

CITY OF PALMER ACTION MEMORANDUM NO. 09-015

SUBJECT: Ratify Amendment #3 to the 2005 Dispatch Services Contract

AGENDA OF: February 24, 2009

Council action: Ratified

Approved for presentation by B. B. Allen, City Manager B. B. Allen

Route To:	Department/Individual:	Initials:	Remarks:
X	Originator – Director of Public Safety	JO	
X	City Clerk	JR	
X	City Attorney	[Signature]	
	Director of Public Safety		
	Director of Administration		
	Director of Community Development		
	Director of Community Services		
	Director of Public Works		

Attachment(s): 2005 Dispatch Contract; Amendment 1, 2, & 3, MSB Borough Minutes

Finance Director's Certification of Funds:

X	No fiscal impact.	
	Funds are budgeted from this account number:	
	Funds are not budgeted. Budget modification is required. Affected account number:	

Finance Director Signature [Signature]

Summary statement:

For a number of years, the City of Palmer and the Matanuska-Susitna Borough have been in a contractual relationship in which the City provided E-911 call answering and dispatch services to the Borough for Fire, Rescue, and EMS services. Historically, the Borough has paid 69.5% of the Dispatch operating budget to pay for these services. For 2008, the City provided a 2008 overall dispatch operating budget to Borough Emergency Services of \$1,223,677. The Borough Department of Emergency Services Director proposed a dispatch budget (Borough share) of \$875,425, based on the Borough's normal and customary cost share of 69.5% of overall operating costs.

In January 2008, the Borough performed an outside audit of the Department of Emergency

Services which offered the opinion that the Borough should pay no more than \$400,000 per year to the City for the dispatch contract.

At the March 4, 2008 regular Borough Assembly meeting, the Assembly considered AM 08-017 for the dispatch contract. Assembly Member Bettine moved a primary amendment to strike the amount \$875,425 and insert the amount \$813,615 in its place. This was the amount paid by the Borough in 2007. This amendment passed with Assembly Member Woods opposed.

On August 26, 2008, at the direction of the Borough Assembly, the Borough Director of Emergency Services put out a Scope of Work to Palmer, Wasilla, and Anchorage requesting a cost to provide E-911 and dispatch services for fire and EMS dispatch for 2009. The responses were due by September 19, 2008. After a period of several weeks, the Borough verbally advised the City that Palmer had submitted the low bid. Following the advisement, the City Public Safety Director requested a contract from the Borough. The Borough stated they were delaying the execution of the 2009 contract. This process stalled the 2008 contract.

After several months without a contract, the City Manager brought this issue to the attention of the Borough Manager for immediate resolution. On February 2, 2009, a contract different from what was approved by the Assembly on March 4, 2008 was provided to the City. The City signed the contract with the need and expectation of immediate payment for provided services.

On February 6, 2009, the Borough advised that the signed contract was not valid due to Assembly action in March 2008 and the payment for services rendered could be pursued through an additional amendment to the 2005 contract. This amendment authorized the Borough to pay the City \$813,615 for 2008 dispatch services.

When the City was finally told there would be no payment until an amendment was signed, the City Manager identified an immediate need to receive the funds and signed Amendment #3 to the contract. Action memorandum 09-015 ratifies the Manager's actions. On February 9, 2009, the Borough paid the City \$813,615 for 2008 services. For 2009, the Borough is proposing month-to-month contracts with the City for the 2009 dispatch services.

Administration recommendation: Approve action memorandum 09-015.

COOPERATIVE SERVICES AGREEMENT
Between the
CITIES OF PALMER and HOUSTON and the MATANUSKA-SUSITNA BOROUGH
For
DISPATCH SERVICES

2005 Dispatch Contract

A. DEFINITIONS/PURPOSE

1. Definitions

In this Agreement:

- a. "Palmer" means the City of Palmer;
- e. "Houston" means City of Houston;
- c. "Borough" means the Matanuska-Susitna Borough;
- d. "parties" means Palmer, Houston, and the Borough;
- e. "users" means Houston and the Borough
- f. "dispatch center" means the communications center located in the Palmer Public Safety Building.

