

# INVITATION TO BID 20-079B

MATANUSKA-SUSITNA BOROUGH  
PURCHASING DIVISION  
PALMER, ALASKA



BIDDING AND CONTRACT DOCUMENTS FOR

**Purchase Microsoft Enterprise Agreement**

**OPENING DATE & TIME: January 13, 2020 @ 4:30 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**

<b>VENDOR</b>		<b>ACCOUNT #</b>	<b>DATE FOR ADVERTISEMENT</b>
Anchorage Daily News		MATA 0070	December 18, 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 #20-079B**

**Purchase Microsoft Enterprise Agreement**

The Matanuska-Susitna Borough is soliciting bids from qualified suppliers to Microsoft Enterprise Agreement which must meet the specifications contained in the scope of work and bid documents.

Bid documents are available beginning **December 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 will be available for free on the internet at [www.matsugov.us](http://www.matsugov.us).

Deadline for Questions: **January 3, 2020 @ 5:00 PM**

Bids open: **January 13, 2020 @ 4:30 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.

Date: 12/17/19	Approved by: Signature on File
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DEPARTMENT ACCOUNT NUMBER: **100.115.117.422.000**

**SECTION II**

**INSTRUCTIONS TO BIDDERS**

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## INSTRUCTIONS TO BIDDER

### 01. EXAMINATION OF BIDDING DOCUMENTS AND SITE

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 this Agreement, 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 Agreement, 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 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 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  
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 Agreement 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 Agreement.

#### **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 Contractor'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 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.

## **10. INSURANCE**

See insurance requirements contained within the Terms and Conditions.

## **11. ESTIMATES OF QUANTITIES APPROXIMATE ONLY**

It is expressly agreed that the quantities shown in the Bid Form, whether for a "Unit Price Bid" or in connection with a "Lump Sum Bid" given under the heading "Bid Form" are approximate only for use as a basis for comparison of Bids and are not to be taken to be either representations or warranties. The Owner does not expressly, nor by implication, agree that the actual amount of work will correspond therewith.

## **12. EXECUTION OF AGREEMENT**

The Bidder whose Bid is accepted shall be issued a purchase order. The Bidder shall furnish the required insurance within five (5) working days after Notice of Intent to Award is issued if required. The purchase order shall be considered fully executed when the purchasing officer signs the purchase order. The purchase order shall be governed by the terms and conditions set forth within this solicitation.

## **13. CONTRACTOR'S WARRANTY**

All work under the Agreement shall be under warranty by the Contractor for one year from the Final Acceptance Date except when a different period is identified in the SPECIAL PROVISIONS. This warranty shall require the Contractor to remedy promptly, without cost to the Owner, any and all defects in material and workmanship including any consequential damages resulting from defective materials or workmanship. If the defect, in the opinion of the Borough Representative, is of such nature as to demand immediate repair, the Borough shall have the right to take corrective action and the cost thereof shall be borne by the Contractor.

## **14. CONTRACTORS' 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.

## **15. BID PROTESTS**

Within 2 (two) days of service of the Purchasing Officer's determination of the apparent successful bidder, 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 bid, the Bidder must provide the borough with a facsimile 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.

## **16. 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) 861-8632. MSB '3.36.040.

## **17. PROCEDURES FOR AWARD**

Purchase Order(s) shall be awarded by written notice issued by the Purchasing Officer to the lowest qualified, responsive, and responsible Bidder, provided that, if the lowest bids are approximately equal, local bidder preference may be applied.

## **18. LOCAL BIDDER PREFERENCE**

Purchase orders shall be awarded to the lowest qualified, responsive and responsible Bidder, provided that, if the lowest bids are approximately equal, that is, within the lesser of \$2,000 or 5 percent of each other, preference may be given to local Bidders who maintain and operate businesses within the boundaries of the Borough. MSB 3.08.240

## **19. 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.

## **20. 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.

## **21. LICENSE REQUIREMENTS**

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

## **22. DESCRIPTIVE LITERATURE (RESERVED)**

## **23. SPECIAL PROVISIONS**

- A. Any bid not meeting the requirements of this Solicitation may be considered non-responsive.
- B. Unless otherwise provided for elsewhere in this solicitation, the F.O.B. Destination for this solicitation is:

Matanuska-Susitna Borough  
Information & Technology Department  
350 East Dahlia Avenue  
Palmer, Alaska 99645

Any bid quoting other than F.O.B. Destination will be considered non-responsive.

