

CITY OF PALMER ACTION MEMORANDUM No. 10-052

SUBJECT: Authorize the City Manager to Negotiate and Enter Into a Lease and Facility Use Agreement with the Alaska Avalanche Hockey Club LLC for a Period of Five (5) Years

AGENDA OF: July 13, 2010

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| Council action: | The motion was amended to add the language "the contract shall be signed following passage of approval of funding" The AM was authorized |
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Approved for presentation by B. B. Allen, City Manager *B. B. Allen*

| Route To: | Department/Individual: | Initials/Date: | Remarks: |
|-----------|-----------------------------------|---------------------------|----------|
| X | Originator – City Manager | 6-30-10 <i>Bill</i> | |
| X | City Clerk | <i>JL</i> 7/7/10 | |
| X | City Attorney | <i>[Signature]</i> 7/7/10 | |
| | Director of Administration | | |
| | Director of Community Development | | |
| | Director of Community Services | | |
| | Director of Public Safety | | |
| | Director of Public Works | | |

Attachment(s): Lease and Facility use Agreement with Alaska Avalanche Hockey Club LLC

Certification of Funds:

| | | |
|---|---|--------------------------------|
| | No fiscal impact. | |
| | Funds are budgeted from this account number: | |
| X | Funds are not budgeted. 2010 Budget modification is required. Affected account number: 01-00-00-3XXX | \$17,428 (4 months x 4,357) |

Director of Administration Signature: *[Signature]*

Summary statement: Passage of action memorandum no. 10-052 provides for a five year agreement with the Alaskan Avalanche Hockey Club LLC from which the City will derive direct payments of \$30,500 per year, and sales tax revenue from increased use and sales associated with 27 Avalanche Home Hockey Games. The City commits to expansion of the arena with new locker rooms, an equipment storage facility, seating to accommodate 1,500 spectators and the ancillary items which accompany expansion of the facility.

Background: The City Manager has been working with Avalanche representatives for the past several months to bring the franchise to Palmer. On June 8, 2010, the City Council passed an Ordinance no. 10-013 which permits beer and wine sales at the Palmer Ice Arena. The five year

Lease and Facilities Agreement spells out the particulars of the association including the following:

- A \$50,000 capital investment from the Avalanche over a 4 year period
- An annual fee Rent and Facility Use Fee of \$30,500 paid by the Avalanche each year
- All beverages and food during league hockey games shall be sold by the Avalanche
- Advertising revenues are split with the City retaining advertising on the Zamboni, Scoreboard, Center Ice, and the Arena name
- Expansion of the Arena by the 2011-12 Season to 1,500 seats

Note: Separate legislation in the July 13, 2010, City Council packet addresses construction costs.

Administration recommendation: Approve action memorandum 10-052.

City of Palmer
Alaska Avalanche Hockey Club LLC
Lease and Facility Use Agreement

LEASE AND FACILITY USE AGREEMENT (“Agreement”) made as of the ___ day of _____, 2010 by and between the CITY OF PALMER (“City”), and ALASKA AVALANCHE HOCKEY CLUB, LLC (“AAHC”).

WITNESSETH:

In consideration of the mutual covenants herein, the parties agree as follows:

Section 1. Definitions and Attachments

1.1 Certain Defined Terms. As used herein, the term:

- (a) Palmer Arena (PA) means the Palmer Ice Arena located at 1317 Kerry Weiland Court, Palmer, Alaska.
- (b) “Default Rate” means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which AAHC may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).
- (c) “Fees” mean the fees that are payable by AAHC for the use of the Leased Premises under Sections 5.1 and 5.2.
- (d) “Leased Premises” means the areas within the PA that are defined as such in Section 2, and marked on the PA floor plan attached hereto as Exhibit ”B.”
- (e) “Term” means the term of this Agreement as defined in Section 4.1.
- (f) “Home Game” means any event where a ticket is sold or donation is made in lieu of compensation including pre-season tournaments, charity games, regular season, conference playoff, divisional playoff, championship playoff, league sanctioned event or tournament played pursuant to a schedule established by the AAHC or North American Hockey League.
- (g) “Prime Time” means Saturday and Sunday of each week of the season from 8:00 AM – 8:00 PM and Monday through Friday 5:00 PM-8:00PM.

(h) “Non-Prime Time” means the remainder of the time the rink is open not designated Prime Time, Monday through Friday 10:00 AM-4:00 PM and 10:00 PM Monday through Sunday and 9:00 PM Sunday.

1.2 Additional Defined Terms. The following additional terms are defined in the Sections of this Agreement noted below:

| <u>Term</u> | <u>Section</u> |
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| | |
|--------------------|------|
| “Event of Default” | 11.1 |
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|------------------------------|-----|
| “Rent and Facility Use Fees” | 5.1 |
|------------------------------|-----|

1.3 Exhibits. The following documents are attached hereto, and shall be deemed to be a part thereof:

Exhibit ”A” Schedule for AAHC’s Use of the Facility

Exhibit ”B” Floor Plan of the PA

Exhibit ”C” Services and Conditions

Exhibit “D” Palmer Arena Rules and Regulations

Exhibit ”E” Minimum Security Requirements

Exhibit “F” Signage and Advertisements

Exhibit “G” PA/AAHC Improvement Plan

Section 2. Leased Premises. City hereby leases to AAHC, and AAHC hereby rents from City, the areas described in this agreement, subject to Section 1.3 Exhibits A-G within the PA (collectively, the “Leased Premises”). City shall deliver possession of the Leased Premises to AAHC on August 30, 2010, and AAHC accepts the Leased Premises as they exist on that date.

2.1 Equipment Storage Area and Locker Room. The locker room is for the assembly of the team for practice, pre-game and post-game activities. AAHC has the exclusive use of this room for the term of this agreement. A portion of the room can be used for the storage of equipment associated with the operation of AAHC’s activities. For the

2010-11 season City agrees to provide an area upstairs in the PA for AAHC's equipment storage.

