

# INVITATION TO BID 20-078B

MATANUSKA-SUSITNA BOROUGH  
PURCHASING DIVISION  
PALMER, ALASKA



BIDDING AND CONTRACT DOCUMENTS FOR

**Provide Vending Services**

**OPENING DATE & TIME: January 8, 2020 @ 4:00 PM**

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

**A D V E R T I S E M E N T**

VENDOR		ACCOUNT #	DATE FOR ADVERTISEMENT
Anchorage Daily News		MATA 0070	December 9, 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**  
**REQUEST FOR BID #20-078B**  
*Provide Vending Services*

The Matanuska-Susitna Borough is soliciting offers from interested Contractors to provide vending services (vending machines) at various sites within the Borough.

Bid documents are available beginning **December 9, 2019** from the Purchasing Division, Matanuska-Susitna Borough, 350 E. Dahlia Avenue, Palmer Alaska 99645. For information call (907) 861-8601, Fax (907) 861-8617, or e-mail [Purchasing@matsugov.us](mailto:Purchasing@matsugov.us). This bid document will be available for free on the internet at [www.matsugov.us/contractopportunities](http://www.matsugov.us/contractopportunities). A document fee of \$10.00 will be charged for materials picked-up and \$15.00 for materials mailed.

Deadline for Questions: **December 30, 2019 @ 5:00 PM**

Bids Open: **January 8, 2020 @ 4:00 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.

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Date: 12/6/19	Requested by: Signature on File
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DEPARTMENT ACCOUNT NUMBER: **100.170.129.422.000**

**SECTION II**

**INSTRUCTIONS TO BIDDERS**

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## **INSTRUCTIONS TO BIDDER**

### **01. EXAMINATION OF BIDDING DOCUMENTS**

The Bidder shall examine carefully, the Bidding Documents before submitting a Bid. The submission of a Bid shall be an admission that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements and accuracy of the Bidding Documents.

The Borough assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of the Permit, unless such understanding or representations are expressly stated in the Bidding Documents or Addenda.

The Bidder shall include in their Bid sufficient sums to cover all items required by the Permit and the conditions of the site(s), and shall rely entirely upon their own examination in making their Bid. The submission of a Bid shall be taken as prima facie evidence of compliance with this paragraph.

If material required for bidding purposes by these documents is absent, the bidder is required to notify the Purchasing Officer by facsimile (907) 861-8617, or by e-mail to [purchasing@matsugov.us](mailto:purchasing@matsugov.us).

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 OR CORRECTION OF BIDDING DOCUMENTS**

Bidders shall notify the Purchasing Officer promptly of any error, omission, or inconsistency that may be discovered during examination of the Bidding Documents. Requests from Bidders for interpretation or clarification of the Bidding Documents shall be made in writing 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 Permit 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 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 Division. 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.

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  
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 and must be received prior to the time fixed for opening of bids to be considered. 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.

#### **07. EVIDENCE OF QUALIFICATIONS**

Upon request of the Owner, a Bidder whose Bid is under consideration for the award of the Permit shall submit promptly to the Owner satisfactory evidence of the Bidder'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 Permit .

## **08. BIDDER QUALIFICATIONS**

Before the Bid is considered for award, the Purchasing Officer reserves the right to determine whether or not a Bidder is responsible and to require the Bidder to complete a Bidder Qualification Form and/or a current financial statement prepared by a Certified Public Accountant.

The Purchasing Officer shall determine whether a Bidder is responsible on the basis of the following criteria:

- The skill and experience demonstrated by the Bidder in performing Agreements of a similar nature;
- The Bidder's record for honesty and integrity;
- The Bidder's capacity to perform in terms of facilities, personnel and financing;
- The Bidder's past performance under Borough Agreements. If the Bidder has failed in any material way to perform its obligations under any Agreement with the Borough, the Bidder may be determined as a non-responsible Bidder.

A Bidder's representations concerning their qualifications will be construed as a covenant under the Agreement. Should it appear that the Bidder has made a material misrepresentation, the Borough shall have the right to terminate the Agreement for the Bidder's breach, and the Borough may then pursue such remedies as provided in the Agreement Documents or as provided by state statute, borough code or as appropriate. Any determination that a Bidder is non-responsible will be made by the Purchasing Officer. Such determination will be made in writing to the Bidder setting forth the reasons for such determination.