C. Bid may not be withdrawn for a period of sixty (60) days from the date of bid opening.

D. All licensing must be purchased and in place by June 30, 2020.

**24. MILEAGE AND PER DIEM (RESERVED)**

**25. 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**

**SPECIFICATIONS/SCOPE OF SERVICES**

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## MATANUSKA-SUSITNA BOROUGH

### Microsoft Enterprise Agreement Licensing SCOPE OF SERVICES

#### Introduction

The Matanuska-Susitna Borough (MSB) will complete a 6 year agreement for volume licensing of Microsoft products in June 2020. We are seeking to continue the current volume licensing strategy which simplifies and standardizes software licensing practices and ensures an upgrade path for our current and future Microsoft needs. In pursuit of this goal, the MSB is soliciting bids from qualified Microsoft Volume Licensing Resellers to engage in a three-year Enterprise Agreement (EA) with the option of renewing for two additional one-year terms for licensing of Microsoft products.

#### Deliverables

##### New EA Volume Licensing Details:

Product	SKU	QTY
Audio Conf ShrdSvr ALNG SubsVL MVL PerUsr	TJ7-00001	20
M365 E3 FromSA Unified ShrdSvr ALNG SubsVL MVL PerUsr	AAD-33200	465
M365F1FullUSL ShrdSvr ALNG SubsVL MVL PerUsr	JFX-00003	275
SysCtrDatactrCore ALNG SA MVL 16Lic CoreLic	9EP-00230	1
VSProSubMSDN ALNG SA MVL	77D-00111	6
WinSvrDCCore ALNG SA MVL 2Lic CoreLic *	9EA-00278	48
WinSvrDCCore ALNG SASU MVL 2Lic WinSvrStdCore CoreLic	9EA-00279	92
WinSvrSTDCore ALNG SA MVL 2Lic CoreLic **	9EM-00270	14
WINENTperDVC ALNG UpgrdSAPk MVL	KV3-00381	40

\* The Matanuska-Susitna Borough currently owns 48 datacenter core licenses covering an existing 96 datacenter cores.

\*\* The Matanuska-Susitna Borough currently owns 248 standard core (2019) licenses covering an existing 496 standard cores on 2019 and 8 standard core (2016) licenses covering an existing 16 standard cores on 2016.

Under the new EA the Matanuska-Susitna Borough production environment requires a total of 280 datacenter cores and 28 standard cores. In order to get from our current 48 datacenter core licenses to the required 140 datacenter core licenses we need to step-up whatever number of standard cores that is necessary to acquire the 184 datacenter cores.

M365 E5 Security and Compliance Packaging		465
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Pricing should also be provided for this item as an add-on to the licensing above. The Matanuska-Susitna Borough has not decided if this SKU will be part of the new three year agreement but would like to see pricing in order to make a final decision.

## **Special Requirements**

This engagement requires:

- An annual review of the Matanuska-Susitna Borough volume licensing that is in place to understand any changes to the licensing or purchased quantities which could impact or benefit the Borough.

## **Technical Specifications**

### **Software for this SOW:**

- Microsoft Volume Licensing Portal
- Partner Account Management and Volume Licensing Portal (if available)

## **Schedule**

All licensing must be purchased and in place by June 30, 2020.

## **Disclaimer**

The Borough shall have unrestricted rights to all delivered data and reports. All documentation and reports will be delivered electronically on the Borough intranet project management site in an editable Microsoft Office 2016 format.

**---- End of Scope of Services----**

**SECTION IV**

**BID FORM**

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**BID FORM**  
**SOLICITATION 20-079B**  
**Purchase Microsoft Enterprise Agreement.**

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 or specifications entitled: **Provide Microsoft Enterprise Agreement**. Bid will be awarded to the lowest responsive and responsible bidder.

