

SUBJECT: AUTHORIZING THE BOROUGH MANAGER TO ENTER INTO AN AGREEMENT WITH THE CITY OF HOUSTON FOR PREVENTATIVE VEHICLE MAINTENANCE THROUGH JUNE 30, 2021 FOR AN AMOUNT OF \$30,000.

AGENDA OF: August 4, 2020

ASSEMBLY ACTION:

MANAGER RECOMMENDATION: Present to the Assembly for consideration.

APPROVED BY GEORGE HAYS, ACTING BOROUGH MANAGER:

Route To:	Department/Individual	Initials	Remarks
	Originator	U	
	Purchasing Officer	DA	7/24/2020
	Emergency Services Director	KB	
	Finance Director	Q	
	Borough Attorney	MS	
	Borough Clerk	Ann 7/27/20 KBT	

ATTACHMENT (S) : Fiscal Note: Yes X No _____
Vehicle Fleet Maintenance Agreement (9 pp)

SUMMARY STATEMENT:

The City of Houston's Fire and Rescue service has been instrumental in assisting with area response coverage and man power from the West Lakes Fire Service Area to the Talkeetna Fire Service Area. The City of Houston's Fire Department does not have a mechanic to work on their apparatus which creates long periods of time that their apparatus needs to be placed out of service. Entering into contract with the Mat-Su Borough for vehicle maintenance will increase the availability of their response vehicles to assist in covering the Mat-Su Borough emergencies, as well as insure the safety of the Houston Fire Department responders.

RECOMMENDATION OF ADMINISTRATION:

Authorize the Borough Manager to enter into an agreement with the City of Houston for preventative vehicle maintenance through June 30, 2021 for an amount of \$30,000.

MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE

Agenda Date: August 4, 2020

SUBJECT: Authorizing the Borough Manager to enter into an agreement with the City of Houston for preventative vehicle maintenance through June 30, 2021 for an amount of \$30,000.

ORIGINATOR: Ken Barkley

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT <u>YES</u> NO
AMOUNT REQUESTED <u>\$30,000</u>	FUNDING SOURCE <u>City of Houston</u>
FROM ACCOUNT #	PROJECT
TO ACCOUNT: 245.160.315	PROJECT #
VERIFIED BY: <u>Yusuf Weiland</u>	CERTIFIED BY:
DATE: <u>7-22-2020</u>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL						
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REVENUE	<u>30</u>					
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FUNDING:

(Thousands of Dollars)

General Fund						
State/Federal Funds						
Other	<u>30</u>					
TOTAL	<u>30</u>					

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

PREPARED BY:

DEPARTMENT:

APPROVED BY:

Chaperne Hensell

PHONE:

DATE:

DATE:

7/23/2020

AGREEMENT FOR VEHICLE FLEET MAINTENANCE
BETWEEN
MATANUSKA-SUSITNA BOROUGH
AND
CITY OF HOUSTON

This Agreement for Vehicle Fleet Maintenance (hereinafter "Agreement") is made and entered into by and between the Matanuska-Susitna Borough (hereinafter "BOROUGH") and the City of Houston (hereinafter "CITY") for vehicle fleet maintenance services to be provided by the BOROUGH and paid for by the CITY.

SECTION 1. Term. This Agreement shall be effective as of the date it is signed by both parties, through June 30, 2021. This Agreement may be extended by mutual written agreement of the parties, and any such extensions are subject to renegotiation of payment for services, provisions, as well as amendment of any other terms, at the discretion of the parties.

SECTION 2. Scope of Work.

A. The BOROUGH shall provide to the CITY the services of preventative vehicle maintenance services, in accordance with the manufacturer's specifications (hereinafter "maintenance"), and annual vehicle inspections, in accordance with NFPA 1901, Standard for Automotive Fire Apparatus, and NFPA 1911, Standard for the Inspection, Maintenance, Testing, and Retirement of In-Service Emergency Vehicles (hereinafter "inspections"), for the following vehicles:

ID#	YEAR	MAKE	TYPE	PUMP	TANK	VIN
ENGINE 91	1998	KME (KOVATCH)	PUMPER	1250	750	1K9AF4283SN058145
ENGINE 92	2006	FREIGHTLINER	PUMPER	1250	1000	1FVACYDJ36HW74834
TENDER 911	2013	INTERNATIONAL	PUMPER TENDER	1250	3300	1HTGSSJT7DJ222728
TENDER 912	1994	FREIGHTLINER	TENDER	500	2500	1FVX1SEB7NL478038
PUMPER TENDER 92	1998	FREIGHTLINER	PUMPER TENDER	1250	3000	1FVXFDYB3WP898351
RESCUE 92	1998	FORD L8000	WALK-IN RESCUE			1F9PBAA79H1037003

