

**City of Palmer
Action Memorandum No. 16-070**

Subject: Direct the City Clerk to Issue the Request for Proposals for the Professional Legal Services

Agenda of: September 27, 2016

Council Action: **APPROVED**

Originator Information:

Originator: Mayor Johnson – via City Clerk
Date: September 13, 2016 **Requested agenda date:** September 27, 2016

Department Information √:

Route to:	Department Director:	Signature:	Date:
_____	Community Development	_____	_____
_____	Finance	_____	_____
_____	Fire	_____	_____
_____	Police	_____	_____
_____	Public Works	_____	_____

Approved for presentation by:

	Signature:	Remarks:
City Manager	_____	_____
City Attorney	_____	_____
City Clerk	_____	_____

Certification of Funds:

Total amount of funds listed in this legislation: \$ _____

This legislation (√):

Has no fiscal impact Creates a positive impact in the amount of: \$ _____
 Creates a negative impact in the amount of: \$ _____*

Funds are (√):

Budgeted Line item(s): _____
 Not budgeted Affected line item(s): _____

General fund unassigned balance (after requested budget modification): \$ _____

Enterprise unrestricted net position (after requested budget modification): \$ _____

Director of Finance Signature: _____

Attachment(s):

- Request for Proposals
- Professional Services Agreement
- Reference Questionnaire

Summary Statement:

On December 13, 2011, the City Council awarded a contract to Wohlforth, Brecht, Cartledge and Brookings.

On January 28, 2014, City Council approved Action Memorandum No. 14-012 extending the contract to December 31, 2014.

On January 13, 2015, City Council approved Action Memorandum No. 15-001 extending the contract to December 31, 2015.

On October 27, 2015, City Council approved Action Memorandum No. 15-087 extending the agreement to December 31, 2016 and execute a Novation Agreement assigning it to Jermain Dunnagan & Owens, P.C.

Action Memorandum No. 16-070 directs the City Clerk to issue an RFP for legal services with the intent of awarding a contract prior to the December 31, 2016, deadline.

Administration Recommendation: Authorize Action Memorandum No. 16-070.



CITY OF PALMER

231 West Evergreen Avenue Palmer,
Alaska 99645
Phone (907) 745-3271 • Fax (907) 745-0930
www.cityofpalmer.org

REQUEST FOR PROPOSALS

**The City of Palmer is soliciting proposals
for General Counsel Legal Services.**

**RELEASE DATE:
SEPTEMBER 28, 2016**

**DEADLINE FOR SUBMISSION AND OPENING DATE AND TIME:
OCTOBER 25, 2016, 2:00 pm**

Use this page as the first page of the proposal.

Response By:

Attorney/Firm Name: _____ Contact Person: _____

Address _____

Telephone () _____ Fax () _____

E-mail Address _____

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

Signed _____ Date: _____

Print Name and Title _____

I. OVERVIEW OF REQUESTED SERVICES

The City of Palmer (**city**), a first-class, home-rule municipality, population approximately 6,100, is seeking proposals for general counsel legal services. It is the intention of the city through this solicitation to enter into a contract with a general counsel that will serve the city council, city manager, city clerk, and city staff in various capacities. The city reserves the right to enter into contracts with attorneys other than the general counsel should the council so choose from time to time. Proposals are invited from any qualified State of Alaska licensed attorney-at-law or law firm. Attorneys/Firms (**proposers**) must be qualified to represent the city in all State of Alaska Courts and the U.S. District Court for the District of Alaska.

II. SCOPE OF SERVICES, TERM, AND QUALIFICATIONS

It is the intention of the city to enter into an agreement under which a qualified proposer will provide general counsel legal services on behalf of the city at a fixed hourly rate. The FY 2016 budgeted amount for legal services for the city was approximately \$160,000.00. This includes amounts for general counsel services and also for other legal services.

- A. SCOPE OF SERVICES. Proposer is expected to provide the city with general counsel legal services, to include the following:
 - 1. Serve as the legal advisor of and be responsible to the city council, and advise the city manager and city clerk concerning matters affecting city administration, as well as perform other duties as may be prescribed by the city council.
 - 2. Prepare legal documents such as ordinances, resolutions, contracts, conveyances, etc., and legal opinions as needed. Provide limited representation in court, negotiate on the city's behalf and handle other legal matters that may arise.
 - 3. Be readily available for consultation by the city council, city manager, city clerk, and city staff.
 - 4. Draft opinion letters regarding, among other subjects, the interpretation of the city code and charter, state and federal laws, and policies.
 - 5. Perform other such duties as may be prescribed for the city attorney by ordinance or by direction of the city council, city manager, and/or city clerk.
 - 6. Must work effectively with the city council, city manager, city clerk, and city staff, and also with other public agencies with which the city has legal relations.
 - 7. The city attorney or designee is required to attend scheduled city council meetings; unless excused by city council.