Bid Item	Description	SKU	Quantity	Price Each (Per Year)	Bid Price (3 Years)
1.	Audio Conf ShrdSvr ALNG SubsVL MVL PerUsr	TJ7-00001	20	\$_____ x 3=	\$_____
2.	M365 E3 FromSA Unified ShrdSvr ALNG SubsVL MVL PerUsr	AAD-33200	465	\$_____ x 3=	\$_____
3.	M365F1FullUSL ShrdSvr ALNG SubsVL MVL PerUsr	JFX-00003	275	\$_____ x 3=	\$_____
4.	SysCtrDatactrCore ALNG SA MVL 16Lic CoreLic	9EP-00230	1	\$_____ x 3=	\$_____
5.	VSPProSubMSDN ALNG SA MVL	77D-00111	6	\$_____ x 3=	\$_____
6.	WinSvrDCCore ALNG SA MVL 2Lic CoreLic *	9EA-00278	48	\$_____ x 3=	\$_____
7.	WinSvrDCCore ALNG SASU MVL 2Lic WinSvrStdCore CoreLic	9EA-00279	92	\$_____ x 3=	\$_____
8.	WinSvrSTDCore ALNG SA MVL 2Lic CoreLic **	9EM-00270	14	\$_____ x 3=	\$_____
9.	WINENTperDVC ALNG UpgrdSAPk MVL	KV3-00381	40	\$_____ x 3=	\$_____
<b>Total Bid Price Per Year</b>				\$_____	
<b>Total Bid Price Three Years</b>					\$_____
<b>Additive Alternate</b>					
	<b>Description</b>		<b>Quantity</b>	<b>Price Each (Per Year)</b>	<b>Bid Price (3 Years)</b>
A1.	M365 E5 Security and Compliance Packaging		465	\$_____ x 3=	\$_____

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

\_\_\_\_\_  
 Signature

**BID FORM CONTINUED ON THE FOLLOWING 1 PAGE**

**BID FORM (Continued)**  
**SOLICITATION 20-079B**  
**Purchase Microsoft Enterprise Agreement.**

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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 **20-079B, entitled Provide Microsoft Enterprise Agreement** 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: _____
--

\_\_\_\_\_  
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

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.	To be considered responsive, Bidders should include the following with their bid: <ul style="list-style-type: none"><li>✓ Signed Bid Form (acknowledging Addenda if applicable)</li><li>✓ Any other items requested within the Instruction to Bidders &amp; Scope of Work</li></ul>
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**SECTION V**

**TERMS AND CONDITIONS**

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# INFORMATION TECHNOLOGY DEPARTMENT

## CONTRACT TERMS AND CONDITIONS

*Section headings are for purposes of convenience only and are not intended to form a part of nor to be used for interpretation of the text hereof, nor are any provision listed in any particular order of precedence. By the acceptance of this Purchase Order and/or commencement of performance for Services, the Contractor agrees that the following terms and conditions apply to this contract*

### 01. DEFINITIONS

- A. The term "**Borough**" means the Matanuska-Susitna Borough.
- B. The term "**Contract**" means all terms and conditions, exhibits, amendments, modifications or other such documents set forth herein which shall govern the performance of the Contractor. The term "Contract", "Agreement" and "Purchase Order" are interchangeable.
- C. The term "**Goods**" means the material and/or equipment to be provided by the Contractor, as described by the Borough, and any additional material and/or equipment as may be required in connection with this Contract.
- D. The term "**Destination**" means the area or location designated by the Borough to which Goods shall be delivered.
- E. The term "IT" means the Information Technology Department of the Matanuska-Susitna Borough.
- F. The term "**Chief Information Officer**" or "**CIO**" means the Chief Information Officer of the Matanuska-Susitna Borough.
- G. The term "**Confidential Information**" means any document deemed by the Borough to be confidential in nature.
- H. The term "**Contractor**" means the third party contracted to furnish equipment or perform work at a certain price or rate.
- I. The term "**Contractor Project Manager**" means the designated single point of contact for information flow from the Contractor. This person is responsible for ensuring the project is on target, ensuring the project meets the specifications of the Agreement documents and is responsible for communicating information to appropriate Borough departments and stakeholders.
- J. The term "**Borough Project Manager**" means the person designated by the CIO as the single point of contact for information flow from the Borough.
- K. The term "**Go-Live**" means the date formally agreed upon by all parties in a project plan that a system is turned on in the production or "live" environment and is ready for full adoption by end-users with no errors.
- L. The term "**Testing**" means an activity that verifies that an IT system, service or process, or other deliverable meets its specification or agreed requirements or conditions.
- M. The term "**Change Order**" means a written order to the Contractor signed by the Borough, issued after execution of the Agreement changing the scope of the work, the total amount of compensation, or the specified time for performance.
- N. The term "**Inspection for Final Acceptance**" means the inspection performed by the Borough to test the products and services for adherence to the scope of services and usability. The objective of this step is to identify any errors in the product or services for remediation and move the project to Final Acceptance.
- O. The term "**Punch List**" means the list of items or errors found by the Borough during Inspection for Final Acceptance that must be resolved before the project can move to Final

Acceptance.