## **09. 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 Permit.

The permit will be awarded to the Vendor offering the highest total percent commission of gross sales paid to the Borough.

On all Bids, Notice of Intent to Award or rejection will be given as soon as practicable. 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 execute the Agreement.

When vendors 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, the cost of amenities provided by the vendor such as signage, equipment (scoreboard, etc.) and upfront cash paid to the MSB will also be calculated into the bid award.

## **10. INSURANCE**

See insurance requirements in Sample Permit.

## **11. BOND - PERFORMANCE**

A five hundred dollar (\$500) performance bond shall be deposited with the MATANUSKA-SUSITNA BOROUGH on or before the date the permit is issued by the MATANUSKA-SUSITNA BOROUGH. The bond warrants the Permittee will faithfully observe the terms and conditions of the permit and defray any costs of restoration, rehabilitation or abandonment of the PROPERTY and the associated equipment affected by the contractual use. The performance bond will be returned to the Permittee upon the expiration or termination of the contract and upon satisfactory compliance with all contractual obligations less any cost for restoration or rehabilitation of equipment or property.

## **12. EXECUTION OF AGREEMENT**

The Bidder whose Bid is accepted shall execute the Permit and furnish the required insurance within five (5) working days after Notice of Intent to Award of the Agreement is issued. The Permit shall be considered executed by the successful Bidder when the Agreement is signed by an authorized representative of the Permittee, and insurance certificate(s) are received by the Purchasing Officer. Failure or neglect of the Permittee to execute the Permit within the time specified may result in award of the Permit to the next lowest Bidder.

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

## **13. PERMITTEES' VIOLATIONS 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, land payment, or rental agreement, with the Borough which has not been remedied within 10 calendar days of receipt of written notice.
- B. The Agreement can be terminated for cause if it is determined that the individual, firm, corporation, or business is in arrears of any taxation, lease, land payment, 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, lease, rental agreement, or land sale payments, against any amount owing to the same under an Agreement between the Borough and the same.

## **14. PROTEST OF AWARD OF BID**

Within 2 (two) days of service of the Purchasing Officer's determination of the apparent successful bid, a bidder 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 bidder, the bidder must provide the Borough with a fax number. It is the responsibility of the bidder to follow the selection process and stay apprised of the bid or proposal due date, the date notice of apparent successful bidder is issued and the period in which protests can be filed.

#### **15. 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 Permittee 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 907-861-8632. MSB '3.36

#### **16. LICENSE REQUIREMENTS**

All Permittees and sub-Permittees must comply with state of Alaska requirements regarding licensing. Reference the state of Alaska's licensing requirements for performing work under this contract.

#### **17. PROCEDURES FOR AWARD**

Contracts shall be awarded by written notice issued by the Purchasing Officer. The permit shall be awarded to the responsible Bidder who provides the Matanuska-Susitna Borough the highest cost benefit.

#### **18. QUALIFIED AND RESPONSIBLE BIDDER**

The Borough reserves the right to require the Bidder to submit information pertaining to its products, service, reputation, and 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.

#### **19. 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.

#### **20. ACCEPTANCE OF CONTRACT/AGREEMENT TERMS AND CONDITIONS**

By signing the Proposed Commission Forms/Submittal Page, the bidder certifies that they have examined and accept the terms and conditions of the permit contained in this solicitation. The acceptance is inclusive of, but not limited to, all CONTRACT REQUIREMENTS, TERMS AND CONDITIONS, GENERAL PROVISIONS, AND SUPPLEMENTAL CONDITIONS along with any and all conditions contained in the INSTRUCTIONS TO BIDDERS associated with this solicitation. Submission of a bid in response to this solicitation certifies that the bidder is willing to accept these terms and understands that failure to accept these terms will subject the bidder to forfeiture of the contract/agreement and loss of any bid guarantee as liquidated damages.

**SECTION III**

**SCOPE OF SERVICES**

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## Provide Vending Services

### Scope of Services

Provide all personnel, materials, supplies, equipment, transportation and all other items as may be required to complete the services identified within the Scope of Services. The permit will be valid from the time it is from **1 February, 2020 through June 30, 2021** with the option of two (2) additional one (1) year extensions.

