

**CITY OF PALMER
ACTION MEMORANDUM NO. 14-012**

Subject: Extend the Contract for Legal Services with Wohlforth, Brecht, Cartledge and Brooking for One Additional Year as Provided in the Contract of January 1, 2012

Agenda of: January 28, 2014

Council Action: Extended _____

Approved for presentation by:

City Manager _____
City Attorney _____
City Clerk _____

J. B. Griff
JB

Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>144,000.00</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) ➤ Various line items (**6027) 2014 budget	\$ <u>144,000.00</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:	_____ <i>S</i>

Summary statement: On December 13, 2011, City Council interviewed respondents to the Request for Proposals for legal services for the City of Palmer. The Council authorized a contract for legal services with Wohlforth, Brecht, Cartledge and Brooking. The contract allows for three (3) one-year options for renewal, with the mutual agreement of the parties. The contract provides for a slight rate increase of \$5 per hour in the hourly rate.

Administration recommendation: Approve action memorandum 14-012.

WOHLFORTH | BRECHT | CARTLEDGE | BROOKING

A PROFESSIONAL CORPORATION

Julius J. Brecht
Cheryl Rawls Brooking
Cynthia L. Cartledge
Michael Gatti
Lella R. Kimbrell
Mary B. Pinkel
Eric E. Wohlforth

ATTORNEYS AT LAW
900 WEST 8TH AVENUE, SUITE 600
ANCHORAGE, ALASKA 99501-2048

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March 1, 2012

Doug Griffin, City Manager
City of Palmer
231 W. Evergreen Avenue
Palmer, Alaska 99645-6952

Brant Mursch, CPFO
Director of Finance
City of Palmer
231 W. Evergreen Ave.
Palmer, AK 99645

Re: Engagement Letter for Bond Counsel Services Relating to the City of Palmer General Obligation Refunding Bonds, 2012; Our File 3155.0605

Dear Doug and Brant:

Thank you for selecting Wohlforth, Brecht, Cartledge & Brooking to provide bond counsel services for the City of Palmer ("City"). The purpose of this engagement letter is to set forth certain matters concerning the services we will perform as bond counsel to the City in connection with the issuance of the City's bonds identified above ("Bonds").

The Bonds are being issued to refund certain outstanding bonds ("Refunded Bonds") of the City to allow for debt service savings.

SCOPE OF ENGAGEMENT

We expect to perform the following duties with regard to each issuance of bonds:

1. Subject to the completion of proceedings to our satisfaction, render our legal opinion (the "Bond Opinion") regarding the validity and binding effect of the Bonds, the source of payment and security for the Bonds, and the excludability of interest, if applicable, on the Bonds from gross income of the holders thereof for federal income tax purposes.

Doug Griffin, City Manager
Brant Mursch, CPFO, Director of Finance
City of Palmer
March 1, 2012
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2. Prepare and review documents necessary or appropriate to the authorization, issuance and delivery of the Bonds, and coordinate the authorization and execution of such documents.

3. Review legal issues relating to the structure of the Bond issue.

4. Draft the continuing disclosure undertaking of the City, if needed.

5. Subsequent to Closing, we will mail the appropriate 8038-G Internal Revenue Service Form, and prepare and distribute to the participants in the transaction a transcript of the proceedings pertaining to the Bonds.

The Bond Opinion for the Bonds will be addressed to the City and the Alaska Municipal Bond Bank and will be delivered by us on the date the Bonds are exchanged for their purchase price (the "Closing").

The Bond Opinion will be based on facts and law existing as of its date. In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the City with applicable laws relating to the Bonds and the excludability of interest of the holders thereof for federal income tax purposes as applicable. We will rely on you to provide us with complete and timely information on all developments pertaining to any aspect of the Bonds and use of the facility financed with proceeds of the refunded bonds. We understand that you will direct members of your staff and other employees of the City to cooperate with us in this regard. In rendering our Bond Opinion, we will expressly rely upon certifications provided by City employees on behalf of the City.

