Purchasing Officer. Failure or neglect of the Bidder to execute the Agreement within the time specified may result in the award of the Agreement to the next lowest Bidder.

The owner will execute the Agreement within ten (10) working days after execution by the Proposer' as set forth above. The date the Agreement is executed by the Owner is the Agreement Date. The rights of the obligations provided for in the Agreement shall become effective and binding upon the parties of the Agreement Date.

The Notice to Proceed will be issued within seven (7) working days of the Agreement Date unless otherwise specified in the SPECIFICATIONS. The effective date of the Notice to Proceed shall be within ten (10) working days of the Agreement Date unless otherwise specified in the Scope of Services.

### **16. CONTRACTOR'S VIOLATION OF TAX OBLIGATIONS**

- A. No agreement shall be awarded to any individual, firm, corporation or business who is found to be delinquent in any area of taxation, lease or rental agreement with the Borough and School District which has not been remedied within 10 calendar days of receipt of written notice.
- B. This Agreement can be terminated for cause if it is determined that the individual, firm, corporation or business is in arrears of any taxation, lease or rental agreement that is due to the Borough that is not remedied within 10 calendar days of notification by regular mail.
- C. The Borough reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent Borough taxes against any amount owing to the same under a contract between the Borough and the same.

## **17. INSURANCE**

See Insurance Requirements in Sample Agreement, Section 27.

## **18. THIRD-PARTY FINANCING AGREEMENTS AND/OR ASSIGNMENTS OF PAYMENT NOT ALLOWED**

Because of additional administrative and accounting time required of borough departments/divisions when third party financing agreement and/or assignments of payment are permitted, they will not be allowed under any agreement resulting from this Invitation to Bid.

## **19. STATUTORY REQUIREMENTS**

Offerors and proposed subcontractors shall be in compliance with the statutory requirements for Alaska licensing included in the certification statement in this RFP package. Non-compliance shall result in rejection of proposal.

## **20. FLOW DOWN PROVISIONS**

This Contract may include flow down provisions. This Contract may be issued in connection with another government agency and may include flow down or contract provisions required by that agency. In the event of a conflict between the terms and conditions of the general agreement and any flow down terms and conditions, the flow down terms and conditions shall govern. The Consultant agrees to comply with any and all flow down or contract provisions required by the Borough or another government agency that are included in the Contract. In the event that flow down or contract provisions required by other agencies or by Law are inadvertently omitted from this Contract, both parties agree to negotiate in good faith for that provisions inclusion into the Contract.

**SECTION III**

**SCOPE OF WORK**

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**MATANUSKA-SUSITNA BOROUGH**  
**INVITATION TO BID #20-046B**  
**LITIGATION GUARANTEES**

**SCOPE OF SERVICES**

The Matanuska-Susitna Borough (MSB) Finance Department requires Litigation Guarantees for delinquent real property tax and local improvement district (LID) properties. It is the intent of the solicitation to result in up to three (3) providers. The Borough will process a list of requested Litigation Guarantees for the Borough real property tax and local improvement district (LID) accounts, at the beginning of the accepted Bid for this contract. The total processed may be sent to one provider or divided between providers. Providers would rotate based on price, expertise, and staff availability. Providers would have to complete a minimum of five (5) requests per week, and provide all completed Litigation Guarantees no later than June 10, for final payment processing purposes. The period of performance for this agreement is one (1) year. The period of performance may be extended, by mutual agreement of the parties for two (2) additional one (1) year periods.

Attached are the following:

A sample printout for the 2015 and prior delinquent real property tax and 2016 and prior delinquent LID foreclosure listing tax or LID number, owner of record, legal description, and amount owed. The borough will provide the actual list of delinquent parcels to the successful proposer. A sample printout of a Schedule C to show expected address information formatting and layout.

**PRODUCT**

The product will be a detailed guarantee for each delinquent property, to include the following information:

