



Action Memoranda 13-005

Included items are:

- **Memo from Director Garley**
- **Downtown Palmer Strategic Initiative**
- **Memo with attachments from City Manager dated January 29, 2013**
- **Action Memorandum 13-005 (with original attachments)**



DEPARTMENT OF COMMUNITY DEVELOPMENT

Sandra Garley
Director

David Meneses
Building Inspector

Beth Skow
Library & Arena Director

MEMORANDUM

TO: Doug Griffin
FROM: Sandra Garley 
DATE: February 18, 2013
SUBJECT: Downtown Palmer Strategic Initiatives (DPSI)

I have made the changes to the draft Scope of Work for the Downtown Palmer Strategic Initiatives (DPSI) document as requested by the City Council at the Special Meeting of February 5, 2013.

The changes are formatted into a draft Request For Proposals (RFP) for Council review on February 26, 2013. The first three elements of the draft Scope of Work are now incorporated into the attached draft RFP as part of Section I. Project Background and Description. The final four elements from the Scope of Work reviewed by Council are now found in the draft RFP II. C. Work Product.

DOWNTOWN PALMER STRATEGIC INITIATIVE (DPSI)

REQUEST FOR PROPOSALS

Notice is hereby given that the City of Palmer is seeking a qualified consulting firm to provide professional development, urban design, and public meeting facilitation services in preparation of a Downtown Palmer Strategic Initiative on development and redevelopment of the central business district as described in Palmer Municipal Code 17.64.050. The City desires to expand upon the work already completed in preparation of its various planning documents, not to conduct an entirely new planning study.

RFP SCHEDULE

Proposals Submittal Deadline: XXXX xx, 2013 @ 4:30 pm

Interviews for Selected Consultants: Week of XXXX xx, 2013

City Council Approval of Consultant Contract: TBA

Proposals shall be submitted no later than 4:30 pm on the above date and addressed to:

City of Palmer
Community Development Department
231 W Evergreen Avenue
Palmer, AK 99645

CONTACT INFORMATION

All questions regarding this solicitation should be directed to the City representative listed below.

Sandra Garley 907 761-1322 sgarley@palmerak.org

I. PROJECT BACKGROUND AND DESCRIPTION

The City of Palmer is seeking a qualified professional firm or consultant to facilitate a community process that culminates in the creation of a series of strategies/initiatives for development and/or redevelopment of the central business district as described in Palmer Municipal Code 17.64.050. The selected consultant will facilitate public outreach efforts, develop conceptual elements based on the input received through the public participation efforts, and prepare recommendations on strategies/initiatives for development and/or redevelopment of the central business district.

Build on previous planning: The consultant is expected to expand on the work previously completed by the community including the 2006 Comprehensive Plan, the Urban Revitalization Plan, Pioneering Palmer's Future, and the Parks, Trails and Recreational Fields Master Plan. The consultant will identify projects from these documents that have been completed and incorporate into recommendations all projects in these documents that are still relevant and supported by the community.

Create a clear vision for the downtown: Working with the community, the consultant will create a clear vision for the central business district including the Matanuska Colony Historic District and the Mat-Maid Block describing what they could be in terms of their local economic importance and their role in Palmer's economic vitality.

Conserve a sense of place: The consultant will develop strategies that respect Palmer’s unique characteristics as an Alaska community and that will enhance those characteristics.

A. PROJECT AREA

The project area consists of approximately 35 blocks that is the central business district in Palmer, Alaska. Palmer Municipal Code 17.64.050 delineates the specific boundary of the area, and these boundaries are reflected on the Official Zoning Map. The project area includes a mix of commercial, institutional, single-family and multifamily units.

B. DOWNTOWN ISSUES

Downtown Palmer is the heart of the City, and is well-loved by both residents and visitors. The City’s Comprehensive Plan encourages the community to “work so downtown Palmer is a more economically vital area, and remains the clear center of Palmer public life.”

A summary of currently identified issues that the consultant should address is below.

- Need for a unified vision for the physical development of downtown, including incremental redevelopment of adjacent areas
- Current and future parking supply
- Physical redevelopment of the Mat Maid block (bounded by E. Dogwood Avenue, S. Denali Street, E. Dahlia Avenue and S. Valley Way)
- Pedestrian safety
- Event management in public spaces along railroad right of way
- Need for improved Wayfinding /branding

C. WORK PRODUCT

1. **Develop clear strategies:** Working with the community, the consultant will create a clear set of recommended strategies that set the framework for future economic and physical development in downtown Palmer.
2. **Identify specific criteria for strengthening the economic vitality of downtown Palmer:** The consultant will identify obstacles to development in downtown Palmer and recommend specific strategies or criteria to overcome these obstacles for consideration by the community and council.
3. **Ensure recommendations are economically feasible:** Develop recommendations that are realistic and will create an inviting community context for future improvements and growth.
4. **Ensure that recommendations are practical and achievable:** Deliver a set of actions that combine City resources and private commitment and partnerships in a fair and equitable manner.

D. PUBLIC PARTICIPATION

Public participation is a key element in this process. Outreach activities should focus on a variety of stakeholders, including property and business owners, residents, downtown stakeholder organizations and the general population of the City. Workshops, community meetings, and interviews should be utilized to gain face-to-face, first-hand feedback on initiative elements.