2.2 Equipment Storage Area and Locker Room

- (a) The City will provide a minimum of 520 square feet of space to be used by AAHC with the agreement that AAHC will pay for all leasehold improvements to that space.

Section 3. Facility Use. The City hereby leases to AAHC the following areas within the PA (the "Leased Premises") subject to conditions stated below.

3.1 Description of Leased Premises. The Facility shall consist of the areas described in this agreement and depicted in Exhibits A-G.

3.2 All fixtures and display cases are recognized as part of the building. No advertisements on or use of such areas is permitted. See Exhibit F.

Section 4. Term.

4.1 Commencement and Termination. The Term of this agreement commences on August 30, 2010, and expires on May 1, 2015. If AAHC fails to surrender the Leased Premises at the end of the Term or any renewal thereof, in addition to the other remedy which the City may have, AAHC shall defend and indemnify City against all claims and demands by a succeeding tenant, arising from AAHC's failure to surrender the Leased Premises at the end of the Term. This agreement may be terminated:

- (a) By the mutual consent of the Parties, expressed in writing;
- (b) By either Party immediately upon a material breach of this agreement; or
- (c) By the City of Palmer if there are insufficient funds lawfully appropriated for its performance.

4.2 Holding Over. If AAHC is in possession of the Leased Premises after the end of the Term of this Agreement, in the absence of any agreement extending the Term, the tenancy under this Agreement shall become one from month to month, terminable by either party on thirty (30) days prior written notice, at a monthly rental equal to one hundred fifty percent (150%) of the average monthly rent.

- 4.3 Extension of Term. City may, in its discretion, offer to extend the Term for up to two additional one (1) year periods. City shall give AAHC written notice of an offer to extend the Term at least ninety (90) days before the expiration of the current Term. AAHC may accept an offer to extend the Term by giving City written notice of acceptance not later than thirty (30) days after the date of City's notice of the offer to extend. In the event that AAHC accepts City's' offer to extend the Term, all of the terms and conditions of the Agreement, except as modified in the City's offer to extend the Term, shall remain in full force and effect during the extended Term.

Section 5. Rent, Fees, Security and Capital Improvement Contribution

- 5.1 Rent and Capital Improvement Fees. AAHC shall pay annual Rent and Facility Use Fees for the Leased Premises in the amount of \$30,500, for home games and exhibition games for the Term of this Agreement.
- (a) Included in the Home Game Fee shall be 130 hours of practice ice (non-prime time, 94.5 hours of game ice, and twelve (12) months use a minimum of 520 square feet of locker room and coaches office storage space in the PA.
- (b) Included in the per Exhibition Game Fee shall be 3 hours of game ice, subject to the Facility Use Fee specified in Section 5.2.
- (c) AAHC agrees to pay \$50,000 for capital improvements to the Palmer Arena, under the following terms:
1. \$12,500 on signing.
 2. Three additional annual installments of \$12,500 each payable on _____.
- 5.2 Facility Use Fees – Additional Ice. AAHC shall pay prevailing advertised rate as published on the PA website for ice rental in excess of that purchased in Section 5.1.
- 5.3 Sale of Alcoholic & Non-Alcoholic Beverages & Food.
- (a) All non-alcoholic beverages and food items and their associated costs must be approved in writing by the City prior to any sale by the AAHC.
- 5.4 Fee Adjustments. This is a five (5) year contract and there will be no fee adjustments, subject to Palmer Municipal Code 3.21.150.
- 5.5 Payment for Additional Services. In addition to the Rent and Facility Use Fees payable under Section 5.1 and 5.2, AAHC shall reimburse the City for any and all services not

included in this Agreement, but requested by AAHC or required to fulfill AAHC's responsibilities under the terms of this Agreement.

5.6 AAHC shall pay all home game fees and practice ice fees per section 5.1 and 5.2 on or before the first day of the month, at the rate of \$4,357.00 per month for seven (7) months beginning September, 2010. This fee includes game and practice ice time.

(a) Rent or Fee payments not received by the City within five (5) days after the due date are considered delinquent and will be subject to interest at the Default Rate specified in Section 1.1(b).

(b) In addition, AAHC will not be allowed to use the Facility until all delinquent payments, plus accrued interest, have been made to the City. Reinstatement of scheduled use following a delinquency will require prepayment of estimated monthly Facility use fees by the first day of each month for the remainder of the Term of this Agreement. Any payment by AAHC or acceptance by City of a lesser amount than shall be due from AAHC to City shall be treated as a payment on account.

5.7 Security Deposit and Guarantees.

(a) The City requires that an irrevocable letter of credit in the amount of \$100,000.00 be issued by Wells Fargo Bank, N.A. in favor of the North American Hockey League as security for the Alaska Avalanche Hockey Club LLC Membership Agreement with the North American Hockey League.

(b) The City requires a Personal Promissory Note with Guaranty of Operations in the amount of \$150,000.00 to be personally executed by Mark D. Lee in favor of the North American Hockey League.

(c) Both of the foregoing finance instruments described in (a) and (b) must be in full force during the term of this agreement. In the event either (a) or (b) lapse, the agreement will be considered in default. The owner of Avalanche Hockey Club LLC will notify the American Hockey League in writing to notify City in the event of default of either (a) or (b).

Section 6. Signs and Advertising.

6.1 Signs on Leased Premises.

- (a) There shall be no signage on the exterior of the leased premises except by a major sponsor designated by the City.