- (1) A complete Litigation Guarantee showing the record owner or owners, mortgages, liens, easements, leaseholds, and all other ownership interests and encumbrances of record and a list of all known addresses for each holder of an interest or encumbrance. The guarantee must include copies of all documents listed on the guarantee. Each Litigation Guarantee must reference the MSB real property tax and/or LID number and the current MSB record owners name(s) on each page in header style (see example). Schedule C address information must be entered in the table/grid format (see example) and column TYPE for MSB (for MSB record owner information), HOA (for any owner association information), and PA (physical address) to be noted for said address(s).
- (2) Updated guarantees will be required on only those properties showing any change in the ownership or condition of title from the date on the guarantee to the date the Matanuska-Susitna Borough Finance Department requests the update. The department must receive the updates and copies of all documents within a reasonable amount of time, no longer than one (1) week, or prior to the June 10, date for final payment processing time.
- (3) All guarantees submitted to the department, whether the guarantee or an update will include an electronic original of the guarantee and one set of all supporting documents. All pages must reference the MSB real property tax and/or LID number, and the current MSB record owner name(s) and the vendor reference number. A compilation of the list of all known addresses for each holder of an interest or encumbrance in its entirety must be submitted in table/grid format (see example).
- (4) The Borough reserves the right to dictate the order in which guarantees are worked.

The liability amount for each guarantee (unit) will be the total property tax or LID amount due on each parcel as shown on the attached sample real property and LID list, PLUS \$7,000 for EACH tax and LID parcel within the unit (not each Unit)

\*A UNIT is either (a) two or more tax and/or LID parcels within a single subdivision with the same plat number and the same owner(s) of record; or (b) two or more tax and/or LID parcels within the same township, range and section with the same owner(s) of record; or (c) if the requirement of (a) or (b) above are not met the unit shall be a single tax or LID parcel.

## **LIABILITY OF THE SUCCESSFUL BIDDERS**

The Matanuska-Susitna Borough Finance Department relies on the litigation guarantees to notify all interested parties and the public of the real property tax and LID foreclosure and to properly fulfill the Borough's duties under the Alaska Statutes and Borough Code.

In the event of professional error or omissions causing a loss to the Borough, the vendor's liability is not restricted to the return of the fee for the title guarantee which might be at issue; the liability extends to damages to the Borough attributable to the errors and omissions. Damages are limited to losses covered by the litigation guarantee specified in the Services Agreement.

**SECTION IV**

**BID FORM**

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**BID FORM**  
**SOLICITATION 20-046B**  
**LITIGATION GUARANTEES**

Provide all personnel, material, supplies, equipment, transportation and all other items as may be required to complete the services identified within the Scope of Work of this solicitation.

<b>Line Item</b>	<b>Description</b>	<b>Total Number of Guarantees Firm is Offering to Perform</b>	<b>Cost for unit Guarantee (as defined in the scope of work)</b>	<b>Total Bid Price</b>
1.	Litigation Guarantees for delinquent real property tax and local improvement districts in accordance with Scope of Services	_____	\$ _____	\$ _____

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature

**BID FORM (Continued)**  
**SOLICITATION 20-046B**  
**LITIGATION GUARANTEES**

By signing below, the Bidder is hereby certifying to the following –

1. The Bidder has carefully examined the bid documents for this solicitation and agrees to perform all specified services for the sum(s) provided above.
2. The individual signing below, or the firm association or corporation of which they are a member, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this solicitation.
3. The individual signing below is authorized by the firm association or corporation to bind such association or corporation to a legal contract.
4. The individual signing below, or the firm association or corporation of which they are a member, is not debarred or suspended from doing business with the Matanuska-Susitna Borough.

5. They are acknowledging receipt of the following Addenda Numbers (if no addenda have been issued, either leave blank or write "N/A"):  
 Acknowledge Addenda Here \_\_\_\_\_

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Mailing Address

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 City, State and Zip Code

\_\_\_\_\_  
 Printed (or typed) Name

\_\_\_\_\_  
 Contact Person (printed or typed)

\_\_\_\_\_  
 Title (printed or typed)

\_\_\_\_\_  
 Phone Number

\_\_\_\_\_  
 Email Address

\_\_\_\_\_  
 Facsimile Number

\_\_\_\_\_  
 State and Specialty License Numbers

<p>It shall be the responsibility of the Bidder to see that their bid is received at or before the date and time fixed for opening.</p>	<p>To be considered responsive, Bidders should include the following with their bid:</p> <ul style="list-style-type: none"> <li>✓ Signed Bid Form (acknowledging Addenda if applicable)</li> <li>✓ Any other items requested in the ITB's &amp; Specs/SOW</li> </ul>
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**SECTION V**

**SAMPLE AGREEMENT**

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**SERVICES AGREEMENT  
SOLICITATION 20-046B  
LITIGATION GUARANTEES**

**SAMPLE**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
by and between the **MATANUSKA-SUSITNA BOROUGH** and \_\_\_\_\_.

