

**SUBJECT: FY00 Parks & Recreation Management Agreement
& FY00 Block Grant Agreement**

PREPARED BY: Administration

DATE: June 29, 1999

FOR AGENDA OF: July 12, 1999

SUMMARY:

I respectfully request Council to authorize the City of Wasilla to take action on the following Agreements between the City of Wasilla and the Matanuska-Susitna Borough.

- FY00 Parks & Recreation Management Agreement authorizes the MSB to pay the City of Wasilla \$10,000 to support parks and recreation facilities within the City. The Agreement shall be for the operation and maintenance of and improvements to the Nunley, Carter, and Wayside (Wasilla Lake) Parks, as described in the Scope of Work, marked Exhibit "B" attached hereto.
- FY00 Block Grant Agreement authorizes the MSB to pay the City of Wasilla \$322,000 for any use the City of Wasilla can legally provide including library functions.

The authorization to execute these Agreements are requested pursuant to WMC 2.16.010, which authorizes the Mayor to execute contracts on behalf of the City of Wasilla upon authorization by Council.

FISCAL IMPACT: __No __Yes, amount requested: Fund:

RECOMMENDED ACTION: Authorize Mayor to execute agreements.


 Reviewed by: SARAH PALIN, Mayor

Presented to council on 7/12/99
 Action taken: Approved Denied
 other: _____
 Verified by Hy.

Attachments:

FY00 Parks & Recreation Management Agreement
FY00 Block Grant Agreement

AGREEMENT

Between

MATANUSKA-SUSITNA BOROUGH

And

CITY OF WASILLA

For

FY 00 PARKS AND RECREATION SERVICES

THIS AGREEMENT is made this ____ day of _____, 1999, by and between MATANUSKA-SUSITNA BOROUGH (hereinafter the BOROUGH) and the CITY OF WASILLA (hereinafter the CITY).

The parties agree as follows:

Section 1. Work. The CITY agrees to provide contractual services as a contractor to the BOROUGH to support parks and recreation functions within the City.

Section 2. Contract Term. This agreement shall become effective upon execution by the parties hereto. The CITY shall perform those management services described herein from date of execution for a three-year term with renewal option, subject to Section 13 and subject to annual review and approval by the Wasilla City Council.

Section 3. Contract Price. The Borough Assembly per Exhibit C shall establish the annual management fees each borough fiscal year. The annual fee will be paid according to the terms described in Exhibit C.

Section 4. Park Facilities. This Agreement shall be for the operation and maintenance of and improvements to the Nunley, Carter, and Wayside (Wasilla Lake) Parks, as described in the Scope of Work, marked Exhibit "B" attached hereto.

Section 5. Recognition of Park Facilities. It is expressly understood that the BOROUGH and the CITY hereby agree that the park facilities listed under **Section 6** of this Agreement are the only park facilities within the City geographic boundaries recognized by the BOROUGH and are the only park facilities to be funded by the BOROUGH unless or until the BOROUGH otherwise recognizes and accepts any other park facilities at its sole discretion.

Section 6. Reports. The CITY specifically agrees to furnish an accounting (unaudited) report and performance report within forty-five (45) calendar days after June 30, 2000. In addition, the CITY shall submit its audited park facilities report within fifteen (15) calendar days of its final

fiscal year 2000 audit report. The performance report shall detail all operation, maintenance, and improvement work accomplished.

Section 7. Inspections. The CITY shall allow the borough representative to inspect any and all work performed under this Agreement at any time during normal working hours that BOROUGH so desires. The CITY shall provide a city representative to accompany the borough representative during such inspections. Any unsatisfactory work/services performed or not performed, as the case may be, shall be remedied within a reasonable time. Such unsatisfactory or incomplete work shall be based upon the performance standard of workmanship, materials, and improvements designated in the Agreement.

