

**CITY OF PALMER ACTION MEMORANDUM NO. 10-064**

**SUBJECT:** Authorize the City Manager to Enter into an Agreement with the Palmer Hockey Association (PHA) for \$47,795 to provide American's With Disabilities Act (ADA) Improvements to the Palmer Arena

**AGENDA OF: September 14, 2010**

<b>Council action:</b>	<b>Authorized</b>
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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 – Director of Administration	<i>HW</i> 8/20/10	
X	City Clerk	<i>JTB</i> 9/7/10	
X	City Attorney	<i>[Signature]</i> 9/7/10	
	Director of Administration		
	Director of Community Development		
	Director of Community Services		
	Director of Public Safety		
	Director of Public Works		

**Attachment(s):** Cooperative Agreement with PHA

**Certification of Funds:**

	No fiscal impact.	
	Funds are budgeted from this account number:	
X	Funds are not budgeted. Budget modification is required. Affected account number: 08-01-01-6XXX Subject to approval of Reso #10-056	\$47,795

Director of Administration Signature: *HW*

**Summary statement:** The Palmer Hockey Association has received a grant from the Mat-Su Health Foundation for providing ADA accessible improvements to the Palmer Arena. With the current renovations at the Palmer Arena, the Palmer Hockey Association has agreed to pass these funds to the City of Palmer to provide the improvements as intended in the grant agreement.

**Administration recommendation:** Approve Action Memorandum 10-064

COOPERATIVE AGREEMENT  
Between the  
CITY OF PALMER and PALMER HOCKEY ASSOCIATION  
For  
PALMER ARENA ADA IMPROVEMENTS

A. DEFINITIONS/PURPOSE

1. Definitions

In this Agreement:

- a. "City" means the City of Palmer;
- b. "PHA" means the Palmer Hockey Association, a nonprofit organization in support of youth hockey programs.
- c. "Arena" means the Palmer Arena located at 1317 Kerry Weiland Court, Palmer, AK.
- e. "Agreement" means the Cooperative Agreement Between the City of Palmer and the Palmer Hockey Association.

2. Purpose

This Agreement is entered into between the parties to set out the terms and conditions under which the City will improve the arena with ADA accessible improvements.

B. TERM

The term of the Agreement shall begin upon the execution of this agreement and end upon completion of the ADA accessible improvements or by December 31, 2011. The parties may extend or modify the Agreement upon the written mutual consent of the parties.

C. IMPROVEMENTS PROVIDED BY CITY

City shall provide the following improvements to the arena and PHA shall pay to the City an amount not to exceed \$47,795 for those costs associated therewith. The City will provide proper documentation of invoices and checks to PHA relating to the costs of the ADA improvements.

- 1. Provide ADA accessible improvements to the arena that include but not limited to the entry doors, locker room doors and bathroom doors.

E. NON-DISCRIMINATION

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

G. PAYMENTS

- a. PHA agrees to pay the City \$47,495 for ADA accessible improvements to the arena upon signing of this agreement.

Expiration date of this agreement is December 31, 2011 or upon mutual agreement of an extension under B TERM.

H. TERMINATION FOR CONVENIENCE OF PARTIES

1. City or any user 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.

City may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials, if any, are the property of City and PHA and shall be delivered to City by or upon the effective date of execution of this Agreement.

I. MODIFICATIONS TO THE AGREEMENT

This Agreement may be amended, changed and modified by writing duly executed by both City and PHA, 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.

J. DEFENSE AND INDEMNIFICATION

This Agreement is for the benefit of the parties only and not for the benefit of any third party.

PHA 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 each user's performance connected with the terms of this Agreement. PHA 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 the user, or its officers', agents', employees', partners', suppliers', or subcontractors' performance or failure to perform connected with this Agreement in any way whatsoever.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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  
City Manager  
231 West Evergreen Ave  
Palmer, Alaska 99645

To Palmer Hockey Association

Mike Madar

HC4 Box 7463

Palmer, AK 99645

Q. 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.

R. 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.

S. 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**

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B.B. ALLEN, Manager

Date

STATE OF ALASKA       )  
  )ss  
Third Judicial District    )

On \_\_\_\_\_, 2010, B.B. Allen 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 HOCKEY ASSOCIATION**

\_\_\_\_\_

Mike Madar, Events Director

Date

STATE OF ALASKA       )  
  )ss  
Third Judicial District    )

On \_\_\_\_\_, 2010, Mike Madar, 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: \_\_\_\_\_