- B. TERM. The term of the professional services agreement is two years, with three one-year options unilaterally available to the city. The agreement may be terminated at the convenience of the city at any time.

- C. QUALIFICATIONS
 - 1. The proposer (or primary attorney for the city in a firm—see III.B.1. below) must be a member in good standing of the State of Alaska Bar Association and be qualified to represent the city in all State of Alaska Courts and the U.S. District Court for the District of Alaska.
 - 2. The proposer (or primary attorney for the city in a firm) should have at least five years of professional experience as legal counsel for an entity such as an Alaska city, municipality, or borough.
 - 3. The proposer (or primary attorney for the city in a firm) should be experienced and proficient in legal matters affecting the city, to include without limitation, Alaska municipal law including AS 29, city charter and code, Matanuska-Susitna Borough Code, other applicable State of Alaska law and federal law.

III. RESPONSE TO RFP.

To achieve a uniform review process and obtain a reasonable degree of comparability, a proposer should submit a Response to RFP following the below contents, which must not exceed fifteen (15) pages in length, double spaced, including Page 1 of this RFP and the Letter of Transmittal. In page 1 of this RFP, provide the name, address, phone number, fax number, website URL of the proposer, together with the name of the person who the city clerk may contact in regard to the RFP. Detail each of the following points in your Proposal:

- A. Letter of Transmittal (limited to one page).
 1. Briefly state proposer's understanding of the services to be performed and make a positive commitment to provide the services as specified.
 2. Statement confirming the primary attorney expects to be available to perform legal services for the City for five years.
 3. Give the name(s) of the person(s) who are authorized to make representations for proposer, their titles and telephone numbers.
 4. **The letter must be signed by an individual who has the authority to bind the proposer.**
- B. Statement of Qualifications.
 1. Statement of Qualifications of the attorney who will be the primary attorney for the city and who will attend council meetings.
 2. Statement of Qualifications of other attorneys, if any, who will support the primary attorney. These attorneys may be in the same firm or available under other arrangement.

The Statement of Qualifications should address the municipal experience, other applicable legal experience, and education of the attorney(s) in III.B.1. and III.B.2. List municipal law cases handled by the primary attorney and supporting attorneys and whether the attorney's clients were the prevailing party or not. In particular, identify and describe the experience over the last five years and the level of expertise in the following areas:

- a. Attendance at council/assembly meetings and related legal issues;
 - b. Issues facing the city;
 - c. Ordinance drafting;
 - d. Zoning and land use regulation;
 - e. Ordinance enforcement;
 - f. Municipal sales tax law and enforcement;
 - g. Public employment labor law;
 - h. Municipal purchasing and contracts;
 - i. Police liability;
 - j. Acquisition and disposition of public property; and
 - k. Intergovernmental issues with State and Federal agencies.
- C. Conflicts. List all matters and/or cases where the proposer currently represents an individual or entity with interests potentially adverse to the city, to include without limitation, the Matanuska-Susitna Borough, City of Wasilla, Matanuska-Susitna Borough School District, State of Alaska, University of Alaska, Mat-Su Regional Medical Center, and Alaska Railroad Corporation, etc. Describe the scope of the representation and nature of the conflict.
 - D. Availability. Specify how available the primary attorney will be to the city. State whether the city will be primary attorney's main client or one of several or one of many. State the current workload of the primary attorney and how that attorney intends to accommodate the city's work. State the location of the office from which the primary attorney will serve the city.

- E. Disclosure. Disclose any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or Bar Association investigation which involve the proposer as a party or in which the proposer has been judged guilty or liable or sanctioned. This is a mandatory disclosure.
- F. Cost. Proposals must state the following cost information:
 1. An hourly cost for services to be provided.
 2. Travel time cost, if any, including:
 - (a) Cost per hour of travel.
 - (b) Round trip travel time for one meeting located at Palmer City Hall, 231 W. Evergreen Avenue, Palmer, Alaska.
 3. Total annual cost to the city for 600 hours of legal services plus attendance at twenty-four four-hour council meetings and ten two-hour consultation meetings at City Hall. This cost is for purposes of comparison and is not a representation of actual legal services to be provided.

