

**CITY OF PALMER
ACTION MEMORANDUM NO. 14-010**

Subject: Authorize the City Manager to Enter into Amendment No. 2 to the Agreement Approved by Council on February 14, 2012 with the Palmer Museum of History and Art for Museum Services to Update Section II. F to Reflect Payments for 2014

Agenda of: January 28, 2014

Council Action: Authorized

Approved for presentation by:

City Manager *Jorge B. Griffin*
City Attorney _____
City Clerk *JR*

Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>44,000</u>
This legislation (✓):	
<input type="checkbox"/> Has no fiscal impact	
Creates:	
<input type="checkbox"/> A negative fiscal impact in the amount of:	\$ _____
<input type="checkbox"/> A positive fiscal impact in the amount of:	\$ _____
<input checked="" type="checkbox"/> Funds are budgeted.	
Funds are budgeted from this (these) line item(s):	
a) ➤ 01-01-20-6030 Contractual Services	\$ <u>44,000</u>
b) ➤	\$ _____
a) Funds originally budgeted in line item :	\$ _____
Difference in budgeted funds:	\$ _____
b) Funds originally budgeted in line item :	\$ _____
Difference in budgeted funds:	\$ _____
<input type="checkbox"/> Funds are not budgeted.	
Budget amendment required in the total amount of: \$ _____	
Affected line item(s):	
➤	\$ _____
➤	\$ _____
<input type="checkbox"/> General fund unassigned balance (after budget modification)	\$ _____
<input type="checkbox"/> Enterprise unrestricted net position (after budget modification)	\$ _____
Director of Finance signature certifying funds:	<u><i>[Signature]</i></u>

Attachment(s):

- Amendment No. 2
- Agreement with Palmer Museum of History and Art approved February 14, 2012

Summary statement: This amends the schedule of payments in the compensation portion of the Agreement with the Palmer Museum of History and Art for care, custody and control of the City's historic artifacts to reflect the 2014 dates. A total of \$44,000 was approved in the FY 2014 Budget for these museum services. Amendment 2 to Section II.F of the Agreement changes the schedule of payments:

<u>From:</u> Amendment No. 1		<u>To:</u> Amendment No. 2	
At signing	\$24,000	At signing	\$24,000
April 1, 2013	\$10,000	April 1, 2014	\$10,000
June 1, 2013	\$ 5,000	June 1, 2014	\$ 5,000
October 1, 2013	<u>\$ 5,000</u>	October 1, 2014	<u>\$ 5,000</u>
	\$44,000		\$44,000

Background: A contractual relationship has existed since March 2006 between the City and the Palmer Museum of History and Art (PMHA) designating the PMHA as the exclusive entity responsible for the care, custody, and control of historic artifacts owned by the City.

On June 28, 2005 the City Council approved Resolution 05-017 authorizing the City to enter into a contract with the PMHA, an Alaska non-profit corporation, to be the official caretaker of all historical artifacts and museum properties for the City. That relationship was formalized by the execution of an Agreement on March 10, 2006 between the City and PMHA. The March 2006 Agreement provided for a total of five years in renewals, but did not allow for extensions beyond five years without entering into a new Agreement.

<u>FY</u>	<u>Council approved</u>	<u>Compensation</u>
2006	Grant Agreement February 14, 2006	\$65,000
2007	Amendment No. 1 – extension, compensation and payment schedule	\$40,000
2008	Amendment No. 2 – extension and payment schedule	\$40,000
2009	Amendment No. 3 – extension and payment schedule.	\$40,000
2010	Amendment No. 4 – extension and payment schedule	\$40,000
2011	Amendment No. 5 – extension and Payment schedule	\$40,000

In February 2012, a new Agreement was approved by Council for a five year period with two potential five year extensions. The Agreement set the compensation at \$40,000 for 2012.

On February 19, 2013, Council approved Amendment No. 1 to the 2012 Agreement and increased the compensation to \$44,000.