- A. **PURPOSE:** The Matanuska-Susitna Borough (MSB) is requesting bids to provide vending services for Borough facilities. These facilities include, but may not be limited to, Brett Memorial Ice Arena, Palmer Pool, Wasilla Pool, MSB Administration Building, Capital Projects Administration Building and the Matanuska River Park Campground.
- B. **LOCATION:** The contract sites are located at:
- Brett Memorial Ice Arena - 746 E Bogard Road, Wasilla
  - Wasilla Pool - 701 E Bogard Road, Wasilla
  - Palmer Pool - 1170 E Arctic Avenue, Palmer
  - MSB Administration Building - 350 E Dahlia Avenue, Palmer
  - Capital Projects Administration Building - 533 E Fireweed Avenue, Palmer
  - Matanuska River Park Campground - Mile 17 Old Glenn Highway, Palmer
- C. **SITE INFORMATION:**
1. The Brett Memorial Ice Arena was opened in 1984 and is open 12 months of the year. The Arena is home to several youth hockey organizations, four high school hockey teams, and a figure skating club. Additionally, the Arena operates a Learn-To-Skate program, recreational public skating sessions, and adult hockey leagues.  
  
The facility is open more than 3,500 hours each year with over 100,000 participants and spectators in attendance.
  2. The Palmer and Wasilla Pools opened in approximately 1983 and 1981, respectively. Both pools are open all year long. The Palmer Pool is currently closed for renovations and will reopen in the spring of 2020.  
  
Each pool is home to their respective high school swim team and a third high school utilizes both pools for practices and swim meets. Swim programs for the high school, middle school, and elementary students are scheduled at each pool during the school year. Public swim sessions, swimming lessons, lap swim, and private parties are scheduled throughout the year.  
  
Both facilities are open over 8,000 hours annually, with more than 150,000 patrons and spectators in attendance.
  3. MSB Administration Building is open during the normal business hours of 8:00 AM through 5:00 PM Monday through Friday. Monthly assembly meetings as well other public meetings are conducted after normal business hours. Approximately 150 full time borough employees work in the building.
  4. Capital Projects Administration Building is open during the normal business hours of 8:00 AM through 5:00 PM Monday through Friday. Approximately 20 full time borough employees work in the building.

5. Matanuska River Park is a seasonal facility which operates from mid-May through mid-September. This facility has a large day use area where many local residents take their families, friends, and relatives for picnics, reunions, and get-togethers. Additionally the park has over 80 campsites. More than 20,000 people utilize this facility during the season.

D. REVIEW OF SITES: All persons submitting a bid should review the sites for their proposed operation prior to submitting a proposal.

E. MINIMUM REQUIREMENTS: The Borough recommends, at a minimum, the following items be offered:

1. **Food** - Chips, candy, cookies, pop tarts, crackers, etc

2. **Drinks** - Bottled water, juice, soda pop, coffee, hot chocolate, hot cider, tea, Gatorade, Vitamin Water, energy drinks all bottled beverages shall be of 20 oz size, substitutions or deviations shall be preapproved by MSB Staff.

F. CONDITIONS OF PERMIT:

1. The MSB is not responsible for property loss, damage, theft or pilferage. All equipment belonging to the PERMITTEE and used on borough property will be properly identified with the PERMITTEE's name.

2. EXPENSES: The Vendor will be responsible for the day-to-day operational costs, including employee wages, supplies, equipment costs, insurance costs, license fees, and maintenance and repair costs. The Borough will be responsible for utility costs associated with the operation of the vending machines

3. EQUIPMENT, SUPPLIES AND ASSOCIATED COSTS: The Vendor shall provide the necessary equipment and supplies to maintain and operate the vending machines. Bids shall identify all equipment and products that will be used or available for use during the term of the contract. Additional machines and products may be added with the approval of the Borough. Under terms of the contract, any machines added to the area must be preapproved and become the property of the Borough, if they are not removed within 30 days of the termination or expiration of the contract.

4. Vendor shall fix, repair or replace defective equipment within 24 hours of notification by MSB staff.

5. Machines shall be serviced, filled a minimum of two times per week. If the machine is less than 25% full, the vendor shall refill machine within 24 hours if notified by MSB. The machines shall be capable of taking coins, paper currency and debit/credit cards.