The City is our client and an attorney-client relationship exists between us. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in each bond transaction.

I will serve as your primary attorney contact in this matter. The lead secretary will be Shirley Rich. Other attorneys and staff are available as needed.

As you are aware, I represent the Alaska Municipal Bond Bank ("Bond Bank") as bond counsel. In the proposed transaction, the Bond Bank will be the purchaser of the City's Bonds. (The Bond Bank currently holds in its portfolio the Refunded Bonds; the Refunded Bonds evidence the repayment obligation set forth in the Loan Agreement between the Bond Bank and City dated July 1, 2004 (the "Loan Agreement").) The

Doug Griffin, City Manager
Brant Mursch, CPFO, Director of Finance
City of Palmer
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Loan Agreement will be amended to evidence the repayment obligation associated with the Bonds and to provide for current policies of the Bond Bank. There will be no new negotiations between the City and the Bond Bank regarding the Loan Agreement. Therefore, my representations of the City will not be adversely affected by my representation of the Bond Bank. My role with the City will be to oversee the issuance of the Bonds by the City and render the Bond Opinion.

Execution of this letter by you will signify the City's consent to my dual representation in this matter and waive any potential conflicts consistent with the circumstances described above.

FEES

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing represented by the Bonds, (ii) the duties we will undertake pursuant to this engagement letter; (iii) the time we anticipate devoting to the financing; (iv) the responsibilities we will assume in connection therewith; and (v) our valued relationship with the City; our fee will be \$7,500 for the transaction. Our fee may vary if material changes in the structure or schedule of the financing occur, or if other unusual or unforeseen circumstances arise which require a significant change in our time or responsibility. If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will advise you and prepare and provide you with an amendment to this engagement letter. In addition to the fee amount, we will expect to be reimbursed for all costs made or incurred on your behalf, such as travel costs, photocopying, deliveries, long distance telephone charges, filing fees, and other expenses. Our fee is usually paid at the Closing, and we customarily do not submit any statement until the Closing unless there is a substantial delay in completing the financing.

RECORDS

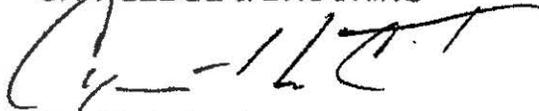
At your request, papers and property furnished by you will be returned promptly upon receipt of payment for outstanding fees and client charges. Our own files, including lawyer work product, pertaining to each transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us in accordance with our records retention procedures.

Doug Griffin, City Manager
Brant Mursch, CPFO, Director of Finance
City of Palmer
March 1, 2012
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If the foregoing terms are acceptable to you, please so indicate by returning the enclosed copy of this letter agreement, dated and signed by an authorized officer, retaining the original for your files. We look forward to working with you.

Sincerely,

WOHLFORTH, BRECHT,
CARTLEDGE & BROOKING

A handwritten signature in black ink, appearing to read 'C. Cartledge', written over a horizontal line.

Cynthia L. Cartledge

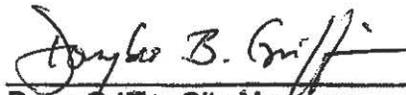
CLC/snr

ACKNOWLEDGMENT AND CONSENT

The undersigned has reviewed the attached letter dated March 1, 2012, and agrees that the law firm of Wohlforth, Brecht, Cartledge & Brooking provide legal services as bond counsel in the manner set forth in that letter.

CITY OF PALMER, ALASKA

Dated: 3-9-2012


Doug Griffin, City Manager

WOHLFORTH | BRECHT | CARTLEDGE | BROOKING

A PROFESSIONAL CORPORATION

Julius J. Brecht
Cheryl Rawls Brooking
Cynthia L. Cartledge
Michael Gatti
Lella R. Kimbrell
Eric E. Wohlforth

