

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

THE CITY AND BOROUGH OF JUNEAU
Plaintiff,

v.

APARC SYSTEMS, INC., A NEVADA
CORPORATION

Defendants.

CASE NO.: 1JU-13-956CI

SUMMONS AND NOTICE TO BOTH
PARTIES OF JUDICIAL
ASSIGNMENT

To Defendant: APARC SYSTEMS, INC., A NEVADA CORPORATION

Address: National Registered Agents, Inc.

9360 Glacier Highway, Suite 202 Juneau, AK 99801

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at: Juneau Dimond Court Building, 123 4th Street Juneau, AK 99801 within 20 (twenty) days* after the day you receive this summons.

In addition, a copy of your answer must be sent to:

Plaintiff's attorney: Robert P. Blasco, of Hoffman & Blasco, LLC

Address: 9360 Glacier Hwy., Suite 202, Juneau, AK 99801

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use the court form Notice of Change of Address/Telephone Number (TF-955), available at the clerk's office or on the court system's website at www.state.ak.us/courts/forms.htm, to inform the court.

- OR -

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

To: Plaintiff and Defendant

You are hereby given notice that this case has been assigned to Judge

**THIS CASE FORMALLY ASSIGNED TO
JUDGE PHILIP PALLEMBERG
BY ORDER OF THE PRESIDING JUDGE:**

(SEAL)

Date

12/19/13

By:

Deputy Clerk

* The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 (10/05)(st.3)
SUMMONS

Civil Rules 4, 5, 12, 42(c), 55

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 THE CITY AND BOROUGH OF JUNEAU,)

4 Plaintiff,)

5 v.)

6 APARC SYSTEMS, INC., A NEVADA)
7 CORPORATION)

8 Defendants.)
9

COPY
Original Received

DEC 19 2013

Clerk of the Trial Courts
By PS Deputy

CASE NO. 1JU-13-456

10 COMPLAINT FOR DAMAGES

11 The City and Borough of Juneau, through its counsel Hoffman & Blasco, LLC, alleges
12 the following:

13 I. INTRODUCTION

14 On September 16, 2010, the City and Borough of Juneau (hereafter CBJ) and
15 APARC Systems, Inc. (hereafter APARC), entered a contract by which APARC agreed
16 and promised to install parking meters, with ongoing maintenance and enforcement
17 equipment for a fee of \$515,381.50. The Contract expires, unless otherwise terminated,
18 on June 30, 2015.

19 Despite CBJ having paid in excess of \$400,000 to APARC, beginning in 2010,
20 APARC has failed to deliver a workable parking meter system in violation of its
21 Proposal and its Contract and its repeated promises and assurances to the CBJ. APARC
22 has breached the contract, breached the implied covenant of good faith and fair dealing,

HOFFMAN & BLASCO, LLC
9360 Glacier Highway, Suite 202
Juneau, AK 99801
907-586-3340 (T) 907-586-6818 (F)

1 and has violated the Alaska Unfair Trade Practices Act (AS 45.50.471-561), as well as
2 engaged in misrepresentations, which were at least negligent misrepresentations.

3 The actions and omissions of APARC have caused damages to the CBJ in an
4 amount in excess of \$100,000.

5 **II. PARTIES**

- 6 1. The CBJ is a municipality duly organized under the laws of the State of Alaska.
7 2. APARC is a Nevada corporation, doing business in Alaska as a foreign
8 corporation under Alaska Entity Number 130049.
9 3. At all relevant times to this Complaint, APARC was and is engaged in trade or
10 commerce within the meaning of the Alaska Unfair Trade Practices Act.

11 **III. JURISDICTION AND VENUE**

- 12 4. The Court has subject matter jurisdiction over this action pursuant to AS
13 22.10.020 because a justifiable controversy is known to exist between the parties
14 that are within the Court's jurisdiction.
15 5. The Court has personal jurisdiction over APARC in accordance with AS
16 09.05.015(a)(3) and (a)(5)(B).
17 6. Venue is proper because the underlying civil controversy and the key events
18 related to that controversy have taken place in Juneau, Alaska.
19 7. Venue is proper because the Contract signed by APARC with the CBJ contained
20 the specific provision that: "Venue shall be in the State of Alaska, First Judicial
21 District at Juneau."
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1 **IV. FACTS**

2 8. On June 1, 2010, CBJ issued its Request for Proposals, RFP E-10-280 titled:
3 Supply and Installation of Multi-Space Parking Pay Stations. (hereafter RFP)