II. SUBMISSION REQUIREMENTS

The Proposal response should be fully self-contained, and display clearly and accurately the capabilities, knowledge, experience, and capacity of the Respondent to meet the requirements of the project and the RFP. Respondents are encouraged to utilize methods they consider appropriate in communicating the required information. At a minimum, this will include submission of the information requested below:

- Firm Description
- Relevant Experience with development projects
- Resumes of Project Team
- Approach to Fulfilling Project Objective
- Fee Schedule
- References (Minimum of three references within the last five years)
- Consultant and Professional Services Agreement/Insurance

The selected consultant will also be required to obtain a City of Palmer Business License.

Three (3) bound copies (one of which must be marked as original) of qualifications should be submitted to the City Hall, 231 W. Evergreen Avenue, Palmer, AK 99645 no later than 4:30 pm by Friday, XXXX xx, 2013. One copy in PDF format should be sent to Sandra Garley, Director of Community Development at sgarley@palmerak.org. Interviews with the most qualified firms will be held on the week of XXXX xx, 2013.

In order to be considered, all requested information requested below shall be submitted. All material shall be presented in a succinct manner in the same order as presented in this RFP. Facsimile, emailed or electronic format proposals are not acceptable. The City will not be responsible for proposals delivered to a person/location other than that specified above.

A. FIRM DESCRIPTION AND EXPERIENCE

1. Consultant: Name, address, telephone number, FAX number, e-mail address, website address (if available)
2. Year the firm was established.
3. Primary contacts within the company: Title, telephone number and e-mail address for each. person will be the contact for the RFP process.
4. Number of employees in firm and office locations
5. Consultant Specialties: List of the type(s) of work the firm specializes in.
6. List of Lead Professional Personnel by Area of Expertise: Provide an organization chart describing available to handle the desired work. Provide a brief but detailed history of the number of years the current firm and other firms, education, professional registration/certifications, and qualified work experience relevant to the services requested. Use separate pages for each person.
7. Current/Prior Experience with development projects (with emphasis on downtown projects): List

up to five (5) projects, starting with the most recent, that the professional personnel of your firm have worked within the past 5 years. Provide the year the project was performed, the name of the municipality/jurisdiction and location (city), the owner's name, address, and contact name and phone number, e-mail address and the scope of work performed. Other related experience may be included.

B. APPROACH

1. Provide the tasks and narrative of how your firm will comply with fulfilling the project objective, and what special services and products your firm has to meet our needs and not exceed the agreement amount.
2. A description of how the firm provides the desired services and quality control to assure adequate level of service and successful project completion and management.
3. A statement indicating the firm is independent, properly licensed to practice in Alaska, and has no conflict of interest with regard to any other work performed by the firm for the City.

C. RATE SCHEDULE

Provide an itemized rate schedule that reflects the work proposed in Item B, Approach. The rate schedule should include typical hourly charge rates for labor classifications anticipated.

D. REFERENCES

Provide three (3) references (names, addresses, phone numbers, e-mail addresses and contact persons) for comparable work for your firm and for the team members. Provide a brief description and magnitude of services provided for each reference.

E. CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT/INSURANCE

Brief statement acknowledging the Consultant's willingness to accept the attached City's standard Consultant and Professional Services Agreement as is, without modifications (see Attachment A).

The selected consultants/firm(s) shall demonstrate that they can meet the City of Palmer insurance requirements. Please refer to the attached City of Palmer Standard Consultant and Professional Services Agreement.

F. CONDITIONS OF REQUEST AND REQUIREMENTS

The following conditions apply to this RFP:

1. The City of Palmer (City) reserves the right to withdraw this solicitation of a proposal at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any firm submitting a proposal.

2. The City reserves the right to reject any and all proposals submitted in response to this request and to reject any sub-consultant or individual working on a consulting team.
3. Any changes to the proposal requirements will be made by addendum.
4. In any event, the City shall not be liable for any pre-contractual expenses incurred by any proposal or Consultant. This shall include pre-contractual expenses such as preparing the Proposal, submitting the Proposal to the City, negotiating with the City on any matter related to the Proposal or other expenses incurred prior to the date of award for any agreement related to the services herein described.
5. No prior, current or post award verbal agreement(s) with any officer, agent or employees of the City shall affect or modify any terms or modifications of this RFP or any contract or option resulting from this process.
6. The City reserves the right to waive any minor irregularities, informalities or oversights at its sole discretion. The term "minor" as used herein means any proposer or City irregularities or oversights that does not materially affect or alter the intent and purpose of this RFP, and is not in violation of any State of Alaska or Federal Government rules, laws and regulations that may apply to this procurement.

III. EVALUATION CRITERIA AND PROCEDURES

A. SELECTION TEAM

The City will rate prospective consultants (firms) for this work using only objective criteria based upon the information obtained from the Proposals.

The City will appoint an ad-hoc selection team (City staff) to screen proposals. The firms with the highest ranking based on experience and qualifications as described in the Proposal to provide the required services will be invited for interviews. The proposed project manager and personnel will be requested to represent the firm at the interviews.

B. SELECTION CRITERIA

The selection team evaluation will consist of a matrix of requirements, qualifications and experience. The following criteria will be used in evaluating the submittals received in response to this RFP:

- Background and experience of firm and personnel – Maximum 35 points
- Past performance and service on similar assignments/projects - Maximum 20 points
- Proposed approach to the completing the scope of work - Maximum 25 points
- Technical qualifications (staff who will actually work on the projects) - Maximum 20 points

C. SELECTION PROCEDURE

Consideration of a prospective consultant's (firm's) proposal will be made only if the prospective consultant meets all the minimum requirements of this RFP. The City reserves the right to award a contract to the firm (or firms) that present the best qualifications and which will best accomplish the desired results for the City.