P. The term "**Final Acceptance**" means that the Borough has formally determined that the work is fully completed and all deliverables and conditions have been met in accordance with the Agreement documents.

Q. The term "**Final Acceptance Form**" means the form signed by the Borough Project Manager and QO stating that all deliverables and conditions have been met and the project is complete and ready for payment

R. The term "**Failover**" means a system operation that automatically switches to a standby database, server or network if the primary system fails or is temporarily shut down for servicing. This may include cold spare, hot spares, dusters or other failover systems.

S. The term "**Warranty Period**" means a written guarantee of a product or service for a time period, during which the Contractor or manufacturer will repair the product free of charge.

## **02. RELATIONSHIP OF PARTIES**

The Contractor, including its employees, agents or representatives, shall be deemed an independent contractor and not an agent or employee of the Borough. All benefits, coverages and claims of its employees shall be the sole discretion of the Contractor. Unless specifically authorized in writing by the Borough, the Contractor shall have no authority to make commitments of any kind on behalf of the Borough.

## **03. INTEREST OF MEMBERS OF THE 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 Supply and Purchase Contract which affects his personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested in having any personal or pecuniary interest, direct or indirect, in this Supply and Purchase Contract.

## **04. CONFLICT OF INTEREST**

The Contractor, all employees of the Contractor, contractors and other personnel employed by the Contractor providing materials or services under this Supply and Purchase Contract shall in no way stand to gain financially from the terms of this contract except for wages, salaries or bonuses paid by the Contractor and shall abide by federal, state, and local laws and regulations associated with conflict of interest and financial disclosure. The Contractor covenants that he 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 contract. The Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed.

## **05. RISK OF LOSS**

Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, the Contractor shall bear risk of loss or damage as to Goods rejected by the Borough or as to which acceptance has been revoked. Further, until delivery of Goods, including related services and information, risk of loss, regardless of cause, is the Contractor's responsibility.

## **06. WARRANTY**

The Contractor warrants that the Goods and services supplied are merchantable, of highest quality, comply with specifications, drawings and data submitted to or by the Borough in connection with this Contract, are free from defects, whether patent or latent, in design, material and workmanship and

are suitable for the particular use for which the items are purchased and are free and clear of all liens and encumbrances. The Contractor further warrants that it has secured the Borough's right to own, sell or use Goods delivered under this Contract. Such warranty, together with service warranties, guarantees and other express or implied warranties, shall run in favor of the Borough and shall survive any inspection, delivery or payment of and for the Goods. The Contractor will be responsible for all damages and costs incurred by the Borough arising out of or in connection with any breach of warranty. For purposes of this Contract, Goods shall include any documentation, such as quality control or test records and certificates of compliance that may be specified in connection with the Contract or are customarily furnished in the trade.

#### **07. REMOVAL OF DEFECTIVE MATERIAL**

The Contractor will promptly remove and replace, at the Borough's sole discretion, any material that the Borough designates as nonconforming or defective.

#### **08. BOROUGH SUPPLIED PROPERTY**

The Borough shall retain title to any drawings, sketches, designs, patterns, dies, molds, copying equipment and materials of every description paid for or supplied by the Borough for use in the performance of this Contract. The Contractor shall hold and maintain any such items at its risk and expense, shall keep such items insured at its expense while in its custody or control in an amount equal to the replacement cost thereof with loss payable to the Borough and shall not use such items except in performance of this Contract. All such items shall be delivered to the Borough upon demand in the same condition as when received, except for reasonable wear and tear and except to the extent such items have been incorporated into Goods delivered to the Borough or consumed in the normal performance of this Contract.

#### **09. DRAWINGS, DATA AND MANUALS**

The Contractor will supply proper operating, training, maintenance, installation drawings, technical data and any other documentation that is required by the contract documents.