6.2 Advertising in Facility.

- (a) The City reserves the right to withhold permission from AAHC to solicit advertising for the following locations in the arena:
 - (i) Zamboni
 - (ii) Arena Scoreboard
 - (iii) Center Ice in the Arena
- (b) The term of any advertising placed in the Facility under (a) of this section expires at the termination of this agreement unless extended by prior agreement between the AAHC and the City. The City makes no warranties or representations of any kind concerning the nature or number of events to be held in the Facility and the City shall have no liability for any failure to display advertising or for any other matter concerning the use of the sign system due to any act of God, or any other reason beyond the control of the City.
- (c) AAHC shall arrange for the manufacture and installation of all dasherboard ads, including any protective covering necessary to ensure durability of the ad. The City will hang ceiling banners at its expense. AAHC will not request less than six (6) banners to be hung at one time. In the event AAHC is required to hang less than six (6) banners, it will pay 50% of the installation costs. Advertising material shall be subject to approval of the City for compatibility with available technical processes.
- (d) This agreement allows event-specific advertising and sponsorship for other PA users without altering or defacing AAHC's advertisements
- (e) All advertisements must be approved by the City. The City has the right to refuse any advertisement that may not be in the best interest of the PA or the community.
- (f) This section applies to all advertisements that are affixed to the ice hockey dasher boards, walls, railings, glass and other structures that are permanent fixtures of the facility. Any advertising affixed to any portable structure by the AAHC, whether it is for the entire season or during games only, is subject to approval by the City.

- (g) All advertising or promotional materials displayed in or distributed in the building or on the common grounds of the facility including driveways, parking lots and easements is subject to written approval by the City.
- (h) See Exhibit F regarding signage and advertisements. Conceptual Layout Options.

Section 7. Additional Covenants of AAHC.

- 7.1 (a) Compliance with Laws, Regulations and Codes. AAHC, at its expense, shall use the Leased Premises and the PA in compliance with all federal, state, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances.
- (b) AAHC acknowledges Section 3.2 and shall not cover permanent cases.
- 7.2 PA Rules and Regulations: Care of Facility. AAHC shall comply with the Facility Rules and Regulations in Exhibit D, as they may be amended by the City from time to time. The City shall notify AAHC in writing of any amendment to the PA Rules and Regulations.
- 7.3 Accommodation of Other PA Users. AAHC shall assure that all participants, spectators and others who are present at its events at the PA conduct themselves in a professional, inoffensive and unobtrusive manner toward other persons who have been permitted to use the PA before, during and after AAHC's use of the PA and Leased Premises.
- 7.4 Facility Occupancy. AAHC shall not admit persons to an event at the Facility in numbers exceeding the PA's maximum building occupancy. The PA/AAHC improvement plan is attached as Exhibit G.
- 7.5 Security. AAHC, at its expense, shall provide a minimum of five (5) unarmed, uniformed security guards for each game and tournament in the Facility, and provide security and crowd control as described in Exhibit E to this Agreement. Security personnel must be clothed in attire designating them as facility security employees.
- 7.6 Alcoholic Beverage Sales.
 - (a) AAHC shall not permit persons attending AAHC events to bring alcoholic beverages into the PA. Alcoholic beverages may be purchased and consumed within the PA only in areas that the State of Alaska Alcoholic Beverage Control

Board has designated and approved for that purpose. AAHC shall have at least one uniformed security personnel at each access point to any area designated for the purchase or consumption of alcoholic beverages. AAHC shall ensure that all rules and regulations of the State of Alaska Alcoholic Beverage Control Board including but not limited to Alaska Statute Title 4 and Alaska Administrative Code Title 13, Chapter 104 are strictly enforced during AAHC events at the PA.

- (b) Due to the anticipated presence of a large number of youthful spectators at AAHC events, it is imperative that AAHC take effective preventive and remedial measures against minors consuming alcoholic beverages, irresponsible consumption of alcoholic beverages, and disorderly conduct. Without limiting the generality of the foregoing, AAHC shall enforce strictly the exclusion and removal from the PA of minors consuming alcoholic beverages, intoxicated persons, and persons engaging in disorderly conduct, and summon necessary police assistance in a timely manner.

AAHC shall maintain a written record of each incident in which a person is removed from the PA and each call for police assistance under this subsection, report all injuries and furnish a copy of each such record to the City not later than the first business day after the incident. The City reserves the right to trespass fans for cause.

- (c) AAHC shall cease all sales and/or service of alcoholic beverages at a time no later than when ten (10) minutes remain on the game clock of the third period of each game played in the PA.
- (d) If AAHC at any time fails to comply with any requirements in subsections (a) through (c) of this section, in addition to any other remedy that is available for AAHC's breach of this Agreement, the City may restrict or terminate AAHC's permission to sell alcoholic beverages in the PA for all or part of the remainder of the Term of this Agreement.

7.7 Equipment and Utensils. AAHC shall keep any equipment owned and used by AAHC in the PA in clean and good working condition at all times at AAHC's expense. AAHC shall be responsible for repairing or replacing any equipment or other property owned by the City and used by the AAHC that is lost, damaged or otherwise rendered unfit for use for reasons other than reasonable wear and tear. AAHC shall maintain all AAHC supplied concession equipment and utensils in clean, sanitary and proper working order. AAHC shall repair promptly any malfunctioning AAHC supplied equipment or remove it from the Facility.

Failure of AAHC to abide by the above requirements may result in the revocation of the authorization for concession operations in the Facility. AAHC shall remain in

compliance with all health and safety rules and regulations as promulgated by Alaska State Statutes. AAHC shall remove all of its equipment from the Facility not later than the earlier to occur of (i) the expiration of the Term of this Agreement, and (ii) fifteen (15) days after AAHC's last event during the Term of this Agreement, unless City and AAHC agree in writing to a different schedule for the removal.

