

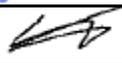
CITY OF PALMER ACTION MEMORANDUM NO. 10-073

SUBJECT: Authorize the City Manager to Enter into a Cooperative Agreement with the Palmer Economic Development Authority (PEDA) for \$49,500 to Secure the Professional Services of a Consultant to Develop a Parks and Trails Master Plan for the Community

AGENDA OF: October 26, 2010

Council action:	Authorized
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Approved for presentation by Douglas B. Griffin, City Manager 

Route To:	Department/Individual:	Initials/Date:	Remarks:
X	Originator – Director of Community Development	 10/06/10	
X	City Clerk	 10/18/10	
X	City Attorney	 10/18/10	
	Director of Administration		
	Director of Community Services		
	Director of Public Safety		
	Director of Public Works		

Attachment(s): Cooperative Agreement with Palmer Economic Development Authority

Certification of Funds:

	No fiscal impact.	
X	Funds are budgeted from this account number: 08-01-10-7129 Subject to council approval of Res # 10-069	\$49,500
	Funds are not budgeted. Budget modification is required. Affected account number:	
	Unrestricted/undesignated fund balance (after budget modification):	

Director of Administration Signature: 

Summary statement: The Palmer Economic Development Authority has received a grant from the Mat-Su Health Foundation to develop a Parks and Trails Master Plan for this community. PEDA has agreed to pass these funds to the City of Palmer to hire a consultant to develop this plan. The City has developed the Scope of Work and has set aside \$25,000 in the Capital Project Fund (08) to match the PEDA funds for this project.

Administration recommendation: Approve action memorandum 10-073.

COOPERATIVE AGREEMENT
Between the
CITY OF PALMER and PALMER ECONOMIC DEVELOPMENT AUTHORITY
For
PALMER PARKS & TRAILS MASTER PLAN

A. DEFINITIONS/PURPOSE

1. Definitions

In this Agreement:

- a. "City" means the City of Palmer;
- b. "PEDA" means the Palmer Economic Development Authority, a nonprofit organization.
- d. "Agreement" means the Cooperative Agreement Between the City of Palmer and the Palmer Economic Development Authority.

2. Purpose

This Agreement is entered into between the parties to set out the terms and conditions under which the City will secure the professional services of a consultant to develop a Parks & Trails Master Plan for the community. The Agreement covers funding for these consultant services.

B. TERM

The term of the Agreement shall begin upon the execution of this agreement and end upon completion of the Parks & Trails Master Plan or by December 31, 2011. The parties may extend or modify the Agreement upon the written mutual consent of the parties.

C. SERVICES PROVIDED BY PALMER

City shall provide the following services, and shall pay those costs associated therewith out of funds derived under this agreement, more particularly set out in Section D of this Agreement. The City will provide proper documentation of invoices and checks to PEDDA relating to the costs of the consultant services for development of the Parks & Trails Master Plan.

- 1. The City shall prepare a Scope of Work describing the professional services needed to develop a Parks & Trails Master Plan for the community;
- 2. The City shall secure the services of a qualified professional consultant by December 21, 2010 to complete said Scope of Work by October 31, 2011;

3. The City shall provide staff assistance to the consultant necessary to complete the development of said Parks & Trails Master Plan..

D. PAYMENTS

1. Upon execution of the Agreement, PEDDA agrees to pay the City \$49,500 to secure the professional services of a consultant to develop a Parks & Trails Master Plan for the community.

2. The City agrees to provide \$25,000 in addition to the PEDDA contribution to secure the professional services of a consultant to develop a Parks & Trails Master Plan for the community.

3. In the event that the City is unable to award a bid for consultant services to develop a Parks & Trails Master Plan by December 21, 2010, the City agrees to return the \$49,500 to PEDDA.

E. NON-DISCRIMINATION

In performing its duties and obligations under this Agreement, no party may discriminate against any person in violation of law.

F. TERMINATION FOR CONVENIENCE OF PARTIES

1. City or PEDDA may terminate this Agreement at any time by giving written notice to the other party of such termination, at least 180 days prior to the effective date of the termination.

2. All finished or unfinished documents and other materials, if any, are the property of City and shall be delivered to City by or upon the effective date of execution of this Agreement.

G. MODIFICATIONS TO THE AGREEMENT

This Agreement may be amended, changed and modified by writing duly executed by both City and PEDDA, and their respective successors and assigns.

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.

H. DEFENSE AND INDEMNIFICATION

This Agreement is for the benefit of the parties only and not for the benefit of any third party. The parties understand and agree that, to the maximum extent possible, all activities carried on hereafter concern the development of a Parks & Trails Master Plan for the community and the funding of professional services for development thereof or are activities associated with those actions.

1. PEDA shall indemnify, defend, hold, and save City, 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, or attorneys fees that may arise out of their performance connected with the terms of this Agreement. PEDA 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 PEDA, or its officers', agents', employees', partners', suppliers', or subcontractors' performance or failure to perform connected with this Agreement in any way whatsoever.

2. If there is a claim of, or liability for, the joint negligent error or omission of the City and the independent negligence of PEDA, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "the City" and "PEDA" as used within this article, include employees, Board Members, agents, and other 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 consultant and in approving or accepting consultant's work.

I. EFFECT OF WAIVER

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

J. 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.

K. GOVERNING LAW

Any civil action arising from this contract shall be brought in the superior Court for the Third Judicial District of Alaska at Palmer, only. The law of the state of Alaska shall

govern the rights and obligations of the parties. The common law rule of construction against the drafter does not apply to this Agreement.

L. 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.

M. NOTICES

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

To the City of Palmer
Douglas B. Griffin, City Manager
231 West Evergreen Ave
Palmer, Alaska 99645

To Palmer Economic Development Authority
Jeffery Johnson
P.O. Box 2527
Palmer, AK 99645

N. CAUSES BEYOND CONTROL

In the event a party is prevented by a cause or causes beyond control of the party from performing any obligation of under this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of contract which will render the party liable for damages or give rights to the cancellation of the contract 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 practicable 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 party and which prevent the performance of the party: 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 party from performing the terms of the contract as set forth herein. Events, which are peculiar to a party and would not prevent another similar party from performing, including, but not limited to financial difficulties, are not causes beyond the control of the party.

O. ENTIRE AGREEMENT

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 these contained herein, and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

P. ACKNOWLEDGMENT

The parties acknowledge that they 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.

CITY OF PALMER

Douglas B. Griffin, City Manager

Date

STATE OF ALASKA)
)ss
Third Judicial District)

On _____, 2010, Douglas B. Griffin 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.

NOTARY PUBLIC
My Commission expires: _____

PALMER ECONOMIC DEVELOPMENT AUTHORITY

Jeffery Johnson, Director

Date

STATE OF ALASKA)
)ss
Third Judicial District)

On _____, 2010, Jeff Johnson, 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.

NOTARY PUBLIC

My Commission expires: _____