- B. The CITY shall provide to the BOROUGH the following:
1. A list of people authorized to drop off and pick up CITY vehicles for BOROUGH service.
 2. A list of people who can commit the CITY to pay for services and parts that exceed maintenance and inspections.
 3. It is the CITY's responsibility to schedule any and all work under this Agreement.
 4. Payment of \$30,000 for maintenance and inspections for the vehicles listed under (A) of this section paid in quarterly installments of \$7,500 each. The first installment payment is due to the BOROUGH on August 20, 2020, the second installment payment is due to the BOROUGH

on November 20, 2020, the third installment payment is due to the BOROUGH on March 20, 2021, and the fourth installment payment is due to the BOROUGH on June 20, 2021. The CITY shall provide payment for additional services or parts as described under Section 3 of this Agreement.

SECTION 3. Payment for Additional Services or Parts. The BOROUGH shall charge the CITY for any additional service provided that exceeds maintenance and inspections and any parts that are needed for additional maintenance, repair, or as a result of an inspection. The BOROUGH will not provide any significant modification to a CITY vehicle that would modify the vehicle from its original state, such as adding a direct tank fill. The BOROUGH shall provide the CITY with a cost estimate prior to work requiring additional service or parts, and shall proceed with such work after the CITY commits to payment. The CITY agrees that the BOROUGH shall charge the CITY these fees when the CITY picks up a vehicle. The BOROUGH may bill the CITY quarterly. A final accounting and payment must be made no later than thirty (30) days following termination of this Agreement. If the CITY fails to make a payment provided for in this Agreement, the BOROUGH may order all service suspended immediately. A late-payment penalty equal to one and one-half percent (1.5%) of the amount due will be assessed for each month, or portion thereof, of any period a payment due from the CITY to the BOROUGH is delinquent. All payments and deposits must be made payable to and remitted to the BOROUGH, at 350 E. Dahlia Ave., Palmer, AK 99645.

SECTION 4. Service location. Service on CITY vehicles will be performed at the BOROUGH's Fleet Maintenance Facility, 10073 W. Parks Highway, Wasilla, AK 99623 (hereinafter "Fleet Services"), unless the BOROUGH determines that circumstances warrant the use of another location or the CITY and BOROUGH agree to the use of an outside vendor. Unless otherwise directed by the BOROUGH, the CITY must drop off and pick up vehicles at Fleet Services for service, and the CITY is responsible for transportation to and from Fleet Services.

SECTION 5. Disclaimer of liability. The BOROUGH accepts no liability for any loss, delay, damage, injury, death, or misrepresentation arising from the use or service of a CITY vehicle, including the CITY's use of a vehicle that the BOROUGH has serviced, repaired, or inspected, or that the BOROUGH has deemed out-of-service for safety reasons or for which the BOROUGH has recommended repairs, service, or parts that the CITY has denied.

The BOROUGH disclaims all warranties, either express or implied, as to merchantability or the fitness for a particular purpose for any parts or labor performed for the maintenance, inspection, or repair of any vehicle under this Agreement, nor will the BOROUGH be liable for any damages, including, but not limited to, incidental or consequential damages arising from any matter covered by or related to this Agreement. Parts warranty is limited to the part manufacturer's warranty, which may or may not include labor. Except as set forth herein, the BOROUGH makes, and the CITY receives, no warranties, whether express, implied, or statutory regarding or relating to the parts or maintenance, inspection, or repair; there are no warranties that extend beyond the description in this Agreement.

SECTION 6. Insurance Duration and Requirements.

A. Exhibit A. During the entire Term, the CITY shall keep in full force and effect a policy or policies of public entity liability insurance, including auto liability, and worker's compensation insurance that

include coverages acceptable to the BOROUGH as are specified in the attached Exhibit A to this Agreement. To the extent the provisions in Exhibit A and this section 6 conflict, the terms of Exhibit A shall prevail.