- 7.8 City at its expense will maintain the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; keep any refuse in industry standard containers within the interior of the Leased Premises until removed; and have such refuse removed on a daily basis. AAHC will not obstruct any driveway, corridor, walkway, parking area, lobby or any other area within the PA. AAHC will not permit the parking of vehicles so as to interfere with the use of any driveway, corridor, walkway, parking area or loading area; receive or ship articles of any kind outside the designated loading areas for the Leased Premises; or place a load upon any floor which exceeds the floor load which the floor was designed to carry. In accordance with occupational health and safety and medical protocol, AAHC agrees to clean up blood on ice and all leased premises areas.
- 7.9 Damage to the PA. AAHC shall pay the cost of repairing any damage to the PA that occurs while AAHC is using or occupying the Leased Premises, and any damage to the PA that is caused by AAHC, its contractors, agents or invitees.
- 7.10 Taxes. AAHC shall pay the appropriate taxing authority any and all sales, excise and other taxes levied, imposed or assessed upon the Rent or Fees payable hereunder. AAHC shall also be solely responsible for and pay within the time provided by law all taxes imposed on its inventory, furniture, trade fixtures, apparatus, equipment and any other of AAHC's personal or other property.
- 7.11 Description of the PA. In all of its written materials and advertising, AAHC shall refer to the PA only as the Matanuska Telephone Association Palmer Arena or as further directed by the City.

Section 8. Management and Operation of the PA.

8.1 Management and Operation.

- (a) City will operate and maintain the PA in a manner deemed by the City to be reasonable and appropriate and in the best interests of the PA. City will have the right (i) to establish, modify and enforce reasonable rules and regulations with respect to the PA, (ii) to enter into, modify and terminate easements and

other agreements pertaining to the use and maintenance of the parking areas and other parts of the PA, (iii) to enforce parking charges, (iv) to close temporarily any or all portions of the PA, (v) to discourage non-customer parking, and (vi) to do and perform such other acts in and to said areas and improvements as, in the exercise of good business judgment, City shall determine to be advisable.

- (b) AAHC is responsible for staffing parking activities for games, but not for practices.

8.2 Changes and Additions to the PA.

- (a) City reserves the right at any time and from time to time (i) to make or permit changes or revisions in its plan for the PA including additions to, subtractions from, rearrangements of, alterations of, modifications of or supplements to the building areas, walkways, parking areas, driveways, or other areas, (ii) to construct other buildings or improvements on the PA and to make alterations thereof or additions thereto, and (iii) to make or permit changes or revisions in the PA including additions thereto, and to convey portions of the PA to others for the purpose of constructing thereon other buildings or improvements, including additions thereto and alterations thereof.
- (b) City will provide minimum seating for 1,500 people on or before August 2011. City will provide a locker room and coach's office as described in exhibit G.

8.3 Utilities. City shall pay all charges for water, sewer and electric service to the Leased Premises and the Facility. AAHC shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, or other facilities by which such utilities are supplied to, distributed in or serve the Leased Premises or the Facility. If AAHC desires to install any equipment that will require additional utility facilities or utility facilities of a greater capacity than the facilities provided by City, such installation shall be subject to City's prior written approval of AAHC's plans and specifications therefore. If City approves such installation and if City provides such additional facilities to accommodate AAHC's installation, AAHC agrees to pay City, on demand, the cost for providing such additional utility facilities or utility facilities of greater capacity.

8.4 Concession Sales Locations. The City, in its sole discretion shall determine the assignment of concession sale locations within the Facility. The AAHC may equip and operate the concession sale locations assigned to it by the City during all AAHC sponsored events and at such other times as AAHC may request subject to City approval. The AAHC will make no modifications to the structure or utility services provided in the concession sale locations without the prior written consent of the City.

Any such changes will comply with applicable codes and be subject to inspection and approval by the City Public Works Department. AAHC may use designated concession sale locations for selling alcoholic beverages, team memorabilia, raffle tickets, fifty-fifty (50-50) game tickets, programs, and other items with the prior written consent of the City.

8.5 Concession Sales Locations.

(a) Day of Game Ticket Sales. AAHC shall be responsible for day of game ticket sales. AAHC shall offer day of game ticket sales beginning no later than sixty (60) minutes before the start of each game. City shall permit AAHC to use of the PA ticket booth on a nonexclusive basis with the PA staff and other individuals or groups approved by the City. There will be no charge to AAHC for the use of the ticket booth.

8.6 Employee Parking. AAHC's employees, players, and volunteers shall comply with City's parking rules and regulations. Parking shall be available to employees on a first-come, first-served basis in common with other visitors to the PA. AAHC shall notify its employees in writing of the provisions of this section.

Section 9 Liability, Indemnity and Insurance.

9.1 Limitation of City Liability. City shall not be liable for the unavailability of the Leased Premises. AAHC will provide a copy of its policy through League USA.

9.2 Indemnification by AAHC. The AAHC shall defend and hold the CITY, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for death or injury to persons or damage to property arising out of the performance of this lease and facility use agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or *claims* for injury or damages are caused by or result from the negligent or culpable acts or omissions of AAHC, its officers, agents or employees.

The CITY shall defend and hold the AAHC, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims [or death or injury to persons or damage to property arising out of the performance of this lease and facility use agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or culpable acts or omissions of the CITY, its officers, agents, or employees.

9.3 Required Insurance Coverage. Before commencing its occupancy of the Leased Premises or use of the Facility, and at all times during the Term of this Agreement, AAHC shall carry and maintain at its expense the following nondeductible insurance

coverage. AAHC may meet these insurance requirements with any combination of primary and excess/umbrella policies.

