

CITY OF PALMER ACTION MEMORANDUM No. 09-023

SUBJECT: Authorize the City Manager to Execute Amendment No. 2 to the Professional Services Agreement with Independent Contractor Don Carling for a Two Year Contract to Provide Gardening Services

AGENDA OF: March 24, 2009

Council action: Authorized

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

Route To:	Department/Individual:	Initials/Date:	Remarks:
x	Originator – Pat Kilmain	<i>pk</i> 3/6/09	
x	City Clerk	<i>JH</i> 3/13/09	
x	City Attorney	<i>[Signature]</i> 3/13/09	
x	Director of Administration	<i>P</i> 3/6/09	
	Director of Community Development		
	Director of Community Services		
	Director of Public Safety		
	Director of Public Works		

Attachment(s): Professional Services Contract with Don Carling
Amendment No. 1 to Contract
Proposed Amendment No. 2

Certification of Funds:

	No fiscal impact.	
x	Funds are budgeted from this account number:	01-0120-6030
	Funds are not budgeted. Budget modification is required. Affected account number:	

Director of Administration Signature: *[Signature]*

Summary statement:

This is a two-year amendment to the Professional Services Agreement with Don Carling for Gardening Services.

Background

Don Carling has maintained the garden at the tourist center, as well as the depot planter, the two plant beds at the intersection of Evergreen Avenue and Alaska Street, and the plant bed and box at City Hall since 2005. Action Memorandum - 09-023 authorizes the extension of Mr. Carling's professional services agreement for an additional two years.

The contract amount for 2009 is \$40,250.00

The funds for this amendment are in the 2009 budget.

Administration recommendation: Approve action memorandum no. 09-023.

PROFESSIONAL SERVICES AGREEMENT

THIS Agreement made and entered into this 7TH day of APRIL, 2006, by and between the City of Palmer, an Alaska municipal corporation (the City), and **Don Carling** (Consultant).

Section 1. Employment of Consultant. The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

Section 2. Consultant's Representation and Warranty, and Manner of Performance.

(A) Consultant hereby represents and warrants to the City, and the City relies upon said representations and warranties, that Consultant is a professional in the subject area in which services are to be provided and that Consultant has more than adequate experience, skill, knowledge, and competence to perform the services set forth in this Agreement.

(B) Consultant accepts the relationship of trust and confidence between the consultant and the City. Consultant covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.

Section 3. Scope of Services. The Consultant shall perform all the services provided for by this Agreement as are described generally and with particularity in Appendix "A", entitled Scope of Services, attached hereto and incorporated by reference as if fully set forth herein.

Section 4. Personnel. Consultant's personnel shall be limited to Consultant employees and those persons approved by the city manager.

Section 5. Time of Performance. The services of the Consultant shall commence upon execution of this agreement by the city manager and shall terminate, subject to Sections 6, 8 and 9, one year after execution of this Agreement.

Section 6. Compensation.

(A) Subject to the provisions of this Agreement, the City shall pay the Consultant a total sum for all services and expenses for the term of this Agreement in accordance with the provisions of Appendix "A" attached hereto and incorporated herein by reference.

(B) Except as otherwise provided in this Agreement and Appendix "A", the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of duties under this Agreement. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.

Section 7. Method and Time of Payment.

(A) The City will compensate the Consultant in accordance with Appendix "A", which compensation shall constitute the full and complete compensation for the Consultant's professional services. Payments will be made on receipt of billings submitted pursuant to the schedule set forth in Appendix "A". A billing is a summary of expenditures to a date by line item categories. The consultant need not submit documentation of expenditures with billings but must retain the documentation in the event the City requests the documentation.

(B) No payment will be disbursed until approved by the City. Billings shall be submitted to the Director of Public Works, in accordance with the schedule in Appendix "A".