**SECTION 1. DEFINITION.** In this Agreement:

- A. The term "Borough" means the Matanuska-Susitna Borough.
- B. The term "Contractor" means \_\_\_\_\_.
- C. The term "Manager" means the manager of the Matanuska-Susitna Borough or his authorized representative.

**SECTION 2. EMPLOYMENT OF CONTRACTOR.** The Borough hereby agrees to engage the Contractor and the Contractor hereby agrees to perform the services hereafter set forth.

**SECTION 3. SCOPE OF SERVICES.** The Contractor shall perform all the services provided for by this Agreement which are described with particularity in Appendix "A," entitled Scope of Work, attached hereto and incorporated by reference as if fully set forth herein.

**SECTION 4. PERSONNEL.** Personnel shall be limited to \_\_\_\_\_.

**SECTION 5. TIME OF PERFORMANCE.** The services of the Contractor shall commence upon execution of this Agreement by both parties and shall terminate on \_\_\_\_\_, 20\_\_\_\_. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

**SECTION 6. COMPENSATION.**

A. Subject to the provisions of this Agreement, the Borough shall pay the Contractor a total sum for all services and expenses for the term of this Agreement not exceeding the sum as set forth in Appendix "B," attached hereto and incorporated herein by reference, for services required by this Agreement.

B. Travel or per diem required for the performance of services pursuant to this Agreement shall be subject to Appendix "B."

C. Except as otherwise provided in this Agreement, the Borough shall not provide any additional compensation, payment, use of facilities, service, or other thing of value to the Contractor in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Contractor may incur in the performance of its obligations under this Agreement have already been included in computation of the Contractor's fee and may not be charged to the Borough.

## **SECTION 7. METHOD AND TIME OF PAYMENT.**

A. The Borough will pay to the Contractor the amount set forth in Appendix "B" which shall constitute the full and complete compensation for the Contractor's services. That sum will be paid on receipt of billings submitted pursuant to a schedule set forth in Appendix "B", if not identified within Schedule "B", normal billing cycle is 30 calendar days from receipt of an approved invoice. A billing is a summary of expenditures to date by line item categories (e.g., Personal Services, Travel, Contractual, Commodities and Equipment). Documentation of expenditures need not be submitted with billings but must be retained by the Contractor in the event the Borough requests said documentation.

B. No payment will be disbursed until the completed task and associated expenditures have been approved by the Borough.

C. All invoices must be submitted in duplicate and addressed as follows:

Matanuska-Susitna Borough  
Attention: Accounts Payable  
350 East Dahlia Avenue  
Palmer, Alaska 99645

D. It is expressly understood and agreed that in no event shall the total compensation due the Contractor exceed \_\_\_\_\_.

**SECTION 8. TERMINATION OF AGREEMENT FOR CAUSE.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the Borough shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Contractor under this Agreement are the property of the Borough and shall be delivered to the Borough by or upon the effective date of termination. The Contractor shall be entitled to receive compensation in accordance with the payment provisions of Appendix "B" of this Agreement only for work completed to the Borough's satisfaction in accordance with Appendix "A" of this Agreement and the other terms of this Agreement.

**SECTION 9. TERMINATION FOR CONVENIENCE OF BOROUGH.** The Borough may terminate this Agreement at any time by giving written notice to the Contractor of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 8 above are the property of the Borough and shall be delivered to the Borough by or upon the effective date of execution of this section. The Contractor shall be entitled to receive compensation in accordance with the payment provisions of Appendix "B" of this

Agreement only for work completed to the Borough's satisfaction in accordance with Appendix "A" of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Contractor, Section 8 of this Agreement shall govern the rights and liabilities of the parties.

**SECTION 10. CAUSES BEYOND CONTROL.** In the event the Contractor is prevented by a cause or causes beyond control of the Contractor from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Contractor liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Contractor shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control", as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Contractor and which prevent the performance of the Contractor: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Contractor from performing the terms of the Agreement as set forth herein. Events which are peculiar to the Contractor and would not prevent another Contractor from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Contractor. The Borough will determine whether the event preventing the Contractor from performing is a cause beyond the Contractor's control.

**SECTION 11. MODIFICATIONS.**

A. The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.

B. It is expressly understood that the Borough may require changes in the Scope of Services and an unreasonable refusal by the Contractor to agree to modification in the Scope of Services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the Agreement not be modified, under any circumstances, without prior written approval of the Borough.

**SECTION 12. EQUAL EMPLOYMENT OPPORTUNITY.**

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The Contractor agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran, or veteran of the Vietnam war era. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

B. The Contractor shall keep such records and submit such reports concerning the

equal opportunity employment provisions set forth in subsection 12 A for applicants for employment and employees as the Borough may require.