- (a) Commercial general liability, including without limitation insurance against assumed or contractual liability under this Agreement, with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage, \$1,000,000 personal injury, and \$2,000,000 aggregate.
- (b) Automobile liability, with a combined single limit of not less than \$1,000,000 per accident applying to all vehicles used in conjunction with this lease.
- (c) Workers' compensation, including employer's liability with limits of not less than \$500,000 per accident, \$500,000 disease-policy limit, and \$500,000 disease -each employee.
- (d) Liquor liability, commencing before AAHC sells any alcoholic beverages in the Facility, with limits not less than \$3,000,000 each common cause, \$3,000,000 annual aggregate.
- (e) Umbrella/Excess Liability \$1,000,000 Occurrence and \$1,000,000 Aggregate. The Umbrella/Excess policy shall provide excess limits over the general liability, liquor liability, employers liability and auto liability
- (f) No pyrotechnical and/or flash use permitted.

9.4 Insurance Policy Requirements. Insurance Policy Requirements. AAHC shall provide City with certificates of insurance and/or copies of each policy acceptable [a City for the coverage's listed herein promptly upon commencement of AAHC's obligation to procure the same. The company or companies writing any insurance which AAHC is required to carry and maintain as well as the form of such insurance shall at all times be subject to City's approval, and any such company or companies shall be licensed to do business in the State of Alaska and shall have a minimum A.M. Best rating of A VII or be approved by the City Manager. AAHC's insurance policies shall be primary and non contributory with any insurance maintained by the City and will name the City as additional insured on their Commercial general liability, automobile liability and liquor liability insurance policies. AAHC will waive all rights of subrogation against the City for any losses arising from leased premises. A waiver of subrogation will be endorsed on AAHC's workers compensation, general liability, liquor liability and auto liability policies. Commercial general liability, automobile liability and liquor liability insurance policies shall name City as additional insured and shall require that

the insurer provide the City with thirty (30) days written notice before it cancels, refuses to renew or materially alters coverage required by this Agreement.

Section 10. Repairs and Alterations: Liens.

- 10.1 Maintenance by City. City shall maintain the PA in good repair, except for the maintenance and repairs that are AAHC's responsibility under this Agreement.
- 10.2 AAHC's Improvements and Maintenance. AAHC shall install at its expense the furniture, fixtures and equipment that it requires to conduct its business in the Leased Premises, using new and quality materials and equipment. Not later than the end of the Term, AAHC shall remove all furniture, fixtures and equipment that it has installed in the Leased Premises, AAHC shall repair any damage to the Leased Premises caused by the removal of its furniture, fixtures or equipment, and shall surrender the Leased Premises at the expiration of the Term or at such other time as it may vacate the Leased Premises in as good condition as when received, excepting ordinary wear and tear. AAHC will alter "the Leased Premises only with the prior written approval of City, AAHC shall perform any approved alterations at its expense, promptly, efficiently, competently, and in a good and workmanlike manner by duly qualified and licensed persons, using first grade materials, without interference with or disruption to the operations of the PA. All such work shall comply with all applicable governmental codes, rules, regulations and ordinances.
- 10.3 Mechanics Liens: AAHC shall pay promptly all persons furnishing labor or materials with respect to any work performed by AAHC on or about the Leased Premises, AAHC promptly shall discharge of record or bond to the satisfaction of City any mechanic's or other lien filed against the PA, by any such person. If AAHC fails to discharge of record or bond to the satisfaction of City any such lien, then, in addition to any other right or remedy, City may bond or discharge the same, and AAHC shall pay to City upon demand the amount so paid by City plus its attorney's fees incurred in defending against such lien or in procuring its discharge, together with interest thereon at the Default Rate specified in Section 1.1(a).

Section 11. Default.

- 11.1 "Event of Default" Defined. Anyone or more of the following events shall constitute an "Event of Default":
- (a) The failure of AAHC to pay any Rent, Fees or other sum of money when due hereunder;
 - (b) Default by AAHC in the performance or observance of any covenant or agreement of this Agreement (other than a default involving the payment of money), which default is not cured within ten (10) days after the giving of notice

thereof by City, unless such default is of such nature that it cannot be cured within such ten (10) day period, in which case no Event of Default shall occur so long as AAHC shall commence the curing of the default within such ten (10) day period and shall thereafter diligently prosecute the curing of same; provided, however, if AAHC shall default in the performance of any such covenant or agreement of this Agreement three (3) or more times in any twelve (12) month period, that notwithstanding such defaults have each been cured by AAHC, any further similar default shall be deemed an Event of Default without the ability to cure;

- (c) The sale of AAHC's interest in the Leased Premises under attachment, execution or similar legal process; or if AAHC is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law or an order for relief is entered against AAHC under the federal Bankruptcy Code and such adjudication or order is not vacated within ten (10) days;
- (d) The commencement of a case under any chapter of the federal Bankruptcy Code by or against AAHC, or the filing of a voluntary or involuntary petition proposing the adjudication of AAHC as bankrupt or insolvent, or the reorganization of AAHC, or an arrangement by AAHC with its creditors, unless the petition is filed or case commenced by a party other than AAHC and is withdrawn or dismissed within thirty (30) days after the date of its filing.
- (e) The admission in writing by AAHC of its inability to pay its debts when due;
- (f) The appointment of a receiver or trustee for the business or property of AAHC, unless such appointment shall be vacated within ten (10) days of its entry;
- (g) The making by AAHC of an assignment for the benefit of its creditors, or if in any other manner AAHC's interest in this Agreement shall pass to another by operation of law;
- (h) The vacating or abandonment of the Leased Premises by AAHC at any time during the Term of this Agreement;
- (i) The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Agreement.

11.2 Remedies. Upon the occurrence and continuance of an Event of Default, City, without notice to AAHC in any instance (except where expressly provided for below or required by law) may do any one or more of the following:

- (a) With or without judicial process, enter the Leased Premises and take possession of any and all goods, inventory, equipment, fixtures and all other personal

property of AAHC situated in the Leased Premises without liability for trespass or conversion, and may sell all or any part thereof at public or private sale. AAHC agrees that five (5) days' prior notice of any public or private sale shall constitute reasonable notice. The proceeds of any such sale shall be applied, first, to the payment of all costs and expenses of conducting the sale or caring for or storing said property, including all attorneys' fees; second, toward the payment of any indebtedness, including without limitation indebtedness for Rent or Fees, which may be or may become due from AAHC to City; and third, to pay the AAHC, on demand, in writing, any surplus remaining after all indebtedness of AAHC to City has been fully paid.