Request for Supplemental Information: The City reserves the right to require, from any or all consultants (firms), supplemental information that clarifies submitted materials.

Questions: All questions regarding this solicitation should be directed to the City representative listed in this RFP

Incomplete Proposals: Incomplete and/or unsigned submissions will not be considered.

Rejection of Submitted RFP: Proposals that are not current, accurate, and/or completed accurately in accordance with the prescribed format shall be considered non-responsive and eliminated from further consideration.

Selection Process Termination: The City reserves the right to terminate the selection process, at any time, without making an award to any or all consultants.

**SAMPLE CONTRACT
CONTRACT FOR SERVICES**

A Contract Between

**City of Palmer
231 W. Evergreen Avenue
Palmer, AK 99645
Ph. (907) 761-1322 Fax (907) 745-5443
And**

**XXXXXXXXXXXXXXXXXX
XXXXXXXX
XXXXXXXX**

WHEREAS, PMC 3.21 authorizes the City Manager to engage, subject to the approval of the City Council, the services of persons as independent Consultants; and

WHEREAS, it is deemed that the services of Consultant are both necessary and in the best interests of the City of Palmer;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Palmer City Council.
2. **DEFINITIONS.** "City" means the City of Palmer and any city department identified herein. "Consultant" means _____ which is an entity that performs services and/or provides goods for the City under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning January 1 and ending December 31 of that calendar year.
3. **CONTRACT TERM.** This Contract shall be effective upon execution by both parties.
4. **SCOPE OF SERVICES.** The Consultant shall perform all the services provided for by this contract which are described with particularity in Attachment 1, entitled Scope of Services, attached hereto and incorporated by reference as if fully set forth herein.
5. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

6. INCORPORATED DOCUMENTS. The Contract documents are complementary and that is called for by any one of them shall be as binding as if called for by all. In the event of any inconsistency between any of the provisions of the Contract documents, the inconsistency shall be resolved by giving precedence in the following order:
- A. This Contract;
 - B. City of Palmer's Request For Proposal (Attachment 1);
 - C. Consultant's Proposal in response to City's Request For Proposal (Attachment 2).
7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.
8. COMPENSATION. Subject to the provisions of this contract, the City shall pay the Consultant a total sum for all services and expenses for the term of this contract not exceeding the sum _____ for services required by this contract. Except as otherwise provided in this contract, 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 Contract duties. The parties understand and agree that administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this contract have already been included in the computation of the Consultant's fee and may not be charged to the City.
9. INSPECTION & AUDIT.
- a. Books and Records. Consultant agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.
 - b. Inspection & Audit. Consultant agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Consultant or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Consultant where such records may be found, with or without notice by a City audit representative or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.
 - c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the City, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

- a. General Termination. This contract may be terminated by the City for any reason upon thirty (30) days written notice prior to the date such termination is effective. In the event the City exercises its right to termination of this agreement pursuant to this section, all finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Consultant under this contract are the property of the City and shall be delivered to the City by or upon the date of such termination. The Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and materials before the date termination is effective. Such compensation shall not be in addition to payment provided to the Consultant under this agreement.
- b. City Termination for Nonappropriation. The continuation of this Contract beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the City Council, State Legislature and/or federal sources. The City may terminate this Contract, and Consultant waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from City, State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- c. Termination for Convenience of the City. The City may terminate this contract 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 Section 10a 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 this contract only for work completed to the City's satisfaction in accordance with Appendix "A" of this contract and the other terms of this contract. If this contract is terminated due to the fault of the Consultant, section 10a shall govern the rights and liabilities of the parties.
- d. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
 - i. If Consultant fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Consultant to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Consultant becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the City materially breaches any material duty under this Contract and any such breach impairs Consultant's ability to perform; or
 - v. If it is found by the City that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of the City of Palmer with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - vi. If it is found by the City that Consultant has failed to disclose any material conflict of interest relative to the performance of this Contract.

- e. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- f. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
 - i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Consultant shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - iii. Consultant shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Consultant shall preserve, protect and promptly deliver into City possession all proprietary information in accordance with paragraph (19).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. DEFENSE AND INDEMNIFICATION. The Consultant shall indemnify, hold harmless, and defend the City from and against any claim of, or liability for negligent acts, errors or omissions of the Consultant under this contract. The Consultant shall not be required to indemnify the City for a claim of, or liability for, the independent negligence of the City. If there is a claim of, or liability for, the joint negligent error or omission of the Consultant and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Consultant" and "City", as used within this article, include the employees, agents and other consultants/contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the City's selection, administration, monitoring, or controlling of the Consultant and in approving or accepting the Consultant's work..

14. INDEPENDENT CONTRACTOR. Consultant is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Consultant is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Consultant or any other party. Consultant shall be solely

responsible for, and the City shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the City; (4) participation or contributions by either Consultant or the City to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the City. Consultant shall indemnify and hold City harmless from, and defend City against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Consultant nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the City. The City and Consultant shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such.

15. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the City, Consultant, as an independent contractor and not an employee of the City, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The City shall have no liability except as specifically provided in the Contract. The Consultant shall not commence work before:
- a. Consultant has provided the required evidence of insurance to the Contracting Agency of the City, and
 - b. The City has approved the insurance policies provided by the Consultant.
 - c. Prior approval of the insurance policies by the City shall be a condition precedent to any payment of consideration under this Contract and the City's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the City to timely approve shall not constitute a waiver of the condition.
 - d. Insurance Coverage: The Consultant shall, at the Consultant's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the City, the required insurance shall be in effect prior to the commencement of work by the Consultant and shall continue in force as appropriate until the latter of:
 - i. Final acceptance by the City of the completion of this Contract; or
 - ii. Such time as the insurance is no longer required by the City under the terms of this Contract.
 - e. Any insurance or self-insurance available to the City shall be excess of and non-contributing with any insurance required from Consultant. Consultant's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the City, Consultant shall provide the City with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Consultant has knowledge of any such failure, Consultant shall immediately notify the City and immediately replace such insurance or bond with an insurer meeting the requirements.
 - f. Workers' Compensation and Employer's Liability Insurance
 - i. Consultant shall provide proof of worker's compensation insurance as required of Alaska Administrative Code Title 8.
 - ii. Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

- g. Commercial General Liability Insurance
 - i. Minimum Limits required:
 - 1. \$1,000,000 General Aggregate
 - 2. \$1,000,000 Products & Completed Operations Aggregate
 - 3. \$1,000,000 Personal and Advertising Injury
 - 4. \$1,000,000 Each Occurrence
- h. Business Automobile Liability Insurance
 - i. Minimum Limit required: \$1,000,000 Each Occurrence for bodily injury and property damage. Coverage shall be for "any auto" (including owned, non-owned and hired vehicles). The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- i. Professional Liability Insurance
 - i. Minimum Limit required: \$1,000,000 Each Claim
 - ii. Retroactive date: Prior to commencement of the performance of the contract
 - iii. Discovery period: Three (3) years after termination date of contract.
 - iv. A certified copy of this policy may be required.
- j. Umbrella or Excess Liability Insurance
 - i. May be used to achieve the above minimum liability limits.
 - ii. Shall be endorsed to city it is "As Broad as Primary Policy"
- k. General Requirements:
 - i. Additional Insured: By endorsement to the general liability insurance policy evidenced by Consultant, The City of Palmer, its officers, employees and shall be named as additional insureds for all liability arising from the Contract.
 - ii. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
 - iii. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
 - iv. Deductibles and Self-Insured Retentions: Insurance maintained by Consultant shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the City. Such approval shall not relieve Consultant from the obligation to pay any deductible or self-insured retention.
- l. Policy Cancellation: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the City of Palmer, c/o Sandra Garley, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown below.
- m. Approved Insurer: Each insurance policy shall be:
 - i. Issued by insurance companies authorized to do business in the State of Alaska or eligible surplus lines insurers acceptable to the City and having agents in Alaska upon whom service of process may be made, and
 - ii. Currently rated by A.M. Best as "A-VII" or better.
- n. Evidence of Insurance: Prior to the start of any Work, Consultant must provide the following documents to the contracting City:
 - i. Certificate of Insurance: The Accord 25 Certificate of Insurance form or a form substantially similar must be submitted to the City to evidence the insurance policies and coverages required of Consultant.
 - ii. Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26) , signed by an authorized insurance company representative, must be submitted to the City to evidence the endorsement of the City as an additional insured per General Requirements, Subsection a above.

- iii. Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess insurance policy may be required.
 - o. Review and Approval: Documents specified above must be submitted for review and approval by the City prior to the commencement of work by Consultant. Neither approval by the City nor failure to disapprove the insurance furnished by Consultant shall relieve Consultant of full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Consultant or its subcontractors, employees or agents to the City or others, and shall be in addition to and not in lieu of any other remedy available to the City under this Contract or otherwise. The City reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.
 - p. Mail all required insurance documents to the City. Address the required insurance documents as ATTN: Sandra Garley, 231 W. Evergreen Avenue Palmer, AK 99645.
 - q. Compliance with Legal Obligations. Consultant shall procure and maintain for the duration of this Contract any city, borough, state or federal license authorizations, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Consultant to provide the goods or services required by this Contract. Consultant will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of the Consultant. Consultant agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The City may set-off against consideration due any delinquent government obligation.
16. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
17. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
18. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or subrogation of any defense to payment by City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Consultant shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the City.
19. CITY OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Consultant (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into City possession by Consultant upon completion, termination, or cancellation of this Contract. Consultant shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Consultant's obligations under this Contract without the prior written consent

of the City. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark or copyright protection.

20. PUBLIC RECORDS. Pursuant to PMC 3.21, information or documents received from Consultant may be open to public inspection and copying. Consultant may label specific parts of an individual document as a "propriety information/trade secret" or "confidential" in accordance with Section 11.16 of the RFP, provided that Consultant thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.
21. CONFIDENTIALITY. To the extent permitted or required by law, any reports, information, data, etc., given to or prepared or assembled by the Consultant under this contract 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.
22. PUBLICATION, REPRODUCTION AND USE OF MATERIAL. No material produced, in whole or in part, under this contract shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under this contract.
23. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:
 - a. Consultant certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - b. Consultant and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
 - c. Consultant and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offer for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
24. LOBBYING The parties agree, whether expressly prohibited by federal, State or local law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
 - a. Any federal, state, county or local agency, legislature, commission, council or board;
 - b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
 - c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

- 25. WARRANTIES. Consultant warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
- 26. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Consultant acknowledges that as required by statute or regulation this Contract is effective only after approval by the Mayor and/or City Council and only for the period of time specified in the Contract. Any services performed by Consultant before this Contract is effective or after it ceases to be effective are performed at the sole risk of Consultant.
- 27. JURISDICTION: CHOICE OF LAW. Any civil action arising from this Contract 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.
- 28. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the City Council.