2. Purpose

This Agreement is entered into between the parties to set out the terms and conditions under which Palmer will provide dispatch services for the users. The Agreement covers operation, staffing, cost allocation, and funding provisions for the dispatch center.

B. TERM

The term of the Agreement shall be for three calendar years beginning January 1, 2005, and ending on December 31, 2007, subject to the termination provisions of Section M. The parties may extend or modify the Agreement upon the written mutual consent of the parties.

C. SERVICES PROVIDED BY PALMER

Palmer shall provide the following services to the users, and shall pay those costs associated therewith out of funds derived under this Agreement:

- 1. Twenty-four-hours-a-day, seven-days-a-week, 911 telephone answering, including the in-house telephone switch, telephone equipment and devices to include all incoming trunk lines, direct-inward-dialing (DID) lines and facsimile (FAX) lines not associated with the Enhanced 911 network (E-911).

2. Nonemergency telephone answering services for the users for telephone lines terminating in the dispatch center or forwarded to the dispatch center by the users.
3. Radio or telephone dispatching of emergency and non-emergency requests for services of the users.
4. Accurate recording and logging of incoming and outgoing emergency calls, non-emergency requests for services, and to provide to the users such records of those calls as the users deem necessary.
5. To provide the above services in a manner that does not discriminate based on callers or users, but which may prioritize based on the nature of the call.
6. To provide for at least three dispatchers (of which one may be a supervisor) to be scheduled and on duty at all times for six days per week, subject to the following conditions:
 - a. annual leave;
 - b. sick leave;
 - c. vacancy of a position; and
 - d. required dispatcher training.

If any of the events listed in subparagraphs "a" through "d" occur on any one day of the week, there shall be at least two dispatchers on duty.

7. Palmer shall provide adequate training to the dispatchers to assure their proper and competent performance under this Agreement. Such training shall, at a minimum, include the following, and all dispatchers shall receive instruction or confirmation of proficiency in the following:
 - a. Basic telephone answering including all functions of the dispatch center telephone system;
 - b. Use of the dispatch computer system;
 - c. Use of the Alaska Public Safety Information Network (APSIN);
 - d. Dispatch Center Policy and Procedures Manual;
 - e. Knowledge of the users, including the contacts and chain of command of the users;
 - f. Knowledge of the city and community boundaries in the borough;
 - g. CPR, including annual refresher courses as required;
 - h. Emergency Medical Dispatch protocols and usage;
 - i. U. S. Department of Transportation (DOT) Hazardous Materials Reference Guide; and
 - j. Use of Enhanced 911 (E-911) software and system.

8. Palmer shall account for all funds received and expended under this Agreement, and such funds shall be accounted for in a separate section under the Palmer Police Department accounts.

9. Palmer shall expend funds under this Agreement for the sole and exclusive purpose of providing dispatch and related services for the parties.

10. Palmer shall provide for an audit of the dispatch funds to be made available to the users when Palmer's annual audit is completed which is usually no later than April 30th of the year following the close of each Palmer budget year.

11. Palmer shall promptly notify the users of any operational problems or malfunctions of user owned and provided equipment, software or services.

12. Palmer agrees to not modify, alter, or place any software on any equipment provided through a user without the prior written approval of the user, which shall provide prompt written responses to Palmer regarding the request for approval.

13. If this Agreement is extended beyond calendar year 2005, Palmer shall provide to the users a proposed annual budget no later than 45 days prior to the budget being adopted by Palmer, and Palmer agrees to consider the comments and recommendations of the users in that budget.