6. Vendor shall provide 1 soft drink machine at each of the following facilities; Palmer Pool, Wasilla Pool, the Matanuska River Park Campground and MSB & Capital Projects Administration Buildings. Vendor shall provide 2 soft drink machines and a hot drink machine at the Brett Ice Arena. Vendor shall provide 1 candy/snack machine at each of the following facilities Palmer Pool, Wasilla Pool, Brett Ice Arena and MSB & Capital Projects Administration Buildings. More machines may be added by mutual agreement of both parties.

7. Provide VendingMiser or equivalent power sensor product on each vending machine. This is intended to provide long term utility energy savings. Vending machine manufacturer built-in sensors are an acceptable and approved equivalent product.
8. Vendor shall post fees, (if any), for credit /debit card transactions.

G. FINANCIAL REQUIREMENTS:

1. The awarded PERMITTEE will pay the MSB the amount/percentage of Gross sales on the bid form per month for the period **February 1, 2020 through June 30, 2021** for the right to provide soda, candy etc. vending services according to the Scope of Services and Conditions of Permit. This amount will be due on the tenth day of each month.
2. Payments for the vending machines in the MSB & Capital Projects Administration Buildings shall be separated as the funds are accounted for differently.
3. Performance Bond: A five hundred dollar (\$500) bond shall be deposited as a performance bond with the MATANUSKA-SUSITNA BOROUGH on or before the date the permit is issued by the MATANUSKA-SUSITNA BOROUGH. The bond warrants the PERMITTEE will faithfully observe the terms and conditions of the contract and defray any costs of restoration, rehabilitation or abandonment of the PROPERTY and the associated equipment affected by the contractual use. The performance bond will be returned to the PERMITTEE upon the expiration or termination of the contract and upon satisfactory compliance with all contractual obligations.

H. QUALIFICATIONS:

Vendors interested in submitting offers, must meet the following qualifications. These qualifications must be submitted in memo format as part of your bid:

1. Verifiable operation or management of a drink and food vending machine business.
2. Brief list the facilities served, general items sold, and a point of contact for verification.

I. TERMINATION CLAUSE:

1. This Permit will be revoked by MSB for non-payment of the commission fee by the PERMITTEE on the tenth day of each month of the Permit.
2. This permit will be revoked by MSB if any of the Conditions of Permit are not met fully by the PERMITTEE, or the employees or representatives of the PERMITTEE.
3. This Permit may be modified at a future date by consent of both parties.

J. INSURANCE:

Successful bidders will be required to provide a Certificate of Insurance on, or before, execution of the Contract. Insurance requirements are stated within the attached sample permit.

K. BID AWARD:

The permit will be awarded to the Vendor offering the highest total percent commission of gross sales paid to the Borough. The cost of amenities provided by the vendor such as signage, equipment (scoreboard, etc.) and upfront cash paid to the MSB will also be calculated into the bid award in the event of tie bids.

**SECTION IV**

**BID FORM/SUBMITTAL PAGE**

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**BID FORM (CONTINUED)**  
**SOLICITATION 20-078B**  
*Provide Vending Services*

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

1. The Bidder has carefully examined the bid documents for solicitation number **20-078B, entitled Provide Vending Services** 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"):

Addenda numbers being acknowledged: _____
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\_\_\_\_\_  
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

<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>✓ Qualification Memo</li></ul>
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**SECTION V**

**SAMPLE PERMIT**

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**Matanuska-Susitna Borough  
Vending Services Permit**

**Bid #20-078B**

**Section 1 Parties:** The **Matanuska-Susitna Borough (hereinafter called "Borough")**, a Municipal Corporation organized and existing under the laws of the State of Alaska whose address is 350 East Dahlia Avenue, Palmer, Alaska 99645, hereby authorizes **Enter Permittee's Name** (hereinafter called the "Permittee"), the right to use the Brett Memorial Ice Arena, Palmer Pool, Wasilla Pool, Matanuska-Susitna Borough & Capital Projects Administration Buildings and Matanuska River Park (hereinafter called "Facilities").

**Section 2 Facility:** The Permittee is authorized to use a designated space as mutually agreed upon by the Permittee and the Borough within the borough facilities identified in Section 1.

**Section 3 Permit:** This permit does not convey any interest in the Facilities. The permit authorizes use of dedicated space within the facilities by the Permittee. The permit is issued to the Permittee only for the authorized purposes and activities and is subject to the conditions set forth in this Permit.