- (b) Perform, on behalf and at the expense of AAHC, any obligation of AAHC under this Agreement which AAHC has failed to perform and of which City shall have given AAHC notice, the cost of which performance by City, together with interest thereon at the Default Rate from the date of such expenditure, shall be payable by AAHC to City upon demand.
- (c) Elect to terminate this Agreement and the tenancy created hereby by giving notice of such election to AAHC, and may reenter the Leased Premises, without the necessity of legal proceedings, and may remove AAHC and all other persons (if AAHC is still in possession) and property from the Leased Premises, and may store such property in a public warehouse or elsewhere at the cost of and for the account of AAHC without resort to legal process and without City being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.
- (d) Exercise any other legal or equitable right or remedy which it may have.

Notwithstanding the provisions of subsection (b) of this section, and regardless of whether an Event of Default shall have occurred, City may exercise the remedy described in subsection (b) of this section without any notice to AAHC if City, in its judgment, believes it would be injured by failure to take rapid action or if the unperformed obligation of AAHC constitutes an emergency. Any costs and expenses incurred by City (including without limitation attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to City by AAHC upon demand.

Section 12. Inspection/Access by City. AAHC will permit City, its agents, employees and contractors to enter all parts of the Leased Premises during AAHC's business hours, upon 24 hours' notice, except in case of emergency, to inspect the same and to enforce or carry out any provision of this Agreement, including, without limitation, any access necessary for the making of any repairs which are City's obligation hereunder; provided, however, that, in an emergency situation, such access shall be at any time upon City's oral request.

Section 13. Miscellaneous.

13.1 Notices. Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be addressed as follows:

To City: City of Palmer
Steve Carrington, Director
Department of Community Services
231 W. Evergreen
Palmer, AK 99645

To AAHC: Alaska Avalanche Hockey Club, LLC
Attn: Mark Lee
1560 North Legacy Lane
Palmer, AK 99645

Either party may, at any time, change its notice address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

13.2 No Waiver. No failure by City to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial fees during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by City of any breach by AAHC under this Agreement shall affect or alter AAHC's obligations under this Agreement in any way whatsoever

13.3 Successors and Assigns. No benefit under this Agreement may be assigned; nor may any duty under this Agreement be delegated, without the prior written consent of the City.

13.4 Captions and Headings. The Section captions and headings in this Agreement are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth herein.

13.5 No Discrimination. It is intended that the Facility shall be developed so that all prospective tenants and users thereof, and all customers, employees, licensees and invitees of all tenants shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the PA without discrimination because of race, creed, color, sex, age, national origin or ancestry, To that end, AAHC shall not discriminate in the conduct and operation of its business in the PA against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

- 13.6 No Joint Venture. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.
- 13.7 Integration; Amendment. The parties intend this Agreement and its attachments hereto to be the final expression of their agreement and as the complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. This Agreement may be modified only by a writing signed by the party against whom the modification is enforceable.
- 13.8 Severability. If any term or provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 13.9 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed so as to confer upon any other person the rights of a third party beneficiary.
- 13.10 Applicable Law; Venue. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Alaska and the City of Palmer. Any legal proceeding in connection with this Agreement shall be in the trial courts for the State of Alaska for the Third Judicial District in Palmer.

EXHIBIT A

City of Palmer
 231 W. Evergreen
 Palmer, Alaska 99645
 Phone (907) 745-3271

SAMPLE ONLY

Fax (907) 745-0930

Customer Schedule at the Palmer Ice Arena

Dates for the Week of _____

Contact Name _____ Contact Phone _____

| <u>DATE</u> | <u>DAY</u> | <u>CUSTOMER NAME</u> | <u>EVENT TYPE</u> | <u>START TIME</u> | <u>END TIME</u> | |
|-------------|------------|-----------------------|-------------------|-------------------|-----------------|----|
| | | <u>DURATION (MIN)</u> | | | | |
| 6-8-2010 | TU | SAMPLE | Private Rent | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE | Private Rent | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE 2 | Practice | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE | Private Rent | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE 2 | Practice | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE 2 | Practice | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE 2 | Practice | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE 2 | Practice | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE | Private Rent | 6:00 PM | 7:00 PM | 60 |
| 6-8-2010 | TU | SAMPLE 2 | Practice | 6:00 PM | 7:00 PM | 60 |
| “ | “ | “ | “ | “ | “ | “ |
| “ | “ | “ | “ | “ | “ | “ |
| “ | “ | “ | “ | “ | “ | “ |