D. SERVICES PROVIDED BY THE BOROUGH

The Borough shall provide the following equipment and services and shall pay for the costs of the items listed below out of funds arising out of the E-911 surcharge and the payment for the following shall not be credited to the Borough as part payment of its allocated share under this Agreement:

1. Provide a three-position dispatch console with digital recording devices and related software and equipment, including maintenance and repairs unless those repairs are a result of damage by Palmer, or its agents or employees, whether intentionally caused or not, but the Borough shall provide warranty work in any event.

2. Provide E-911 telephone circuits and network devices.

3. Provide the E-911 system to include software, database of maps and addresses, computer equipment and related items, including annual maintenance and repair, except damage caused by Palmer, its agents or employees, whether intentional or not, but the Borough shall provide warranty work in any event.

Borough shall provide the following equipment and services and shall pay for the costs of the items listed below, but the payment for the following shall not be credited to the Borough as part payment of its allocated share under this Agreement:

1. Provide an annual update of Borough operating procedures for dispatch and provide any changes or modifications that may be required during the year.

2. Provide a radio system for the dispatch of Borough emergency services such as fire, rescue, EMS, and emergency animal control.
3. Provide on an as-needed basis up to 12-hours-a-year in orientation training to new dispatchers or as refresher training of current dispatchers in Borough functions, operations and procedures.
4. Telephone lines and circuits to link Borough and the dispatch center, including call forwarding lines and associated costs.
5. Borough shall promptly notify Palmer of any errors or omissions by Palmer, whether operational or otherwise, and Palmer will cure the problem.

E. SERVICES PROVIDED BY HOUSTON

Houston shall provide the following equipment and services and shall pay the costs of the items listed below, but the payment for the following shall not be credited to Houston as part payment of its allocated share under this Agreement:

1. Provide, at least annually, an updated standard operating procedures and dispatch requirements manual for Houston emergency services.
2. Provide updates and modifications to the manual as may be required during the year.
3. Provide for any radio systems, telephone circuits, or network to supply the dispatch of Houston services.
4. Houston shall promptly notify Palmer of any errors or omissions by Palmer, whether operational or otherwise, so that Palmer may cure the problem.

F. RELATIONSHIP OF PARTIES

Palmer shall perform its obligations pursuant to the terms of this Agreement as an independent contractor of the users. The users shall participate with Palmer in an annual operational review of the dispatch center and make recommendations on changes, modifications or improvements for the user. The users shall not supervise or direct Palmer other than as provided in this section.

G. NON-DISCRIMINATION

In performing its duties and obligations under this Agreement, no party may discriminate against any person in violation of law.

H. ALLOCATION OF COSTS

1. The parties have agreed to allocate the costs according to the following:
 - a. First, Palmer shall provide each of the users with Palmer's written estimates of the total costs of operating the dispatch center for 2005, reduced by

any E-911 surcharge revenues provided by the Borough according to Section J, below.

b. Second, the total costs of operating the dispatch center will be allocated according to the following percentages:

Houston	1%
Palmer	29.5%
Borough	69.5%

c. In addition, since the dispatch costs are estimates only, the parties recognize that events beyond those reasonably foreseeable may occur and that significant increases in cost may occur. Thus, it is further agreed that any significant increases in the dispatch budget must be approved, in writing, by the users in advance of those costs being incurred.

d. Since dispatch costs are calculated on a cost allocation method, Palmer agrees that any funds not used by it for calendar year 2005 shall, at each party's option, be returned to each party pro rata or used as partial payment of future costs due from such party.

2. In future years, the parties may agree that the costs of the dispatch center shall be paid for by the users under a different cost-allocation method, and that such allocation be reviewed by the Enhanced 911 Advisory Board that has been established by MSBC §3.38. Such different method of cost allocation may consider the availability of the service to a user, the number of E-911 calls by party, the time per call, the expertise required to handle such calls by party, the number of nonemergency calls by party, an allocation of time spent performing office or clerical work on behalf of a party, and other work related duties as agreed to by the parties.