Section 8. Reconciliation of Accounting/Funding. It is understood that the funding provided by the BOROUGH under this Agreement is the total obligation to be furnished by the BOROUGH; provided, however, any funding furnished by the BOROUGH not expended by the CITY shall be held in a special parks and recreation city account and, if not mutually agreed to its park and recreation use, shall be returned to the BOROUGH within fifteen (15) calendar days of the final fiscal year 1997 audit report. Any expenditures/costs made or incurred by the CITY in excess of the contract price of the Agreement shall be the sole responsibility of the CITY; provided, however, the BOROUGH at its sole discretion and prior to any excess expenditures/costs, may agree to fund such excess if additional funding is available.

Section 9. Relationship of the Parties. The CITY shall perform all obligations under this Agreement as an independent contractor of the BOROUGH. The BOROUGH will administer this Agreement and monitor the performance within the Agreement.

Section 10. Assignments and Subcontractors. The CITY may not assign any interest in the Agreement to another person, nor delegate any duties to a subcontractor or other person without the prior written approval of the Borough Manager. Any attempt by the CITY to assign any interest or delegate duties under this Agreement shall give the BOROUGH the right to immediately terminate the Agreement without any liability for work performed subsequent to termination. However, normal procurement for materials and/or services by the CITY is permissible.

Section 11. Warranty. The CITY expressly warrants that all materials used will be of the best quality locally available and that all workmanship will meet the highest standards of the trade. The CITY guarantees to answer personally for all materials and workmanship supplied to the BOROUGH and shall undertake to correct any workmanship or defect in materials found by the Borough Manager to constitute a breach of the Agreement.

Section 12. Borough Held Harmless. The City shall indemnify, defend, and hold and save the Borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees. The City shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from City's, or City's

officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, the City shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

Section 13. Termination. This Agreement may be terminated by the BOROUGH:

1. If the CITY, through no fault of the BOROUGH, fails to substantially perform any obligation under this Agreement;
2. For any reason upon ten (10) days written notice to the CITY; or
3. Under **Section 7** of this Agreement.

Upon termination of this Agreement the BOROUGH shall pay the CITY for all contract work completed to the satisfaction of the Borough Manager as of the date termination is effective. Payment to the CITY under this section may not exceed that total amount stated in **Section 4**.

Section 14. Contract Documents and Integration.

- A. This Agreement and those documents and appendices incorporated by reference (B) of this Section shall constitute the entire Agreement of the parties. There are not promises, terms, conditions, or obligations, other than those stated in this Agreement and its appendices, and this Agreement shall supersede all previous communications, representation, or agreements, either oral or written between the parties.
- B. The following documents are incorporated by reference into this agreement:
1. FY 97 Budget marked Exhibit "A";
 2. Scope of Work marked Exhibit "B"; and
 3. Management Fee Schedule marked Exhibit "C" attached hereto.

MATANUSKA-SUSITNA BOROUGH

CITY OF WASILLA

Date: _____

Date: _____

Michael J. Scott, Borough Manager

Sarah Palin, Mayor

EXHIBIT C MANAGEMENT FEE SCHEDULE

This fee schedule shall be amended each fiscal year.

TERM

This fee schedule is for the period beginning July 1, 1999, and ending on June 30, 2000.

PAYMENT

1. In exchange for the services described in Exhibit B, Scope of Work, the borough shall pay to the City for the above term, the total amount of \$10,000.
2. Payment for the full \$10,000 shall be made within 10 days of signing this Agreement by the Borough Manager, but not earlier than August 1.
3. The Borough shall not provide any additional compensation, payment, use of facilities, service or other thing of value than the compensation described above.

BLOCK GRANT AGREEMENT
between
MATANUSKA-SUSITNA BOROUGH
and
CITY OF WASILLA

THIS AGREEMENT is made between the MATANUSKA-SUSITNA BOROUGH, a municipal corporation (hereinafter the BOROUGH) and the CITY OF WASILLA, a municipal corporation (hereinafter the CITY) for providing a block grant.