4 9. The purpose of the RFP stated in the RFP: “...to supply and install multi-space
5 parking pay stations (Meters), handheld enforcement devices and all necessary
6 associated hardware and software to implement a new parking management
7 system (System), as well as to provide training and ongoing support for the
8 system.” (RFP, p. 5)

9 10. The RFP required the successful proposer to meet 19 “mandatory criteria.” (RFP,
10 p. 6-7)

11 11. The mandatory criteria included, but was not limited to:

12 a) Meters must be capable of managing parking by: pay-by-space; pay-and-
13 display; and pay-by-license-plate. Meters must be capable of transitioning
14 from one management mode to another by CBJ staff using the system’s
15 management software of web interface;

16 b) Meters must meet all the requirements of the Americans with Disabilities
17 Act of 1990 as amended in 2008;

18 c) Credit card processing must be in real time (PCI) with online wireless
19 authorization in less than 10 seconds (underline in original);

20 d) Meters must operate with real time communication to a CMS;

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- e) In a Pay-by-Space and Pay-by-license mode, the meter must be able to communicate in real time to an integrated handheld wireless enforcement system...The same handheld is then to be used to issue the parking citation;
 - f) No meter may be out of operation for longer than 48 hours due to mechanical breakdown.
12. Under the Warranty and Support section of the RFP, the CBJ required that: “The maximum response time to take corrective action, following any equipment, component or software failure shall be 4 hours, with an acknowledgment within 60 minutes.” (RFP, p. 8-9)
13. The RFP required completion of the installation of 8 meters, “fully operational, including all associated hardware and software, and all training of personnel” within 60 calendar days of the Notice to Proceed.
14. The RFP included a Response Document that required the proposer to confirm that the Proposal was “accurate and true” to the best of the Proposer’s knowledge.
15. The RFP required the Proposer to assign “a high level experienced Project Manager to administer the contract.” (RFP, Attachment 3, p. 5)
16. APARC submitted its Proposal to CBJ on June 21, 2010. The Proposal was signed by Robert Ziola as President and CEO of APARC.
17. APARC’s Proposal included an “Executive Letter.” The Executive Letter promised the following and/or made the following representations:

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- a) “After a thorough review of CBJ’s RFP E-10-280 for the Supply and Installation of Multi-Space Parking Pay Stations, we are confident that our solutions are more than able to support the City’s parking initiatives today and in the future...Aparc provides exceptional equipment and integrated enforcement tools that allow cities such as Juneau to analyze and generate comprehensive reports to minimize the effects of problems like congestion and non-compliance.” (page 1)
- b) “For salt water and frigid environments like Juneau, our system provides an additional layer of protection to the elements to eliminate rusting, improve moisture ingress/egress issues, and overall equipment sustainability.” (page 2)
- c) “Unique to Aparc, our handheld enforcement systems have been fully integrated with SIEMANS pay-stations to deliver **real-time** parking enforcement.” (page 2, bold in original)
- d) APARC represented that the SIEMANS equipment would have the “highest grade components.” (page 2)
- e) APARC represented that “APARC can maximize Juneau’s Parking Enforcement Officers accuracy and productivity...” (page 2)
- f) “With proven success and highly recommended solutions, Aparc’s program will exceed the City’s objectives both now and in the future.” (page 3)

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- g) “To support our dedication to this project, Aparc is prepared to present the SIEMANS Corporate Guarantee to the City to ensure this project is a complete success!” (page 3)
 - h) The Executive Letter also listed the “City and Borough of Juneau, California” as a current customer. (page 3)
18. From APARC’s Schedule C2 Proposer’s Experience attached to its Proposal, APARC represented that: “Aparc does not bid or respond to any project that we cannot guarantee a successful result.” (page 8)
19. From Schedule C2 Proposer’s Experience attached to its Proposal, APARC represented that: “In many applications, our systems are doubling or tripling our clients parking and enforcement revenues with a return on investment (ROI) of less than one year.” (page 11)
20. From Schedule C2 Proposer’s Experience attached to its Proposal, APARC described its relationship with its partner SIEMANS as: “SIEMANS has clearly outlined in its corporate guarantee that they will ensure the successful completion of this project.”
21. In other parts of its Proposal, APARC made the following promises and/or representations:
- a) In response to Part 6b as to how APARC would meet the required “variety of payment options”, APARC stated: “For CBJ to remotely extend time from a telephone, Aparc can provide this ability through one of our Pay-by-

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Phone partners (Park, Mobile, Verrus). (page 17). APARC repeated this representation at Part 6h, page 21.