I. PAYMENTS

1. The users agree to pay to Palmer for dispatch costs the amounts agreed to herein and under any extensions of this Agreement.

a. Base Budget (2005): \$ 943,182

b. Cost allocation:

\$655,512	Borough annual payment
\$278,239	Palmer annual payment
\$9,431	Houston annual payment

2. The users shall pay Palmer their annual payments according to the following schedule:

- a. January 15* - ½ of the amount owed;
- b. July 15* - ½ the amount owed the fund.

*For 2005, full payment shall be made within two weeks of execution of this Agreement.

J. 911 SURCHARGE

By November first after each Borough fiscal year (July 1 through June 30), the Borough shall allocate to each City operating a dispatch center the residual monies from the E-911 Revenue Surcharge as per Borough resolution. Should monies collected by the Borough under the 911 surcharge become available for distribution to Palmer, these monies shall be used by Palmer to reduce the estimated total annual operating costs estimated by Palmer under subsection H (1) (a), above, of the next calendar year's dispatch center budget and proportionately allocated according to subsection H (1) (b), above.

K. USE OF E-911 DATA AND INFORMATION

Palmer shall provide training for the dispatchers regarding the confidentiality and records access provisions of Borough's agreement with the Matanuska Telephone Association (MTA), based in part on Borough-supplied information specifying the training components.

L. TERMINATION FOR CONVENIENCE OF PARTIES

1. Palmer or any user may terminate this Agreement at any time by giving written notice to the other parties of such termination, at least 180 days prior to the effective date of the termination.
2. Should Palmer terminate the Agreement, users may negotiate other agreements between themselves or any other party to continue the dispatch functions.
3. Should any one of the users terminate the Agreement, the remaining users and Palmer may negotiate any amendment to the Agreement as the remaining parties shall determine.

M. MODIFICATIONS TO THE AGREEMENT

The parties may, from time-to-time, require changes to this Agreement. Such changes must be agreed to by all parties, in writing, prior to any change being implemented. Any such modifications or changes shall become a part of the Agreement.

N. DEFENSE AND INDEMNIFICATION

This Agreement is for the benefit of the parties only and not for the benefit of any third party. The parties understand and agree that, to the maximum extent possible, all activities carried on hereunder concern the establishment, funding, use, operation or maintenance of an enhanced 911 system or are activities associated with those actions, and thus receive the immunity provided under AS 29.35.133 or AS 09.65.070 or both or any other law.

Palmer shall indemnify, defend, and hold and save the users, their 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, or attorneys fees that may arise out of Palmer's performance under the terms of this Agreement. Palmer shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules or

regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person or property arising from Palmer's, or its officers', agents', employees', partners', attorneys', suppliers', or subcontractors' performance or failure to perform this Agreement in any way whatsoever.

Each user shall indemnify, defend, hold, and save Palmer, 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, or attorneys fees that may arise out of each user's performance connected with the terms of this Agreement. The user shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person or property arising from the user, or its officers', agents', employees', partners', attorneys', suppliers', or subcontractors' performance or failure to perform connected with this Agreement in any way whatsoever.

O. ASSIGNMENT

None of the parties to this Agreement shall assign an interest in this contract and shall not transfer any interest in the same without the prior written consent of all parties to this Agreement.

P. EFFECT OF WAIVER

The failure of any party 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 any party thereafter to enforce each and every protection hereof.

Q. 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.

R. GOVERNING LAW

Any civil action arising from this contract shall be brought in the superior Court for the Third Judicial District of Alaska at Palmer, only. The law of the state of Alaska shall govern the rights and obligations of the parties. The common law rule of construction against the drafter does not apply to this Agreement.

