

CITY OF PALMER ACTION MEMORANDUM No. 10-036

SUBJECT: Authorize the City Manager to Enter into a Three Month Lease with Jim Hill for the Building Known as the Old Woods Hanger at the Palmer Municipal Airport

AGENDA OF: May 11, 2010

Council action: <div style="border: 1px solid red; padding: 5px; display: inline-block; color: red;">Authorized</div>

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

Route To:	Department/Individual:	Initials/Date:	Remarks:
x	Originator – City Manager		
x	City Clerk	<i>JH</i> 5/3/10	
x	City Attorney	<i>[Signature]</i> 5/3/10	
	Director of Administration		
	Director of Community Development		
	Director of Community Services		
	Director of Public Safety		
	Director of Public Works		

Attachment(s): Lease Agreement

Certification of Funds:

	No fiscal impact.	
	Funds are budgeted from this account number	
	Funds are not budgeted. Budget modification is required. Affected account number:	

Director of Administration Signature: _____

Summary statement: Mr. Jim Hill is interested in a long term lease of the structure known as the Old Woods Hanger on the western edge of the Palmer Municipal Airport. The formal lease agreement in use at the airport requires revisions and has not yet been thoroughly vetted. A temporary three month lease will allow the City administration to revise the long-term lease prior to signing an agreement with Mr. Hill for a longer period of time.

Administration recommendation: Approve action memorandum number 10-036.

AIRPORT HANGAR LEASE

This Lease is made and entered into this ____ day of ____, 2____ (“Effective Date”) by and between the City of Palmer, a municipal corporation (“City”), and James C. Hill, Jr. (“Tenant”). City and Tenant are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

1. PREMISES. City hereby leases to Tenant, and Tenant hereby leases from City, that certain hangar designated as the “Old Woods Hanger”, located on the Palmer Municipal Airport Parcel A-36, Tract J, (the “Premises”), located at the Palmer Municipal Airport (“Airport”), and more particularly described in Exhibit “A” attached hereto. This lease of the Premises is for the principle purpose of the storage and maintenance of Tenant’s aircraft which is identified as year 1947 Piper PA 12, Registration No. 3528M, or for commercial aviation related business, and any incidental aviation related uses associated therewith.

2. TERM. The term of this Lease shall be [month-to-month] commencing May 15, 2010 with a maturity date of September 1, 2010. The parties agree that at the maturity of this lease a new, long term lease will be negotiated, subject to the approval of the Palmer City Council.

3. CONSIDERATION.

3.1 Monthly Rental Payments. Tenant shall pay to City on or before the 15th day of each month during the term of this lease as monthly rent, without deduction, setoff or demand, the sum of Five Hundred Dollars (\$500.00). A late fee shall be levied in the amount of ten percent (10%) of the amount due for any amount not received by the date such rent is due. Conditions: The Tenant agrees to pay utilities, telephone, janitorial and liability insurance with the City of Palmer names as the Loss Payee.

3.2 Manner of Payment of Rent. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. The monthly rent and any applicable late charges payable by Tenant hereunder shall be paid by Tenant without notice, demand or offset at the office of the Airport Manager, or at such other place as may from time to time be designated by City.

3.3 Taxes and Assessments.

3.3.1 Obligation to Pay. Tenant is responsible for and shall pay all real and personal property taxes (including any tax levied on a possessory interest), general and special assessments, and other charges of every description, levied on or assessed against the Premises, personal property located on the land or improvements, the leasehold estate, or any subleasehold estate, falling due during the term of this Lease. Tenant shall make all such payments directly to the assessing authority, before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

3.3.2 Proration for Partial Year. Any imposition of taxes referred to in Section 3.3.1 above relating to a fiscal period of a taxing authority, a part of which period is included within the term of this Lease and a part of which is included in a period of time before the Effective Date or after the termination of this Lease, shall be paid by Tenant as above but shall be prorated with City.

3.3.3 Proof of Compliance. Upon the request of City, Tenant shall furnish to City receipts or other appropriate evidence establishing payment or any applicable tax, assessment or charge. Tenant may comply with this requirement by retaining a tax service to notify City whether the taxes have been paid.