b) In response to Part 6f as to ease and ability to expand the System, APARC stated: “Our experience in software development has even influenced SIEMANS to incorporate many of our applications and system refinements throughout their parking operations, to over 92 countries worldwide.” (page 20)

c) In response to Part 8e for the Proposed Rollout Schedule, APARC stated: “Aparc will also ensure that all system components are functional and fully communicating prior to the ‘go live’ date.” (page 37)

d) In response to Part Schedule C-4, APARC stated: Aparc will have 8 pay stations delivered within 60 days and 24 pay stations operational with 8 weeks of Notice to Proceed. (page 67)

e) In its Price Proposal, APARC stated: “Upon receipt of a signed Purchase Order and the first years’ \$200,000 payment, Aparc will guarantee delivery of the first eight (8) Pay-Stations within sixty (60) days and the remaining sixteen (16) Pay-Stations within ninety (90) days.”

22. In Schedule C3, Proposer’s Technical Services, APARC stated:

a) “Regardless of the payment method, all customers who extend time using our system are tracked and recorded in real-time on our handheld enforcement systems to ensure we do not ticket vehicles that are paying customers.” (page 21)

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- b) “Aparc has the world’s leading real-time handheld enforcement system— Ticket Manager...Aparc has streamlined our Ticket Manager system making parking enforcement easier and more efficient.” (page 25)
- c) “Aparc will submit a schedule of training sessions to the City’s designated representative for approval, with a minimum of thirty (30) working days notice in advance of any class.” (page 33)
23. In APARC’s Additional Information Equipment Description section of its Proposal, APARC stated: “At all times, the Pay Station will be communicating in real-time to the back office to ensure the unit is functioning and productive around-the-clock.” (page 72)
24. APARC promised to deliver to CBJ an Installation Certificate in its Proposal.
25. APARC publishes brochures which include, but are not limited to the following promises and/or representations: “Real-time on the go transit enforcement and mobile cashiering increase customer compliance and protect revenue.” (From brochure titled: *Discover an all-in-one transit and parking payment and enforcement system unlike any other*)
26. APARC’s Fee Proposal to deliver the system represented in its Proposal required payments of \$200,000 in each of the first two years, \$38,460.50 in year 3, and \$38,230.50 each in years 4 and 5.
27. After completion of the selection process, CBJ awarded the Contract to APARC. APARC signed a contract with the CBJ on September 16, 2010. The Contract

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included Appendix A (Scope of Work, Term and Compensation, Appendix B (Standard Provisions) and Appendix C (Additional Provisions). The Scope of Work specifically included: Attachment 1 (CBJ’s Request for Proposals), Attachment 2 (Response Document submitted by APARC as laid out in Addendum 1), Attachment 3 (Downtown Juneau Parking Management Plan), and Attachment 4 (Parking Meter Installation Packet).

- 28. CBJ made the first \$200,000 payment to APARC on September 17, 2010.
- 29. The promises and representations by APARC contained in its Proposal, Response Document, and its Executive Letter, partially outlined in Paragraphs 17-25 above, were intentionally and/or knowingly and/or negligently false misrepresentations, and were made in reckless disregard for the facts and requirements as related in the RFP.
- 30. The representations by APARC contained in its Proposal, Response Document, and its Executive Letter, partially outlined in Paragraphs 17-25 above, were intentionally and/or negligently deceptive and/or misleading.
- 31. Despite CBJ’s efforts to work cooperatively with APARC since the signing of the Contract, APARC has intentionally or negligently failed to provide the parking system required by the RFP and as represented by APARC it would deliver. As partially outlined in Paragraphs 17-25 above, APARC intentionally or negligently failed to provide the parking system required by the RFP or APARC knew it could not provide the parking system required by the RFP and

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nonetheless made misrepresentations to the CBJ that were unfair, deceptive, misleading and likely to create confusion in CBJ as the consumer.

32. APARC's false and/or misleading representations constitute a breach of the contract with CBJ.

33. CBJ has paid APARC in excess of \$400,000 and the CBJ does not have a parking system that meets the mandatory criteria in the RFP and which does not meet the promises and representations made by APARC, partially outlined in paragraphs 17-25 above. APARC has failed and/or refused to reimburse CBJ and/or failed or refused to provide CBJ with a parking system that meets the mandatory criteria of the RFP and APARC's own promises and assurances.

34. In addition to the direct payments to APARC, CBJ has been unable to enforce parking violations because of APARC's failures to provide real-time communication as promised in its Proposal, which has caused CBJ damages to be proven at trial.