Attorney Fees:

Hourly Fee	Description	Total Fee
	600 Hours of Legal Services	\$
	24 Four-Hour Council Meetings	\$
	10 Two-Hour Consultations at City	\$
	10 Travel Time To and From City	\$
	50 Hours of Paralegal Services	\$
	Grand Total:	\$

See Section 5(A) of the Agreement that limits travel time fees.

- G. Municipal experience. List all municipalities for which the proposer has performed legal services in the last five years. Provide a short description of the services, the date performed, and the municipal contact person.
- H. References. Provide a minimum of five (5) references from similar clients, to include local government, state and/or private clients, for whom the proposer has performed legal services within the last three years. **Proposers are required to provide Attachment B, Reference Questionnaire, to the references they list. The references must submit the Reference Form directly to the Palmer city clerk by October 25, 2016.** It is the proposer’s responsibility to ensure that the completed forms are received by the city clerk on or before the proposal submission deadline for inclusion in the evaluation process. References that are not received, or are not complete, may affect the proposer’s evaluation score. The city may contact any or all references for validation of information submitted and other information.
- I. Local Preference. Does the primary attorney have a law office in the City (please provide a City Business License Number), live in the City, or within five (5) miles of City limits. Please provide proof of residency.

IV. PROPOSAL EVALUATION AND AWARD PROCESS

A. Proposals will be evaluated and scored on a 100 point scale based upon the following criteria.

Qualifications of Primary Attorney:	30	Based on criteria in III.B., better qualifications--higher score
Qualifications of Other Attorneys:	5	Based on criteria in III.B., better qualifications--higher score
Conflicts (may exclude proposer):	7	Based on III.C., more/greater conflicts—lower score

Availability:	7	Based on III.D., more available—higher score
Disclosure (may exclude proposer):	7	Based on III.E., negative disclosures—lower score
Cost:	20	Based on III.F., lower cost--higher score
Local Preference:	<u>4</u>	Based on III.I, full points awarded if local
Subtotal for initial selection:	80	
Council interview	<u>20</u>	Better demonstration of qualifications and ease of understanding for Council—higher score

Grand Total: 100

Proposals will be kept confidential until a contract is awarded, subject to law.

- B. The city may contact the references provided by the proposer; contact any proposer to clarify a response; contact current and/or prior clients; solicit information from any available source concerning any aspect of a proposal; and see and review any other information deemed pertinent to the evaluation process.
- C. After the proposals are received a panel of three (3) people will initially evaluate and score the proposals, select the top two to five proposals, and submit them to the council for review and interviews. The council will then review selected proposals and interview the selected proposers, provided the council may also review any or all non-selected proposals and interview any or all non-selected proposers. The council may re-evaluate and re-score any or all of the proposals.
- D. At the conclusion of proposal evaluations and interviews, the city council will determine its choice of the highest rated proposer. Any award is contingent upon the successful negotiation of final contract terms and upon approval by the city council. Negotiations shall be confidential and not subject to disclosure to competing proposers unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the city upon written notice to all selected proposers may negotiate a contract with the next highest scoring proposer or proposers or withdraw the RFP.

V. SUBMITTAL INSTRUCTIONS

A. RFP TIMELINE

TASK	DATE/TIME
Deadline for submission and opening of proposals	10/25/16 at 2:00 p.m.
Initial evaluation period	10/25/16 to 10/28/16
Selection for interview with City Council	10/31/16
Council interview of selected proposers	11/2/16 to 11/22/16
Selection of attorney/firm	11/22/16 or later
Commencement of services	1/1/2017

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

B. Proposers shall submit one (1) original proposal marked "MASTER" and twelve (12) identical copies to: Norma I. Alley, City Clerk, City of Palmer, 231 W. Evergreen Avenue, Palmer, AK 99645.

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

REQUEST FOR PROPOSAL: Legal Counsel Services

Proposal opening date: October 25, 2016

D. Proposals must be received at the above-reference address no later than 2:00 pm on October 25, 2016. Proposals that do not arrive by proposal opening time and date WILL NOT BE ACCEPTED. Proposers may submit their proposal at any time prior to the above stated deadline. Facsimile, email or telephone proposals will NOT be considered.