4. USE OF PREMISES. [Bill please review]

4.1 Use of Hangar. The Premises shall be used and occupied by Tenant principally for the storage and maintenance (aeronautical use only) of aircraft and related business or other aviation uses. No other commercial activity of any kind whatsoever shall be conducted by Tenant in, from or around the Premises. Tenant shall take such steps as are necessary to ensure that the performance of such maintenance work does not damage the Premises. Tenant shall control the conduct and demeanor of its employees and invitees, and of those doing business with it, around the Premises and shall take all steps necessary to remove persons whom City may, for good and sufficient cause, deem objectionable. Tenant shall keep the Premises clean and free of debris at all times. Upon termination of this Lease, Tenant shall immediately surrender possession of the Premises and shall remove the Aircraft and all other property therefrom, leaving the Premises in the same condition as when received, ordinary wear and tear and improvements made by Tenant excepted. Tenant shall be liable for any and all damage to the Premises caused by Tenant's use, including, without limitation, bent or broken interior walls, damage to unsealed floors due to fuel oil spillage, or doors damaged due to Tenant's improper or negligent operation.

4.2 Compliance with Laws and Regulations. In utilizing the Hangar during the term of this Agreement, Lessee agrees to and shall comply with regulations established from time to time by City as well as all applicable ordinances, rules and regulations established by any federal, state, or local government agency exercising jurisdiction over the premises, including FAA regulations and rules and regulations of the Airport. Non-aviation use of the Hangar is not permitted. This lease is also subject to certain assurances mandated by FAA. These assurances are set forth in exhibit B attached hereto and incorporated herein by reference.

Lessee agrees to comply with all security measures that may be imposed from time to time by the City or any other applicable governmental agency. If gate codes are used in the future Lessee agrees not to give any gate code to any unauthorized persons. Additionally, it is understood by the parties that the City is not responsible for the security of the aircraft located in the hangar.

It is expressly understood that no storage of airplanes, boats, cars, trucks, trailers or mobile homes is permitted outside of the Hangar or anywhere on the City's property except

designated parking areas for such vehicles or aircraft. No pets or other animals are allowed on the property.

Lessee shall indemnify and hold harmless City (inclusive of its subsidiaries, affiliates, as now or hereafter constituted) and its officers, directors, agents, Lessees, customers, consultants, subcontractors, invites and employees from and against any and all fines penalties, damages or legal actions which may be imposed by the Airport, FAA or any other agency having jurisdiction at or on the Airport as a result of Lessee's or its officers, directors, agents, consultants, subcontractors, invites or employees failure to comply and adhere to any and all federal, state, local or Airport regulations in effect as of the effective date of this Lease or promulgated from time to time thereafter.

4.3 Waste Disposal. Tenant shall dispose of all sewage and industrial waste in accordance with all applicable regulations and laws of those governmental agencies having jurisdiction or authority thereover. Tenant shall ensure that all solid waste materials are placed in appropriate covered containers designed for use with the type of waste involved, which shall remain covered, and locked, and that such containers remain located on the Premises and not moved from their location for any reason. Tenant shall cooperate with City to provide for the proper separation of waste to maximize recycling.

4.4 Hazardous Materials.

(a) Any Hazardous Materials (as hereinafter defined) brought upon, kept or used in or about the Premises or the Airport by Tenant, its agents, employees, contractors or invitees, shall be necessary or useful to Tenant's business and shall be used, kept and stored in a manner that complies with all laws, statutes, ordinances, rules, regulations, orders, requirements, and policies of any and all governmental agencies and authorities applicable to any such Hazardous Materials ("Hazardous Materials Laws").

