CITY OF PALMER
ACTION MEMORANDUM NO. 11-023
AGENDA: APRIL 12, 2011

Subject: Authorize the City Manager to Enter into Amendment No. 2 to the Contract for Visitor Information Services between the City and the Palmer Museum of History and Art to update Section 4, Compensation, to Reflect Payments in 2011

Council Action: Authorized

Approved for presentation by:

City Manager Douglas B. Griffin
City Attorney WBCB
City Clerk

Route To:	Department/Individual:	Initials:	Remarks:
x	Originator – Community Development		
x	Director of Administration		
	Director of Community Development		
	Director of Public Safety		
	Director of Public Works		

Certification of Funds:

Total amount of funds listed in legislation: $ 53,200

This legislation (√):

____ Has no fiscal impact
√ Funds are budgeted from this (these) line item(s): 01-01-02-6030
____ Funds are not budgeted. Budget modification is required. Affected line items:

Unrestricted/undesignated fund balance (after budget modification) $ _____

Director of Administration signature certifying funds: _____

Attachment(s):
Amendment No. 2, Contract for Visitor Information Services
Amendment No. 1, approved by Council on February 23, 2010
Contract for Visitor Information Services between the City and the Palmer Museum of History and Art approved by Council March 24, 2009

Summary statement: This amendment changes the references in Section 4 of the Contract for Visitor Information Services between the City and the Palmer Museum of History and Art from payments in 2010 to payments in 2011.

The amendment will change paragraph A, in Section 4 to read:

The City shall pay Contractor as follows:

At signing		$14,800
03/01/2011		$8,400
06/01/2011		$10,000
07/01/2011		$10,000
08/01/2011		$10,000
	TOTAL	$53,200

The budget for these services in 2011 is $53,200 which is the same amount approved in Amendment No.1 for 2010. The FY 2011 Budget approved by Council in December 2010 includes the $53,200 for this service.

Administration recommendation: Approve action memorandum no. 11-023.

Contract
For
Visitor Information Services

AMENDMENT NO.2

This Amendment, dated _____, 2011 amends the Contract for Visitor Information Services dated March 26, 2009, between the City of Palmer (City) and the Palmer Museum of History and Art (PMHA), as follows:

For the Payment schedule outlined in Section 4, replace "2010" with "2011" to reflect the following payment dates in 2011:

The City shall pay the Contractor as follows:

At signing		$14,800
03/01/2011		$8,400
06/01/2011		$10,000
07/01/2011		$10,000
08/01/2011		$10,000
	TOTAL	$53,200

CITY OF PALMER

_____
Douglas B. Griffin, City Manager

_____
Date

PALMER MUSEUM OF HISTORY AND ART

_____
Melissa Jenski, Executive Director

_____
Date

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On _____, 2011, Melissa Jenski personally appeared before me,

1. [ ] who is personally known to me
2. [ ] whose identity I proved on the basis of _____
3. [ ] whose identity I proved on the oath/affirmation of _____,

a credible witness to be the signer of the Amendment No. 2 of the Contract for Visitor Information Services between the City and the Palmer Museum of History and Art and she acknowledged that she signed it.

_____
Notary Public
My Commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On _____, 2011,Douglas B. Griffin, City Manager, personally appeared before me, who is personally known to me, to be the signer of the above document, and he acknowledged that he signed it on behalf of the City of Palmer.

_____
Notary Public
My Commission expires: _____

Professional Services Contract
for
Visitor Information Services

AMENDMENT NO. 1

This Amendment, dated 3/12, 2010, amends the "Professional Services Contract for Visitor Information Services," dated March 26, 2009, between the City of Palmer (City) and the Palmer Museum of History and Art (PMHA), as follows:

1. There are two "Section 3" sections. Change the second "Section 3" to "Section 3A" Section 4 and all subsequent remain as numbered in the Agreement.

2. In the second Section 3, replace "2012" with "2011."

3. In Section 4:

   1. The amount of $51,400 listed in Section 4 for the year 2009, is hereby increased to $53,200, the amount included in the adopted 2010 City of Palmer budget.

   2. The payment schedule outlined in Section 4 is changed for 2010 as follows:

At Signing	$14,800
3/1/2010	$ 8,400
6/1/2010	$10,000
7/1/2010	$10,000
8/1/2010	$10,000

   3. Add the following sentence to the end of Section 4: "Annual payments to the Contractor by the City of Palmer for 2011 shall be agreed to by the City and the Contractor by signed amendment prior to February 1, 2011."

CITY OF PALMER

B.B. Allen, City Manager

3·16·10
Date

PALMER MUSEUM OF HISTORY AND ART

DeLena Johnson, Executive Director

3/12/10
Date

Contract for
Visitor Information Services

This is a Contract made and entered into effective 3-26, 2009, by and between the City of Palmer (City), an Alaska municipal corporation, and the Palmer Museum of History and Art (Contractor).

The parties agree as follows:

Section 1. Employment of Contractor.

The City hereby agrees to engage the Contractor and the Contractor hereby agrees to perform the services hereafter set forth. Contractor accepts the relationship of trust and confidence between it and the City and agrees to perform the services under this Contract with due diligence, due care, and in a good and professional manner.

Section 2. Scope of Work.

Contractor shall perform all the services provided for by this Contract which are described with particularity in this section:

A. The full time and best efforts of the Contractor as an independent contractor of the City shall be expended to operate and manage the City's Visitor Information Center in accord with industry best practices and City budgets, as adopted and amended from time to time.

B. Contractor shall provide visitor information services at the Palmer Visitor Information Center (PVIC) between the hours of 9:00 a.m. to 6:00 p.m., seven days a week, for the period of May 1 through September 30 of each year. The service will begin on May 1, 2009.

C. Contractor shall provide visitor information services such as information and/or brochures about lodging, restaurants and attractions in the general area; knowledgeable information about local goods and services; directions as requested; providing historical information about the Palmer area); to the public in a respectful, and helpful manner at the PVIC for the period of the contract.

D. Contractor shall provide adequate staff to be available to provide visitors with the above listed information. Contractor will provide its employees, at its expense, with a training course in the provision of visitor information services. (Such as courses offered by the Mat Su Visitor and Convention Bureau and the State of Alaska Department of Commerce.)

E. Contractor shall provide, without charge, visitor information handout materials, such as brochures, directories, or lists, focusing on the Greater Palmer Area. Guidebooks, books

and, maps may be sold by Contractor. Other items may be offered for sale with the City's approval.

F. Contractor shall provide telephone and email contacts for information requests and inquiries by the public for both the part of the year the PVIC is open as well as the part of the year that it is closed. This may be by use of a high-quality telephone answering machine. The outgoing message shall be approved by the City. Incoming messages are to be retrieved and responded to on a daily basis during each week. Email inquiries shall also be responded to on a daily basis during each week. Compliance with this immediate call back/respond requirement shall be an on-going this Contract evaluation factor between the City and the Contractor.

G. Contractor will establish and maintain a website under the auspices of the City's website (www.cityofpalmer.org). This website will be owned and paid for by the City and will remain the property of the City at any termination of this contract. The City will provide training to one of Contractor's employees on the use of the website. The City must approve the general content of the website, including any links to businesses.

H. KEY PROVISION. The City demands that Contractor provide courteous and responsive service to the public through personable and friendly answering of questions and dissemination of information about the City of Palmer, the history of Palmer and the region, as well as about local businesses and attractions in the City and Greater Palmer area. The City requires that Contractor provide competent and friendly staff at all operating hours with at least two (2) knowledgeable and trained individuals, on-scene at all open hours, to accomplish the above services. Contractor will conduct on-going quality assurance testing throughout the summer in order to provide consistent, high-quality, visitor information services to meet the requirements listed in this contract.

I. The City will be responsible for routine maintenance of the PVIC building, such as entrance area snow removal, trip and fall safety mitigation, replacing light bulbs. The City shall also be responsible for exterior building and grounds maintenance (including all window washing), and maintenance and repair of the building structure, and major PVIC fixtures, which are defined as heating system, the plumbing system, and major electrical work. Contractor shall be responsible for janitorial service (cleaning floors, restrooms; emptying trash).

J. The City will be responsible for payment of utilities for the VIC building, to include: electricity, natural gas, water, trash pickup and basic phone service. Contractor will be responsible for long distance phone charges. The installed telephone system and phones will remain the property of City. The phone number(s) for PVIC will remain the property of the City.

Section 3. Insurance.

A. Contractor shall provide the City with a Certificate of Insurance for a minimum of $1,000,000 per event of Commercial General Liability insurance which names the City

as an additional named insured, with thirty (30) days prior notice of cancellation. In addition, the Contractor will provide the City with proof of Workers Compensation insurance for its employees

B. Contractor shall furnish the City with certificates of insurance and with certified copies of all endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the City. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

C. A lapse in insurance coverage is a material breach of this Contract which shall result in immediate termination of the agreement, pursuant to Section 5.

Section 3. <u>Time of Performance.</u>

The services of Contractor shall commence on April 1, 2009, and shall terminate on December 31, 2012. The period of performance may be extended for three (3) additional one-year periods, beginning on January 1 and ending on December 31 of the year of the extension, only by the mutual written agreement of the parties and the approval of the Palmer City Council.

Section 4. <u>Compensation.</u>

A. Subject to the provisions of this Contract, as compensation for all of Contractor's services, the City shall pay Contractor the amount of $51.400. The City shall pay Contractor as follows:

Advanced	$ 7,000
At signing	$13,000
June 1	$10,000
July 1	$10,000
August 1	$11,400

B. Except as otherwise provided in this contract, the City shall not provide any additional compensation, payment, service or other thing of value to Contractor in connection with performance of its Contract duties; provided, however, that Contractor shall be able to use the Visitor Information Center property to perform its duties hereunder. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs Contractor may incur in the performance of its obligations under this Contract have already been included in computation of Contractor's fee and may not be charged to the City.

Section 5. Termination of this Contract for Cause.

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the obligations under this Contract if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Contractor under this Contract are the property of the City and shall be delivered to the City by or upon the effective date of termination. Contractor shall be entitled to receive compensation in accordance with the payment provisions of section 4, pro rata to the effective date of termination. Only for work completed to the City's satisfaction in accordance with Section 2 and the other terms of this Contract.

Section 6. Termination for Convenience of City

The City may terminate this Contract at any time by giving written notice to the Contractor of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 8 above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. Contractor shall be entitled to receive compensation in accordance with the payment provisions of section 6, pro rata to the effective date of termination only for work completed to the City's satisfaction in accordance with Section 2 and the other terms of this Contract. If this Contract is terminated due to the fault of the Contractor, Section 5 of this Contract shall govern the rights and liabilities of the parties.

Section 7. Causes Beyond Control.

In the event the Contractor is prevented by a cause or causes beyond control of the Contractor from performing any obligation of Contract, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Contract which will render the Contractor liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Contractor 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 Contractor and which prevent the performance of the Contractor: 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 Contractor from performing the terms of the Agreement as set forth herein. Events which are peculiar to the Contractor and would not prevent another Contractor from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Contractor. The City will determine whether the event preventing the Contractor from performing is a cause beyond the Contractor's control.

Section 8. Modifications.

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

Section 9. Equal Employment Opportunity.

A. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. Contractor agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran, or veteran of the Vietnam War era. Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by Contract.

B. Contractor shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in subsection 12 (A) for applicants for employment and employees as the City may require.

Section 10. 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 Contract which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

Section 11. Assignability.

A. Contractor shall not assign any interest in this Contract 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 Contractor from the City under this Contract 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 Contractor shall be responsible to the City for any moneys due the assignee of this Contract which are paid directly to the Contractor.

B. Contractor shall not delegate duties or otherwise subcontract work or services under this Contract without the prior written approval of the City.

Section 12. Interest of Contractor.

Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed.

Section 13. Findings Confidential.

To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Contract which the City requests to be kept confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the City

Section 14. 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 contract. 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 contract.

Section 15. Audits and Inspections.

At any time during normal business hours and as often as the City or the Comptroller General of the United States may deem necessary, there shall be made available for examination all of its records with respect to all matters covered by this Contract and will permit representatives of the City or the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by Contract.

Section 16. Non-Waiver.

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

Section 17. Permits, Laws and Taxes.

Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under Contract. All actions taken by the Contractor under this

Contract shall comply with all applicable statutes, ordinances, rules and regulations. Contractor shall pay all taxes pertaining to its performance under Contract.

Section 18. Relationship of the Parties.

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

Section 19. Contract Administration.

The Director of Community Services, or designee, will be the representative of the City administering this Contract.

Section 20. Integration.

This instrument and all exhibits 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 Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

Section 21. Defense and Indemnification

Contractor shall indemnify, hold harmless, and defend the City from and against any claim of, or liability for negligent acts, errors or omissions of the Contractor under Contract. Contractor shall not be required to indemnify the City for a claim of, or liability for, the independent negligence of the City. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "City", as used within this article, include the employees, agents and other Contractors/contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the City's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Section 22. Interpretation and Enforcement.

This Contract 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 Contract are not to be construed as limitations or definitions but are for identification purposes only.

Section 23. Understanding.

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

Section 24. Severability.

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

Section 25. Jurisdiction, Choice of Law.

Any civil action arising from this Contract shall be brought in the superior court for the Third Judicial District of the state of Alaska at Palmer, only. The laws of the State of Alaska and the City of Palmer shall govern the rights and obligations of the parties.

Section 26. Miscellaneous.

A. Contractor shall comply with all laws and ordinances and any lawful regulations or orders of any regulatory board, commission or agency of the City of Palmer, the Matanuska-Susitna Borough, the State of Alaska, or the Federal Government relating in any way to its duties and responsibilities under this Contract.

B. Contractor shall not solicit, accept, or attempt to accept any kickback. The term kickback means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to Contractor, any relative by blood or marriage of Contractor, any person having a financial relation with Contractor, or any employee of Contractor for the purpose of improperly obtaining or rewarding favorable treatment in connection with Contractor's duties and responsibilities under this Contract.

Section 27. Notices.

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

City Manager	DeLena Johnson, Executive Director
City of Palmer	Palmer Museum of History & Art
231 W. Evergreen Ave.	723 South Valley Way
Palmer, AK 99645	Palmer, AK 99645

Section 28. Counterparts

Contract may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

Section 29. Survival of Representations and Warranties

The representations, warranties, covenants, and agreements of the parties under Contract, and the remedies of either party for the breach of such representations, warranties, covenants, and agreements by the other party shall survive the execution and termination of Contract.

Section 30. Fund Verification

Fund source and verification of funds for this project:

Funding Source: 01-01-20-6030 $51,400
Future years Funding subject to appropriation

K Welch
Verified by

3/27/09
Date

CITY OF PALMER

B.B. Allen, City Manager

March 26, 2009
Date

PALMER MUSEUM OF HISTORY & ART

DeLena Johnson, Executive Director

3-26-09
Date

STATE OF ALASKA

Third Judicial District

On March 26, 2009, DeLena Johnson personally appeared before me,

1. [ ] who is personally known to me
2. [X] whose identity I proved on the basis of Alaska Driver's License
3. [ ] whose identity I proved on the oath/affirmation of _____, a credible witness

to be the signer of the **Contract for Visitor Information Services** and he/she acknowledged that he/she signed it.

OFFICIAL SEAL
ALICE M. WILLIAMS
NOTARY PUBLIC-STATE OF ALASKA
My Comm. Expires Aug. 12, 2012

Alice M Williams
Notary Public for the State of Alaska
My Commission expires: Aug 12, 2012

STATE OF ALASKA

Third Judicial District

On March 26, 2009, B. B. Allen, City Manager, personally appeared before me, who is personally known to me, to be the signer of the above document, and he acknowledged that he signed it on behalf of the City of Palmer.

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