29. FUND VERIFICATION:

Fund source and verification of funds for this project:

Funding Source: _____

Verified by

Date

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Consultant

Date

APPROVED:

Doug B Griffin, City Manager

Date



Douglas B. Griffin
City Manager

City of Palmer
231 W. Evergreen Avenue
Palmer, Alaska 99645-6952
Phone (907) 761-1317
dgriffin@palmerak.org
www.cityofpalmer.org

MEMORANDUM

TO: Deputy Mayor Hanson and Members of the Palmer City Council
FROM: Douglas B. Griffin, City Manager *Douglas B. Griffin*
DATE: January 29, 2013
RE: Mat Maid Block Update and Direction from City Council

The following is a progress report regarding the Mat Maid Block (MMB) since our last meeting. Following the update, I request further direction on how to proceed.

The Downtown Palmer Strategic Initiative Request for Proposal (RFP)

Attachment A to this memorandum is a draft of elements necessary in a scope of work for the planning process to strengthen economic vitality of downtown Palmer. These elements will be used to prepare an RFP for conducting this planning effort.

Intergovernmental Cooperative Agreement

On January 23 the Mat Maid Block team (Glen Price, Sandra Garley, and me) met with Borough Manager Moosey and a team of Matanuska-Susitna Borough (MSB) employees (Borough Attorney Nicholas Spiropoulos, Planning Director Eileen Probasco, Community Development Director Eric Phillips, Land Management Agent Nancy Cameron, Pre-Design /Transportation Manager Brad Sworts, Environmental Engineer Michael Campfield and Resource Specialist Ray Nix), to determine if the MSB is interested in signing the Intergovernmental CA. Mr. Price, Director Garley, and I briefed Mr. Moosey and staff on the project history and status, including stalled land negotiations and environmental contamination liability concerns. They were very supportive of the project to redevelop the Mat Maid parcel next door to borough headquarters. However, the MSB was hesitant about being a party to an agreement, even in a support role, due to potential environmental liability. Mr. Moosey was willing to place a resolution of support before the Assembly at its next available meeting in favor of a reasonable approach to address environmental contamination and supporting the City of Palmer in planning to develop the Mat Maid Block. Attachment B is a proposed draft resolution for submission to the MSB after February 5.

Meeting with Assistant Attorney General Bob McFarlane

Mr. Price met with Bob McFarlane, the Assistant Attorney General for both the ARLF Board and Division of Agriculture. Mr. McFarlane has been very supportive of the Mat-Maid

project. Glen explained the current status of the project, and provided a detailed update of the dilemma the City is facing with DEC/EPA in addressing environmental issues. Mr. Price also went over the draft of the Intergovernmental Cooperative Agreement with Mr. McFarlane. Bob suggested that he put a resolution before the ARLF Board at its February meeting in which the ARLF will show support for the project and request that DNR (through Deputy Commissioner Fogels) work with the City in its efforts to resolve the environmental issues facing the City and other property owners.

Palmer Arts Council Withdrawal

The Palmer Arts Council has voted to rescind all previous agreements to sell their property in the Mat Maid Block to the City. They intend to seek development options independently. See Attachment C for the letter.

Environmental Contamination Planning and Institutional Controls

Following the January 8 City Council meeting, I responded to an email from John Carnahan of the Alaska Department of Environmental Conservation about the status of the Targeted Brownfield project for the MMB project. It was very useful to have clear direction from the City Council to convey the grave concerns of 'becoming embroiled in a big environmental contamination trap' and our preference of focusing on systematic planning to reduce liability going forward.

I was subsequently contacted by Joanne Labaw of the U.S. Environmental Protection Agency by email dated January 22, stating that she has begun working to obtaining support to conduct a Systematic Planning session for the Mat-Maid project. She says support for this effort is coming from the EPA Headquarters (I assume this means from Washington, D.C). As of the writing of this memorandum, we have not had a planning teleconference for the Systematic Planning session.

The Mat Maid Team sees this as a positive development. More planning and understanding of the probable contamination up front will reduce the potential liability exposure for the City and present land owners. It will also allow us to understand, plan for, and seek funding for the proper remediation measures to address potential health risks of contamination on the Mat Maid Block.

I would recommend proceeding with the Systematic Planning or TRIAD process. It is more in keeping with our desired approach of having a firm plan with accepted institutional controls in place to reduce the potential liability of developing the Mat Maid Block. The emails between me and Mr. Carnahan and Ms. Labaw are included as Attachment D. Attachment E is a synopsis from Mr Hulbert regarding remediation.