E. Proposals may be modified by facsimile, email or written notice, provided such notice is received prior to the opening of the proposals. Proposers may transmit proposal modifications by facsimile or email at their own risk. Only changes in cost information (reduce or increase fee by \$X; reduce or increase total annual cost by \$Y) may be submitted by facsimile or email; do not send actual cost data via facsimile or email. The city will not be responsible for any error or failure in facsimile or email transmission or receipt.

F. For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined in this RFP, and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed.

G. Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc. are not necessary or desired. Emphasis should concentrate on conformance to the RFP instructions, responsiveness to the RFP requirements, and on complete and clear content.

H. The proposal must be signed by the individual legally authorized to bind the proposer.

VI. GENERAL TERMS, CONDITIONS AND EXCEPTIONS

A. Performance of the proposer may be rated semi-annually for the first year following contract award and then annually for the term of the contract by the city council.

B. The city reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the city to do so.

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

D. The city reserves the right to reject any or all proposals received prior to contract award.

E. The city shall not be obligated to accept the lowest priced proposal, but may make an award in the best interests of the city after all factors have been evaluated.

F. Alterations, modifications or variations to a proposal may not be considered unless authorized by the

RFP or by addendum or amendment.

- G. Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered. Proposers transmit proposal withdrawals by facsimile at their own risk. The city will not be responsible for any error or failure in facsimile transmission or receipt.
- H. Prices offered by proposers in their proposals are an irrevocable offer for the term of the contract, provided that the proposer may increase its hourly fee \$5 per year for each one-year extension the city chooses to exercise. The awarded proposer agrees to provide the services at the costs, rates and fees as set forth in its proposal in response to this RFP (plus any applicable \$5 per year increase noted above). No other costs, rates or fees shall be payable to the awarded proposer for implementation of their proposal.
- I. The city will not be liable for any costs incurred by a proposer to prepare its proposal. Costs to develop the proposals and any other such expenses incurred by the proposer in responding to the RFP are entirely the responsibility of the proposer and shall not be reimbursed in any manner by the city.
- J. All proposals submitted become the property of the city and will be returned only at the city's option and at the proposer's request and expense. The master copy of each proposal shall be retained for official files and will become public record after the award of the contract.
- K. The city will not be liable for federal, state or local excise taxes.
- L. Proposer's response to this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment A professional-services- agreement form and all terms and conditions therein, except such terms and conditions that the proposer expressly excludes, which must be written in ***bold, italicized, and underscored font***. Exceptions will be taken into consideration as part of the evaluation process.
- M. The city reserves the right to negotiate final contract terms with any proposer selected. The contract between the parties will consist of the RFP, including the professional services agreement form, together with any modifications thereto, and the awarded proposer's proposal, together with any modifications and clarifications thereto that are submitted at the request of the city during the evaluation and negotiation process.
- N. Proposer understands and acknowledges that the representations above are material and important, and will be relied on by the city in evaluation of the proposal. Any proposer misrepresentation may be treated as fraudulent concealment from the city of the true facts relating to the proposal.
- O. The city reserves the right to conduct a background inquiry of each proposer that may include collection of appropriate criminal history information, contractual and business associations and practices, Bar sanctions and reprimands, employment histories and reputation in the legal and business communities. By submitting a proposal to the city, the proposer consents to such an inquiry.
- P. All interested and qualified proposers will be considered, but not every proposer need be interviewed.
- Q. The city is an equal opportunity employer and complies with Title I of the American with Disabilities Act. Proposers who need accommodation to respond to this RFP may call the city clerk at 907-761-1301.

Attachment A: City of Palmer professional services agreement form.

Attachment B: Reference Questionnaire.

(End of RFP)

****SAMPLE****
PROFESSIONAL SERVICES AGREEMENT

THIS Agreement made and entered into this _____ day of _____, 2016, by and between the City of Palmer, an Alaska municipal corporation (the City), and _____ (Attorney).

Section 1. Engaged Employment of Attorney

The City hereby agrees to engage the Attorney and the Attorney hereby agrees to perform the services hereafter set forth.

Section 2. Attorney's Representations and Warranties, and Manner of Performance

- (A) Attorney hereby represents and warrants to the City, and the City relies upon said representations and warranties, that Attorney is a professional in the subject area in which services are to be provided and that Attorney has more than adequate experience, skill, knowledge, and competence to perform the services set forth in this Agreement.
- (B) Attorney accepts the relationship of trust and confidence between it and the City. Attorney covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.
- (C) Attorney agrees to be bound to the City for all attorney-client duties.