ATTORNEYS AT LAW
900 WEST 5TH AVENUE, SUITE 600
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WWW.AKATTY.COM

December 27, 2011

Sandra Peterson
City of Palmer
231 West Evergreen Avenue
Palmer, Alaska 99645

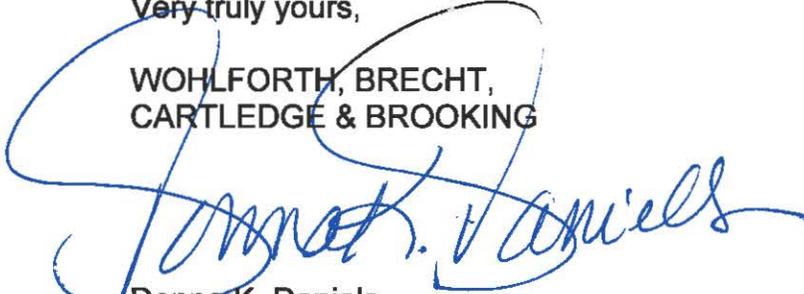
Re: City of Palmer Appeal
Our File No.: 3155.0101

Dear Ms. Peterson:

Enclosed per your request are two Professional Services Agreements ("PSA") with Michael Gatti's signature. Once Mr. Griffin has signed the PSA, please return a fully executed copy to our office for our files. Thank you.

Very truly yours,

WOHLFORTH, BRECHT,
CARTLEDGE & BROOKING


Donna K. Daniels

DKD:dkd
Enclosure (as stated)

PROFESSIONAL SERVICES AGREEMENT

THIS Agreement made and entered into this 1st day of January, 2012, by and between the City of Palmer, an Alaska municipal corporation (the City), and Wohlforth, Brecht, Cartledge & Brooking (Consultant

Section 1. Employment of Consultant, The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

Section 2. Consultant's Representation and Warranty, and Manner of Performance.

- (A) Consultant hereby represents and warrants to the City, and the City relies upon said representations and warranties, that Consultant is a professional in the subject area in which services are to be provided and that Consultant has more than adequate experience, skill, knowledge, and competence to perform the services set forth in this Agreement.
- (C) Consultant accepts the relationship of trust and confidence between it and the City. Consultant covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.

Section 3. Scope of Services.

- (A) Serve as the legal advisor of and be responsible to the city council, and advise the city manager and city clerk concerning matters affecting city administration, as well as perform other duties as may be prescribed by the city council.
- (B) Prepare legal documents such as ordinances, resolutions, contracts, conveyances, etc., and legal opinions as needed. Provide limited representation in court, negotiate on the city's behalf and handle other legal matters that may arise.
- (C) Be readily available for consultation by the city council, city manager, city clerk and city staff.
- (D) Draft opinion letters regarding, among other subjects, the interpretation of the city code and charter, state and federal laws, and policies.
- (E) Perform other such duties as may be prescribed for the city attorney by ordinance or by direction of the city council and/or city manager.
- (F) Must work effectively with the city council, city manager, and city staff, and also with other public agencies with which the city has legal relations.
- (G) The city attorney is expected to attend at least two city council meetings per month.

Section 4. Personnel.

Consultant's personnel shall be limited to Consultant employees and those persons

approved by the City Manager.

Section 5. Time of Performance.

The term of the professional services agreement is two years, with three one-year options unilaterally available to the city. The agreement may be terminated at the convenience of the City at any time. The services of the Consultant shall commence upon execution of this contract by the City and shall terminate, subject to Sections 8 and 9, on January 1, 2014. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 6. Compensation.

- (A) Subject to the provisions of this Agreement, the City shall pay the Consultant a total sum for all services and expenses for the term of this Agreement in accordance with the following provisions:
 - (1) Hourly cost for services to be provided: Shareholder attorneys: \$190.00/hour; Associate attorneys \$170.00/hour; and Paralegals \$85.00/hour
 - (2) No travel time shall be charged for round trip travel to Palmer for city meetings.
 - (3) Total annual cost to the City for 600 hours of legal services plus attendance at twenty-four-four-hour council meetings and six two hour consultation meetings at City Hall (This cost and hours shall be an approximation. Actual cost and hours shall be based on need): \$134,520
- (B) Consultant may increase its hourly fee \$5.00 per hour for each one-year extension unilaterally granted by the City under provisions of Section 5 of this Agreement.
- (C) Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of his duties under this Agreement. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.