**Section 4 Compensation to be Paid to the Borough:**

- A. Subject to the provisions of this Permit, the Permittee shall compensate the Borough as set forth in Appendix "B", attached hereto and incorporated herein by reference, for **products sold and additional compensation by the Permittee in the Facilities per the Bid Form.**
- B. Travel or per diem required for the performance of services pursuant to this Permit shall be subject to Appendix "B".
- C. Except as otherwise provided in this Permit, the Borough shall not provide any additional compensation, payment, use of facilities, service, or other thing of value to the Permittee 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 Permittee may incur in the performance of its obligations under this Permit have already been included in computation of the Permittee's fee and may not be charged to the Borough.
- D. Payments shall be made no later than the 10th of the month following sale of products and services.

**Section 5 Permit Term:** The term of the permit is from **1 February, 2020 through June 30, 2021.**

**Section 6 Renewal:** This permit shall expire on the date specified unless a renewal is approved by the Borough prior to the expiration date of this permit. If the Permittee desires to renew the permit, the Permittee shall, not sooner than 60 days nor later than 30 days prior to the expiration, submit a written request for a renewal of the Permit. The Permit may, by mutual agreement, be renewed two (2) times, each for a one (1) year term.

**Section 7 Performance Bond:** Five Hundred Dollars (\$500.00) shall be deposited as a performance bond with the Matanuska-Susitna Borough on or before the date the permit is issued by the Matanuska-Susitna Borough. The bond warrants the Permittee will faithfully observe the terms and conditions of the contract and defray any costs of restoration, rehabilitation or abandonment of the property and the associated equipment affected by the contractual uses. The performance bond will be returned to the Permittee upon the expiration or termination of the contract and upon satisfactory compliance with all contractual obligations.

**Section 8 Annual Plan of Operation:** Prior to the start of operations each year of the Permit, the Permittee shall submit to the Borough, in writing, a plan of operation to include the following:

- A. A description of the services to be offered, items to be sold, and other activities that may vary from those previously agreed upon.
- B. Copies of the Permittee's current business license and other applicable permits and licenses that is required for the Permittee's activities and operation.
- C. A price list of items to be sold subject to the approval of the Borough.
- D. Schedule.

**Section 9 Termination for Cause:** Violation of the permit conditions subject the Permittee to termination of the permit and may result in a claim for damages by the Borough and other civil or criminal penalties as applicable under law. Notice of termination of the permit under this section will be given in writing at least five (5) days before the effective date of termination, unless the Borough determines that it is necessary to terminate sooner to protect the public health, safety, welfare, or convenience. Nothing in this section shall be deemed a limitation on the Borough's remedies for breach. Any reports or documents made by the Permittee pursuant to the permit are the property of the Borough and shall be delivered to the Borough by the Permittee on or by the effective date of termination.

**Section 10 Termination For Convenience Of The Borough:** This Permit may be suspended or terminated, in writing, by the Borough to protect resources, health, safety, and the environment or if the Borough Manager determines it is in the Borough's best interest to do so. The Borough shall give written notice of termination under this section stating the effective date of the termination. Any reports or documents produced by the Permittee are the property of the Borough and shall be delivered to the Borough on or by the date of termination.

**Section 11 Assignment:** This Permit may not be transferred or assigned without prior written approval of the Borough. If the Permittee desires to assign the permit, the Permittee shall request an assignment, in writing, and submit the request with an assignment fee of One Hundred Dollars (\$100). The request shall be reviewed by the Borough and approved in writing if the Borough deems the assignment is in the best interest of the Borough. The assignment shall not release the Permittee from the terms and conditions of the permit, or any associated liabilities or penalties.

**Section 12 Defense and Indemnification:** The Permittee agrees to indemnify, save harmless and defend the Borough, its Assembly members, officers, agents and employees from all liability, including costs and expenses, for all actions or claims of any character resulting from economic loss, violation of laws or constitutional claims, deaths, injuries or damages sustained by any person or property arising directly or indirectly as a result of any act or omission, in the use of or occupancy of the Facilities or the performance under this permit by the Permittee, its assigns and agents, including but not limited to its subcontractors, partners, attorneys, or anyone directly employed by the Permittee or Permittee's agents or assigns.