B. Workers' Compensation. The CITY shall ensure that they maintain in effect at all times during the term of this Agreement, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law. The CITY waives all rights of subrogation against the BOROUGH for recovery of damages to the extent covered by the Workers' Compensation policy.

C. Public Entity Liability Insurance. The CITY shall keep in full force and effect a policy or policies of public entity liability insurance that includes bodily injury, property damage, auto liability, and personal injury coverages acceptable to the BOROUGH, as outlined in Exhibit A, with respect to CITY vehicles repaired on BOROUGH property. The policy or policies purchased pursuant to this Section 6 shall name both the BOROUGH and the CITY as additional insureds, with respect to Fleet Services and any business the BOROUGH conducts on the CITY's behalf in accordance with this Agreement.

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

It is hereby understood and agreed that CITY coverages are in all cases to be considered as primary and BOROUGH insurance will not contribute to any third-party claims of any nature arising out of the use or maintenance of the assets described and the CITY will ensure all required insurance be endorsed to the effect.

SECTION 7. Termination. Either the BOROUGH or the CITY may terminate this Agreement at any time by giving thirty (30) days written notice of such termination to the other party at the address of the contract administrator described in Section 8 of this Agreement. The CITY shall be required to pay all fees accrued up to the date of the termination.

SECTION 8. Modifications. The parties may mutually agree to modify the terms of this Agreement at any time, provided that this Agreement shall only be amended, modified, or changed by a writing executed by authorized representatives of the parties. Any attempt to amend, modify, or change this Agreement by either an unauthorized representative or unauthorized means shall be void. For the purposes of any amendment, modification, or changes to the terms and conditions of this Agreement, the only authorized representatives of the parties are:

1. for the BOROUGH, the BOROUGH Manager or designee; and
2. for the CITY, the CITY Mayor or designee.

SECTION 9. Contract Administrator. The contract administrator for the CITY shall be the Christian Hartley, Fire Chief, whose address is 13878 W. Armstrong Road, Houston, Alaska, 99694.

SECTION 10. Relationship of Parties. This Agreement is entered into by agreement of the parties pursuant to AS 29.35.010(13). The CITY shall not supervise or otherwise direct the BOROUGH except to provide information and to provide authorizations pursuant to this Agreement.

SECTION 11. Integration, No Third-Party Beneficiaries. This Agreement and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, 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. This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the CITY and the BOROUGH.

SECTION 12. Indemnification. The CITY shall indemnify, defend, and hold and save the BOROUGH, its elected and appointed officers, agents, and employees, harmless from liability of any nature or kind, including costs, expenses, and attorney's fees, for or on account of any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, deprivation of constitutional rights, or any other kind of loss sustained by any person, or property arising out of the performance of this Agreement.

SECTION 13. Severability. If any section or clause of this Agreement is held invalid by a court of law of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

SECTION 14. Causes Beyond Control. In the event the BOROUGH is prevented by a cause or causes beyond its control from performing any obligation under 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 BOROUGH liable for damages or give rights of cancellation of this Agreement to the CITY. However, if and when such cause or causes do prevent performance, the BOROUGH 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 BOROUGH and which prevent the performance of the BOROUGH: fire, explosions, acts of God, severe weather conditions, orders of law by duly constituted public authorities, and other major uncontrollable events. The BOROUGH will determine whether the event preventing performance is a cause beyond the BOROUGH's control.

SECTION 15. 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 16. Waiver; Non-waiver.

- A. The CITY waives all claims against the BOROUGH for compensation for loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement.
- B. No agent, representative, or employee of the BOROUGH has authority to waive any provision of this Agreement unless expressly authorized to do so in writing by the BOROUGH.
- C. The failure of the BOROUGH 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 BOROUGH thereafter to enforce each and every protection hereof.

SECTION 17. 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 parties under this Agreement shall comply with all applicable statutes, ordinances, rules, and regulations. Each party shall pay all taxes, assessments, or fees pertaining to its performance under this Agreement.

SECTION 18. 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 issues only.

SECTION 19. Understanding. The parties acknowledge both have read and understand the terms of this Agreement, have had the opportunity to review the same with counsel of their choice, and are executing this Agreement of their own free will.