S. 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.

T. 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:

To the City of Palmer
City of Palmer
Chief of Police
231 West Evergreen
Palmer, Alaska 99645

Copy to:
City of Palmer
City Manager
231 West Evergreen
Palmer, Alaska 99645

To the City of Houston
City of Houston
Mayor
P.O. Box 27
Houston, Alaska 99694

To the Matanuska-Susitna Borough
Matanuska-Susitna Borough
Director of Public Safety
680 North Seward Meridian Parkway
Wasilla, Alaska 99654

Copy to:
Matanuska-Susitna Borough
Borough Manager
350 East Dahlia Avenue
Palmer, Alaska 99645

U. CAUSES BEYOND CONTROL

In the event a party is prevented by a cause or causes beyond control of the party from performing any obligation of under this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of contract which will render the party liable for damages or give rights to the cancellation of the contract for cause. However, if and when such cause or causes cease to prevent performance, the party shall exercise all reasonable diligence to resume and complete performance of the obligation with the least practicable 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 party and which prevent the performance of the party: 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 party from performing the terms of the contract as set forth herein. Events, which are peculiar to a party and would not prevent another similar party from performing, including, but not limited to financial difficulties, are not causes beyond the control of the party.

V. ENTIRE AGREEMENT

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 these contained herein, and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

W. ACKNOWLEDGMENT

The parties acknowledge that they have read and understand the terms of this Agreement, have had the opportunity to review the same with counsel of their choice, and are executing this Agreement of their own free will.

X. AMENDMENTS, MODIFICATIONS AND SUPPLEMENTS

The parties may mutually agree to modify the terms of the contract. Modifications to the contract shall be incorporated into the contract by duly signed, written amendments.

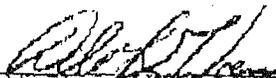
CITY OF PALMER



THOMAS HEALY, Manager

NOVEMBER 11, 2005
Date

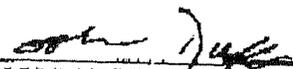
CITY OF HOUSTON



DALE ADAMS, Mayor

7 Oct 05
Date

MATANUSKA-SUSITNA BOROUGH



JOHN DUFFY, Manager

10-12-05
Date

AMENDMENT NO. 1
To
COOPERATIVE SERVICES AGREEMENT
Between the
CITIES OF PALMER, HOUSTON and MATANUSKA-SUSITNA BOROUGH
For
DISPATCH SERVICES

This Amendment No. 1 amends the Cooperative Services Agreement ("Agreement") made and entered into on October 11, 2005, by and between the Cities of Palmer, Houston and the Matanuska-Susitna Borough for dispatch services.

WHEREAS, Section M of the Agreement provides for the modification of the Agreement; and,

WHEREAS, it is necessary to modify Section I of the Agreement to recognize dispatch services costs budgeted by the City of Palmer for Communication Center expenses in calendar year 2006.

THEREFORE, effective as of midnight, December 31, 2005, the Agreement is amended as follows:

Section I, Payments, is deleted and replaced by the following Section I.

I. PAYMENTS

1. The users agree to pay to Palmer for dispatch costs the amounts agreed to herein and under any extensions of this Agreement.

a. Base Budget (2006): \$ 1,137,185

b. Cost allocation:
\$790,344 Borough annual payment
\$335,470 Palmer annual payment
\$11,371 Houston annual payment

2. The users shall pay Palmer their annual payments according to the following schedule:

a. January 31* - ½ of the amount owed;
b. July 15 - ½ the amount owed.

* Or within twenty calendar days of approval of this Amendment.

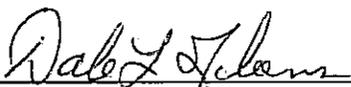
Except as herein amended, all other terms, conditions, and requirements remain the same.

CITY OF PALMER


Thomas Healy, City Manager

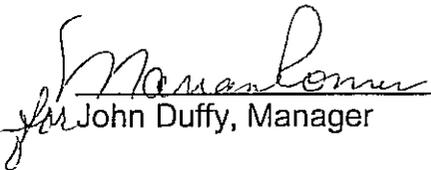
7/17/06
Date

CITY OF HOUSTON


Dale Adams, Mayor

13 July 06
Date

MATANUSKA-SUSITNA BOROUGH


John Duffy, Manager

6/28/06
Date

AMENDMENT NO. 2
To
COOPERATIVE SERVICES AGREEMENT
Between the
CITIES OF PALMER, HOUSTON and MATANUSKA-SUSITNA BOROUGH
For
DISPATCH SERVICES

This Amendment No. 2 amends the Cooperative Services Agreement ("Agreement") made and entered into on October 11, 2005, by and between the Cities of Palmer, Houston and the Matanuska-Susitna Borough for dispatch services.