**Section 13 Insurance:** The Permittee will, to the fullest extent permitted by law, indemnify, defend and hold harmless the Borough and its Administrator, officers, officials, agents, employees, volunteers and servants from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the Permittee's performance of this Permit; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the Borough's negligence.

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

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

The Permittee shall procure and maintain the following insurance:

- A. Minimum Scope of Insurance: Coverage shall be at least as broad as:
  - 1. Insurance Services office form number CG 0001 (Current Edition) covering Commercial General Liability.
  - 2. Insurance Services office form number CA 0001 (Current Edition) 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: Permittee shall maintain limits no less than:
  - 1. General Liability: \$500,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury. The general aggregate limit shall be \$500,000. The general aggregate limits shall apply separately to each project. If the general liability insurance is written on a claims made form, the Permittee shall provide insurance for a period of two years after final payment of the Permit. The policy(s) shall evidence a retroactive date, no later than the beginning of this Permit.
  - 2. Auto Liability: \$500,000 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. Employer's liability shall be endorsed to the following minimum limits:

Bodily injury by Accident .....	\$500,000 each accident
Bodily injury by Disease .....	\$500,000 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 Permittee to combine an excess liability or umbrella policy with the general liability, auto liability or employer's liability. In the instance where the Permittee 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 Permittee 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 Permittee shall reduce or eliminate such deductibles or self-insured retention as respects the Borough, its officers, officials, employees and volunteers; or the Permittee shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expense.

- 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 Permittee, products and completed operations of the Permittee premises owned, occupied or used by the Permittee or automobiles owned, leased, hired or borrowed by the Permittee. The coverage shall contain no special limitation on the scope of protection afforded to the Borough, its Administrators, officers, officials, employees and volunteers.
    - b. The Permittee's insurance coverage shall be primary insurance as respects the Borough, its Administrators, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Borough, its Administrators, officers, officials, employees and volunteers shall be excess of the Permittee's insurance and shall not contribute to it.
    - c. The Permittee's 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 Administrators, officers, officials, employees and volunteers for losses arising from work performed by the Permittee or any sub Permittee 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, cancelled 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 Permittee 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 Permittee 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: Permittee 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. Lapse in Insurance Coverage. A lapse in insurance coverage is a material breach of this contract which shall result in immediate termination of the contract, pursuant to Section 8.
- H. Sub Permittees. Permittee shall include all Sub Permittees as insured under its policies or shall furnish separate certificates and endorsements for each Sub Permittee. All coverage for Sub Permittees shall be subject to all requirements stated herein.

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

**Section 14 Authorized Activities:** This Permit authorizes the Permittee to use the Facilities to sell goods and provide services as described in Permittee's bid dated, approved by the Borough, and made a part hereof.

The Permittee shall maintain an efficient and high quality business operation.

**Section 15 Compatible Uses:** The Borough reserves the right to permit other use in the Facilities, provided the Borough determines that such use will not unduly impair the purpose or conditions of this permit. Should the Borough desire to make additional improvements to the Facilities, it will do so in such a manner as to not impact the Permittee's activities.

**Section 16 Powers Reserved To The Borough:** The Borough shall have, and hereby reserves the right of approval over the following matters as they pertain to this permit:

- A. The type, brand and quality of beverages, and other products or services and items sold or provided by the Permittee.
- B. The fee structure and charges to users by the Permittee.
- C. The design of structures and improvements and their placement in the Facilities by the Permittee.
- D. The placement and design of signs that advertise goods and services in the Facilities.

**Section 17 Suitability:** The Borough does not represent or guarantee the safety, suitability, or condition of the site(s) referenced by this permit for the Permittee's operation or plans.

**Section 18 Facility Damages:** The Permittee shall be liable for damage to any Borough-owned property resulting from the activities that the Permittee engages in pursuant to this permit, whether or not those activities have been approved by the Borough.

**Section 19 Natural Disaster:** In the event of a natural disaster, the Borough shall assess the damage and elect to repair the site or terminate the Permit without fault. Should the permit be terminated because of such

a disaster, the Borough will not be responsible for any loss of the Permittee's property or income as a result of the disaster.