Section 3. Scope of Services

Attorney agrees to perform the following services for the City.

- (A) Serve as the legal advisor of and be responsible to the City Council, and advise the City Manager, and City Clerk concerning matters affecting City administration, as well as perform other duties as may be prescribed by the City Council.
- (B) Prepare legal documents such as ordinances, resolutions, contracts, conveyances, etc., and legal opinions as needed. Provide limited representation in court, negotiate on the City's behalf and handle other legal matters that may arise.
- (C) Be readily available for consultation by the City Council, City Manager, City Clerk, and City staff.
- (D) Draft opinion letters regarding, among other subjects, the interpretation of the Palmer Municipal Code and Charter, state and federal laws, and policies.
- (E) Perform other such duties as may be prescribed for the City Attorney by ordinance or by direction of the City Council and/or City Manager.
- (F) Must work effectively with the City Council, City Manager, City staff, and also with other public agencies with which the City has legal relations.

- (G) The City Attorney, or designee, is required to attend scheduled city council meetings; unless excused by City Council.

Section 4. Time of Performance

The services of the Attorney shall commence on January 1, 2017, for a term of two years, with three one-year extension options unilaterally available to the City. The period of performance may be extended for additional periods beyond five years only by the mutual written agreement of the parties. The agreement may be terminated at the convenience of the City at any time.

Section 5. Compensation

- (A) Subject to the provisions of this Agreement, the City shall pay the Attorney a total sum for all legal services, all non-secretarial paralegal services, approved third-party expenses, and all allowed travel time for the term of this Agreement in accordance with the following provisions:
 - (1) Hourly cost for services to be provided:
Attorneys: _____/Hour
Paralegals: _____/Hour
 - (2) No travel time shall be charged for two meetings per month. Travel time to and from Palmer may not exceed two hours total. Subject to the prior limitations, travel time may be charged at Attorney's normal travel time rate, but may not exceed one-third of Attorney's hourly fee.
- (B) Attorney may increase its hourly fee \$5.00 per year for each one-year extension the City chooses to exercise.
- (C) Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Attorney in connection with performance of Attorney's duties under this Agreement. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Attorney may incur in the performance of its obligations under this Agreement have already been included in computation of the Attorney's fee and may not be charged to the City.

Section 6. Method and Time of Payment

- (A) The City will compensate the Attorney in accordance with Section 5. Compensation, which compensation shall constitute the full and complete compensation for the Attorney's services and performance under this Agreement. Payments will be made on receipt of monthly billing.
- (B) No payment will be disbursed until approved by the City. The City Manager shall review Attorney's billings in a timely manner, and to request from the Attorney necessary explanations or additional documentation within fifteen (15) days of receipt of billing by the City. The City expects to pay within thirty-one (31) days of receipt of billing or receipt of requested explanations or documentation acceptable to the City, whichever is later.

Section 7. Termination of Agreement for Cause

If, through any cause, the Attorney shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Attorney shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Attorney of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material (to include without limitation data and information kept on computer, disk, video, tape, etc.) prepared by the Attorney arising out of or connected with this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination or upon request. The Attorney shall be entitled to receive compensation in accordance with the payment provisions of Section 5. Compensation of this Agreement only for work completed to the City's satisfaction in accordance with Section 5. Compensation of this Agreement and the other terms of this Agreement.

Section 8. Termination for Convenience of City

The City may terminate this Agreement at any time by giving written notice to the Attorney of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 7. Termination of Agreement for Cause are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Attorney shall be entitled to receive compensation in accordance with the payment provisions of Section 5. Compensation of this Agreement only for work completed to the City's satisfaction in accordance with Section 5. Compensation of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Attorney, Section 7. Termination of Agreement for Cause of this Agreement shall govern the rights and liabilities of the parties.

Section 9. Causes Beyond Control

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

Section 10. Modifications

- (A) The parties may mutually agree to modify the terms of the Agreement only by means of an agreement in writing signed by both parties. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.

- (B) It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Attorney to agree to modification in the scope of services will be the basis for termination of the Agreement for cause.