V. COUNT I: UNFAIR TRADE PRACTICES ACT VIOLATIONS

35. CBJ incorporates by reference paragraphs 1-34 above.

36. APARC engaged in acts or omissions deemed unlawful under the Unfair Trade Practices Act including, but not limited to (a) representing that equipment it provided, including hardware and software, either directly or through its partner or agent (SIEMANS) had characteristics that it did not have; (b) representing that the equipment and services provided, including hardware and software, either directly or through its partner or agent (SIEMANS) are of a particular

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standard and quality which they are not; and (c) using or employing misrepresentations in connection with the advertisement of services and equipment, including hardware and software, either directly or through its partner or agent (SIEMANS); and (d) engaging in any other conduct creating a likelihood of confusion or of misunderstanding, which misleads, deceives or damages a buyer.

37. CBJ was a buyer within the meaning of the Unfair Trade Practices Act in entering the Contract with APARC. In entering the Contract with APARC, CBJ relied upon the misrepresentations made by APARC in its brochures, Executive Letter, Response Document, and other communications from APARC.

38. As a direct and proximate cause of APARC's deceptive acts, practices and representations, CBJ has suffered damages in an amount to be determined at trial. CBJ is entitled to an award of treble damages and full actual reasonable attorneys fees. CBJ may be entitled to punitive damages as determined at trial.

VI. COUNT II: INTENTIONAL OR NEGLIGENT MISREPRESENTATION

- 39. CBJ incorporates by reference paragraphs 1-38 above.
- 40. APARC made representations in its brochures, Executive Letter, Response Document, and other communications with CBJ, partially outlined in paragraphs 17-25 above.
- 41. CBJ relied on those representations.
- 42. The representations by APARC were intentionally or negligently false and/or deceptive and/or misleading

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43. As a result of APARC’s intentional or negligent misrepresentations, CBJ has been damaged in an amount to be proven at trial.

VII. COUNT III: BREACH OF CONTRACT

44. CBJ incorporates by reference paragraphs 1-43 above.

45. APARC failed to install workable multi-space parking pay stations in accordance with the mandatory criteria set forth in the RFP and as promised by APARC in its Response Document and Executive letter, as partially outlined in Paragraphs 17-25 above.

46. The false and reckless misrepresentations by APARC, partially outlined in paragraphs 17-25 above, about its product, services, hardware, software and that of its partner or agent, SIEMANS, constitute a breach of contract.

47. CBJ fully complied with the terms and conditions of the contract.

48. As a result of APARC’s breach of contract, CBJ has been damaged in an amount to be proven at trial.

VIII. COUNT IV: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

49. CBJ incorporates by reference paragraphs 1-43 above.

50. Every contract in the State of Alaska includes an implied covenant of good faith and fair dealing.

51. APARC failed to deliver the multi-space pay parking system it represented it could deliver and which was required as mandatory criteria in the RFP, including but not limited to a) failing to go-live on the required dates; b) not

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providing real-time communication; c) not providing a Ticket Manager system; d) not providing an Installation Certificate; e) by installing a 2G network system for the real-time communications, which APARC knew or should have known, was obsolete and would not be compatible with CBJ's network provider, which was operating on a 4G system; f) and in other ways to be revealed in discovery and proven at trial.

52. As a result of APARC's breach of the implied covenant of good faith and fair dealing, CBJ suffered damages in an amount to be determined at trial.

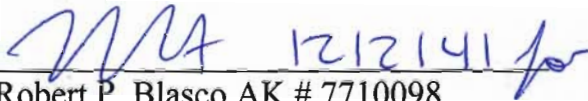
WHEREFORE, the City and Borough of Juneau requests the Court order as follows:

1. That APARC breached his contract and is responsible for the damages and losses of CBJ;
2. That APARC shall pay to CBJ an amount as proved at trial in excess of \$100,000;
3. Award CBJ all of its damages, including treble damages under the Alaska Unfair Trade Practices and Consumer Protection Act, in an amount in excess of \$100,000, to be determined at trial;
4. Award the CBJ punitive damages under the Unfair Trade Practices Act;
5. Award the CBJ its full actual reasonable attorneys' fees and costs against the APARC;
6. For such other and further relief as the Court deems just and proper.

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DATED: December 18, 2013

HOFFMAN & BLASCO, LLC

By: 
Robert P. Blasco AK # 7710098
Attorneys for the City and Borough of Juneau

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