The Contractor shall submit any drawings, technical data or other such documents required for performance of this Contract for review by the Borough, the Contractor shall comply with all comments of the Borough regarding such documents, but the Borough's review shall not relieve the Contractor of its responsibility for correctness of engineering, design, workmanship, material and all other aspects of the Goods or from any other liability hereunder. Omissions from design drawings and technical data (data) which are manifestly necessary to carry out the Work shall not relieve the Contractor from performing such omitted details or Work, but they shall be performed as if fully and correctly set forth and described in the data. All documents including, but not limited to, studies, calculations, assumptions, data, findings, results and reports and other information resulting from the performance of the Contractor hereunder shall become property of the Borough. The Contractor shall, unless otherwise directed, deliver to the Borough all such documents and information and the Borough shall have the right to use them for any purpose whatsoever.

#### **10. DELAYS**

Time is of the essence in the Contractor's performance of this Contract. If the Contractor does not deliver services or materials in a timely manner in accordance with the requirements of this contract, the Contractor understands that the Borough's work may be disrupted and delayed, and the Contractor may be required to pay the Borough any reasonable damages sustained as a result, unless the Contract provides for Liquidated Damages, at which point the Liquidated Damages would be applicable.

#### **11. EXCESS MATERIAL**

The Contractor agrees to accept the return of any Goods that may become excess, as determined by

the Borough, and payment due from the Borough shall be equitably reduced.

## **12. SUBSTITUTIONS**

No substitutions will be permitted without the express written consent of the Borough. If the Contractor proposes any substitution, the Contractor guarantees that the substitution is equal in quality, capacity, durability, appearance, function, ease of maintenance, and ease of installation to the material originally specified.

## **13. INSPECTIONS AND TESTING**

The Borough may inspect and test material at any time. The Contractor will facilitate the Borough's inspection and testing which may take place at the factory, in the warehouse, on the road, or in the field.

## **14. AUDITS**

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 the Contractor's records with respect to all matters covered by this contract and the Contractor 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, personnel information, conditions of employment, and other data relating to all matters covered by this contract

## **15. COMPLIANCE WITH THE LAW**

The Contractor shall fully comply with all federal, state and local laws, ordinances, statutes, rules, regulations, license and permit conditions or requirements (hereinafter "Laws")/ including, but not limited to, all Laws pertaining to the environment, natural resources, employment, health and safety, and any other Laws affecting the Contractor's performance of this Contract. All fees and charges in connection with the Contractor's compliance with applicable Laws shall be borne by the Contractor. In the event of a violation by the Contractor of any Laws, or the failure of the Contractor to comply with same, the Contractor shall pay all fines, penalties and other expenses, including attorney fees, imposed upon or incurred by the Contractor or the Borough in connection therewith.

## **16. CHANGES**

The Borough, by written order, may modify services or materials to be rendered under this Contract, and the Supply and Purchase Contract Price will be equitably reduced. The Borough may request a change in services or materials to be supplied at the unit prices stated in the Contract. If no unit prices are stated, the Contractor will promptly, at the request of the Borough, quote prices, and the Borough will promptly accept or reject the quote.

All changes to the Scope of Services, the total amount of compensation, or the specified time for performance under the Contract must be executed by Change Order in writing, and must be approved and signed by the Borough Project Manager, the CIO and the Borough Purchasing Officer before any work can proceed. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment to the total amount of compensation or the specified time for performance.

## **17. TRANSPORTATION & TRAVEL CHARGES**

Except in cases where Goods were quoted F.O.B. Destination, and unless otherwise agreed to in writing, transportation charges shall be prepaid and separately invoiced to the Borough. No insurance or premium transportation costs will be allowed unless authorized by the Borough.

Travel expenses of any kind will not be paid by the Borough and are the Contractor's responsibility.

## **18. ASSIGNMENTS AND SUBCONTRACTORS**

The Contractor may not assign any interest in the Contract to another person, nor delegate any duties to a subcontractor or other person without the prior written approval of the Purchasing Officer. Any attempt by the Contractor to assign any interest or delegate duties under the Supply and Purchase Contract shall give the Borough the right to immediately terminate this Contract

## **19. INDEMNITY**

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's fees. The Contractor shall be responsible under this cause 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 intangible, sustained by any person, or property arising from the Contractor, or the 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, the 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.