(b) If Tenant breaches the obligations stated in subparagraph (a) of this Section 4.4, or if the presence of Hazardous Materials on the Premises after the Effective Date results in contamination of the Premises or the Airport, or if Hazardous Materials are otherwise discharged or released from the Premises after the Effective Date, then Tenant shall indemnify, defend and hold City harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in value of the Airport, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Airport, damages arising from any adverse impact on marketing of space in the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the term of this Lease as a result of such breach, contamination, discharge or release. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in, on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the

Premises after the Commencement Date results in any contamination of the Airport, or otherwise results in the release or discharge on, under or from the Premises of Hazardous Materials, Tenant shall promptly take all actions at its sole expense as are necessary to return the Airport to the condition existing prior to the introduction of any such Hazardous Materials to the Airport or to otherwise remove and/or abate the release or discharged Hazardous Materials; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Airport, will not unreasonably interfere with the use and enjoyment of other portions of the Airport, and will be performed in accordance with all Hazardous Materials Laws. Upon the termination of this Lease, Tenant shall surrender the Premises to City free of any and all Hazardous Materials and in compliance with all Hazardous Materials Laws. This indemnification shall survive the termination or expiration of this Lease.

(c) For the purpose of this Section 4.4, the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §9601 et seq.), applicable State law, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state or local environmental laws, ordinances, rules or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the Effective Date.

4.5 Billboards and Signs. Tenant shall not construct, install or maintain, nor allow upon the Premises any billboards, signs, banners or like displays which may be placed in or upon any building or structure in such manner as to be visible from the outside thereof, except with the prior written consent of City.

4.6 Waste; Nuisance. Tenant shall not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties. Tenant shall not use the Premises for sleeping, washing clothes, cooking or the preparation, manufacture or mixing of anything that might emit any odor or objectionable noises or lights onto adjacent properties. Tenant shall not do anything on the Premises that will cause damage to the Premises.

4.7 Access; Locks; Keys; Combinations. Tenant shall comply with all reasonable regulations and directives of City regarding access to the Premises. City may enter the Premises without permission of, or supervision by, Tenant for inspection or emergency purposes (i.e. fire, burglary, flooding, criminal activity, or other catastrophe) determined reasonably necessary by City or required by law, including but not limited to five-year fire sprinkler inspections, maintenance work that requires entrance by City, or any other to lawfully enter the Premises. City shall subsequently notify Tenant of any entry for emergency purposes

and the reason for the entry if the Tenant was unable to supervise such entry. City reserves the right to limit Tenant's access to the Airport or the Premises, or both, due to any terrorist threat, civil unrest, any unsafe condition, or for the safety and protection of persons and property. City shall not be responsible for Tenant's inability to access the Airport or the Premises due to events or acts beyond the control of City. Tenant shall, at its own expense, furnish City's Airport Manager with a duplicate set of keys or lock combination for the locks securing the Premises. City shall secure keys and lock combinations from access or exposure by unauthorized individuals and will notify Tenant immediately in the event of any compromise of keys and lock combinations.

4.8 Requests from Airport Manager. Tenant shall cooperate with any reasonable request from City's Airport Manager regarding use or operations at the Airport.

5. MAINTENANCE, ALTERATIONS.

5.1 As-Is Condition. Tenant hereby acknowledges that neither City nor anyone acting for or on behalf of City, has made any representation, warranty or promise to Tenant concerning the physical aspects or condition of the Premises or improvements, the feasibility, desirability or convertibility of the Premises into any particular use, the conditions of the soil, ground water, or surface waters or the presence or absence of any toxic waste or hazardous substances or material, and that by entering into this Lease has not relied on any representation, statement or warranty of City, or anyone acting for or on behalf of City, and that all matters concerning the Premises shall be independently verified by Tenant, and that Tenant shall lease the Premises on Tenant's own examination thereof, AND THAT TENANT IS LEASING THE PREMISES IN "AS IS" PHYSICAL CONDITION AND "AS IS" STATE OF REPAIR. Tenant hereby waives and City hereby disclaims all warranties of any or kind of description, including, without limitation, those of fitness for particular purpose, tenantability, habitability and use. Tenant hereby expressly waives any and all claims for damages or for rescission or cancellation of the Lease because of any representations made by City or by any agent of City. Tenant acknowledges that it has had sufficient time to conduct all inspections, reviews and studies of the Premises that Tenant may deem necessary. Tenant hereby expressly assumes the risk that adverse physical conditions and the full extent thereof, may not be revealed by Tenant's inspections, reviews and studies of the Premises.

