

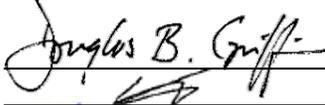
**CITY OF PALMER
ACTION MEMORANDUM NO. 12-052**

Subject: City Council Authorization for the Manager to Negotiate and Execute a Mutual Agreement to Terminate the Alaska Avalanche Hockey Club, LLC Lease and Facility Use Agreement

Agenda of: May 22, 2012

Council Action: Authorized

Approved for presentation by:

City Manager City Attorney City Clerk	<u></u> <u></u> <u></u>
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Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>18,000</u>
This legislation (✓):	
<input type="checkbox"/> Has no fiscal impact	
Creates:	
<input checked="" type="checkbox"/> A negative fiscal impact in the amount of:	\$ <u>18,000 (future revenues)</u>
<input type="checkbox"/> A positive fiscal impact in the amount of:	\$ _____
<input type="checkbox"/> Funds are budgeted from this (these) line item(s):	
➤	\$ _____
<input type="checkbox"/> Funds are not budgeted. Budget modification is required. Affected line item(s):	
➤	\$ _____
➤	\$ _____
Unrestricted/undesignated fund balance (after budget modification)	\$ _____
Director of Finance signature certifying funds:	<u></u>

Attachment(s):

- Mutual Agreement to Terminate

Summary statement: On or about September 22, 2010, the City and the Alaska Avalanche Hockey Club, LLC ("AAHC") entered into a Lease and Facility Use Agreement ("LFUA") for the MTA Events Center ("MTAEC"). Recently, the City was notified that the AAHC was suffering financial difficulties and was being sold to a franchise in Pennsylvania, the Johnstown Sports Partnership and has advised the City that it will be vacating the MTAEC.

On or about April 18, 2012, AAHC has vacated the MTAEC and has requested the City to consider a mutual termination of the LFUA. In consideration of the mutual termination of the agreement, AAHC has agreed to provide the City with property and improvements, which is

estimated to be valued at approximately \$6,000. The estimated amount of \$6,000 partially offsets the \$25,000 AAHC agreed to pay to the City for the remaining 2 years on the LFUA. Additionally, the City would not receive revenue from AAHC for ice rental. However, the Community Development Department estimates that loss of ice rental time can be offset by the sale of additional ice rental time, which may operate to equalize or exceed that lost revenue which the City would have received from AAHC under the LFUA. Balancing the loss of revenue from the termination of the AAHC contract and the estimated revenue receipts notwithstanding the termination, the Administration recommends termination of the contract. While the City regrets the loss of the Alaska Avalanche Hockey Club as a feature in the MTA Events Center, it continues to develop plans for the use of the facility to promote the public's interest and the betterment of the community.

Administration recommendation: Approve action memorandum 12-052. Recommend mutual termination of the AAHC contract and authorize the City Manager to negotiate and execute a mutual agreement to terminate AAHC LFUA.

**MUTUAL AGREEMENT TO TERMINATE ALASKA AVALANCHE HOCKEY CLUB
LEASE AND FACILITY USE AGREEMENT WITH THE CITY OF PALMER**

Section 1. Parties. On September 22, 2010, the Alaska Avalanche Hockey Club ("AAHC") and the City of Palmer ("City") entered into a Lease and Facility Use Agreement ("LFUA") for the Matanuska Telephone Association Event Center ("MTAEC") for a term of 5 years terminating on May 1, 2012. Attachment 1.

Section 2. Termination. For and in consideration of the parties mutual agreement to terminate the LFUA and for other good and valuable consideration, the parties hereby mutually agree to terminate all rights, duties, obligations and requirements of the Lease and Facility Use Agreement attached and to each release and discharge the other party from further performance under said terminated LFUA.

Section 3. Equipment. In further consideration of the mutual agreement to terminate and release the City from further performance under the LFUA, AAHC agrees to convey and provide clear and marketable title to the following equipment to the City as follows:

- | | |
|-------------------------------------|-------------------------------------|
| 1 television – LCD 40" with bracket | 1 television – LCD 47" with bracket |
| Enclosures fencing for storage area | Portable Skate Sharpener |
| Player Stalls | 5 In-ice Logos |
| Cooler | 36 Dasher Boards 30" x 96" |
| 20 Banners | |

Section 4. Defense and Indemnification. The AAHC shall defend and hold the City, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for death or injury to

persons or damage to property arising out of the performance of the mutual agreement to terminate the LFUA but only in proportion to and to the extent such liability, loss, expenses, attorney's fees, or claims for injury or damages are caused by or result from any acts or omissions of AAHC, its officers, agents or employees. The defense and indemnification currently contained in the LFUA will waive the termination of the LFUA.

SECTION 5. Miscellaneous.

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

TO CITY: City of Palmer
City Planner and Department Director
231 West Evergreen
Palmer, Alaska 99645

TO AAHC: Alaska Avalanche Hockey Club, LLC
ATTN: Mark Lee
1560 North Legacy Lane
Palmer, Alaska 99645

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

5.2 No Waiver. The failure by City to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial fees during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. The waiver by City of any breach by AAHC under this Agreement shall not affect or alter AAHC's obligations under this Agreement in any way whatsoever.

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

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

5.5 No Joint Venture. Any intention to create a joint venture or partnership relation between the parties hereto is expressly disclaimed.

5.6 Integration: Amendment. The parties intend this Agreement and its attachments hereto to be the final expression of their agreement and as to the complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. This Agreement may be modified only by a writing signed by the party against whom the modification is enforceable.

5.7 Severability. If any term or provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

5.9 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed so as to confer upon any other person the rights of a third party beneficiary.

6. No Duress. Each party represents that it has carefully read this Agreement and have consulted with their respective legal counsel, or had the opportunity to consult with their respective counsel, and be advised as to matters of liability, legal procedures, damages, and the consequences of signing this Agreement and states that they fully understand the same and signs this Agreement as their own free act without any duress.

7. Covenant Not to Sue. This Agreement applies, without limitation, with respect to any events, actions or claims arising out of the matters set forth between the parties identified above. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous agreements, contracts, promises, representations, warranties, inducements, covenants, or duties, oral or written, conditional or unconditional, expressed or unexpressed, which in any way arise out of or result from the subject matter of this Agreement.

8. Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and, when taken together with other signed counterparts, shall constitute on Agreement, which shall be binding upon and effective as to all parties.

9. Governing Law. This Agreement will be deemed to have been executed and delivered within, and the rights and obligations of the parties will be construed and

enforced in accordance with, and governed by, the laws of the State of Alaska, and the laws of the City of Palmer, Alaska. The venue for all claims and disputes arising from this Agreement shall be brought in the Superior Court for the State of Alaska, Third Judicial District, at Palmer, Alaska.

10. Cooperation Clause. If additional documents are required to be completed and executed in order to effectuate the full terms of this Agreement that have not been identified herein, the parties shall cooperate to ensure all necessary additional documentation is completed, executed, and filed to satisfy and achieve the terms of this Agreement.

11. Authority. By signing this Agreement, the undersigned represent that they are authorized to execute this Agreement and bind the parties and their respective officers, directors, employees, agents, heirs, successors and assigns hereto, and that they have not assigned any claim covered by this mutual termination agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year stated in the acknowledgements below.

CITY OF PALMER, ALASKA

ALASKA AVALANCHE HOCKEY CLUB, LLC

Douglas Griffin, City Manager

Mark D. Lee, Managing Member

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Douglas Griffin, known to me and to me known to be the City Manager of the City of Palmer, Alaska who executed the foregoing instrument,