## **20. OFFSETTING ACCOUNTS**

The Borough may offset against the price of this Supply and Purchase Contract the amounts of any obligations of the Contractor to the Borough, whether arising out of this or any other project

## **21. TERMINATION**

The Borough has the absolute right to terminate or suspend Work under this Contract by written notice to the Contractor. Such termination or suspension may be made in whole or in part and shall be at the sole discretion of the Borough, may be done at any time and may be for any reason. Notice of termination or suspension may specify the schedule or manner and other conditions of the termination or suspension and the Contractor shall comply with therewith. In such event, the Contractor shall be entitled to payment for the Work performed up to the time of such termination or suspension in accordance with the terms of this Contract, including such expenditures as in the judgment of the Borough are necessarily incurred by the Contractor in the orderly termination or suspension of its Work as prescribed in the notice.

## **22. KEY PERSONNEL**

To the extent that Key Personnel are specified for the performance of this Contract, such Key Personnel are considered to be essential to such performance. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Borough not less than ten (10) days in advance and gain approval of the Borough. The Contractor shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation. No substitutions or deviations shall be made by the Contractor without the written consent of the Borough.

## **23. ATTORNEY'S FEES**

In the event of litigation arising out of this Contract, or performance or interpretation thereof, the court will award attorney fees pursuant to the Rule 82 of the Alaska Rules of Civil Procedure.

## 24. JURISDICTION AND CHOICE OF LAW

Any civil action arising from this Supply and Purchase Contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Palmer or in the Federal District Court for the State of Alaska in Anchorage. The law of the state of Alaska shall govern the rights and obligations of the parties.

## 25. NON-WAIVER

The failure of the Borough at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provisions, nor in any way effect the validity of this contract or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

## 26. SEVERABILITY

If any provision of the Supply and Purchase Contract or the application thereof to any person or circumstances is held invalid, the remainder of this contract and its application to other persons or circumstances shall not be affected thereby.

## 27. NOTICES

Any notice required pertaining to the subject matter of the Contract shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

Borough: Matanuska-Susitna Borough, Purchasing Office

350 East Dahlia Avenue, Palmer, Alaska 99645

Contractor: Enter Contractor's Name

Enter Contractor' Address

## 28. 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 work covered by this Contract. The Contractor shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in this section for applicants for employment and employees as the Borough may require.

B. The Contractor shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the Borough may require.

## **29. INSURANCE**

The Contractor warrants that it has obtained or will obtain such public liability, product liability, property damage employees' liability and compensation insurance as will protect the Borough from all risks arising out of the manufacture, sale or use of the Goods. If requested by the Borough, the Contractor shall furnish to the Borough within three (3) days following the receipt of this Contract, a Certificate of Insurance acceptable to the Borough evidencing compliance with the minimum insurance coverage required by the Borough as stated on the Insurance Requirements, the terms and conditions of which are incorporated herein.

## **30. STOP WORK ORDER**

The Borough may, at any time, by written notice to the Contractor, stop all or part of the Work hereunder for up to ninety (90) days. Upon receiving a stop-work order, the Contractor shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional costs allocatable to such work. Within ninety (90) days after the effective date of the stop-work order, the Borough shall either cancel the stop-work order or terminate the Work covered by the stop-work order. The Borough shall make an equitable adjustment in the delivery schedule and/or price if the stop-work order results in an increase in time or cost for performance. The Contractor must assert a claim for equitable adjustment within fifteen (15) days after the end of the work stoppage.

## **31. WORK PERFORMED AT CONTRACTOR'S RISK**

The Contractor shall perform all work at its risk and if the Work or any portion thereof shall be damaged in any way before the final completions and acceptance of the Work, the Contractor shall promptly repair or replace such damaged Work without expense to the Borough. The Contractor shall be responsible for any loss or damage to equipment or other articles used or held for use in connection with the Work.

## **32. FLOW DOWN PROVISION**

In the event that this Contract is issued in connection with another government agency, the Borough will make every effort to include any flow down or contract provisions required by that agency in this Contract. The Borough reserves the right to include, and the Contractor agrees to comply with any flow down or other agency provisions. In the event that flow down or contract provisions required by other agencies or by Law are inadvertently omitted from this Contract, both the Borough and the Contractor agree to negotiate in good faith for that provision's inclusion into the Contract.