Section 7. Method and Time of Payment.

- (A) The City will compensate the Consultant in accordance with Section 6 which compensation shall constitute the full and complete compensation for the Consultant's services and performance under this Agreement. Payments will be made on receipt of billings submitted pursuant to the schedule set forth in Section 6. A billing is a summary of expenditures to a date by line descriptive categories. Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the City requests said documentation.

- (B) No payment will be disbursed until approved by the City. The City Manager shall review Consultant's billings in a timely manner, and request from the Consultant necessary explanations or additional documentation within fifteen (15) days of receipt of billing by the City.

Section 8. Termination of Agreement for Cause.

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement, or if the Consultant 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 Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material (to include without limitation data and information kept on computer, disk, video, tape, etc.) prepared by the Consultant arising out of or connected with this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Section 6 of this Agreement only for work completed to the City's satisfaction in accordance with Section 6 of this Agreement and the other terms of this Agreement.

Section 9. Termination for Convenience of City.

The City may terminate this Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in paragraph 8 above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Section 6 of this Agreement only for work completed to the City's satisfaction in accordance with Section 6 of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 10. Causes Beyond Control.

In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of the Agreement for cause, provided that Consultant duly and timely notifies the City in writing of the cause or causes, which writing must be titled "Cause or Causes Beyond Control of Consultant." However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means anyone or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: 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 Consultant from performing the terms of the Agreement as

set forth herein.

Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. Based on Consultant's "Cause or Causes Beyond Control of Consultant," the City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 11. Modifications.

- (A) The parties may mutually agree to modify the terms of the Agreement only by means of an agreement in writing signed by both parties. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.
- (B) It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the Agreement will not be modified, under any circumstances, without prior written approval of the City. The above notwithstanding, if a change in the scope of services significantly changes the amount of work required of Consultant or requires services Consultant is not qualified to perform so that it would not be reasonable for Consultant to perform all the work or provide the qualified personnel for less than the not-to-exceed amount set out in Section 6, then the City's failure to reasonably increase said not-to-exceed amount will excuse Consultant's refusal to agree to the modification in the scope of services.

Section 12 Equal Employment Opportunity.

The Consultant will not discriminate against any employee or applicant for employment in violation of law, to include without limitation, because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Consultant shall take affirmative 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 disability, age, status as a disabled veteran, or veteran of the Vietnam era. 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 and educational activities.

The Consultant agrees to post in conspicuous places in its office available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

Section 13. Interest of Members of City and Others.

No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 14. Non-Assignability.

- (A) The Consultant 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 the Consultant 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 the Consultant shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to the Consultant.
- (B) The Consultant shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

Section 15. Interest of Consultant.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement it shall not knowingly employ any person having any such interest and that it shall reasonably inquire of all its employees to determine that they have no such interest.

Section 16. Findings Confidential

Except as required by law, including court orders directing disclosure, any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

Section 17. Officials Not to Benefit.

No members of the Congress of the United States and no resident commissioner shall be admitted to any share or part thereof or to any benefit to arise from this Agreement. No member of the legislature or officer of the state of Alaska or the City shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.

Section 18. Publication, Reproduction and Use of Materials.

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 19. Audits and Inspections.

At any time during normal business hours and as often as the City may deem necessary, there shall be made available for examination all of Consultant's records with respect to all matters covered by this Agreement and Consultant will permit representatives of the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement. Except in case of emergency, Consultant must make such records available upon five (5) day's notice. In case of emergency, Consultant must make such records available immediately upon request. In performing such audits and investigations, the City and its representatives shall not unduly interfere with the ability of Consultant to perform its duties under this Agreement.

Section 20. 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. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 21. 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 the 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 hereof.

Section 22. Permits, Laws and Taxes.

The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. In performing its obligations under this Agreement, Consultant shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 23. Relationship of the Parties.