Section 1. Definitions. In this Agreement:

- A. The term BOROUGH means the Matanuska-Susitna Borough.
- B. The term CITY means the City of Wasilla.
- C. The term BOROUGH MANAGER means the manager of the Matanuska-Susitna Borough or his authorized representative.
- D. The term CITY MAYOR means the mayor of the City of Wasilla or her authorized representative.

Section 2. Authority. The city may use this block grant for any use they can legally provide including library functions.

Section 3. Term. This Agreement shall become effective on July 1, 1999 and shall expire on June 30, 2000.

Section 4. Payment.

- A. The BOROUGH shall pay to the CITY **\$322,000.00** subject to **Section 8** of this Agreement.
- B. Within 15 days following the signing of the Agreement by the Borough Manager, the BOROUGH shall pay the CITY \$80,500.00 of the total sum described in **Section 4(A)** above.
- C. Thereafter, the BOROUGH shall make equal payments in the amount of \$80,500.00 on October 10, 1999, January 10, 2000, and April 10, 2000.

Section 5. Relationship of Parties. The CITY shall perform its obligations under this Agreement as an independent contractor of the BOROUGH. The BOROUGH may administer the contract and monitor the CITY'S performance of its obligations under this Agreement. The BOROUGH may not supervise or direct the CITY other than as provided in this section.

Section 6. Reconciliation of Accounting/Funding. The CITY shall separately account for the expenditures of this block grant provide the BOROUGH a copy of its annual audit on these expenditures. Any funding furnished by the BOROUGH through this block grant and not expended by the CITY shall be returned to the BOROUGH within thirty days of completion of the CITY'S fiscal year audit. Any expenditures made or incurred by the CITY in excess of the block grant amount shall be the sole responsibility of the CITY.

Section 7. Termination of Agreement for Cause. If, through any cause, either party shall fail to fulfill in a timely and proper manner its material obligations under this agreement, or if either party shall violate any of the material covenants, agreements, or stipulations of this agreement, the other party shall thereupon have the right to terminate this agreement by giving written notice to the breaching party of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Such termination shall not eliminate any claim for damages for past breach.

Section 8. Causes Beyond Control. In the event the CITY is prevented by a cause or causes beyond control of the CITY 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 CITY 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 CITY 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 CITY and which prevent the performance of the CITY: 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 CITY from performing the terms of the Agreement as set forth herein. The BOROUGH will determine whether the event preventing the CITY from performing is a cause beyond the CITY'S control.

Section 9. Payment Upon Termination. If this contract is ended before term, for reasons stated in Section 7 or Section 8, payment pursuant to Section 4 will be prorated to date of termination.

Section 10. Modifications. 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 executed by both parties.

Section 11. Equal Employment Opportunity.

(A) The CITY 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 era. The CITY 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 era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or termination's; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The CITY 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 CITY will, in all solicitations or advertisements for employees placed by or on behalf of the CITY, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The CITY will cause the foregoing provisions to be inserted in all subagreements for any work covered by this contract.

(B) The CITY shall keep records and submit reports concerning the racial and ethnic origin of applicants for employment and employees as the BOROUGH may require.

Section 12. Assignability

(A) The CITY 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 BOROUGH, thereto; provided, however that claims for money due or to become due to the City from the BOROUGH 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 BOROUGH, or the CITY shall be responsible to the

BOROUGH for any moneys due the assignee of this Agreement which are paid directly to the CITY.

Section 13. Officials Not to Benefit. No member of the legislature or officer of the state of Alaska or the BOROUGH or the CITY shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.

Section 14. Audits and Inspections. At any time during normal business hours and as often as the BOROUGH may deem necessary, there shall be made available for examination all of its records with respect to all matters covered by this Agreement and will permit representatives of the BOROUGH to audit, examine, and make excerpts or transcripts from such records, and to make audits of all Agreements, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

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. Non-Waiver. 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 CITY 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 CITY under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. All taxes required to be paid by law shall be paid by the city, including federal withholding taxes for employees.