5.2 Maintenance of Premises. Throughout the term of this Lease, Tenant shall, at Tenant's sole cost and expense, maintain the Premises in first class condition and repair, provided; however, that City shall maintain the structural components of the hangar, including doors and door mechanisms.

5.3 Alterations. Tenant shall not make any alternations to the Premises without City's prior written consent. Any alterations made shall remain on and be surrendered at the expiration or sooner termination of the term; provided, however, that City may, at City's sole election, demand the removal from the Premises of all fixtures and improvements or of certain fixtures or improvements or both as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30)

days before the expiration date. A demand to take effect on any other termination of the Lease shall be effected by notice given in or concurrently with notice of such termination or within sixty (60) days after such termination. Tenant shall comply with the notice before the expiration date for normal termination, and within thirty (30) days after the notice for other terminations.

6. PROHIBITION AGAINST ASSIGNMENT AND SUBLETTING. Tenant shall not assign or transfer, whether voluntarily, involuntarily or by operation of law, its interest in this Lease or any part hereof. No such assignment or transfer shall be valid or binding. An attempted assignment or transfer shall be grounds for City's termination of this Lease. As used in this Article 6, the term "assignment" shall include a "more than 25% change in ownership of Tenant." A "more than 25% change in ownership of Tenant" shall mean, if Tenant is a corporation, the transfer of more than 25% of the voting stock of Tenant, or if Tenant is a general partnership, the transfer of the right to share in more than 25% of the profits of such partnership; or, if Tenant is a limited partnership a transfer of more than 25% of the voting rights of the general partner thereof to individuals or entities which were not theretofore general partners of Tenant. In addition, the parking of aircraft not owned or under exclusively lease by Tenant in the Premises shall constitute a sublease for purpose of this Article.

7. INDEMNITY.

7.1 Indemnity. Tenant shall indemnify, hold harmless and defend City, its elected officials, officers and employees, from and against any and all actions, claims, damages, disabilities or expenses including, without limitation, attorneys' fees, witness costs and court costs that may be asserted by any person or entity, including Tenant, arising out of or in connection with any of the following circumstances:

7.1.1 Use of Premises. Use of the Premises or Airport in any manner by Tenant, its agents, employees, invitees, subtenants, licenses and contractors, and the agents, employees, patrons, contractors and invitees of Tenants and subtenants, including any use of the Premises or the Airport not allowed under this Lease.

7.1.2 Breach by Tenant. Any breach by Tenant of the terms, covenants or conditions herein contained.

7.1.3 Other Activities. Any other activities of Tenant, its agents, employees and subtenants whether or not there is concurrent negligence on the part of City, but excluding liability due to the sole active negligence or sole willful misconduct of City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Tenant or its agents under workers' compensation acts, disability benefit acts or other employee benefit acts.

8. TERMINATION AND EXPIRATION.

8.1 Termination for Tenant's Default. If Tenant fails to pay rent or any other sums to be paid by Tenant hereunder, Tenant shall have thirty (30) days after written notice is

given Tenant to cure the default. If any default by Tenant shall continue uncured following notice of default as required by this Lease, City shall have the right to immediately terminate this Lease in addition to all other rights and remedies provided by law or equity to which City may resort cumulatively or in the alternative.

8.2 Tenant's Duty to Surrender. At the expiration or earlier termination of the term of The Lease, Tenant shall surrender to City in as good condition and repair as of the Effective Date, the possession of the Premises. If Tenant fails to surrender the Premises at the expiration or sooner termination of this Lease, Tenant shall defend and indemnify City from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant or Tenant or resulting from Tenant's failure to surrender.