Section 11. Equal Employment Opportunity

The Attorney will not discriminate against any employee or applicant for employment in violation of law, to include without limitation, because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Attorney 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 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 Attorney agrees to post in conspicuous places in its office available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Attorney will, in all solicitations or advertisements for employees placed by or on behalf of the Attorney; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Attorney will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

Section 12. Interest of Members of City and Others

No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 13. Non-Assignability

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

Section 14. Interest of Attorney

The Attorney covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Attorney further covenants that in the performance of this Agreement it shall not knowingly employ any person having any such interest and that it shall reasonably inquire of all its employees to determine that they have no such interest.

Section 15. Findings Confidential

Except as required by law, including court orders directing disclosure, any reports, information, data, etc., given to or prepared or assembled by the Attorney under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Attorney without the prior written approval of the City.

Section 16. Officials Not to Benefit

No members of the Congress of the United States and no resident commissioner shall be admitted to any share or part thereof or to any benefit to arise from this Agreement. No member of the legislature or officer of the state of Alaska or the City shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.

Section 17. Publication, Reproduction and Use of Materials

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 18. Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available for examination all of Attorney's records with respect to all matters covered by this Agreement and Attorney will permit representatives of the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement. Except in case of emergency, Attorney must make such records available upon five (5) day's notice. In case of emergency, Attorney must make such records available immediately upon request. In performing such audits and investigations, the City and its representatives shall not unduly interfere with the ability of Attorney to perform his duties under this Agreement.

Section 19. Jurisdiction; Choice of Law

Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 20. Non-Waiver

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

Section 21. Permits, Laws and Taxes

The Attorney shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. In performing its obligations under this Agreement, Attorney shall comply with all applicable statutes, ordinances, rules and regulations. The Attorney shall pay all taxes pertaining to its performance under this Agreement.

Section 22. Relationship of the Parties

The Attorney shall perform its obligations hereunder as an independent contractor of the City. The City may administer this Agreement and monitor the Attorney's compliance with this Agreement but shall not supervise or otherwise direct the Attorney except to provide recommendations and to provide approvals pursuant to this Agreement.

Section 23. Administration of this Agreement

- (A) The City Manager or designee will be the representative of the City administering this Agreement.
- (B) The services to be furnished by the Attorney shall be administered by the City Manager. In the event that Attorney is unable to serve for any reason to perform his obligations under this Agreement, the Attorney shall appoint a successor in interest but such appointment will be subject to a written approval of the City.

Section 24. Integration

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement; the following documents are incorporated by reference into this Agreement as if fully set forth herein:

Section 25. City Held Harmless

- (A) The Attorney shall indemnify, defend, save and hold harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Attorney or any sub-Attorney as a result of the Attorney's or any sub-Attorney's performance pursuant to this Agreement.
- (B) The Attorney shall not indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of wrongful or negligent acts, errors or omissions solely of the City occurring during the course of or as a result of the performance of this Agreement.
- (C) Where lawsuits, actions, claims or liability, including reasonable attorney's fees and costs, arise out of wrongful or negligent acts of both the Attorney and the City occurring as a result of the performance of this Agreement, the Attorney shall indemnify, defend, save and hold the City harmless from only that portion of the lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act,

error or omission of the Attorney or any sub-Attorney as a result of the Attorney's or any sub-Attorney's performance pursuant to this Agreement.

Section 26. Interpretation and Enforcement

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

Section 27. Attorney Insurance

- (A) The Attorney will maintain during the course of the contract attorney's errors and omissions insurance in the amount of at least \$1,000,000 per claim and \$2,000,000 aggregate, with a deductible no greater than \$25,000. In addition, the policy is a claims-made policy; the Attorney must maintain such policy of insurance after the termination of the contract for a period of six years or alternatively obtain an extended reporting endorsement (tail coverage) for six years after the termination providing the same coverage, or a combination of the two. Attorney shall annually provide the City with a certificate of insurance for errors and omissions insurance from attorney's insurance company showing the then-current coverage limits (including extended reporting endorsement, if applicable).
- (B) The Attorney will, at its own expense, secure and maintain and will file with the City the following proper and acceptable insurance coverage, including defense and indemnification of the City. The insurance coverage will be secured with an insurance company acceptable to the City.
 - (1) Crime Insurance Coverage: Limit \$1,000,000 endorsed to include third party coverage for the City of Palmer.
 - (2) Comprehensive General Liability or Commercial General Liability Coverage: Limit \$1,000,000 per claim and \$2,000,000 aggregate Bodily Injury and Property Damage, combined Single Limit. Coverage to include:
 - Premises Operation
 - Products/Completed Operations
 - Independent Contractors
 - Blanket Contractual
 - Broad Form Property Damage
 - Personal Injury with Exclusion "C" deleted
 - (3) Professional Liability: Limit \$2,000,000.
 - (4) Worker's Compensation Insurance in compliance with the laws of the state of Alaska, AS 23.30, et. seq., and federal jurisdiction where the work is being performed, covering all employees engaged in the performance of the work specified in this Agreement. Employer's liability limits shall be: \$100,000 each accident; \$500,000 disease--policy limit; and \$100,000 disease--each employee.
 - (5) Comprehensive Automobile Liability: Limit \$1,000,000 Bodily Injury and Property Damage, Combined Single Limit. Coverage to include all vehicles driven by employees engaged in the performance of the work specified in this Agreement.