Lobbying Strategy

The request for funding to assist the City of Palmer in acquiring the State-owned 3.3 acres is priority 10 (b) on the Palmer Capital Projects submission to the Governor and Legislature. The Mat-Maid acquisition project is also segregated from the rest of our requested projects. These two factors make it a challenge to accurately convey this need to legislators and members of the Parnell Administration. I remain convinced that refraining from going into debt to acquire land from the State of Alaska is a winning argument. There may be ways to acquire the property from the Agricultural Revolving Loan Fund without appropriating the money through the City. There are also State issues of working cooperatively with the Department of Environmental Conservation, various divisions of the Department of Natural Resources, and the Governor's Office to gain support for helping the City of Palmer guide

development of the Mat Maid Block. I wish to strike the correct balance of pushing the Mat Maid Block project on the funding and environmental clean-up fronts without doing damage to the other funding priorities of the City of Palmer.

Direction from the City Council

To keep this process moving forward the City Administration requests the following direction from the City Council:

1. Is the Scope of Work sufficient to use as the basis of an RFP to prepare the Downtown Palmer Strategic Initiative? Can the Scope be amended to make it ready for an RFP?
2. Is the draft resolution of support from the MSB sufficient as an indication of its 'partnership' with the City and is it ready to be forwarded to the Manager for inclusion on the next available Assembly agenda?
3. Is the draft resolution of support from the ARLF sufficient and ready to be forwarded to Bob McFarlane for inclusion on the ARLF Board's February meeting?
4. Is the City Council supportive of moving forward with ADEC and USEPA in hosting a Systematic Planning meeting in Palmer? In meetings with State and Federal officials may the Administration champion this approach?
5. Can the City discuss the Mat Maid Block project with legislators and high ranking State officials to discuss challenges and benefits to the State for the City to gain ownership of the State Agricultural Revolving Loan Fund parcel? What constraints, if any, are there on presentations to acquire this parcel?
6. Can the City discuss the environmental concerns with legislators and high ranking State officials, and request their assistance in directing DEC to work with the City to implement feasible reductions in environmental health risks?

RFP for the Downtown Palmer Strategic Initiative (DPSI)

The Downtown Palmer Strategic Initiative (DPSI) is a public planning process with an overall goal of strengthening the economic vitality of downtown Palmer by retaining and supporting existing businesses, providing space to attract new development and to ensure the continued momentum for downtown redevelopment and revitalization.

Scope of Work:

Build on previous planning: The consultant will expand on the work previously completed by the City and community members including the 2006 Comprehensive Plan, the Urban Revitalization Plan, Pioneering Palmer's Future, and the Parks, Trails and Recreational Fields Master Plan. Consultant will identify projects from these documents that have been accomplished, and incorporate projects in these documents that are still relevant and supported by the community.

Create a clear vision for the downtown: Working with the community, the consultant will create a clear vision for the downtown area including the Matanuska Colony Historic District and the Mat-Maid Block and what they could be in terms of their local economic importance and their role in Palmer's economic vitality.

Conserve a sense of place: The consultant will develop strategies that respect Palmer unique characteristics as an Alaskan community and that will enhance those characteristics.

Develop clear strategies: Working with the community, the consultant will create a clear set of strategies that set the framework for future economic and physical development in downtown Palmer.

Identify specific criteria for strengthening the economic vitality of downtown Palmer: Identify any obstacles to development in downtown Palmer and recommend specific criteria to overcome these obstacles for consideration by the community and council.

Ensure recommendations are economically feasible: Review recommendations so that they are realistic and create an inviting context for improvements and growth.

Ensure that recommendations are practical and achievable: Deliver a set of actions that combine City resources and community commitment and partnerships in a fair and equitable manner.

ATTACHMENT B

Action:

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 13-___**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to \$3 million dollars in general obligation bonds to finance the acquisition of the Mat-Maid Properties for public purposes of the City; and

WHEREAS, subsequent to the passage of the ballot proposition, the City (i)formed a Project Management Team, including a land consultant, property appraiser, and environmental consultant; (ii) received partial funding from both the Alaska Legislature and the U.S. Environmental Protection Agency (EPA) for environmental and due diligence investigation of the properties; (iii) completed environmental reports and health risk analyses and presented such information to both Alaska Department of Environmental Conservation (DEC) and EPA; and (iv) negotiated Purchase Agreements with certain property owners; and

WHEREAS, site environmental assessment of the properties has revealed that common historical contamination will likely be discovered during development, resulting in significant and unpredictable expenses and potentially extensive delays from DEC oversight and requirements unrelated to actual health risks; and

WHEREAS, mitigating health risks from this contamination without creating greater health risks will require site specific remediation and institutional controls which, if established now in conjunction with DEC, will enable development planning to proceed; and

WHEREAS, despite entreaties, DEC has been unwilling to discuss site specific remediation or institutional controls until an owner identifies contamination and becomes liable for cleanup, which effectively dissuades owners from developing their properties or purchase by the City or developers; and

WHEREAS, unless this situation is resolved, the City likely must terminate the project, losing this development opportunity, leaving the properties in their state of increasing disrepair and safety hazards, and indefinitely delaying beneficial use of the Mat-Maid block; and

WHEREAS, resolving this situation would benefit from involving the State Administration and Legislature, thereby enabling timely beneficial development of the Mat-Maid block while minimizing health risks from contamination and remediation; and

WHEREAS, the City has requested that the Borough adopt a resolution supporting the City's efforts to develop the Mat-Maid block, and encouraging that the State Administration and Legislature work with the City to timely and reasonably resolve

the environmental issues on the Mat-Maid block so that it may be developed to provide for economic development while also preserving the historic attributes of the property; and

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough fully supports the City's efforts to timely develop the Mat-Maid block to provide for economic development while also preserving the historic attributes of the property.