EXHIBIT B FLOOR PLAN

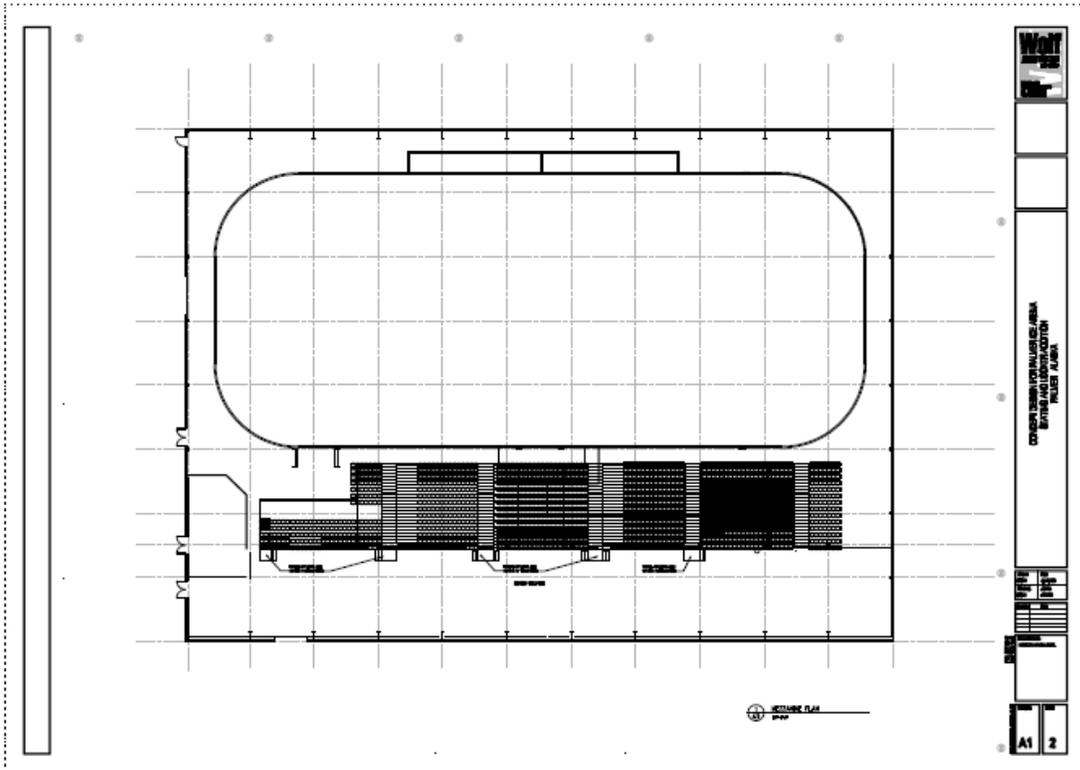
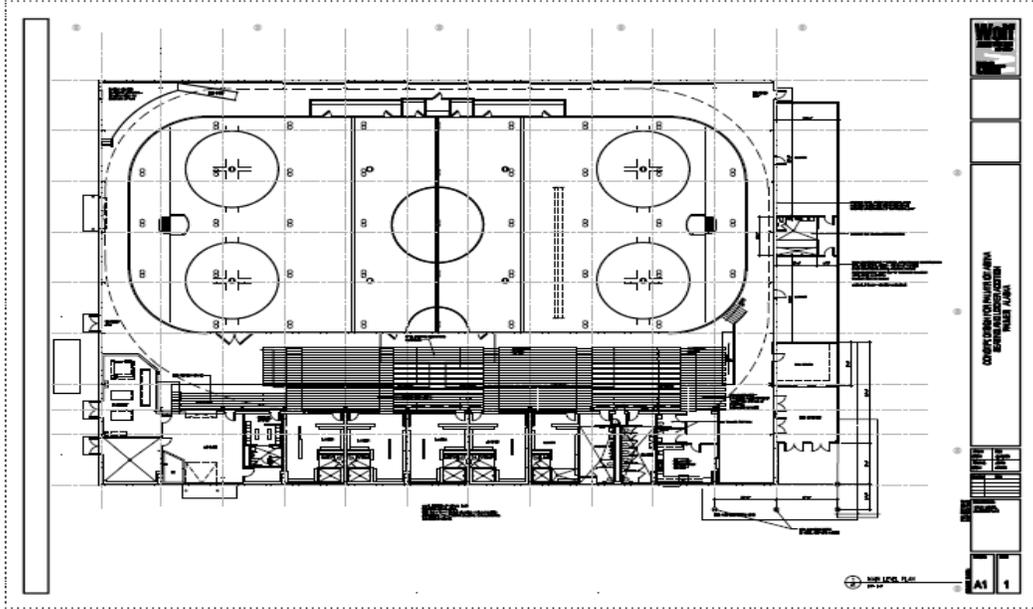


EXHIBIT C
SERVICES AND CONDITIONS

1. The City shall provide ice resurfacing, scoreboard, public address system, team locker rooms for each event and maintenance thereof.
2. The City shall provide a single dedicated phone line for use by the media. Long distance calls will only be available by using a call card or calling collect.
3. AAHC will have access to the facility beginning ninety (90) minutes prior to the scheduled start of each game. Doors are scheduled to open forty-five (45) minutes prior to the start of each scheduled game. Other Users of the ice rink have until sixty (60) minutes prior to the start of each scheduled game to vacate the ice rink and team locker rooms.
4. AAHC shall keep its assigned equipment storage area clean and orderly.
5. AAHC shall inform its concessionaires to thoroughly clean the designated concession area(s) at the end of each game.
6. AAHC shall remove all supplies from and thoroughly clean the designated concession area(s) no later than five (5) days after the last event of the season.
7. AAHC shall obtain all necessary permits, licenses and insurance and abide by all city, borough, state and federal laws pertaining to the sale of alcoholic beverages.
8. The City has the final approval on any banners placed in or around the facility.
9. AAHC shall give written notice of all proposed dates for special events/activities during any of the AAHC's sponsored events (e.g. cars/trucks on the ice, foreign materials on the ice surface, crowd participation events, throwing or catching events, skating parties after games, etc.). The City will approve or disapprove these events in writing.
10. AAHC shall not obstruct any access to stairs or exit doors.
11. AAHC shall enforce the rule of no participants permitted on the walking track for the purpose of watching the event without consent of the facility manager.
12. AAHC shall provide all "on/off" ice officials for games and be responsible for all related expenses.