WHEREAS, Section M of the Agreement provides for the modification of the Agreement; and,

WHEREAS, it is necessary to modify Section I of the Agreement, as amended by Amendment No. 1 to the Agreement to recognize dispatch services costs budgeted by the City of Palmer for Communication Center expenses in calendar year 2007.

THEREFORE, effective as of midnight, December 31, 2006, the Agreement, as amended, is amended as follows:

Section I, Payments, is deleted and replaced by the following Section I.

I. PAYMENTS

1. The users agree to pay to Palmer for dispatch costs the amounts agreed to herein and under any extensions of this Agreement.

- a. Base Budget (2007): \$ 1,203,381
- b. Cost allocation:
 - \$836,350 Borough annual payment (69.5%)
 - \$354,997 Palmer annual payment (29.5%)
 - \$12,034 Houston annual payment (1%)

2. The users shall pay Palmer their annual payments according to the following schedule:

- a. January 31* - ½ of the amount owed;
- b. July 15 - ½ the amount owed.

* Or within twenty calendar days of approval of this Amendment.

3. Payments shall be delinquent if not received by Palmer within thirty (30) calendar days of the payment due date. Delinquent payments shall be subject to a 1.5% service charge per month, pro-rated for periods of less than full months.

Except as herein amended, all other terms, conditions, and requirements remain the same.

CITY OF PALMER

Thomas Healy, City Manager

Date

CITY OF HOUSTON

Dale Adams
Dale Adams, Mayor

23 MAY 07
Date

MATANUSKA-SUSITNA BOROUGH

John Duffy
John Duffy, Manager

5-18-07
Date

- c. AM No. 08-020: AWARD OF BID NO. 08-083 TO TEW'S EXCAVATION, INC., IN THE CONTRACT AMOUNT OF \$114,188 FOR CENTRAL LANDFILL RENTAL EQUIPMENT.

Ms. Charles read the above legislation into the record.

MOTION: Assemblymember Woods moved to approve the consent agenda as read into the record by the Clerk.

VOTE: The motion passed without objection.

- a. AM No. 08-017: AUTHORIZING THE BOROUGH MANAGER TO ENTER INTO AN AMENDMENT FOR THE COOPERATIVE SERVICES AGREEMENT WITH THE CITY OF PALMER TO INCREASE THE ANNUAL PAYMENT FOR THE CONTRACT TO AN AMOUNT NOT TO EXCEED \$875,425 FOR THE PROVISION OF DISPATCH SERVICES FOR CALENDAR YEAR 2008.

MOTION: Assemblymember Kvalheim moved to adopt AM No. 08-017.

Assemblymember Kvalheim queried what the amount of the contract included.

Mr. Brodigan spoke regarding how the rates were derived.

Assemblymember Kvalheim queried if the Borough owned the building.

Mr. Brodigan:

- responded that the city of Palmer owns the building; and
- advised that the Borough owns the equipment.

Assemblymember Bettine queried if the Borough provides the technical support for the equipment.

Mr. Brodigan:

- affirmed that the Borough provides the technical support for the E-911 equipment; and
- noted that Borough-owned hardware is serviced through the Information Technology Department.

Discussion ensued regarding how the money is distributed between the cities each year.

MOTION: Assemblymember Bettine moved a primary amendment to AM No. 08-017 to strike the amount of "\$875,425" and insert the amount of "\$813,615" in its place.

VOTE: The motion passed with Assemblymember Woods in opposition.

VOTE: The motion passed as amended without objection.