SECTION 20. Notices. Any notice required pertaining to the subject matter of this Agreement shall be personally delivered or mailed by pre-paid first class, registered or certified mail to the following address:

Matanuska-Susitna BOROUGH
Attn: BOROUGH Manager
350 E. Dahlia Ave.
Palmer, Alaska 66945

CITY of Houston
Attn: Mayor
13878 W. Armstrong Road
Houston, Alaska 99694

MATANUSKA-SUSITNA BOROUGH

CITY OF HOUSTON

BOROUGH Manager

CITY Mayor

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the identical individual described in and who executed the within and foregoing Agreement for Vehicle Fleet Maintenance, as _____ for the MATANUSKA-SUSITNA BOROUGH, a municipal corporation, and they acknowledged to me that they signed the same in the name of, for and on behalf of said corporation, freely and voluntarily for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal this ____ day of _____, 2020.

NOTARY PUBLIC in and for the State of Alaska
Commission expires: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the identical individual described in and who executed the within and foregoing Agreement for Vehicle Fleet Maintenance, as _____ for the CITY OF HOUSTON, a municipal corporation, and he acknowledged to me that he signed the same in the name of, for and on behalf of said corporation, freely and voluntarily for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal this ____ day of _____, 2020.

NOTARY PUBLIC in and for the State of Alaska
Commission expires: _____

EXHIBIT A

INSURANCE REQUIREMENTS

The parties herein to this Agreement specifically agree that the provisions of this Agreement do not create in the public or any member thereof, a third-party benefit hereunder, or authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms and provision of this Agreement. It is highly recommended that the CITY confer with their respective insurance companies or brokers to determine if their insurance program complies with the BOROUGH's insurance requirements.

The CITY shall procure and maintain the following insurance:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. A public entity liability policy covering bodily injury, personal injury, advertising injury, and property damage, including auto liability.
2. Worker's Compensation insurance as required by the State of Alaska and Employer's Liability Insurance.

B. Minimum Limits of Insurance

The CITY shall maintain limits no less than:

1. Public Entity Liability:

\$5,000,000 per occurrence for bodily injury, property damage, auto liability, personal injury and advertising injury. The general aggregate limit shall be \$5,000,000. The general aggregate limits shall apply separately to each project.

If the public entity liability insurance is written on a claims made form, the CITY 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. Worker's Compensation and Employer's Liability:

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

Bodily injury by Accident - \$1,000,000 each accident
Bodily injury by Disease - \$1,000,000 each employee
Bodily injury by Disease - \$1,000,000 policy limit

3. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the CITY to combine an excess liability or umbrella policy with public entity liability including auto or employer's liability. In the instance where the CITY 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 BOROUGH. The CITY 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 BOROUGH, the CITY shall reduce or eliminate such deductibles or self-insured retention as respects the BOROUGH, its officers, officials, employees, and volunteers; or the CITY 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. Public Entity Liability, Automobile Liability

- a. The BOROUGH, 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 CITY; products and completed operations of CITY premises owned, occupied, or used by the CITY or automobiles owned, leased, hired, or borrowed by the CITY. The coverage shall contain no special limitation on the scope of protection afforded to the BOROUGH, its Administrator, officers, officials, employees, and volunteers.
- b. The insurer shall agree to waive all rights of subrogation against the BOROUGH, its Administrator, officers, officials, employees, and volunteers for losses arising from work performed by the BOROUGH or any subcontractor for the BOROUGH.
- c. The CITY's insurance coverage shall be primary insurance as respects the BOROUGH, its Administrator, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the BOROUGH, its Administrator, officers, officials, employees, and volunteers shall be in excess of the CITY's insurance and shall not contribute to it.
- d. The CITY's 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. **Workers' Compensation and Employer's Liability**
The insurer shall agree to waive all rights of subrogation against the BOROUGH, its Administrator, officers, officials, employees, and volunteers for losses arising from work performed by the BOROUGH or any subcontractor for the BOROUGH in relation to this Agreement.
 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, or reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the CITY or after 60 days prior written notice to the BOROUGH for any other reason. Such written notice must be made by certified mail, return receipt requested to the BOROUGH's Purchasing Officer.
- 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**
The CITY shall furnish the BOROUGH 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 BOROUGH. All certificates are to be received and approved by the BOROUGH before work commences. The BOROUGH reserves the rights to require complete, certified copies of all required insurance policies, at any time.
- G. **Subcontractors**
The CITY 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 Insurance Coverage**
A lapse in insurance coverage or any change that restricts, reduces insurance provided, or changes name of insured without BOROUGH approval, is a material breach of this Agreement, which shall result in immediate termination of the Agreement.