## **33. UNDERSTANDING**

The Contractor acknowledges that the Contractor has read and understands the terms of this Contract, has had the opportunity to review the same with counsel of the Contractor's choice, and is executing this contract of the Contractor's own free will.

The Contractor acknowledges that only the provisions set forth in this Contract are binding and all other verbiage including that included on the Contractor's quote or other documentation will be cancelled by this Contract. The Borough will not be held to any agreement, contract, Terms and Conditions or other provision set forth by the Contractor unless specifically noted in this document.

## **34. COMPENSATION**

- A. Subject to the provisions of this Contract, the Borough shall pay the Contractor a total sum for all services for the term of this Contract not exceeding the sum agreed, attached hereto and incorporated herein by reference, for services required by this Contract.

- B. Except as otherwise provided in this Contract, 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 Contract 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 Contract have already been included in the computation of the Contractor's fee and may not be charged to the Borough.

### **35. METHOD AND TIME OF PAYMENT**

- A. The Borough will pay the Contractor the amount agreed upon which shall constitute the full and complete compensation for Contractor's services.
- B. No payment will be dispersed until Final Acceptance, after the Chief Information Officer has approved and signed the Final Acceptance Form.
- C. Invoices for all services and products must be submitted within 30 days of notice of Final Acceptance.
- D. All services must be rendered and products received by the date specified in the Scope of Services or within 45 days upon receipt of order, whichever is earlier.
- E. All invoices must be submitted in duplicate and addressed as follows:  
  
Matanuska-Susitna Borough  
Attention: Accounts Payable  
350 East Dahlia Avenue  
Palmer, Alaska 99645
- F. Documentation to accompany invoices before payment is made will include:
  - 1. Timesheet for work performed. Electronic version of the timesheet can be obtained from the Borough Project Manager.
  - 2. Itemization of materials if applicable.

### **36. FINDING CONFIDENTIAL**

To the extent permitted or required by law, the Contractor shall be prohibited from publishing or making available to any individual or organization any Borough reports, data, files, databases, or other Borough information of any kind, including Confidential Information, given to, prepared by, assembled by, or accessed by the Contractor under this Contract, unless the Contractor has obtained the express written authorization of the Borough.

The Contractor shall employ effective technical and physical security protocols that ensure the protection of Borough data, files, databases, or other Borough information of any kind. In the event that the Contractor obtains or possesses Borough information of any kind, to the extent permitted or required by law the information shall be returned to the Borough (if originals) or permanently destroyed (if copies) from any of the Contractor's media, servers, including hosted, or local instances or any other means of storing information within 30 days of the Final Acceptance of the project. This requirement does not apply to records pertaining solely to the administration

of this Contract, such as the Contractor's own payroll and expense records, or Contractor's solicitation preparation documents.

In addition, Contractor shall perform background checks on each of its employees, subcontractors, or agents given access to Borough information. Contractor will not allow any individual to access Borough information if the required background check would lead a reasonable person to suspect that the individual has committed identity theft or otherwise misused third party data at any time, or that the individual presents a threat to the security of Borough data or information.

The Contractor shall comply with all applicable state and federal laws and regulations governing the handling of Borough data, files, databases, or other Borough information.

The Contractor shall notify the Borough immediately if the Contractor learns that any Borough information including, but not limited to, Confidential Information, employee personnel files, medical information, personal information, financial information of any individual, or any other information, reasonably expected to be protected by any Borough, state or federal law or regulation, is released by the Contractor or any agent of the Contractor. The Contractor shall cooperate with the Borough and law enforcement in investigating any such release of information, at the Contractor's expense. None of these remedies, modify or limit the Contractor's obligations under Section 19.

The Borough retains the right to consult with external parties regarding agreements, pricing and functionality associated with any agreement, software, hardware, support, maintenance or other technology agreement.

### **37. HARDWARE AND SOFTWARE WARRANTY**

- A. **Function.** The Contractor fully warrants the functionality, suitability for its purpose intended under this Agreement, and implementation of all software and hardware used under this Agreement, including software provided, designed, developed, or adapted by the Contractor, and including software and hardware purchased or used by the Contractor to carry out the Scope of Services under this Agreement, for 12 months after Final Acceptance. In the event of breach of the warranty in this Subsection, in addition to any other remedies that apply, the Contractor will immediately repair the software and/or hardware or replace it with software and/or hardware of substantially similar functionality at no additional cost to the Borough.
  