**Section 20 Permits, Laws, and Taxes:** All activities authorized under this permit shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and orders of governmental authorities having jurisdiction over the Facilities, now or hereafter, in effect during the term of this permit, and the Permittee agrees to obtain the necessary approvals from all third party interests and obtain all permits or written authorization required by the applicable laws, rules, and regulations from governing authorities and defend and indemnify the borough for its failure to do so. The Permittee agrees to provide documentation of all applicable licenses and permits as required by the Borough. All taxes related to this permit, if any, shall be kept current by the Permittee.

**Section 21 Liability:** The Permittee shall keep the property and improvements free and clear from liens and shall hold the Borough harmless from all costs, expense, or liability resulting from any construction.

**Section 22 Endorsements:** Advertising or promotional materials may not contain any representation that the Permittee's services are endorsed by the Borough.

**Section 23 Lawful Operations:** The Permittee shall not conduct or allow to be conducted upon the Facilities, any activity in violation of any local, state or federal code, statute, law or enforcement order issued under said authority, including but not limited to Matanuska-Susitna Borough Code, regulations and rules of the Alaska Department of Environmental Conservation, and state regulations pertaining to employment practices, safety, and sanitation. The Permittee agrees to conform to all state regulations regarding discrimination in hire.

All of the above rules and regulations shall have the force of any other provisions of this contract, in addition to any penalties prescribed by law.

The Permittee shall not discriminate with respect to this permit or operation or use of the Facilities on the basis of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era.

**Section 24 Improvements and Occupancy:** Any improvements, including structures, constructed by the Permittee, in connection with this permit and in the Facilities, shall be in accordance with plans approved by the Borough.

All structures associated with this permit shall be temporary. Temporary structures are defined here as being removable from the Facilities within ten (10) days' notice and without damage to the Facilities or Borough property.

**Section 25 Operation Costs:** The Permittee shall be responsible for all costs of operation directly associated with this permit with the exception that the Borough will provide electricity to adequately operate the concessions.

**Section 26 Sanitation:** Facilities for employees and the public that are established by the Permittee in association with this permit shall be operated in conformance with the requirements of the appropriate state agencies. All solid waste resulting from the Permittee's operations shall be removed from the Facilities and Borough Property.

**Section 27 Alcoholic Beverages:** The Permittee shall not sell nor serve alcoholic beverages in the Facilities or on Borough property.

**Section 28 Inspections:** Authorized agents of the Borough shall have access, at all times, to the Facilities and to the books and records of the Permittee, including all contractors and sub-contractors, relating to activities under this permit.

**Section 29 Responsibilities Upon Expiration:** Equipment owned by the Permittee in the Facilities permitted, shall, within ten (10) days after expiration, termination, or cancellation of the permit, be removed by the Permittee; provided, such removal will not cause injury or damage to the Facilities; and further provided, that the Borough may extend the time for removing such improvements in cases where hardship is proven. The retiring Permittee may, with the consent of the Borough, sell the equipment to the succeeding Permittee.

Nothing in this section shall be construed as relieving the Permittee from an obligation to clean up, remove, or dispose of debris, waste, and similar materials, in accordance with other provisions of this permit.

**Section 30 Notices:** All notices shall be sent to both parties as follows:

Matanuska-Susitna Borough Recreational Services Division  
350 East Dahlia Avenue, Palmer, Alaska, 99645

Permittee: \_\_\_\_\_  
Permittee Address \_\_\_\_\_

**Section 31 Modifications:** The parties may agree to modify the permit. All modifications to the permit shall be incorporated by written amendments to this permit executed by both parties.

**Section 32 Jurisdiction:** Choice of Law. Any civil action arising from this permit shall be brought in the court at Palmer in the Third Judicial District of the State of Alaska. The law of the State of Alaska shall govern the rights and obligations of the parties.

**Section 33 Non-Waiver:** The failure of the Borough at any time to enforce a provision of this permit shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this permit or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

**Section 34 Titles:** The titles of the sections in this permit are for identification purposes; they are not to be interpreted as limitations of the terms of the permit.

**Section 35 Causes Beyond Control:** Any failure to perform by either party due to causes beyond control shall not be deemed a violation or breach hereof. Causes beyond control include any interruption, suspension, or interference with the project caused by acts of God, acts of the public enemy, wars, blockades, insurrections, riots, and similar occurrences. The borough shall determine whether an event constitutes a cause beyond control of the parties.