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

Section 24. Administration of this Agreement.

- (A) The City Manager or his designee will be the representative of the City administering this Agreement.
- (B) The services to be furnished by the Consultant shall be administered by the City Manager. In the event that Consultant is unable to serve for any reason to perform its obligations under this Agreement, the Consultant shall appoint a successor in interest but such appointment will be subject to a written approval of the City.

Section 25. 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:

Section 26. City Held Harmless.

- (A) The Consultant shall indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-Consultant as a result of the Consultant's or any sub-Consultant's performance pursuant to this Agreement.
- (B) The Consultant shall not indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of wrongful or negligent acts, errors or omissions solely of the City occurring during the course of or as a result of the performance of this Agreement.
- (C) Where lawsuits, actions, claims or liability, including reasonable attorney's fees and costs, arise out of wrongful or negligent acts of both the Consultant and the City occurring as a result of the performance of this Agreement, the Consultant shall indemnify, defend, save and hold the City harmless from only that portion of the lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-Consultant as a result of the Consultant's or any sub-Consultant's performance pursuant to this Agreement.

Section 27. 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.

Section 28. Consultant Insurance.

- (A) The Consultant will provide the City with a certificate of errors and omissions insurance from the Consultant's insurance company in an amount of \$1,000,000. The insurance shall remain in force through the term of this Agreement whether occurrence or claims-made and if claims made then for a minimum of three years after final payment to the Consultant by the City.
- (B) The Consultant will, at its own expense, secure and maintain and will file with the City the following proper and acceptable insurance coverage, including defense and indemnification of the City. The insurance coverage will be secured with an insurance company acceptable to the City.
- (1) Worker's Compensation Insurance in compliance with the laws of the state of Alaska, AS 23.30, et. seq., and federal jurisdiction where the work is being performed, will cover all employees engaged in the performance of the work specified in this Agreement. Employer's liability limits shall be: \$100,000 each accident; \$500,000 disease--policy limit; and \$100,000 disease--each employee.
- (2) Comprehensive General Liability or Commercial General Liability Coverage: Limit \$1,000,000 Bodily Injury and Property Damage, combined Single Limit. Coverage to include:
Premises Operation Products/Completed
Operations Independent Contractors
Blanket Contractual Broad Form Property
Damage Personal Injury with Exclusion "C" deleted
- (3) Comprehensive Automobile Liability: Limit \$1,000,000 Bodily Injury and Property Damage, Combined Single Limit. Coverage to include:
All Scheduled Vehicles
Hired Vehicles
Non-owned Vehicles
- (4) Unemployment Insurance by payment of employment security taxes for all employees hired by the Consultant to work on this project. In the event of the Consultant's failure to pay such taxes, the City will withhold an amount sufficient to pay such taxes from any payments owed to the Consultant by the City. The City also reserves the right to contact the Alaska State Department of Labor, in order to determine whether unemployment security taxes have been paid by the Consultant. The City further reserves the right to withhold that portion of employment security taxes owed to any employees pending notification of the Consultant's unemployment security tax clearance from the Alaska State Department of Labor.
- (C) A lapse in insurance coverage is a material breach of this Agreement, which shall result in immediate termination of the Agreement, pursuant to Section 8.
- (D) Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the City prior to cancellation. Each policy (other than for

worker's compensation) shall name the City as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage. Consultant's insurance coverage shall be primary to any coverage carried by the City, which may cover the work specified in this Agreement. Consultant's insurance carrier must be an admitted carrier in the State of Alaska or must be Best rated A+7 or better.

Section 29. Understanding.

The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of its choice, and is executing this Agreement of its own free will.

Section 30. 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.

Section 31.

Compliance with Law. Consultant shall comply with all applicable Federal, State of Alaska and City laws, regulations, and ordinances in performing its duties hereunder.

Section 32. Notices.