- B. **Infringement/Ownership.** The Contractor warrants that it is the owner of the software and/or hardware and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property and other rights granted in this Agreement without the further consent of any third party. The Contractor warrants that the Boroughs' use of any and all such software and hardware according to the terms of this Agreement will not infringe on the intellectual property rights of any third party. If the software and/or Hardware becomes, or in either party's reasonable opinion is likely to become, the subject of any claim, suit, or proceeding arising from or alleging infringement of any intellectual property right, or in the event of any adjudication that the software and/or hardware infringes any such right, the Contractor, at its own expense, will promptly and without any interruption in use by the Borough, take the following actions: (i) secure for the Borough the right to continue using the software and/or hardware; or (ii) replace or modify the software and/or hardware to make it non-infringing, provided such modification or replacement will not

materially degrade any functionality relied upon by the Borough.

If it is found that infringement has occurred, in addition to any other remedies that apply, the Contractor will be required to refund the costs of the license fees paid by the Borough.

There is no warranty period or expiration date for this warranty.

- C. **Harmful Code.** The Contractor warrants that the software and/or hardware and any media used to distribute it, and any updates provided related to this Agreement, contain no viruses or other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems. The Contractor will be liable for all damages incurred if such viruses or restrictive code cause(s) harm or financial expense to the Borough to repair. There is no warranty period or expiration date for this warranty.
- D. **Service Performance.** The Contractor warrants that all services provided pursuant to this Agreement will be performed in a workmanlike manner. There is no warranty period or expiration date for this warranty.
- E. **Remedies.** The remedies set forth in this Section are not exclusive of any others the Borough may have under the provisions of this Agreement, and/or at law or in equity.

### **38. LICENSING**

All licenses must permit any and all Borough employees, agents, authorized users, contractors, and consultants hired by the Borough to use the software and access it remotely in the course of their work for Borough assignments.

The Contractor agrees that the Borough maintains the right to buy additional identical licenses for future requirements at or below, as may be negotiated, the unit price proposed by the Contractor for software licenses per seat per the proposal submission and evaluation section of the solicitation documents, or as negotiated with the Borough during Proposal Evaluation, if applicable, for a period of 12 months from the date of Final Acceptance of services under this Agreement. If licenses purchased under this Agreement or purchased within the 12-month price protection timeframe are upgraded by the Contractor at any time or the Contractor is acquired, merged with or taken over by another company at any time, the Borough retains the right to identical licensing without loss of productivity, function or the imposition of any additional costs.

The Contractor will disclose any open-source, freeware or similarly supported and distributed software. The requirements in this Agreement will apply to all software including , open source, proprietary, or other licensing models or intellectual property forms.

The Contractor shall promptly provide notice of any security problems, bugs, or upgrades for any software for which the Borough has purchased licenses under this Agreement, and shall provide fixes and/or upgrades to the Borough promptly for that software without any fees, charges or costs imposed on the Borough even if the 12-month warranty period under this Agreement has expired, and even if there is no maintenance and support agreement in effect at the time.

All proposed licensing terms or modifications to licensing terms must be clearly articulated in writing at the time of submission, are subject to negotiation, and must be formally adopted as terms of this Agreement by written agreement of both parties. The terms of this Agreement shall supersede any conflicting licensing terms, and all subsequent changes to licensing terms must be

made in writing and executed by modification of this Agreement.

The Borough shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, and free of any extra charges, fees, or costs, any reports, data or other materials prepared under this Agreement. This includes all training and reference materials such as manuals.

### **39. FAILOVER & DISASTER RECOVERY**

The Borough shall not be charged any additional licensing costs or fees if the main system is shut down for any reason and a failover system is activated, including due to Borough testing of failover systems. This includes use of the software during failover, upon return to the main system, or if a new system is necessitated.

### **40. FINAL ACCEPTANCE AND FINAL PAYMENT**

Final Acceptance of deliverables will require that all products and services meet the requirements outlined in the Scope of Services and fulfill the intended outcome of the project. Acceptance requires that every application, item of hardware, or other technology or data collection, is complete, accurate, and reliable, materially performs to the requirements set forth in the Scope of Services, and has full functionality as advertised with no errors returned.

### **41. 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.