**Section 36 Permit Administration:**

- A. The Borough Manager, or his designee, will be the representative of the Borough administering this permit.

B. The services to be furnished by the Permittee 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 permit is unable to serve for any reasons, the Permittee shall appoint a successor in interest subject to a written approval of the Borough.

**Section 37 Severability:** If any section or clause of this Permit is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of the Permit shall remain in full force and effect.

**Section 38 Relationship of the Parties:** The Permittee shall perform its obligations hereunder as an independent contractor of the Borough. The Borough may administer this permit and monitor the Permittee's compliance with this agreement but shall not supervise or otherwise direct the Permittee except to provide recommendations and to provide approvals pursuant to this agreement.

**Section 39 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 permit 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>
Appendix "A" ~ Scope of Services	State of Alaska Business License
Appendix "B" ~ Bid Form	Matanuska-Susitna Borough Business License
Appendix "C" ~ Addendum(a)	City of Palmer & Wasilla Business Licenses
Appendix "D" ~ Certificate of Insurance	

**Section 40 Audits and Inspections:** At any time during normal business hours and as often as the Borough may deem necessary, there shall be made available an examination of all its records with respect to all matters covered by this permit and will permit representatives of the Borough to audit, examine, and make excerpts or transcripts from such records, and to make audits of all permits, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this permit.

**Section 41 Entry Or Re-Entry:** In the event that the permit is terminated, cancelled or forfeited, or in the event that the equipment owned by the Permittee or any part thereof, should be abandoned by the Permittee during the permit term, the Borough or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said equipment or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. No entry or re-entry by the Borough shall be deemed an acceptance of a surrender of the permit.

**Section 42 Voluntary Agreement:** The Permittee acknowledges that the Permittee has read the terms of this agreement, understands the terms of this agreement, and has had the opportunity to review the same with counsel of his choice, and is executing this agreement of his own free will.

**Section 43 Authority of the Purchasing Officer (MSB Code 3.08.150)**

All borough contracts for supplies, services, professional services and construction, and any amendments to the contracts shall be signed by the manager or the purchasing officer.

MSB Code 3.08.170 CONTRACT AMENDMENTS; ASSEMBLY APPROVAL states

- A. Contract amendment shall not be used to avoid procurement by the competitive procedures establish under this title.
  
- B. Except for emergency procurement authorized under MSB 3.08.200, contracts for supplies, services, profession services and construction may be amended by the manager or the purchasing officer with the approval of the assembly, as set forth in MSB 3.08.161, only for the following reasons:
  - 1. to change the quantity order or date of delivery under contract for supplies, where necessary to meet unforeseen borough requirements;
  - 2. to change the quantity of services or professional services to be rendered, or to change the scope of a project under a contract for services or professional services where necessary to meet unforeseen changes in borough requirements;
  - 3. to change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen borough requirements, or to change the specification under a construction contract because unforeseen conditions render the original specification impracticable;
  - 4. to change the time for completing a project under a contract for services, professional services or construction;
  - 5. to correct an error in contract specifications made by the borough in good faith or to resolve a good faith dispute between the borough and a contractor as to a party's rights and obligations under the contract; and
  - 6. to change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the borough.

For these purposes, the Purchasing Officer is defined as **Rustin Krafft** during absences of the purchasing officer, the Assistant Purchasing Officer has been delegated the authority to act as the Purchasing Officer.

**Authority of the Borough Project Manager**

The Borough Project Manager has the authority to monitor and administer the Agreement, but cannot make changes to the amount of the contract nor change the completion date of the contract

I hereby acknowledge that I have read and understand the authority granted to the parties by the Matanuska-Susitna Borough.

SIGN HERE: \_\_\_\_\_

**MATANUSKA-SUSITNA BOROUGH**

**PERMITTEE**

\_\_\_\_\_  
Signature

Rustin M. Krafft,  
Purchasing Officer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**ACKNOWLEDGMENT OF PERMITTEE**

STATE OF ALASKA

Third Judicial District

On \_\_\_\_\_, 2020, \_\_\_\_\_ 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 **Bid #20-078B, Provide Vending Services** and he/she acknowledged that he/she signed it.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF ALASKA

Third Judicial District

On \_\_\_\_\_, 2020, \_\_\_\_\_, 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: \_\_\_\_\_