Section 8. Termination of Agreement for Cause. If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement, or if the Consultant violates any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice of termination to the Consultant specifying the termination's effective date, which must be at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports prepared by the Consultant arising out of or connected with this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Appendix "A" of this Agreement only for work completed to the City's satisfaction in accordance with Appendix "A" of this Agreement and the other terms of this Agreement.

Section 9. Termination for Convenience of City. The City may terminate this Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in paragraph 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. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Appendix "A" of this Agreement only for work completed to the City's satisfaction in accordance with Appendix "A" of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 10. Causes Beyond Control. In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of the Agreement for cause, provided that Consultant duly and timely notifies the City in writing of the cause or causes, which writing must be titled "Cause or Causes Beyond Control of Consultant." However, if and when such cause or causes cease to prevent performance, the Consultant 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 Consultant and which prevent the performance of the Consultant: 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

Consultant from performing the terms of the Agreement as set forth herein. Events which are peculiar to the Consultant and would not prevent another consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 11. Modifications.

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

(B) It is expressly understood that the total amount of compensation for successful performance of the Agreement will not be modified without prior written approval of the City.

Section 12. Reserved.

Section 13. Reserved.

Section 14. Non-Assignability.

(A) The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the City.

(B) The Consultant shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

Section 15. Interest of Consultant. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement it shall not knowingly employ any person having any such interest and that the consultant shall reasonably inquire of all its employees to determine that they have no such interest.

Section 16. Reserved.

Section 17. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available for examination all of Consultant's records with respect to all matters covered by this Agreement. Consultant will permit city representatives to audit, examine, and make excerpts or transcripts from such records.

Section 18. Jurisdiction: Choice of Law. Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 19. Non-Waiver. The failure of the City at any time to enforce a provision of this Agreement shall not constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City to enforce each and every provision hereof.

Section 20. Permits, Laws and Taxes. The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. In performing its obligations under this Agreement, Consultant shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 21. Relationship of the Parties. The Consultant shall perform the obligations under this Agreement as an independent contractor of the City. The City may administer this Agreement and monitor the Consultant's compliance with this Agreement but shall not supervise or otherwise direct the Consultant except to provide recommendations and to provide approvals pursuant to this Agreement.

Section 22. Administration of this Agreement.

(A) The public works director will be the City's representative administering this Agreement.

(B) The services to be furnished by the Consultant shall be administered by the Consultant. In the event that the Consultant is unable for any reason to perform the obligations under this Agreement, the Consultant shall appoint a successor in interest. Such appointment shall be subject to the City's written approval.

Section 23. Integration. This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous oral or written communications, representations or agreements between the parties.

Section 24. Hold Harmless, Indemnity. The Consultant shall indemnify, hold harmless, and defend the City, its officers and employees from and against any suit, action, claim or liability arising out of any negligent act, error or omission of the "Consultant" under this Agreement, except for the sole negligence or willful misconduct of the City. "Consultant" and "City" as used within this section include the employees, agents, servants or independent contractors or other contractors who are directly responsible, respectively, to each.

Section 25. Interpretation and Enforcement. This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 26. Consultant Insurance.

(A) The Consultant shall provide and maintain throughout the contact term, as may be extended from time to time, those insurances as required by the City, or by law.

(B) A lapse in insurance coverage is a material breach of this Agreement that shall result in immediate termination of the Agreement, pursuant to Section 8.

(C) Each policy of insurance required by this section shall provide for no less than 30 days advance notice to the City prior to cancellation. Each policy (other than for worker's compensation) shall name the City as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage. Consultant's insurance coverage shall be primary to any coverage carried by the City that may cover the work specified in this Agreement. Consultant's insurance carrier must be an admitted carrier in the State of Alaska or must be Best rated A+7 or better.

Section 27. Understanding. The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of its choice, and is executing this Agreement of his own free will.

Section 28. Severability. If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 29. Compliance with Law. Consultant shall comply with all applicable Federal, State of Alaska and City laws, regulations, and ordinances in performing his duties hereunder.