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

City: City Manager
City of Palmer
231 W. Evergreen Avenue
Palmer, Alaska 99645

Consultant: Wohlforth, Brecht, Cartledge & Brooking
900 W. 5th Avenue, Suite 600
Anchorage, Alaska 99501

CITY OF PALMER

CONSULTANT:
Wohlforth, Brecht, Cartledge, & Brooking

Douglas B. Griffin, City Manager

Michael R. Gatti, Shareholder Attorney

worker's compensation) shall name the City as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage. Consultant's insurance coverage shall be primary to any coverage carried by the City, which may cover the work specified in this Agreement. Consultant's insurance carrier must be an admitted carrier in the State of Alaska or must be Best rated A+7 or better.

Section 29. Understanding.

The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of its choice, and is executing this Agreement of its own free will.

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City: City Manager
City of Palmer
231 W. Evergreen Avenue
Palmer, Alaska 99645

Consultant: Wohlforth, Brecht, Cartledge & Brooking
900 W. 5th Avenue, Suite 600
Anchorage, Alaska 99501

CITY OF PALMER

CONSULTANT:

Wohlforth, Brecht, Cartledge, & Brooking



Douglas B. Griffin, City Manager



Michael R. Gatti, Shareholder Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS Agreement made and entered into this 1st day of January, 2012, by and between the City of Palmer, an Alaska municipal corporation (the City), and Wohlforth, Brecht, Cartledge & Brooking (Consultant

Section 1. Employment of Consultant, The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

Section 2. Consultant's Representation and Warranty, and Manner of Performance.

- (A) Consultant hereby represents and warrants to the City, and the City relies upon said representations and warranties, that Consultant is a professional in the subject area in which services are to be provided and that Consultant has more than adequate experience, skill, knowledge, and competence to perform the services set forth in this Agreement.
- (C) Consultant accepts the relationship of trust and confidence between it and the City. Consultant covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.

Section 3. Scope of Services.

- (A) Serve as the legal advisor of and be responsible to the city council, and advise the city manager and city clerk concerning matters affecting city administration, as well as perform other duties as may be prescribed by the city council.
- (B) Prepare legal documents such as ordinances, resolutions, contracts, conveyances, etc., and legal opinions as needed. Provide limited representation in court, negotiate on the city's behalf and handle other legal matters that may arise.
- (C) Be readily available for consultation by the city council, city manager, city clerk and city staff.
- (D) Draft opinion letters regarding, among other subjects, the interpretation of the city code and charter, state and federal laws, and policies.
- (E) Perform other such duties as may be prescribed for the city attorney by ordinance or by direction of the city council and/or city manager.
- (F) Must work effectively with the city council, city manager, and city staff, and also with other public agencies with which the city has legal relations.
- (G) The city attorney is expected to attend at least two city council meetings per month.

Section 4. Personnel.

Consultant's personnel shall be limited to Consultant employees and those persons

approved by the City Manager.

Section 5. Time of Performance.

The term of the professional services agreement is two years, with three one-year options unilaterally available to the city. The agreement may be terminated at the convenience of the City at any time. The services of the Consultant shall commence upon execution of this contract by the City and shall terminate, subject to Sections 8 and 9, on January 1, 2014. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 6. Compensation.

- (A) Subject to the provisions of this Agreement, the City shall pay the Consultant a total sum for all services and expenses for the term of this Agreement in accordance with the following provisions:
 - (1) Hourly cost for services to be provided: Shareholder attorneys: \$190.00/hour; Associate attorneys \$170.00/hour; and Paralegals \$85.00/hour
 - (2) No travel time shall be charged for round trip travel to Palmer for city meetings.
 - (3) Total annual cost to the City for 600 hours of legal services plus attendance at twenty-four-four-hour council meetings and six two hour consultation meetings at City Hall (This cost and hours shall be an approximation. Actual cost and hours shall be based on need): \$134,520
- (B) Consultant may increase its hourly fee \$5.00 per hour for each one-year extension unilaterally granted by the City under provisions of Section 5 of this Agreement.
- (C) Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of his duties under this Agreement. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.

Section 7. Method and Time of Payment.