8.3 Holding Over. If Tenant shall continue to occupy or possess the Premises after the termination of this Lease without the consent of City, then unless City and Tenant have otherwise agreed in writing, Tenant shall be a tenant on a month-to-month basis. All the terms, provision and conditions of this Lease shall apply to this month-to-month tenancy except those terms, provisions and conditions pertaining to the term, and except that the monthly rent shall be immediately adjusted upward upon the expiration or termination of this Lease to equal three hundred percent (300%) of the monthly rent for the Premises in effect under this Lease during the month which includes the day immediately prior to the date of the expiration or termination of this Lease. This month-to-month tenancy may be terminated by City or Tenant upon thirty (30) days' prior notice to the non-terminating Party. In the event Tenant fails to surrender the Premises upon such termination or expiration, Tenant shall defend, indemnify and hold City harmless against all loss, liability, cost or expense resulting from or arising out of Tenant's failure to surrender the Premises, including, without limitation, any amounts required to be paid to any lessee or prospective lessee who was to have occupied the Premises after said termination or expiration and any related attorneys' fees and brokerage commissions. Notwithstanding the foregoing, no termination of this Lease shall release Tenant from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or date of surrender if it be later.

9. NOTICES. Any notice required or permitted to be given under this Lease shall be in writing. Delivery of such written notice shall be conclusively taken and sufficiently given after deposit in the United States Mail, addressed as follows:

City: City of Palmer
231 W. Evergreen Avenue
Palmer AK 99645

Tenant: James C. Hill, Jr.
PO Box 872454
Wasilla AK 99687

Any Party may at any time may change its address for notices by giving written notice of such change to the other Party in the manner provided in this paragraph.

10. INSURANCE. Upon the Effective Date of this Lease, Tenant shall provide City with a copy of Tenant's aircraft insurance policy for the specific aircraft that is stored in the Premises. In the event Tenant replaces such aircraft with a replacement aircraft during the term of the this Lease, Tenant shall provide City with a copy of the Tenant's aircraft insurance policy for such replacement aircraft within ten (10) days of the same.

11. MISCELLANEOUS PROVISIONS.

11.1 Joint and Several Obligations. If Tenant consists of more than one person, the obligation of all such persons is joint and several.

11.2 Captions. The captions of this Lease are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Lease.

11.3 Successors. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective Parties.

11.4 Broker's Commissions, Expenses. Tenant and City mutually covenant that no brokers have been or will be used with respect to this Lease. In the event any broker or finder perfects a claim for a commission or finder's fee based upon any such contract, dealings or communications, the Party through whom the broker or finder makes a successful claim shall be responsible for said commission or fee and all costs and any expenses (including reasonable attorneys' fees) incurred by the other Party in defending against the same.

11.5 Applicable Law and Forum. This Lease shall be construed and interpreted according to the laws of the State of Alaska and the City of Palmer. Venue of any matter involving this lease is in Third Judicial District Palmer, Alaska.

11.6 Covenants and Conditions. All provisions of this Lease whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions and such covenants shall survive termination.

11.7 Time of Essence. Time is and shall be of the essence of this Lease and of each and every provision contained in this Lease.

11.8 No Discrimination. Tenant shall comply with all applicable federal, state and local laws, rules and regulations relating to non-discrimination in employment and services because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition and handicap.

11.9 No Third Party Beneficiaries. Nothing contained in this Lease shall be construed to create and the parties do not intend to create any rights in third parties.

11.10 Construction of Lease; Severability. To the extent allowed by law, the terms, covenants, conditions, provisions and Leases in this Lease shall be construed and given effect in a manner that avoids any violation of statute, regulation or law. City and Tenant covenant and agree that in the event any term, covenant, condition, provision or Lease in this Lease is held to be invalid or void by court of competent jurisdiction, the invalidity of any such term, covenant condition, provision or Lease shall in no way affect any other term covenant, condition provision or Lease in this Lease.

11.11 Relationship. The Parties intend by this Lease to establish the relationship of City and Tenant only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of City and Tenant.

11.12 Authority. Lessee represents and warrants that Lessee has authority to enter into and to perform this agreement. Once approved and executed, this agreement shall be complete and binding. The person executing this agreement on behalf of the Lessee is fully authorized to do so.

IN WITNESS WHEREOF, the parties to this Lease have duly executed this Lease on the date set forth above.

CITY OF PALMER

TENANT

Mayor

By: _____

Title: _____