Section 30. Notices. Any required notice pertaining to this Agreement shall be personally delivered or mailed by first-class, registered or certified mail to the following addresses:

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

Consultant: Don Carling
PO Box 2796
Palmer, AK 99645

CITY OF PALMER



Thomas Healy, City Manager

CONSULTANT



Don Carling

ATTEST:



Janette Bower, City Clerk

MEMO:

TO: Rick Koch (Toni Bloemer)

FROM: Don Carling, Box 2796, Palmer, AK 99645
Phone: 376-6255,
email <carling@mtaonline.net>

DATE: March 15, 2006

RE: Oversight of Palmer Visitor Garden and related activities

Below please see an outline of activities I propose doing in 2006. Also, please see the outline of budget.

Activities that were performed at the visitors garden and other plant beds at the visitors center, depot planter, two main intersection beds and city hall plant beds will be done again in 2006. In addition, up to 40 hanging baskets will be acquired (and placed, with Mark Troutman' assistance) and the contents of up to 10 planters will be arranged, weeded and maintained. Also, the following additional activities are proposed:

1. Preparation for and placement of walkway stones (with Mark Troutman assistance).
2. Removal or pruning of selected overgrown or declining trees and shrubs in the display garden.
3. Inventorying and labeling of plant species. (Many plants are either not labeled or incorrectly labeled)
4. Plot reconstruction. (Many display garden perennial plots are in need of renovation or a complete reconstruction. This is a task that can be performed over a 3-5 year period without causing a major disruption in garden use or garden traffic. I propose beginning this multi-year process in 2006 on selected beds.)

ACTIVITIES:

1. Spring cleanup, fertilization and other early season maintenance.
2. Acquisition and planting of seed and transplants of annual crops. I see the emphases here to be: 1) colorful annual flowering plants and 2) periodic planting of commercially grown vegetable crops that are produced in the Matanuska Valley.
3. Season long maintenance to include mowing, planting, weeding, watering as well as general cleanup and repair as needed. (Watering of hanging baskets, planters and plots located away from the garden/visitors center will, as it was last year, be handled by Mark T. crew.)
4. Appropriate cleanup and closeup at end of season (approximate finish date is September 10).

EXHIBIT A

Page 1 of 2

EXPECTED ASSISTANCE [Mark Troutman (parks and rec)]:

1. Assistance with preparation for and placement of walkway stones.
2. Short term assistance for placement of large (heavy) perennial plants.
3. Use of a van or covered pickup when necessary for hauling plants, etc.
4. Watering of hanging baskets, planters and plots located away from the visitor center/display garden site

BUDGET:

1. Don Carling: **\$5,000** due on April 1, **\$3,000** due on May 1, **\$3,000** due on June 1, **\$3,000** due on July 1 and **\$3,500** due on August 1, 2006. Total **\$17,500.00**.
2. Technical assistance and general labor: **\$10,600** due on May 1 (\$1,000 technical and \$9,600 general labor)
3. Plant material: **\$6,000** due on May 1 [Including 1) hanging baskets, and). plants, primarily annual plus some perennial for display gardens, other selected plots and planters.)
CARLING SHALL PROVIDE RECEIPTS TO SUPPORT \$6000 EXPENSE, RETURN ANY UNSPENT BALANCE.
4. Equipment (mowers, trimmers, etc) and supplies (hand tools, etc) other than plant material to be provided by Parks and Rec.

OTHER TOPICS:

1. WIRE FENCE ON BACK LINE
2. WOOD FENCE
3. EQUIPMENT SHED

AMENDMENT NO. 1

PROFESSIONAL SERVICES AGREEMENT

Gardening Services

THIS AMENDMENT is made and entered into this 29th day of March, 2007, by and between the City of Palmer, an Alaska municipal corporation (the City), and Don Carling (Consultant), in accordance with City of Palmer Action Memorandum 07-024, approved by the Palmer City Council on March 27, 2007.