**SECTION 13. INTEREST OF MEMBERS OF BOROUGH AND OTHERS.** No officer, member or employee of the Borough and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

**SECTION 14. ASSIGNABILITY.**

A. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Borough, thereto; provided, however that claims for money due or to become due to the Contractor from the Borough under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Borough, or the Contractor shall be responsible to the Borough for any moneys due the assignee of this Agreement which are paid directly to the Contractor.

B. The Contractor shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the Borough.

**SECTION 15. INTEREST OF CONTRACTOR.** The Contractor covenants, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

**SECTION 16. FINDINGS CONFIDENTIAL.** To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Agreement which the Borough requests to be kept confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the Borough.

**SECTION 17. PUBLICATION, REPRODUCTION AND USE OF MATERIALS.** No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The Borough shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**SECTION 18. AUDITS AND INSPECTIONS.** At any time during normal business hours and as often as the Borough or the Comptroller General of the United States may deem necessary, there shall be made available for examination all of its records with respect to all matters covered by this Agreement and will permit representatives of the Borough or the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

**SECTION 19. JURISDICTION; CHOICE OF LAW.** Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

**SECTION 20. NON-WAIVER.** The failure of the Borough at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

**SECTION 21. PERMITS, LAWS AND TAXES.** The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Contractor under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Agreement.

**SECTION 22. RELATIONSHIP OF THE PARTIES.** The Contractor shall perform its obligations hereunder as an independent Contractor of the Borough. The Borough may administer this Agreement and monitor the Contractor's compliance with this Agreement but shall not supervise or otherwise direct the Contractor except to provide recommendations and to provide approvals pursuant to this Agreement.

**SECTION 23. CONTRACT ADMINISTRATION.**

A. The Borough Manager, or their designee, will be the representative of the Borough administering this Agreement.

B. The services to be furnished by the Contractor shall be administered, supervised, and directed by \_\_\_\_\_. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement is unable to serve for any reason, the Contractor shall appoint a successor in interest subject to a written approval of the Matanuska-Susitna Borough.

**SECTION 24. INTEGRATION.** This instrument and all appendices and amendments hereto embody the entire Agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

To the extent they are not inconsistent with the terms of this Agreement, the following documents are incorporated either by reference or full text into this Agreement as if fully set forth herein:

<b><u>FULL TEXT</u></b>	<b><u>REFERENCE</u></b>
Exhibit "A" ~ Specifications/Scope of Work	Alaska Business License
Exhibit "B" ~ Bid Form	Matanuska-Susitna Borough License
Exhibit "C" ~ Certificate of Insurance	Contractors License
	Addendum(a)

## **SECTION 25. BOROUGH HELD HARMLESS.**

A. The Contractor shall indemnify, defend, and hold and save the Borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character, including costs, expenses, and attorney fees. The Contractor shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or sustained by any person, or property arising from Contractor's or Contractor's Officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the Borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Contractor shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Borough, its agents, or employees.

B. If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause should remain enforceable.

**SECTION 26. INTERPRETATION AND ENFORCEMENT.** This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

**SECTION 27. CONTRACTOR INSURANCE.** It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

It is highly recommended that the Contractor confer with their respective insurance companies or brokers to determine if their insurance program complies with the Borough's Insurance requirements.

The Contractor shall procure and maintain the following insurances:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 10/01) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 10/99) covering Automobile Liability, symbol 1 "any auto".
3. Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability:

\$300,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury. The general aggregate limit shall be \$300,000.

If the general liability insurance is written on a claims made form, the Contractor shall provide insurance for a period of two years after final payment of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

2. Auto Liability:

\$100,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability:

Worker's Compensation shall be statutory as required by the State of Alaska. Employers liability shall be endorsed to the following minimum limits:

Bodily injury by Accident - \$100,000 each accident  
Bodily injury by Disease - \$100,000 each employee  
Bodily injury by Disease - \$500,000 policy limit

4. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the Contractor to combine an excess liability or umbrella policy with the general liability, auto liability or employers liability. In the instance where the Contractor purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to work commencing any deductible or self-insured retention must be declared and approved by the Borough. The Contractor may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Borough, the Contractor shall reduce or eliminate such deductibles or self-insured retention as respects the Borough, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.