- (A) The City will compensate the Consultant in accordance with Section 6 which compensation shall constitute the full and complete compensation for the Consultant's services and performance under this Agreement. Payments will be made on receipt of billings submitted pursuant to the schedule set forth in Section 6. A billing is a summary of expenditures to a date by line descriptive categories. Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the City requests said documentation.

- (B) No payment will be disbursed until approved by the City. The City Manager shall review Consultant's billings in a timely manner, and request from the Consultant necessary explanations or additional documentation within fifteen (15) days of receipt of billing by the City.

Section 8. Termination of Agreement for Cause.

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement, or if the Consultant 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 Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material (to include without limitation data and information kept on computer, disk, video, tape, etc.) prepared by the Consultant arising out of or connected with this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Section 6 of this Agreement only for work completed to the City's satisfaction in accordance with Section 6 of this Agreement and the other terms of this Agreement.

Section 9. Termination for Convenience of City.

The City may terminate this Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in paragraph 8 above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Section 6 of this Agreement only for work completed to the City's satisfaction in accordance with Section 6 of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 10. Causes Beyond Control.

In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of the Agreement for cause, provided that Consultant duly and timely notifies the City in writing of the cause or causes, which writing must be titled "Cause or Causes Beyond Control of Consultant." However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means anyone or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: 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 Consultant from performing the terms of the Agreement as

set forth herein.

Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. Based on Consultant's "Cause or Causes Beyond Control of Consultant," the City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 11. Modifications.

- (A) The parties may mutually agree to modify the terms of the Agreement only by means of an agreement in writing signed by both parties. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.
- (B) It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the Agreement will not be modified, under any circumstances, without prior written approval of the City. The above notwithstanding, if a change in the scope of services significantly changes the amount of work required of Consultant or requires services Consultant is not qualified to perform so that it would not be reasonable for Consultant to perform all the work or provide the qualified personnel for less than the not-to-exceed amount set out in Section 6, then the City's failure to reasonably increase said not-to-exceed amount will excuse Consultant's refusal to agree to the modification in the scope of services.

Section 12 Equal Employment Opportunity.

The Consultant will not discriminate against any employee or applicant for employment in violation of law, to include without limitation, because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Consultant shall take affirmative 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 disability, age, status as a disabled veteran, or veteran of the Vietnam era. 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 and educational activities.

The Consultant agrees to post in conspicuous places in its office available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

Section 13. Interest of Members of City and Others.

No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 14. Non-Assignability.

- (A) The Consultant 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 the Consultant 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 the Consultant shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to the Consultant.
- (B) The Consultant shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

Section 15. Interest of Consultant.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement it shall not knowingly employ any person having any such interest and that it shall reasonably inquire of all its employees to determine that they have no such interest.

Section 16. Findings Confidential

Except as required by law, including court orders directing disclosure, any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

Section 17. Officials Not to Benefit.

No members of the Congress of the United States and no resident commissioner shall be admitted to any share or part thereof or to any benefit to arise from this Agreement. No member of the legislature or officer of the state of Alaska or the City shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.

Section 18. Publication, Reproduction and Use of Materials.

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 19. Audits and Inspections.

At any time during normal business hours and as often as the City may deem necessary, there shall be made available for examination all of Consultant's records with respect to all matters covered by this Agreement and Consultant will permit representatives of the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement. Except in case of emergency, Consultant must make such records available upon five (5) day's notice. In case of emergency, Consultant must make such records available immediately upon request. In performing such audits and investigations, the City and its representatives shall not unduly interfere with the ability of Consultant to perform its duties under this Agreement.

Section 20. 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. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 21. 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 the 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 hereof.

Section 22. Permits, Laws and Taxes.

The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. In performing its obligations under this Agreement, Consultant shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 23. Relationship of the Parties.

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

Section 24. Administration of this Agreement.

- (A) The City Manager or his designee will be the representative of the City administering this Agreement.
- (B) The services to be furnished by the Consultant shall be administered by the City Manager. In the event that Consultant is unable to serve for any reason to perform its obligations under this Agreement, the Consultant shall appoint a successor in interest but such appointment will be subject to a written approval of the City.