This Amendment amends the Professional Services Agreement dated April 7, 2006, (the Agreement) between the City and Consultant for the provision of gardening services at various City locations, as follows:

1. Amend Section 5, Time of Performance, to read, "The services of the Consultant shall commence upon execution of this agreement by the city manager and shall terminate on December 31, 2008."
2. Replace Exhibit A with a new Exhibit A, a memo dated March 10, 2007, from the Consultant.

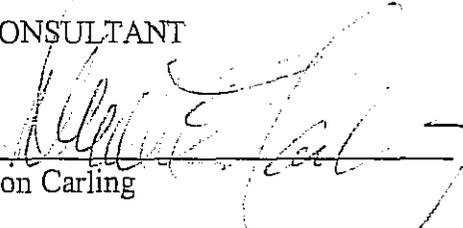
All other provisions of the Agreement remain unchanged.

CITY OF PALMER



Thomas Healy, City Manager

CONSULTANT



Don Carling

MEMO:

TO: Toni Bloemer

FROM: Don Carling, Box 2796, Palmer, AK 99645
Phone: 376-6255,
email <carling@mtaonline.net>

DATE: March 10, 2007

RE: Oversight of Palmer Visitor Garden and related activities

Below please see an outline of activities I propose doing in 2007. Also, please see the outline of budget.

Activities that were performed at the visitors garden and other plant beds at the visitors center, depot planter, two main intersection beds and city hall plant beds will be done again in 2007. Also, 40 hanging baskets will be acquired (and placed, with public works crew assistance) and the contents of up to 10 planters will be arranged, weeded and maintained. Also, the following additional activities are proposed:

1. Inventorying and labeling of plant species.
2. Removal or pruning of selected overgrown or declining trees and shrubs in the display garden.
3. Additional plot reconstruction. (Many display garden perennial plots are in need of renovation or a complete reconstruction. This is a task that can be performed over a 3-5 year period without causing a major disruption in garden use or garden traffic. This multi-year process was begun in 2006 on selected beds and will be continued in 2007.)

ACTIVITIES:

1. Spring cleanup, fertilization and other early season maintenance.
2. Acquisition and planting of seed and transplants of annual crops. I see the emphases here to be: 1) colorful annual flowering plants and 2) periodic planting of commercially grown vegetable crops that are produced in the Matanuska Valley.
3. Season long maintenance to include mowing, planting, weeding, watering as well as general cleanup and repair as needed. (Watering of hanging baskets, planters and plots located away from the garden/visitors center will, as it was last year, be handled by public works.)
4. Appropriate cleanup and closeup at end of season (approximate finish date is September 10).

EXPECTED PERIODIC ASSISTANCE [from public works]:

1. Short term assistance for placement of any large (heavy) perennial plants.
2. Use of a van or covered pickup when necessary for hauling plants, etc.
3. Watering of hanging baskets, planters and plots located away from the visitor center/display garden site

BUDGET:

1. Don Carling: \$5,000 due on April 1, \$3,000 due on May 1, \$3,000 due on June 1, \$3,000 due on July 1 and \$3,500 due on August 1, 2007. Total \$17,500.00.
2. Technical assistance and general labor: \$11,000 due on May 1 (\$1,000 technical and \$10,000 general labor)
3. Plant material: \$6,600 due on May 1 [Including 1) hanging baskets, and). Plants, primarily annual plus some perennial for display gardens, other selected plots and planters.]
4. Equipment (mowers, trimmers, etc) and supplies (hand tools, etc) other than plant material to be provided by Parks and Rec.

OTHER TOPICS IN NEED OF DISCUSSION:

1. WIRE FENCE ON BACK LINE
2. WOOD FENCE
3. EQUIPMENT SHED

MEMO:

TO: Pat Kilmain

FROM: Don Carling, Box 2796, Palmer, AK 99645
Phone: 376-6255,
Email <carling@mtaonline.net>

DATE: March 5, 2009

RE: Oversight of Palmer Visitor Garden and related activities

Below please see an outline of activities I propose doing in 2009. Also, at the end of the page, please see the outline of budget.