BE IT FURTHER RESOLVED, that the Matanuska-Susitna Borough encourages the involvement of the higher levels of the State Administration and Legislature with environmental issues, so that the project moves forward in a timely, cost-effective manner, while minimizing health risks from contamination and remediation.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of February, 2013.

LARRY DeVILBISS, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)



Cultivating Creativity and Community through the Arts

January 23, 2013

City of Palmer
Attn: City Manager, Members of the Palmer City Council
Palmer, Alaska 99645

RE: Sale/Purchase of Powerhouse Property

At its regular board meeting on January 23, 2013, the Board of Directors of Palmer Arts Council voted unanimously to "renounce and rescind all previous actions and agreements by the Palmer Arts Council to sell the Powerhouse property to the City of Palmer."

The Palmer Arts Council will be seeking options for the development of its property for the benefit of the citizens of Palmer. Input from members of the City Council and from City of Palmer staff will always be welcomed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffery Lisa Charvet".

Jeffery Lisa Charvet, President
Palmer Arts Council

Jeffery Lisa Charvet
President

Rose Hendrickson
Vice President

Howard Bess
Secretary

Paul Morley
Treasurer

Bill Aube
Board Member

P.O. Box 4286 Palmer, AK 99645 907.745.7735 www.thepalmerartscouncil.org

Palmer Arts Council is a 501 (c) 3 federally tax exempt Alaska not-for-profit corporation.

All gifts are tax-deductible. All members of the Board of Directors serve without compensation.

Douglas Griffin

From: Labaw.Joanne@epamail.epa.gov
Sent: Thursday, January 24, 2013 1:16 PM
To: Douglas Griffin
Cc: Carnahan, John
Subject: RE: Mat Maid-Systematic Planning

Doug,
I am glad to hear you are enthusiastic about this! I am too. I have forwarded your message on to my counterparts in HQ. Unfortunately, Monday won't work for me for a conference call, but I will see if we can set something up later in the week. I will keep you posted.

Joanne LaBaw
U.S. EPA--Region 10 (ECL-112)
1200 Sixth Ave., Suite 900
Seattle, WA 98101

(206)553-2594
labaw.joanne@epa.gov

▼ Douglas Griffin ---01/24/2013 11:53:04 AM---Ms. Labaw - **We are very excited with the prospect of conducting a thorough Systematic Planning sessi**

From: Douglas Griffin <dgriffin@palmerak.org>
To: Joanne Labaw/R10/USEPA/US@EPA
Cc: "Carnahan, John" <John.Carnahan@dec.state.ak.us>
Date: 01/24/2013 11:53 AM
Subject: RE: Mat Maid-Systematic Planning

Ms. Labaw – We are very excited with the prospect of conducting a thorough Systematic Planning session to address the Mat-Maid project. I realize this may slow down the process a bit, but I think it will be a very useful exercise. The more planning and information we can impart upfront with regard to environmental contamination liability the better. You are correct in noting the potential economic and political concerns along with the fundamental environmental aspects of this problem. I think Systematic Planning and/or a TRIAD process with all of the stakeholders will help fill an information vacuum that is now in large part filled with fear of huge clean-up costs and multi-year delay in trying to redevelop this property. Your offer of proceeding at no cost is welcome news and the City is prepared secure suitable meeting space and handle logistics for the meeting. I would like to hold the meeting within 30 to 45 days. I would propose a conference call for 10 a.m. Monday, January 28 (AST) that would be 11 a.m. in Seattle. I do need to learn more about Systematic Planning and I will be prepared to ask more questions at that time. I may also have members of my Mat-Maid Block team join me for the conference call. Confirm if this works for you or suggest another time/date if it does not. –
Doug Griffin

From: Labaw.Joanne@epamail.epa.gov [<mailto:Labaw.Joanne@epamail.epa.gov>]
Sent: Tuesday, January 22, 2013 2:19 PM
To: Douglas Griffin
Cc: Carnahan, John
Subject: Mat Maid-Systematic Planning

Hello Doug,
I wanted to let you know that I have been pursuing obtaining support to conduct a Systematic Planning session for the Mat-Maid project. We have a Brownfields technical support office at EPA Headquarters who can provide this kind of support. We had a conference call last week to discuss the site and I answered a number of questions they had. The BF

Douglas Griffin

From: Douglas Griffin
Sent: Thursday, January 24, 2013 10:50 AM
To: 'Labaw.Joanne@epamail.epa.gov'
Cc: Carnahan, John
Subject: RE: Mat Maid-Systematic Planning

Ms. Labaw – We are very excited with the prospect of conducting a thorough Systematic Planning session to address the Mat-Maid project. I realize this may slow down the process a bit, but I think it will be a very useful exercise. The more planning and information we can impart upfront with regard to environmental contamination liability the better. You are correct in noting the potential economic and political concerns along with the fundamental environmental aspects of this problem. I think Systematic Planning and/or a TRIAD process with all of the stakeholders will help fill an information vacuum that is now in large part filled with fear of huge clean-up costs and multi-year delay in trying to redevelop this property. Your offer of proceeding at no cost is welcome news and the City is prepared secure suitable meeting space and handle logistics for the meeting. I would like to hold the meeting within 30 to 45 days. I would propose a conference call for 10 a.m. Monday, January 28 (AST) that would be 11 a.m. in Seattle. I do need to learn more about Systematic Planning and I will be prepared to ask more questions at that time. I may also have members of my Mat-Maid Block team join me for the conference call. Confirm if this works for you or suggest another time/date if it does not. – Doug Griffin