Council approved \$44,000 in the FY 2014 Budget for the Palmer Museum of History and Art for care, custody and control of the City's historic artifacts.

Administration recommendation: Approve action memorandum 14-010.

Agreement Between
City of Palmer and Palmer Museum of History and Art
For Curatorial, Archival and Museum Services

AMENDMENT NO.2

This Amendment, dated _____, 2014 amends the Agreement for curatorial, archival and museum services approved by Palmer City Council on February 14, 2012 between the City of Palmer (City) and the Palmer Museum of History and Art (PMHA) as follows:

II.F. Subject to the provisions of this Agreement, as compensation for PMHA's services, the City shall pay PMHA, the amount of \$44,000. The City shall pay Contractor as follows:

At signing	\$24,000
<u>April 1, 2014</u>	\$10,000
<u>June 1, 2014</u>	\$ 5,000
<u>October 1, 2014</u>	<u>\$ 5,000</u>
TOTAL	\$44,000

CITY OF PALMER

PALMER MUSEUM OF HISTORY AND ART

Douglas B. Griffin, City Manager

Anne Lane, President

Date

Date

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On _____, 2014, Anne Lane personally appeared before me,

1. [] who is personally known to me
 2. [] whose identity I proved on the basis of _____
 3. [] whose identity I proved on the oath/affirmation of _____,
- a credible witness to be the signer of the Amendment No. 1 of the Contract for Visitor Information Services between the City and the Palmer Museum of History and Art and she acknowledged that she signed it.

Notary Public
My Commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On _____, 2014, Douglas B. Griffin, City Manager, 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 on behalf of the City of Palmer.

Notary Public
My Commission expires: _____

AGREEMENT

CITY OF PALMER and PALMER MUSEUM OF HISTORY AND ART

This Agreement is entered into the 24th day of February, 2012, between the City of Palmer (hereinafter City), a municipal corporation, whose address is 321 West Evergreen Avenue, Palmer, Alaska 99645, and the Palmer Museum of History and Art (hereinafter "PMHA"), a non-profit corporation, whose address is 723 South Colony Way, Palmer, Alaska 99645, for the purpose of providing curatorial, archival and museum services to the City.

I. RECITALS:

A. The City has a collection of artifacts (the "Collection") that has been housed in the Palmer Visitor Center for several years; and

B. The PMHA has incorporated as a non-profit corporation dedicated to manage and care for the Collection, and to exhibit and interpret items that depict the history of the greater Palmer area; and

C. By Resolution No. 05-017, attached as Exhibit A, adopted by the City Council of the City of Palmer on June 28, 2005, the City authorized the City Manager to enter into a contract with the PMHA to be the exclusive entity responsible for the care, custody, and control of the historical artifacts owned by the city.

II. THEREFORE, it is agreed as follows:

A. The full time and best efforts of the PMHA as an independent contractor of the City shall be expended to provide curatorial, archival and museum services to the City in accord with industry best practices and City budgets, as adopted and amended from time to time.

B. PMHA shall perform all tasks associated with the ownership of the historical artifacts owned by the City, also referred to as the Collection, entrusted to its care in a good and professional manner. These tasks are generally described as follows:

1. Complete an inventory or catalogue of all items in the Collection and provide either a paper or digital copy of the inventory or catalogue to the City to be archived by the City.

2. Complete the registration of all items in the Collection.

3. Collect and register items appropriate to the PMHA purpose as described in the PMHA collections policy, attached as Exhibit A. Develop and maintain displays of Collection items as public display areas are available for the PMHA's use.

4. Provide for the proper care and custody of the Collection utilizing accepted archival practices.

C. The Collection and items subsequently acquired by the PMHA under this Agreement shall remain the property of the City, unless items are accepted by the PMHA for display under terms of a loan agreement with the owner of the item. In all cases, the PMHA shall prepare and retain records adequate to document the ownership of all items on display or in the Collection.