A. Activities that were performed in 2008 will be done again in 2009, including planting and maintaining:

1. visitor garden and nearby trees and shrubs; and
2. other annual and perennial plants around and near the visitor center building; and
3. depot planter; and
4. two main intersection beds; and
5. two city hall plant beds and adjacent planting; and
6. planters located along Main Street, Fireweed Ave. and Cope; and
7. planters located in park adjacent to library parking lot.

B. Plant material acquisition will include:

1. All annual plants required for the above mentioned spaces.
2. Forty (or more, number to be decided by public works or city management) hanging baskets for placement (by public works) around the city).
3. Potted plants for placement in front of city hall.

C. Also, I am proposing that the following additional activities be continued:

1. Inventorying and labeling of plant species in and around the visitor center and visitor garden.
2. Removal or pruning of selected overgrown or declining trees and shrubs in the visitor garden.
3. Additional plot reconstruction. All visitor garden perennial plots were in need of renovation or complete reconstruction. This is a task that can be performed over a 3-5 year period without causing a major disruption in garden use or garden traffic. This multi-year process was begun in 2006 on selected beds, continued in 2007 and 2008, and will be continued again in 2009. To date, sixteen of the smaller plots have been reworked. Several large plots, as well as plots along the existing border fence, still require the same treatment.

D. Description of activities:

1. Spring cleanup, fertilization and other early season maintenance.
2. Acquisition and planting of seed and transplants of annual crops. I see the emphases here to be: 1) colorful annual flowering plants and 2) periodic planting of vegetable crops that are commercially produced in the Matanuska Valley.
3. Season long maintenance of visitor garden to include mowing, planting, weeding, watering as well as general cleanup and repair as needed. (Watering of hanging baskets, as well as planters and plots located away from the garden/visitors center will, as it has been in previous years, be handled by public works summer crew.)
4. Appropriate cleanup and close up at end of season (approximate finish date is September 10).

E. Expected periodic assistance from Public Works and Community

Services:

1. Short term assistance for placement of any large perennial plants.
2. Watering and fertilization of hanging baskets, planters and plots located away from the visitor center/display garden site
3. Use of the Community Services pickup on an as needed basis

F. Budget

	Carling	Tech Asst/Labor	Plants, Suplies
April 1	\$ 5,750		
May 1	\$ 4,000	\$13,000	\$7,500
June 1	\$ 3,000		
July 1	\$ 3,000		
August	\$ 4,000		
Total:	\$19, 750	\$13,000	\$7,500

Larger equipment (mowers, trimmers, etc) and supplies (other than hand tools, etc) to be provided by Public works.

******RELATED PROJECTS IN NEED OF COMPLETION:**

1. Chain link (six feet high) fence on back line. Kids cut through and think its fun to stomp on things as they walk by.
2. Equipment shed is too small. In addition to equipment storage, a place is needed to sit and work.

******other possible green plant related tasks:**

1. Miscellaneous tree trimming.
2. Miscellaneous hedge trimming.
3. Miscellaneous plant care and replacement.

AMENDMENT NO. 2

**Professional Services Agreement
Gardening Services**

THIS AMENDMENT is made and entered into this ____ day of March, 2009, by and between the City of Palmer, an Alaska municipal corporation (the City), and Don Carling (Consultant), in accordance with City Palmer Action Memorandum 09-023, approved by the Palmer City Council on March 24, 2009.

This Amendment amends the Professional Services Agreement dated April 7, 2006, (the Agreement) between the City and Consultant for the provision of gardening services at various City locations as follows:

1. Amended Section 5, Time of Performance, to read, "The services of the Consultant shall commence upon execution of this agreement by the city manager and shall terminate on December 31, 2010."
2. Replace Exhibit A with a new Exhibit A, a memo dated March 5, 2009, from the Consultant.

All other provision of the Agreement remain unchanged.

CITY OF PALMER

CONSULTANT

B. B. Allen, City Manager

Don Carling