Section 18. Agreement Administration. (A) The Borough Manager, or his designee, will be the representative of the BOROUGH administering this Agreement.

(B) The services to be furnished by the CITY shall be administered, supervised, and directed by Sarah Palin. In the event that the individual named above is unable to serve for any reason, the CITY shall appoint a successor and advise the BOROUGH in writing of the successors name.

Section 19. Borough Held Harmless. The CITY shall indemnify, defend, and hold and save the BOROUGH, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees. The CITY shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from CITY'S, or CITY'S officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, the CITY shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

Section 20. 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 21. 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 22. City Insurance.

(A) The City will, at its own expense, secure, maintain, and file with the BOROUGH, proper and acceptable insurance coverage, including defense and indemnification of the BOROUGH. The insurance coverage will be secured with an insurance market acceptable to the BOROUGH and shall be primary to any coverage carried by the City which may cover the work specified in this Agreement.

(1) Worker's Compensation Insurance in compliance with the laws of the state of Alaska, AS 23.30, et seq., and federal jurisdiction where the work is being performed, covering all employees engaged in the performance of the work specified in this Agreement. Employer's

Liability limits shall be: \$100,000 each accident; \$500,000 disease--policy limit; \$100,000 disease--each employee.

(2) Comprehensive General Liability: Limit \$300,000 Bodily Injury and Property Damage, Combined Single Limit. Coverage to be at least as broad as Insurance Service Office (ISO) form CG00 01 Edition 11/88.

(3) Comprehensive Automobile Liability: Limit \$100,000 Bodily Injury and Property Damage, Combined Single Limit. Coverage to be at least as broad as Insurance Service Office (ISO) form CA00 01 Edition 6/92.

(4) Unemployment Insurance by payment of employment security taxes for all library employees hired by the City. In the event of the City's failure to pay such taxes, the BOROUGH will withhold an amount sufficient to pay such taxes from any payments owed to the City by the BOROUGH. The BOROUGH also reserves the right to contact the Alaska State Department of Labor, in order to determine whether unemployment security taxes have been paid by the City. The BOROUGH further reserves the right to withhold that portion of unemployment security taxes owed to any employees pending notification of the City's unemployment security tax clearance from the Alaska State Department of Labor.

(B) A lapse in insurance coverage is a material breach of this contract which shall result in immediate termination of the contract, pursuant to **Section 9**.

(C) Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the BOROUGH prior to cancellation. Each policy shall name the BOROUGH as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the BOROUGH by reason of any payment made for claims under the above coverage.

Section 23. Notices. Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid registered or certified mail to the following address:

Borough: Matanuska-Susitna Borough
Recreational Services Division
350 E Dahlia Avenue
Palmer, AK 99645-6488

City:

City of Wasilla
290 E Herning Avenue
Wasilla, AK 99654

Section 24. Financial Records.

A. Expenditures of funds under this Agreement shall be made by the CITY solely for the purpose of fulfilling the CITY'S duties described in **Section 2** above.

B. Expenditures and revenues to the same extent as may be required by law governing all other expenditures and revenues of the CITY, shall be independently audited annually.

C. The CITY shall furnish the BOROUGH a copy of the annual audit of these funds within thirty days of receipt of the CITY'S annual audit.

Section 25. Integration. This written Agreement and any attachments embody the entire Agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this instrument shall supersede all previous communications, representations or Agreements, either oral or written between the parties.

Section 26. Understanding. The CITY MAYOR acknowledges that she has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of the city's choice, and is executing this Agreement of her own free will.

Dated: _____

Dated: _____

MATANUSKA-SUSITNA BOROUGH

CITY OF WASILLA

By: _____

Michael J. Scott
Borough Manager

By: _____

Sarah Palin
City Mayor