D. PMHA as an independent contractor is solely responsible for hiring staff and entering into agreements for contract services as necessary to perform its duties under this Agreement.

E. PMHA shall present to the City by September 15 of the then current annual period covered by this Agreement a proposed work plan and budget for the following calendar year that contains all costs associated with the PMHA's responsibilities under this Agreement for that period. The work plan budget shall identify the source and amount of all revenue the PMHA has received to support its activities for the period. The funds requested by the PMHA in the annual proposed work plan and budget are subject to appropriation by the City Council.

F. Subject to the provisions of Section II of this Agreement, as compensation for PMHA's services, the City shall pay PMHA the amount of \$40,000. The City shall pay PMHA:

At signing	\$20,000
April 1	\$10,000
June 1	\$ 5,000
October 1	\$ 5,000

G. Except as otherwise provided in this contract, the City shall not provide any additional compensation, payment, service or thing of value to PMHA in connection with performance of its duties under this Agreement; provided, however, that PMHA shall be able to use the City's building and property located at 723 S. Colony Way, Palmer Alaska to perform its duties hereunder. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs PMHA may incur in the performance of its obligations under this Agreement have already been included in computation of PMHA's compensation and may not be charged to the City.

1. Use of the 1.42 acre parcel on which the building at 723 S. Colony Way by the PMHA for temporary events and special displays requires prior written consent of the City and acquisition of any required local, state or federal permits.

H. PMHA shall keep and maintain accurate records of the expenditure of City funds and make these records available to the City. At a minimum, these records must include a monthly account showing the expenditure of City funds in the budget line items of

the annual budget, with supporting documentation sufficient to verify those expenditures. The PMHA shall provide the city copies of monthly expense reports and supporting documentation within ten days following the end of the previous monthly period.

I. If PMHA receives grants that provide funds to support PMHA's responsibilities or activities under this Agreement, PMHA, as grantee, shall be solely responsible for compliance with all grant terms and conditions. The City shall have no responsibility to assure PMHA's compliance with grant agreements in which the City is not the grantee. The City may agree to be the grantee for a grant to acquire items for the Collection, to make improvements to the Collection or facility, to enhance the educational opportunities provided at the museum, or other activities that support the PMHA's responsibilities or activities under this Agreement if permitted by the granting agency and approved by the Palmer City Council.

J. This Agreement shall start on the date duly executed by both parties and continue until December 31, 2016. Thereafter, this Agreement may be renewed by a writing signed by both parties for two additional five year periods. This Agreement is always subject to termination as described in Section K and L and this Agreement is subject to annual appropriation by the Council.

K. Termination of Agreement for Cause. If, through any cause, the PMHA shall fail to fulfill in a timely and proper manner the obligations under this agreement, or if the PMHA shall violate any of the covenants, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the PMHA of such termination and specifying the effective date thereof, at least five days before the effective date of such termination.

L. Termination of Agreement for Convenience of City. The City may terminate this Agreement at any time by giving written notice to the PMHA of such termination and specifying the effective date of such termination. If the City notifies PMHA of a termination for the convenience of the City, the City will pay PMHA all costs duly chargeable to the City under this contract, not previously paid, for the actual performance of this contract during the then current year before the effective date of the termination.

M. Modifications. The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by signed, written amendment.

N. Equal Employment Opportunity.

1. PMHA will not discriminate against any employee or application for employment because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. PMHA shall take action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. PMHA shall keep such records

and submit such reports concerning the equal opportunity employment provision for applicants for employment and employees as the City may require. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational or educational activities. PMHA agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. PMHA will, in all solicitations or advertisements for employees placed by or on behalf of PMHA, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran, or veteran of the Vietnam War era. PMHA will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

2. PMHA shall comply with all Federal statutes and regulations relating to non-discrimination.

O. Assignability.

1. PMHA shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City, thereto; provided, however that claims for money due or to become due to PMHA from the City under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City, or PMHA shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to PMHA.

