



**Summary statement:** The City currently has an IT Services contract with TekMate, an Alaska Communications Company, which expires on March 31, 2016 with options to renew for three additional years.

The City went out for RFP for Information Technology Support Services in February 2012. TekMate was awarded the contract for a three-year period with options to extend for additional periods. The City would like to exercise the option to extend for an additional year.

**Administration recommendation:** Authorize Action Memorandum 16-026.



## Professional Services Agreement

for

### Information Technology Support Services

THIS PROFESSIONAL SERVICES AGREEMENT made and entered into this 1st day of April, 2015 by and between the CITY OF PALMER, ALASKA and TEKIMATE, LLC.

#### Section 01 Definition

In this Professional Services Agreement:

- A. The term "City" means the City of Palmer, Alaska.
- B. The term "Contractor" means TEKIMATE, LLC.
- C. The term "Manager" means the manager of the City of Palmer, Alaska or his authorized representative.
- D. The term "Agreement" means the Professional Services Agreement between the City and the Contractor.
- E. The term "Project" means Information Technology Support Services.
- F. The term "parties" means the City and the Contractor collectively.
- G. The term "sub-contractor" means a firm approved by the City to provide professional or other services unless otherwise stated in contracts associated with the Project

#### Section 02 Retention of Contractor

The City hereby agrees to engage the Contractor and the Contractor hereby agrees to perform the services hereafter set forth.

#### Section 03 Scope of Services

The Contractor shall perform all the services provided for by this Agreement which are described with particularity in Appendix "A", entitled Statement of Work, attached hereto and incorporated by reference as if fully set forth herein.

#### Section 04 Personnel

Personnel shall be limited to employees' of the Contractor.

#### Section 05 Time of Performance

The services of the Contractor shall commence upon execution of this Agreement by the Manager and shall have an initial contract term of one year with an effective date of April 1<sup>st</sup>, 2015. The contract may be renewed up to three additional years at the sole discretion of the City.

**Section 06 Compensation**

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

**Section 07 Method and Time of Payment**

- A. The City will pay to the Contractor, subject to the provisions of this Agreement, per the fee schedule included as Appendix A. Billings shall be submitted on a monthly basis. The City's normal billing cycle is 30 calendar days from receipt of an approved invoice. Each bill shall detail the hours of service provided, broken down by department or project completed in the month for which billing applies.
- B. No payment will be disbursed until the completed task and associated expenditures have been approved by the City.
- C. All invoices must be addressed as follows:

City of Palmer  
231 West Evergreen Avenue  
Palmer, Alaska 99645

**Section 08 Termination of Agreement for Cause**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) 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 Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Contractor shall be entitled to receive compensation in accordance with the payment provisions of section 6 of this Agreement only for work completed to the City's satisfaction in accordance with the scope of work for this Agreement and the other terms of this Agreement.

**Section 09 Termination for Convenience of City**

This Agreement may be terminated by Client upon ninety (90) days written notice if Service Provider breaches any material term or fails in any material respect to fulfill its obligations under this Agreement and does not cure any such breach or failure within thirty (30) days of its receipt of actual written notice of such breach or failure.



**Section 10 Causes Beyond Control**

In the event either party is prevented by a cause or causes beyond control of the other party 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 other party 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 party 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 parties and which prevent the performance of the parties: 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 parties from performing the terms of the Agreement as set forth herein. Events which are peculiar to the contract 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 11 Modifications**

A. The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments approved by both parties.

B. It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Contractor to agree to modification in the scope of services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the Agreement will not be modified, under any circumstances, without prior written approval of the City.

**Section 12 Equal Employment Opportunity**

A. The 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. The 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. The 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. The 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. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

B. The 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 13 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 Agreement 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 Agreement or the proceeds thereof.

**Section 14 Assignability**

A. The Contractor shall **not** assign any interest in this Agreement 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 Agreement 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 Agreement which are paid directly to the Contractor.

B. The Contractor 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 Contractor**

The Contractor 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 Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

**Section 16 Findings Confidential**

The City will grant access to the Contractor to systems and information that is 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 Agreement 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 17 Publication, Reproduction and Use of Materials**

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**Section 18 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 Agreement.

**Section 19 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 and the city of Palmer shall govern the rights and obligations of the parties.

**Section 20 Non-Waiver**

The failure of the City 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 the City thereafter to enforce each and every protection hereof.

**Section 21 Permits, Laws and Taxes**

The Parties shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Contractor under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Agreement.

**Section 22 Relationship of the Parties**

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

**Section 23 Agreement Administration**

A. The City Manager, or their designee, will be the representative of the City administering this Agreement.

B. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement is unable to serve for any reason, the Contractor shall appoint a successor in interest subject to a written approval of the City.

**Section 24 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 communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement, the following documents are incorporated by reference into this Agreement as if fully set forth herein:

Request for Proposal (RFP)	City of Palmer Business License
Appendix A" Managed Services Agreement	Certificate of Insurance

**Section 25 Defense and Indemnification**

The independent 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 this agreement. The 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 26 Interpretation**

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 27 Contractor Insurance**

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

It is highly recommended that Contractor confer with their respective insurance companies or brokers to determine if their insurance program complies with the City's Insurance requirements.