D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability

- a. The Borough, its Administrator, officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor premises owned, occupied or used by the Contractor or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the Borough, its Administrator, officers, officials, employees and volunteers.
- b. The Contractor's insurance coverage shall be primary insurance as respects the Borough, its Administrator, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Borough, its Administrator, officers, officials, employees and volunteers shall be excess of the Contractor insurance and shall not contribute to it.
- c. The Contractor insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the Borough, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the Borough.

3. All Insurance

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Contractor or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the Borough. Such notice shall be mailed by the Contractor to the attention of the Borough's Purchasing Officer.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII.

F. Verification of Coverage

Contractor shall furnish the Borough with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the Borough. All certificates are to be received and approved by the Borough before work commences. The Borough reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

H. Lapse in Insurance Coverage

A lapse in insurance coverage is a material breach of this Agreement which shall result in immediate termination of the Agreement, pursuant to Section 8.

**SECTION 28. SEVERABILITY.** If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

**SECTION 29. UNDERSTANDING.** The Contractor acknowledges that the Contractor has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of their choice, and is executing this Agreement of their own free will.

**SECTION 30. NOTICES.** Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class to the following address:

Borough: 350 East Dahlia Avenue, Palmer, Alaska 99645

Contractor: (Insert Contractor's address here)

**SECTION 31. CONTRACTORS' VIOLATIONS OF TAX OBLIGATIONS.**

A. Any Contractor in arrears on a Borough obligation, including, but not limited to tax, assessment, lease, sale, rental payments, or land payments, whether as an individual, or as a representative of a business, organization, firm, corporation, or partnership, shall not be awarded the Agreement if the delinquency is not cured within ten calendar days of receipt of written notice sent by the Borough of the delinquency.

B. This Agreement can be terminated for cause, pursuant to Section 8, if it is determined that a Contractor, whether the amounts owed are in the name of the Contractor as an individual or as a representative of a firm, business, corporation, or partnership, is in arrears of any taxation, lease, rental agreement, or land payments, that is due to the Borough that is not remedied within 10 calendar days of notification by regular mail.

C. The Borough reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent Borough taxes, moneys owed on sales, assessments, leases, rental agreements, and land payments, against any amount owing to the same under an Agreement between the Borough and the same.

### **SECTION 32. FLOWDOWN PROVISIONS.**

This Contract may include flow down provisions. This Contract may be issued in connection with another government agency and may include flow down or contract provisions required by that agency. In the event of a conflict between the terms and conditions of the general agreement and any flow down terms and conditions, the flow down terms and conditions shall govern. The Consultant agrees to comply with any and all flow down or contract provisions required by the Borough or another government agency that are included in the Contract. In the event that flow down or contract provisions required by other agencies or by Law are inadvertently omitted from this Contract, both parties agree to negotiate in good faith for that provisions inclusion into the Contract.

### **SECTION 33. CONTRACTS ENFORCEABLE AGAINST THE BOROUGH (MSB CODE 3.08.120)**

A contract for supplies, services, professional services or construction, or any amendment to the contract, may not be enforced against the borough unless its terms have been approved in accordance with this chapter, and unless the contract or amendment to the contract has been set forth in writing, executed in accordance with this chapter.

### **SECTION 34. FUND VERIFICATION.** Fund source and verification of funds for this project:

Funding Source: 100.126.119 426.900

**MATANUSKA-SUSITNA BOROUGH**

**CONTRACTOR**

\_\_\_\_\_  
RUSTIN M. KRAFFT  
Purchasing Officer

\_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ALASKA

Third Judicial District

On \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ personally  
appeared before me,

1. \_\_\_\_\_ who is personally known to me
2. \_\_\_\_\_ whose identity I proved on the basis of  
\_\_\_\_\_
3. \_\_\_\_\_ whose identity I proved on the oath/affirmation of  
\_\_\_\_\_, a credible witness

to be the signer of the Agreement for **20-046B, LITIGATION GUARANTEES** and he/she  
acknowledged that he/she signed it.

\_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF ALASKA

Third Judicial District

On \_\_\_\_\_, 20\_\_\_\_, RUSTIN M. KRAFFT, Purchasing Officer, personally  
appeared before me, who is personally known to me, to be the signer of the above document,  
and he acknowledged that he signed it on behalf of the Matanuska-Susitna Borough.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

## **ATTACHMENTS**

Attachment 1: LITIGATION GUARANTEE REPORT (61 p.)

Attachment 2: LOCAL IMPROVEMENT DISTRICT SPECIAL ASSESSMENT FORECLOSURE (1 p.)

Attachment 3: EXAMPLE (1 p.)