EXHIBIT D
ARENA RULES AND REGULATIONS

1. AAHC may not be on the ice surface or sit on the dasher boards in the players or penalty boxes during the resurfacing or other maintenance operations. All gates to the arena are to remain closed during resurfacing operations. AAHC may return to the ice surface after the Zamboni has completed resurfacing the ice and the gates are closed; or when other maintenance operations have been completed.
2. Absolutely no puck shooting may take place when a MTAPA staff person is on the ice or personnel gates are open. Puck shooting when a MTAPA staff person is on the ice may result in immediate suspension of AAHC from the facility for the remainder of the scheduled season.
3. Vandalism or other misuse of any part of the MTAPA will result in individual, team or organizational suspension from the facilities. Personnel in charge of each user group (i.e. coaches) are responsible for the conduct of their participants while they are using the MTAPA both on and off the ice. Team locker rooms should be inspected prior to each use. Observation of any damages or other irregularities should be reported to a facility staff person immediately. The MTAPA Manager will review each incident and determine appropriate and reasonable actions necessary to maintain proper use etiquette.
4. In order to assure a punctual start for each user, it is mandatory you leave the ice immediately at the conclusion of your allotted time. Failure to comply may result in suspension of ice time until such time as the facility manager is assured that the problem is corrected.
5. AAHC is responsible for individual, team, and in some cases, spectator control during their allotted ice time. (AAHC will be informed if security officers are needed for spectator control).
6. Smoking is prohibited inside the building.
7. Alcoholic beverages are prohibited at all times from team locker rooms and from inside the facility unless purchased from a vendor inside the facility, and then consumed in an approved area by the Alcohol Beverage Control Board. Failure to comply will result in immediate suspension of individuals and/or teams from the facility for the remainder of the scheduled season.
8. Use of illegal drugs is prohibited and will result in immediate suspension of individuals and/or teams from the arena for the remainder of the scheduled season.
9. AAHC agrees to hold harmless, defend and indemnify the City from any claim whatsoever arising out of the use and occupation of the facility by the AAHC.

10. Vehicle parking is in designated areas only. No parking in handicap, fire or ambulance zones or in other areas as posted. Vehicles in violation are subject to ticketing or towing and impound at the owners expense.

11. Team locker rooms can be secured for all events.

It is the AAHC's responsibility to use assigned locker rooms. Upon completion of the event, the room shall be cleared by the AAHC and inspected by an on duty supervisor. If there is any damage to the room or the room is not satisfactorily cleaned, a penalty of a minimum of \$100 will be imposed on the using team or organization. Payments or arrangements will be made within seventy-two (72) hours, or the AAHC will be suspended from further facility use.

12. All ice time will be scheduled by the administration of the MTAPA. Any ice time cancellation will be honored up to thirty (30) days prior to the scheduled date. Scheduled changes are the responsibility of the AAHC. The City will not track any changes on the master schedule. The AAHC will be invoiced for all the time whether or not they use it or sell it to another user. The City reserves the right to alter, cancel or reschedule any time with reasonable notice.

13. Hitting or throwing pucks, tennis balls, tape balls or any other objects off the ice surface is prohibited and will result in the confiscation of hockey sticks, pucks, etc. This includes the team locker rooms.

14. Children under the age of 14 will have adult supervision while in the facility.

15. Posting of any advertisements, posters or flyers must be pre-approved by the facility manager.

16. Taping of posters, banners, decorations, etc. to the glass surrounding the ice rink and display cases are not permitted.

17. Spitting tobacco on the ice, walls, floor, water fountains, benches, corners and any out of the way place is unsanitary and dangerous. It will not be tolerated and may result in suspension from use of the building.

18. The AAHC may not be the sole user of the facility. In consideration of other patrons, everyone needs to act in an unobtrusive, professional manner.

19. All Players in all ice hockey classifications must wear appropriate safety equipment. All players must wear a hockey helmet, with chinstrap properly fastened, while on the ice, in the player's boxes and penalty bench. Any coach under the age of eighteen (18) years of age must wear a helmet while on the ice or in the player's bench. All players and coaches must abide by USA Hockey Rules and Regulations.

20. Shaking or grabbing on the glass surrounding the ice rink is prohibited and may result in the suspension from the facility for the remainder of the season or longer depending on the severity of the act.

EXHIBIT E
MINIMUM SECURITY REQUIREMENTS

1. AAHC shall provide a minimum of 5 licensed unarmed uniformed security personnel over 21 years of age during AAHC's sponsored events.
2. In the event that the attendance average for more than three consecutive games goes above 1000 attendees per game, AAHC shall be required to provide a minimum of six (6) licensed unarmed uniformed security personnel over 21 years of age.
3. In the event that attendance average goes over 1000 attendees for three (3) consecutive games, AAHC shall be required to increase the number of licensed unarmed security personnel over 21 years of age to three (3), but under no circumstance will less than five (5) security personnel be on duty at any event.
4. All security personnel shall be on duty at least fifteen (15) minutes prior to the start of all AAHCs' sponsored events and until all spectators have left the facility.
5. Security personnel shall make a concerted effort to communicate the courtesies of sitting in the handicap seating to members of the public.
6. Security shall immediately remove any individuals who throw any items onto the ice rink surface or into players or penalty boxes, with the exception of those items that are thrown onto the ice during special events such as "Chuck-a-Puck."
7. Obviously intoxicated individuals who are abusive, belligerent, combative or disruptive shall be removed from the facility. Individuals involved in physical altercations or who otherwise refuse to respond to the directions of security staff will be trespassed from the facility for a period of not less than one (1) year.
8. Security shall be responsible for enforcing item numbers 3, 5, 6, 7, 8, 10, 13, 14, 17 & 20 of the Palmer Ice Arena Rules and Regulations as stated in Exhibit D.
9. The City reserves the right to ensure contract compliance of this Agreement at all times. The City and/or its representatives maintain the right to enter the premises for any purpose but primarily for inspecting the facilities and operational compliance.

EXHIBIT F

**ADVERTISING AND PROMOTION
CONCEPTUAL LAYOUT**