- (6) Unemployment Insurance by payment of employment security taxes for all employees hired by the Attorney to work on this project. In the event of the Attorney's failure to pay such taxes, the City will withhold an amount sufficient to pay such taxes from any payments owed to the Attorney by the City. The City also reserves the right to contact the Alaska State Department of Labor, in order to determine whether unemployment security taxes have been paid by the Attorney. The City further reserves the right to withhold that portion of employment security taxes owed to any employees pending notification of the Attorney's unemployment security tax clearance from the Alaska State Department of Labor.
- (7) Cyber Liability: Limit \$1,000,000 endorsed to include third party coverage for the City of Palmer.
- (C) A lapse in insurance coverage is a material breach of this Agreement, which may result in immediate termination of the Agreement, pursuant to Section 7. Termination of Agreement for Cause.
- (D) Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the City prior to cancellation. Each policy (other than for worker's compensation) shall name the City as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage. Attorney's insurance coverage shall be primary to any coverage carried by the City, which may cover the work specified in this Agreement. Attorney's insurance carrier must be an admitted carrier in the State of Alaska or must be **best rated A+7** or better.

Section 28. Understanding

The Attorney acknowledges that the Attorney has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of its choice, and is executing this Agreement of his own free will.

Section 29. Severability

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

Section 30. Compliance with Law

Attorney shall comply with all applicable Federal, State of Alaska and City laws, regulations, and ordinances in performing his duties hereunder.

Section 31. Notices

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

City: City Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, AK 99645

Attorney:

CITY OF PALMER

ATTORNEY:

Nathan E. Wallace, City Manager



CITY OF PALMER

231 West Evergreen Avenue
Palmer, Alaska 99645
Phone (907) 745-3271
Fax (907) 745-0930
www.cityofpalmer.org

REFERENCE QUESTIONNAIRE FOR:

(Name of attorney or law firm requesting reference)

Regarding City of Palmer Request for Proposals for General Counsel Legal Services

This form is being submitted to you for completion as a reference for the attorney or law firm listed above. Please return this form to Norma I. Alley, City Clerk, at the above address but marked "Confidential", **no later than October 25, 2016 at 2 p.m.** The completed form **must not** be returned to the attorney or firm requesting the reference. Thank you.

CONFIDENTIAL INFORMATION WHEN COMPLETED

Company providing reference:	
Contact name and title/position:	
Contact telephone number:	
Contact email:	

QUESTIONS

1. In what capacity have you worked with this attorney or law firm in the past?

2. How would you rate this attorney's or law firm's knowledge and experience? _____
(3=Excellent; 2=Satisfactory; 1= Unsatisfactory)
Comments:

3. How would you rate this attorney's or law firm's responsiveness to timelines? _____
(3=Excellent; 2=Satisfactory; 1= Unsatisfactory)
Comments:

4. What is your level of satisfaction with written materials produced by the attorney or law firm? _____
(3=Excellent; 2=Satisfactory; 1= Unsatisfactory)
Comments:

5. How would you rate the dynamics/interaction between the attorney or firm and your staff? _____
(3=Excellent; 2=Satisfactory; 1= Unsatisfactory)
Comments:

6. Who were the firm's principal attorneys involved in your project and how would you rate them individually? _____
(3=Excellent; 2=Satisfactory; 1= Unsatisfactory)

Name: _____

Rating: _____

Name: _____

Rating: _____

Name: _____

Rating: _____

Name: _____

Rating: _____

Comments:

7. With which aspect(s) of this attorney or law firm's services are you most satisfied?

Comments:

8. With which aspect(s) of this attorney or firm's services were you least satisfied?

Comments:

9. Would you recommend this attorney or firm's services to your organization again?

Comments: