

CITY OF PALMER ACTION MEMORANDUM No. 10-079

SUBJECT: Authorize the City Manager to Negotiate and Execute a Brand Licensing Agreement with Matanuska Telephone Agreement

AGENDA OF: November 23, 2010

Council action:	Authorized
------------------------	-------------------

Title changed to
Matanuska
Telephone
Association

Authorization by Douglas B. Griffin, City Manager

Route To:	Department/Individual:	Initials/Date:	Remarks:
X	Originator – City Manager	11/3/10	
X	City Clerk	11/17/10	
X	City Attorney	11/17/10	
	Director of Administration		
	Director of Community Development		
	Director of Community Services		
	Director of Public Safety		
	Director of Public Works		

Attachment(s): Brand Licensing Agreement

Certification of Funds:

	No fiscal impact.	
X	Funds are budgeted from this account number: 01-00-00-3005	\$300,000 over 5 years
	Funds are not budgeted. Budget modification is required. Affected account number:	
	Unrestricted/undesignated fund balance (after budget modification):	

Director of Administration Signature:

Summary statement: The City has been working with Matanuska Telephone Association (MTA) for the last several months to write a Brand Licensing Agreement which develops a partnership between the two entities and applies to the facility currently known as the Palmer Ice Arena. The agreement provides for the facility and surrounding sports fields to be known as the "MTA Arena and Events Center" and in exchange the City will receive \$60,000 per year over a five year period for a total of \$300,000. Those funds will be allocated to the General Fund.

Background: The City of Palmer is in the process of upgrading the Palmer Ice Arena in two phases. The primary improvements in phase I are increased bleacher seating to approximately 600 seats, a small raised seating platform, a new sound system, upgrades to lighting design, and some additional parking.

Improvements in phase II are slated to take place between April and August of 2011. Although final plans have are not yet fully designed, it is anticipated Phase II will expand the structure 20 feet to the south, add more bleacher seating, construct new locker rooms, and expand rest room facilities.

When complete, the facility will become a multi-use facility, available for community rental for a broad range of activities. The expansion also allows the Alaska Avalanche to make Palmer their home ice. The City has a five year agreement with the hockey team through the 2014-2015 season.

In addition to the naming rights of the facility for the five year term of the agreement, MTA will receive tickets to all events, the right to use the facility free of charge three times annually, and advertising on the zamboni, center ice, and scoreboard.

The City will be responsible for updating the sign at the entrance of the facility, including lighting, paying for half of the sign over the new entry way at the conclusion of phase II, and providing electricity to light the sign on the east side of the structure.

Both entities agree to indemnify the other, carry the proper insurance, and operate for the good of the community and the agreement.

Administration recommendation: Approve action memorandum 10-079.

BRAND LICENSE AGREEMENT

THIS BRAND LICENSE AGREEMENT ("Agreement") is made as of the ____ day of _____, 20__ by and between Matanuska Telephone Association, Inc., with its principal place of business at 1740 S. Chugach Street, Palmer, Alaska 99645 (hereinafter referred to as "MTA"), and City of Palmer, with its principal place of business at 231 W. Evergreen, Palmer, Alaska 99645 (hereinafter referred to as "COP").

The Parties agree to these basic tenants:

MTA is the owner of the MTA name and logo and certain other marks which incorporate such logos, as shown on Exhibit "B" hereto.

COP owns and operates the Palmer Ice Rink located at 1317 Kerry Weiland Court, Palmer, Alaska 99645 ("Facilities").

The Parties desire to enter into an arrangement whereby the Facilities shall be identified under a brand determined as provided in Section 1.1(a) in the definition of "Brand".

COP recognizes the vital importance of protecting MTA's exclusive and valuable rights in and to the MTA name and logo and the goodwill it symbolizes.

ARTICLE 1

DEFINITIONS

I.I. Definitions. For purposes of this Agreement, the following terms shall be defined as follows:

- (a) "Brand" means such trademark and/or branding which incorporates the Mark (as hereafter defined) on the COP Facility as mutually agreed upon by the Parties in Exhibit B. For the purpose of this Agreement the brand is Matanuska Telephone Association and/or MTA.
- (b) "Facility" or "Facilities" means the Palmer Ice Rink building to include, inside and outside of the building, parking lot and the soccer fields.
- (c) "Licensed Mark" or "Mark" means - MTA Arena and Events Center, and logo as set forth in Exhibit B which is incorporated by reference.
- (d) "Party" means MTA or COP. MTA and COP are collectively referred to herein as the "Parties".
- (e) "Initial Term" means the period commencing on the Effective Date and expiring on the fifth anniversary thereof.
- (f) "Renewal Term" means any extension of the term after the initial term pursuant to Section 2.2 of this Agreement.
- (g) "Anniversary" of this Agreement means at the end of five (5) years.

ARTICLE 2

GRANT OF LICENSE

2.1 Grant. Subject to the terms and provisions set forth in this Agreement, MTA hereby grants to COP, and COP hereby accepts, a nonexclusive, non-transferable, non-assignable license royalty free, to use the Mark during the Term solely in connection with the marketing of the Facilities, but only as incorporated into, or used in conjunction with, the Brand.

2.2 Term. The initial Term of this Agreement shall be for a period of five (5) years commencing from the later of, January 1, 2011 "Effective Date". The parties may mutually agree to extend this written agreement beyond the initial term.

The COP Facility is currently under renovations as detailed in Exhibit C, Project Schedule. The Parties agree that it is their mutual intent that the transition be completed at the earliest possible date following execution of this Agreement and within 90 days of the project schedule's completion date.

2.3 Limitations on Use. COP has no right to nor shall it use the Mark as shown in Exhibit B, except for the marketing the Facilities or otherwise approved by MTA.

2.4 Limitations on Licensing. During the Term, MTA reserves and shall have the right to grant to any other person or entity the right to use the Mark in conjunction with the Facility.

2.5 Use of Other Marks. During the Term of this Agreement, neither COP nor any subsidiary or affiliate of COP will use any mark or name except the Mark on the Facilities or in connection with advertising or promotional materials for the Facilities, except as approved in writing by MTA.

ARTICLE 3

QUALITY CONTROL

3.1 Quality Control; Inspections; Approvals. In order to protect the goodwill and reputation associated with the Mark, COP covenants, agrees, represents and warrants as follows, at a minimum that:

(a) All related advertising, labels, publicity materials, and promotional materials used by COP in connection with the Facilities; the Brand shall conform to the standards agreed upon in Exhibit B. COP shall require all users and renters of the Facility to incorporate the brand as provided to them by COP in all promotional materials, including, but not limited to flyers, brochures, electronic advertising, print advertising, and press releases. Advertising examples will be provided to MTA upon request.

(b) Notwithstanding any other provision in this Agreement, MTA shall have no liability to COP or third parties with respect to the management of the Facilities by COP, its agents, contractors or sub-contractors or its customers.

(c) All rental use of the Facility shall exclude sexually suggestive or explicit products or activities.

(d) Upon request, COP shall allow MTA to inspect the facilities. .

(e) COP shall submit to MTA, without charge, for inspection and approval by MTA, a sample of each advertisement, publicity or promotional material that uses the Mark or the Brand. COP shall not use any advertisement, package, label, tag, publicity or promotional material for the Facilities using the Brand, the Mark or the MTA name, which has not been approved by MTA in writing.

(g) COP shall not have a personality or celebrity endorse or promote the Facility unless and until it obtains a signed release with a clause stating that the celebrity shall not promote any other telecommunications company or a company that is in competition with MTA.

(h) COP's policy of the use and maintenance of the Facility shall be of the highest standard and shall in no manner reflect adversely upon the good name of MTA or upon the goodwill and reputation associated with the Mark.

(i) The Parties shall use their reasonable best efforts to promptly handle any requests for approvals required under this Agreement (for example, approvals under Section 5.2; but excluding, without limitation, amendments to this Agreement). Unless the Parties agree otherwise, response to requests for approval must be given within ten (10) business days from the date of request. Lack of such response within ten (10) business days from the date of the second notice of such request (which second request shall not be given prior to ten (10) business days from the date of the first request) shall constitute approval of the request.

ARTICLE 4

OWNERSHIP OF THE MARK

4.1 Ownership of Mark. COP acknowledges and agrees that:

(a) COP shall acquire no ownership rights in or to the Mark by virtue of this Agreement or otherwise and all use by COP of the Mark shall be deemed to inure to the benefit of MTA.

(b) COP shall not, during the Term or at any time thereafter, directly or indirectly, contest or aid in contesting MTA's ownership of the Mark or the validity of the Mark, and

(c) COP shall not, during the Term or at any time thereafter, do anything inconsistent with or which impairs MTA's ownership of or the validity of the Mark.

4.2 Cooperation in Enforcing Ownership Rights. At MTA's request, COP will cooperate fully, at MTA's expense, in confirming, perfecting, preserving and enforcing MTA's rights in the Mark.

4.3 Unauthorized Use. COP agrees to notify MTA of any unauthorized use, or other infringement by other persons relating to the Brand or the Mark promptly after it comes to COP's express knowledge. MTA agrees to notify COP of any unauthorized use, unfair competition or other infringement by other persons relating to the Brand promptly after it comes to MTA's attention. The Parties shall have the right to determine what action, if any, will be taken to remedy any infringement(s) of or related to their respective name or logos or other intellectual property rights, either standing alone or as incorporated in the Brand. The Parties shall not take any action with respect to such infringements of the other Party's name or logos or other intellectual property, standing alone, without the prior written consent of the other Party. Notwithstanding the foregoing, the Parties agree to cooperate in good faith in determining what action to take regarding any infringement of the Brand.

ARTICLE 5

ADDITIONAL OBLIGATIONS OF COP

5.1 Marketing. COP agrees to use its reasonable best efforts, consistent with its past practices and past financial expenditures, for marketing, advertising, promoting and publicity for the Brand.

5.2 When and if available, MTA shall have exclusive right to stream events live over the internet for events at the Facility and to broadcast such event on MTA's DTV Video on Demand. All broadcast games would be on a delayed basis.

5.3 Approval of Formats. COP shall use the Mark only in the composition, lettering, logos, print styles, forms and formats which have received the prior written approval of MTA.

5.4 Insurance Coverage. During the Term, COP shall obtain and maintain from a reputable insurance carrier liability insurance with limits not less than \$1,000,000 (U.S. dollars) (per person, per injury) in order to protect and insure MTA and COP against any claims or liabilities with which either or both of them may be charged because of personal injuries or injuries suffered by any person or entity, resulting from the use of the Facilities, whether during the Term or thereafter. MTA shall be named in the policy of such insurance as an additional insured and such policy shall provide that the insurance cannot be cancelled without the insurer giving MTA written notice thereof at least thirty (30) days prior to the effective date of the cancellation and that the insurance covers the contractual liability of COP to MTA under the provisions of paragraph 5.5 below. COP shall maintain such insurance in full force and effect throughout the Initial Term and for a Discovery Period of three (3) years after the termination date of the Agreement. Within ten (10) days after the term of this Agreement begins and on the first day of each year thereafter, COP shall deliver to MTA a certificate of insurance showing evidence of coverage. The insurance described in this Section shall be primary and shall not be subject to contribution by any other insurance, which may be available to MTA.

5.5. Indemnity. COP agrees to indemnify MTA and its affiliates, directors, officers, employees and agents and hold them harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) (collectively, "Damages") arising out of or resulting from or in connection with COP's (1) performance or non-performance of its obligations under this Agreement; or (2) negligent or willful acts or omissions (or such actions or omissions of COP's agents, employees, contractors, or consultants). This Section shall survive the expiration, termination, breach or alleged breach of this Agreement.

ARTICLE 6

MTA'S OBLIGATIONS

6.1 Each anniversary of the Initial Term MTA shall pay COP sixty thousand dollars (\$60,000) for the upfront cost of the renovations and set up costs for naming rights to the Facility and for the exclusivity to MTA as the only telecommunications company advertising in the Facility, as outlined in Exhibit A.

6.3 Indemnity. MTA agrees to indemnify COP and its directors, officers, employees and agents and hold them harmless from and against any and all Damages arising out of or resulting from or in connection with MTA's (1) performance or non-performance of its obligations under this Agreement; or (2) negligent or willful acts or omissions of MTA (or such acts or omissions of

MTA's agents, employees, contractors, or consultants). This Section shall survive the expiration, termination, breach or alleged breach of this Agreement.

ARTICLE 7

BREACH, DEFAULT AND TERMINATION

7.1 Termination for Cause. Either Party may terminate this Agreement at any time if the other defaults in the performance of any of its obligations under this Agreement and fails to cure such default as set forth in this Agreement. In such event, the Party declaring the default shall provide the other Party ("Recipient") with written notice thereof setting forth the nature of the default, and:

(a) Recipient shall have thirty (30) days from the date of the notice to cure a default (other than a default described in Section 7.1(b)), provided, however, that if the nature of the alleged fault is such that it cannot reasonably be cured within thirty (30) days, the Recipient may cure such default by commencing in good faith to cure such default promptly after its receipt of such written notice and prosecuting the cure of such default to completion with diligence and continuity within a reasonable time thereafter; or

(b) In the event COP shall at any time breach or be in default of any of the provisions set forth in Section 3.1(a) - (j) of this Agreement, COP shall have thirty (30) business days from receipt of MTA's notice to COP of such Quality Default to cure it; provided however, however, MTA may terminate this Agreement immediately, without providing COP an opportunity to cure, upon the third Quality Default in any five (5) year period.

7.2 Termination in Event of Bankruptcy, etc. This Agreement shall terminate automatically upon notice to a Party, in the event that with respect to such Party: (a) there is an expropriation, confiscation or nationalization by any government of a substantial portion of its assets or property; (b) it becomes insolvent; (c) it seeks relief as a debtor under any applicable bankruptcy law or other law relating to the liquidation or reorganization of debtors or to the modification or alteration of the rights of creditors or consents to or acquiesces in such relief; (d) it makes an assignment for the benefit of, or enters into a composition with, its creditors; (e) it appoints or consents to the appointment or receiver or other custodian for all or a substantial part of its assets or property; (f) a petition seeking to have it declared or adjudicated bankrupt or insolvent under any applicable bankruptcy or similar law is not dismissed within sixty (60) days after filing; (g) an order or judgment is entered by a court of competent jurisdiction for relief against it in any case commenced under any bankruptcy or similar law or finding it to be bankrupt or insolvent or ordering or approving its liquidation, reorganization or any modification of the rights of its creditors or appointing a receiver, guardian or other custodian for all or a substantial part of its assets or property; or (h) it admits its inability to pay its debts when due.

7.4 No Waiver of Right to Terminate. Either Party's failure to exercise or delay in exercising its right of termination hereunder for any one or more causes shall not be deemed to prejudice its right of termination for such cause(s) or for any other subsequent cause. Termination or expiration of this Agreement for any reason whatsoever shall not relieve the Parties from their respective obligations accruing hereunder upon or prior to such termination or expiration.

7.5 Certain Obligations upon Termination or Expiration. Upon any expiration or termination of this Agreement:

COP shall, at its expense, within thirty (30) days following the date of such expiration or termination ("Transition Period") remove from, and by the end of the Transition Period shall

have ceased to use or display in any manner the Brand or the Mark inside the Facilities, in connection with the Facilities or any label, equipment, advertising or promotional medium of any kind whatsoever, or any other document, device or medium; unless the Parties expressly agree otherwise. MTA shall be responsible to remove any signage outside the Facilities.

7.6 Arbitration. The Parties agree to resolve any dispute hereunder through good faith negotiations. Accordingly, the Parties agree that any dispute or claim (collectively, "Disputes") arising out of or in connection with this Agreement shall be settled by binding arbitration in Palmer, Alaska (or such other location as the Parties may agree) under the rules then prevailing of the American Arbitration Association by one arbitrator appointed in accordance with those rules. The arbitrator shall be chosen from a panel of arbitrators with knowledge relevant to the subject matter of the Dispute. The arbitrator shall apply Alaska law to the merits of any Dispute without reference to such state's conflicts of law rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The prevailing Party shall be entitled to recover, in addition to any other relief awarded or granted, its incurred costs and expenses including, but not limited to, reasonable attorneys' fees.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 No Agency. Nothing in this Agreement shall create a partnership, joint venture or establish the relationship of principal and agent or any other relationship of a similar nature between the Parties. In all transactions regarding the Facilities or the Brand, COP shall assume sole responsibility for any commitments, obligations or representations made by it in connection with the manufacture, marketing, use or advertising thereof.

8.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the Parties, pertaining to such subject matter. No amendment, supplement, modification or waiver of this Agreement shall be binding unless it is set forth in a written document signed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in a written document signed by the Parties hereto.

8.3 Binding Nature of Agreement. Subject to Article 2 above, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

8.4 Governing Law. This Agreement shall be construed in accordance with laws of the State of Alaska and the City of Palmer without regard to conflict of laws principles.

8.5 Headings. The headings and captions contained in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect the interpretation of this Agreement. Unless the context otherwise specifically requires, words importing the singular include the plural and vice versa. The terms "hereunder", "hereto", "herein" and similar terms relate to this entire Agreement and not to any particular paragraph or provision of this Agreement.

8.6 Voluntary Nature of Agreement. This Agreement has been entered into after negotiation and review of its terms and conditions by the Parties under no compulsion to execute and deliver a disadvantageous agreement. The Agreement incorporates provisions, comments and suggestions proposed by both Parties. No ambiguity or omission in this Agreement shall be

construed or resolved against either Party on the ground that this Agreement or any of its provisions was drafted or proposed by the Party.

8.7 Notices. All notices or other communications which are required or which may be given under the provisions of this Agreement shall be in writing and shall be hand-delivered or mailed certified or registered mail, postage prepaid, as follows:

To MTA at:

Matanuska Telephone Association
1740 S. Chugach Street
Palmer, Alaska 99645
Attention: Contract Administrator
Facsimile #: (907) 761-2540

To COP at:

City of Palmer
231 W. Evergreen
Palmer, Alaska 99645
Attention: Director, Community Services Department
Facsimile #: (907) 745-0930

Either Party may change its address for notice by written notice to that effect given to the other Party in accordance with this Section. All notices shall be effective upon actual receipt (or refusal) at the address specified.

8.8 Remedies. Except where otherwise specifically referenced in this Agreement as an exclusive remedy, the Parties hereto shall have all remedies available at law or in equity, which remedies shall be cumulative and nonexclusive, and in addition shall be entitled to such restraining orders, injunctions, specific performance, protective orders or similar remedies as may be appropriate.

8.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed signatures will be accepted, provided the originally signed documents are delivered on the following business day.

8.10 Compliance with Law. MTA shall be familiar with and at all times comply with and observe all applicable federal, state and local laws, ordinances, rules, regulations, and executive orders, all applicable safety orders, all orders or decrees of administrative agencies, courts, or other legally constituted authorities having jurisdiction or authority over

ARTICLE 9

REPRESENTATIONS, WARRANTIES AND COVENANTS OF LICENSOR

9.1 Title to the Licensed Marks. MTA represents and warrants that:

(a) MTA has good title to the Licensed Marks and has the right to grant the licenses provided for hereunder in accordance with the terms and conditions hereof, free of any liabilities, charges, liens, pledges, mortgages, restrictions, adverse claims, security interests, rights of others, and encumbrances any kind (collectively, "Encumbrances"), other than Encumbrances which will not

restrict or interfere in any material respect with the exercise by COP of the rights granted to COP hereunder.

(b) There is no claim, action, proceeding or other litigation pending or, to the knowledge of Licensor, threatened with respect to MTA's ownership of the Licensed Marks or which, if adversely determined, would restrict or otherwise interfere in any material respect with the exercise by COP of the rights purported to be granted to Licensee hereunder.

Except as expressly provided elsewhere in this document, MTA makes no representation or warranty of any kind or nature whether express or implied with respect to the Licensed Marks (including freedom from third party infringement of the Licensed Marks).

9.2 Other Licensees. In the event MTA grants to any third party any licenses or rights with respect to the Licensed Marks, MTA shall not, in connection with the grant of any such license or rights, take any actions, or suffer any omission that would adversely affect the existence or validity of the Licensed Marks or conflict with rights granted to COP hereunder.

9.3 Abandonment. Licensor covenants and agrees that, during the term of this agreement, it will not abandon the Licensed Marks.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES OF BOTH PARTIES

10.1 Representations and Warranties. Each party hereby represents and warrants to the other party as follows:

(a) Due Incorporation or Formation; Authorization of Agreement. Such party is a corporation duly organized, a limited liability company duly organized or a partnership duly formed, validly existing and, if applicable, in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate, company or partnership power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby. Such party is duly licensed or qualified to do business and, if applicable, is in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. Such party has the corporate, company or partnership power and authority to execute and deliver this agreement and to perform its obligations hereunder and this execution, delivery and performance of this agreement have been duly authorized by all necessary corporate, company or partnership action. Assuming the due execution and delivery by the other party hereto, this agreement constitutes the legal, valid and binding obligation of such party enforceable against such party in accordance with its terms, subject as to enforceability to limits imposed by bankruptcy, insolvency or similar laws affecting creditors' rights generally and the availability of equitable remedies.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound thereby, have executed this Agreement by their duly authorized representatives to be effective as of the day and year first above written.

MATANUSKA TELEPHONE ASSOCIATION, INC.

CITY OF PALMER

By:

Printed Name: Greg Berberich

Title: CEO

Date:

By:

Printed Name: Douglas B. Griffin

Title: City Manager

Date:

Exhibit A
to
Brand License Agreement
Presentation of Brand

****SIGN DIMENSIONS ARE STILL BEING WORKED OUT – THIS IS A DRAFT ONLY**

MTA Signage on Exterior Building to be paid by MTA

MTA Signage at new entry way, constructed in Phase 2, will be split in cost between COP & MTA

MTA (Lighted) Signage entering the parking lot will be provided by the COP

Center Ice – MTA Logo

Zamboni or other ice resurfacing machine – MTA Logo

Scoreboards (x2) – MTA Logo

4 MTA Box Seats and 4 general admission tickets to each event for each year of the Term

MTA may use the Facility up to 3 times annually, free of cost. MTA will coordinate with COP for scheduling.

All Fields within the community complex are included with this agreement in addition to the arena Facility.

Exhibit B
to
Brand License Agreement

MTA Logo

Name of Facility shall be “MTA Arena & Events Center”. MTA Arena & Events Center signage shall be displayed in the interior and exterior of the Facility.

Any signs referencing the Facility shall be new and lighted.

Exhibit C
to
Brand License Agreement

Project Schedule to be provided by March 1, 2011