Section 25. 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:

Section 26. City Held Harmless.

- (A) The Consultant shall indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-Consultant as a result of the Consultant's or any sub-Consultant's performance pursuant to this Agreement.
- (B) The Consultant shall not indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of wrongful or negligent acts, errors or omissions solely of the City occurring during the course of or as a result of the performance of this Agreement.
- (C) Where lawsuits, actions, claims or liability, including reasonable attorney's fees and costs, arise out of wrongful or negligent acts of both the Consultant and the City occurring as a result of the performance of this Agreement, the Consultant shall indemnify, defend, save and hold the City harmless from only that portion of the lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-Consultant as a result of the Consultant's or any sub-Consultant's performance pursuant to this Agreement.

Section 27. 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.

Section 28. Consultant Insurance.

- (A) The Consultant will provide the City with a certificate of errors and omissions insurance from the Consultant's insurance company in an amount of \$1,000,000. The insurance shall remain in force through the term of this Agreement whether occurrence or claims-made and if claims made then for a minimum of three years after final payment to the Consultant by the City.
- (B) The Consultant will, at its own expense, secure and maintain and will file with the City the following proper and acceptable insurance coverage, including defense and indemnification of the City. The insurance coverage will be secured with an insurance company acceptable to the City.
 - (1) Worker's Compensation Insurance in compliance with the laws of the state of Alaska, AS 23.30, et. seq., and federal jurisdiction where the work is being performed, will cover all employees engaged in the performance of the work specified in this Agreement. Employer's liability limits shall be: \$100,000 each accident; \$500,000 disease--policy limit; and \$100,000 disease--each employee.
 - (2) Comprehensive General Liability or Commercial General Liability Coverage: Limit \$1,000,000 Bodily Injury and Property Damage, combined Single Limit. Coverage to include:
 - Premises Operation Products/Completed
 - Operations Independent Contractors
 - Blanket Contractual Broad Form Property
 - Damage Personal Injury with Exclusion "C" deleted
 - (3) Comprehensive Automobile Liability: Limit \$1,000,000 Bodily Injury and Property Damage, Combined Single Limit. Coverage to include:
 - All Scheduled Vehicles
 - Hired Vehicles
 - Non-owned Vehicles
 - (4) Unemployment Insurance by payment of employment security taxes for all employees hired by the Consultant to work on this project. In the event of the Consultant's failure to pay such taxes, the City will withhold an amount sufficient to pay such taxes from any payments owed to the Consultant by the City. The City also reserves the right to contact the Alaska State Department of Labor, in order to determine whether unemployment security taxes have been paid by the Consultant. The City further reserves the right to withhold that portion of employment security taxes owed to any employees pending notification of the Consultant's unemployment security tax clearance from the Alaska State Department of Labor.
- (C) A lapse in insurance coverage is a material breach of this Agreement, which shall result in immediate termination of the Agreement, pursuant to Section 8.
- (D) Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the City prior to cancellation. Each policy (other than for

worker's compensation) shall name the City as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage. Consultant's insurance coverage shall be primary to any coverage carried by the City, which may cover the work specified in this Agreement. Consultant's insurance carrier must be an admitted carrier in the State of Alaska or must be Best rated A+7 or better.

Section 29. Understanding.

The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of its choice, and is executing this Agreement of its own free will.

Section 30. 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.

Section 31.

Compliance with Law. Consultant shall comply with all applicable Federal, State of Alaska and City laws, regulations, and ordinances in performing its duties hereunder.

Section 32. Notices.

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

City: City Manager
City of Palmer
231 W. Evergreen Avenue
Palmer, Alaska 99645

Consultant: Wohlforth, Brecht, Cartledge & Brooking
900 W. 5th Avenue, Suite 600
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CITY OF PALMER

CONSULTANT:
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Douglas B. Griffin, City Manager

Michael R. Gatti, Shareholder Attorney

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