The Contractor shall procure and maintain the following insurances:

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 01/96) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 6/92) covering Automobile Liability, symbol 1 "any auto".
3. Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.
4. Professional Liability insurance against liability arising out of the rendering or failure to render professional services under this agreement on a form acceptable to the City.

**B. Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

1. **General Liability:**  
\$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury. The general aggregate limit shall



be \$2,000,000. The general aggregate limits shall apply separately to each project.

If the general liability insurance is written on a claims made form, the Contractor shall provide insurance for a period of two years after final payment of this agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this agreement.

2. Auto Liability:

\$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability:

Worker's Compensation shall be statutory as required by the State of Alaska. Employers' liability shall be endorsed to the following minimum limits:

Bodily injury by Accident-	\$500,000 each accident
Bodily injury by Disease -	\$500,000 each employee
Bodily injury by Disease -	\$500,000 policy limit

4. Professional Liability:

\$1,000,000 combined single limit per occurrence. The general aggregate limit shall be \$1,000,000.

The professional liability insurance shall be maintained in effect until final acceptance by the City of the completed Project. If the professional liability insurance is written on a claims made form, the Contractor shall provide insurance for a period of two years after final payment of this agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of the agreement.

5. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the Contractor to combine an excess liability or umbrella policy with the general liability, auto liability or employers' liability. In the instance where the Contractor purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to work commencing any deductible or self-insured retention must be declared and approved by the City. The Contractor may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the City, the Contractor shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond



guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

**1. General Liability, Automobile Liability**

a. The City, its Administrator, officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor premises owned, occupied or used by the Contractor or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its Administrator, officers, officials, employees and volunteers.

b. The Contractor's insurance coverage shall be primary insurance as respects the City, its Administrator, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its Administrator, officers, officials, employees and volunteers shall be excess of the Contractor insurance and shall not contribute to it.

c. The Contractor insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**2. Worker's Compensation and Employer's Liability**

The insurer shall agree to waive all rights of subrogation against the City, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the City.

**3. All Insurance**

Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Contractor or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the City. Such notice shall be mailed by the Contractor to the attention of the Director of Administration.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII.

**F. Verification of Coverage**

Contractor shall furnish the City with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. 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.

**G. Subcontractors**

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

**H. Lapse in Coverage**

A lapse in insurance coverage is a material breach of this agreement which shall result in immediate termination of the agreement, pursuant to Section 8.

**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 Understanding**

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

**Section 30 Notices**

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

City: City of Palmer  
231 West Evergreen Avenue  
Palmer, Alaska 99645

Contractor: TekMate, LLC  
600 Telephone Ave  
MS 70  
Anchorage, Alaska 99503

**Section 31 Contractors' Violations of Tax Obligations**

A. Any Contractor in arrears on a City obligation, including, but not limited to tax, assessment, lease, sale, or rental payments, whether as an individual, or as a representative of a business, organization, firm, corporation, or partnership, shall not be awarded the Agreement if the delinquency is not cured within ten calendar days of receipt of written notice sent by the City of the delinquency.

B. This Agreement can be terminated for cause, pursuant to Section 8, if it is determined that a Contractor whether the amounts owed are in the name of the Contractor as an individual or as a representative of a firm, business, corporation, or partnership, is in arrears of any taxation, lease or rental agreement that is due to the City that is not remedied within 10 calendar days of notification by regular mail.



C. The City reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent City taxes, moneys owed on sales, assessments, leases and rental agreements, against any amount owing to the same under a Agreement between the City and the same.

**Section 32 Counterparts**

This Agreement 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 33 Survival of Representations and Warranties**

The representations, warranties, covenants, and agreements of the parties under this Agreement, 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 this Agreement.

**Section 34 Subject to Appropriation**

It is understood that any and all expenditures of the City's funds are contingent on the availability of lawful appropriations by the City Council. If the City determines at any time that the City Council failed to continue funding for payments and/or other obligations that may be due hereunder, then the City's obligations under the Agreement are terminated as of the date that the funding expired without further obligation of the City.

**Section 35. Consequential or Indirect Damages.**

Despite any provision in this agreement to the contrary, except to the extent resulting from willful misconduct by any officer of the liable Party, in no event shall any Party be liable under this Agreement to another Party for any punitive, incidental, indirect special or consequential damages, including any damages for business interruption, loss of use, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not the breaching Party was advised of the possibility of such damages, and in no case will Contractor's liability exceed the amount payable hereunder for the 12 months prior to the events giving rise to the liability.



**Section 34 Fund Verification**

Fund source and verification of funds for this Project:

Funding Source: 01-0605-6096 \$112,800/yr.

Verified by: [Signature] Date: 6/5/15

IN WITNESS WHEREOF, TEKIMATE INC, has caused this Agreement to be executed in its name and the City of Palmer, Alaska has caused this Agreement to be executed in its name, all as of the date first above written.

TEKIMATE INC

CITY OF PALMER, ALASKA

[Signature]  
Aaron Doshier, VP & General Manager  
Chris Reburn, VP, Manager Services

[Signature]  
Joe Hannan, City Manager



STATE OF ALASKA

Third Judicial District

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2015 by Aaron Doshier, VP & General Manager of TEKIMATE INC., an Alaska corporation, on behalf of the corporation.

Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA

Third Judicial District

On June 8, 2015, Joe Hannan, 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.



[Signature]  
Notary Public in and for Alaska  
My Commission Expires: Jul 25, 2016