2. PMHA shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

P. Jurisdiction; Choice of Law. Any civil action arising from this Agreement shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Palmer, Alaska. The law of the State of Alaska and the City of Palmer shall govern the rights and obligations of the parties.

Q. Non-Waiver. The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of its provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City thereafter to enforce each and every provision of the agreement.

R. Permits, Laws and Taxes. PMHA shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by PMHA under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. PMHA shall pay all taxes pertaining to its performance under this Agreement.

S. Relationship of the Parties. PMHA shall perform its obligations as an independent Contractor of the City. The City may administer this Agreement and monitor PMHA's compliance with this Agreement but shall not supervise or otherwise direct PMHA except to provide recommendations and to provide approvals pursuant to this Agreement.

T. Agreement Administration.

1. The City Manager, or his/her designee, will be the representative of the City administering this Agreement.

2. The services to be furnished by PMHA shall be administered, supervised, and directed by its Executive Director. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement is unable to serve for any reasons, PMHA shall appoint a successor in interest subject to a written approval of the City.

U. Integration. 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 those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement, the following documents are incorporated by reference into this Agreement as if fully set forth herein:

Palmer Business License

Certificate of Insurance

Documentation of Non-Profit status

V. Defense and Indemnification.

1. PMHA shall hold the City, its officers, employees, and agents (collectively, "City") harmless from and defend and indemnify, the City for liability, claims, or causes of action arising out of PMHA's intentionally wrongful or negligent acts or omissions under this agreement.

Responsibility for all actions or claims, including costs and attorney's fees, resulting from injuries or damages sustained by any person or property arising directly or indirectly from PMHA's performance of the agreement, which results from the joint negligence of PMHA and the City shall be apportioned on the basis of comparative fault.

PMHA's duty to defend shall apply regardless of whether it is also alleged that the City's acts or omissions contributed to the injury (including injury to personal property, real property or persons, including fatal injury).

W. 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.

X. 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.

Y. Independent Contractor. PMHA provides its services to the City as an independent contractor of the City. PMHA has no other legal relationship with the City.

Z. Notices. Any notice required pertaining to the subject matter of this Agreement shall be delivered or mailed to the following address:

City: City Manager
City of Palmer
213 W. Evergreen Avenue
Palmer, AK 99645

PMHA: Executive Director
Palmer Museum of History and Art
723 S. Colony Way
Palmer, AK 99645

III. FUND VERIFICATION:

Fund source and verification of funds for this project:

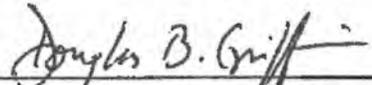
Funding Source: 01-01-20-6030

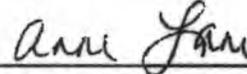

Verified by

2/27/12
Date

CITY OF PALMER

PALMER MUSEUM OF HISTORY AND ART


Douglas B. Griffin, City Manager

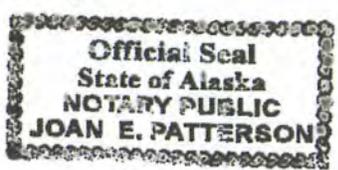

Anne Lane

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On February 24, 2012, Anne Lane personally appeared before me,

- 1. [] who is personally known to me
- 2. [X] whose identity I proved on the basis of Alaska Driver's License
- 3. [] whose identity I proved on the oath/affirmation of _____, a credible witness

to be the signer of the Agreement for the **Palmer Museum of History and Art** acknowledged that he/she signed it.



Joan E. Patterson
Notary Public
My Commission expires: With Office

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On February 27, 2012, Douglas B. Griffin, City Manager, 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 on behalf of the City of Palmer.



Alice M. Williams
Notary Public
My Commission expires: Aug 12, 2012