From: Labaw.Joanne@epamail.epa.gov [<mailto:Labaw.Joanne@epamail.epa.gov>]
Sent: Tuesday, January 22, 2013 2:19 PM
To: Douglas Griffin
Cc: Carnahan, John
Subject: Mat Maid-Systematic Planning

Hello Doug,

I wanted to let you know that I have been pursuing obtaining support to conduct a Systematic Planning session for the Mat-Maid project. We have a Brownfields technical support office at EPA Headquarters who can provide this kind of support. We had a conference call last week to discuss the site and I answered a number of questions they had. The BF support group is very interested in working with us. Given the potential environmental, economic and political concerns that go along with this site, I think a facilitated approach would be very beneficial. This support would be at no cost, however, if you agree to move forward with this, we may look to the City to project a meeting place.

I would like to invite you to a conference call to discuss this further. This would also be a good opportunity to answer your questions. This would give you a better idea of how systematic planning would work and what the City's role would be. I hope this is something you would be interested in. I think it would greatly facilitate this project.

I look forward to hearing from you.

Joanne LaBaw
U.S. EPA--Region 10 (ECL-112)
1200 Sixth Ave., Suite 900
Seattle, WA 98101

(206)553-2594
labaw.joanne@epa.gov

Douglas Griffin

From: Douglas Griffin
Sent: Tuesday, January 15, 2013 4:22 PM
To: 'Carnahan, John (DEC)'
Subject: FW: Potential Preliminary Sampling at the Mat-Maid Block

John – As mentioned, here are the suggestions from Ralph on how we may proceed. I concur with his suggested measures. – Doug

From: Ralph Hulbert [<mailto:hulbert@alaska.net>]
Sent: Monday, January 14, 2013 5:56 PM
To: Douglas Griffin
Cc: Glen Price; Sandra Garley; Richard w. Best
Subject: Potential Preliminary Sampling at the Mat-Maid Block

Doug

The city does not have access permission from parcel owners to perform invasive soil or groundwater sampling. However, other assessments might be performed by E&E through the TBA while the city and DEC work out systematic planning details.

- Asbestos Containing Material (ACM) surveys for all buildings were included in E&E's sampling approach, as were presence of PCB light ballasts and lead paint. These surveys are valuable to the owner for structure remodeling or demolition. They are not gateways to DEC contaminated sites listings and owners may be more willing to grant access. These surveys are not limited by winter.
- Testing downgradient drinking water wells or boring a sentinel well are not limited by winter, and would be done off-site. Remediation planning will evaluate the need for either. E&E proposed boring six wells to groundwater, and presumed depth is less than 40 ft and can be reached by inexpensive push systems; neither is likely, since the onsite well log showed the first water at ~89 ft, while the cobbly soil thwarts push systems. I suggest sampling the four downgradient drinking water wells as first choice for assessing health risks. Although less direct for assessing health risks, a sentinel well in the south side of the library lot would intercept any plume from the Mat-Maid block or DOT/pretrial site further north before any possible drinking water receptor. Either option is far less expensive and a better assessment of health risks than the 6 proposed wells.
- Although not included in E&E's draft, solid waste removal/recycling assessments are apparently within the scope of TBA grants. Major health risks include the abandoned derelict structures, and removal options and costs are needed. As with ACM surveys, these assessments can be performed in winter and owners may be more willing to grant access. RCRA sampling for disposals, such as fire residue, would require an approved workplan addressing need and generator knowledge determinations. Owner access approval would be required.

I hope this helps,

Ralph Hulbert, P.E.
AlaskChem Engineering
907.746.4587

Douglas Griffin

From: Douglas Griffin
Sent: Tuesday, January 15, 2013 3:38 PM
To: 'Carnahan, John (DEC)'
Subject: RE: Checking in

John – Sorry for the delay in getting back to you. The Mat-Maid Project was the subject of a City Council meeting on January 8 and we got a change in marching orders from the Council on how it wishes to proceed. The property procurement aspect has become a problem. Owners want well above appraisal and the Council believes the counteroffers are too high. The potential of becoming embroiled in a big environmental contamination trap is also weighing heavy on the Council. Some prominent community members fear the City will get stuck with property that ends up having a negative value.

The upshot of the City Council meeting is an even clearer understanding that before we can make any progress on rehabilitating this property with meaningful development the City and/or the private property owners must resolve the environmental issues. The City needs some assurances from ADEC and EPA that there is a path through the environmental remediation thicket that does not create a crushing obligation on parties that want to do the right thing and get this property back into productive use.

The direction I am getting from my City Council only makes it even clearer that proper upfront planning under the DEC/CSP protocol to focus on how best to reduce the health risks of developing the Mat-Maid property is essential. The City is not adverse to working every angle to limit and control, if not eliminate, the liability it assumes in seeking development of the property. This includes seeking assistance from our legislative delegation and the Parnell administration. The City has prepared a draft intergovernmental cooperative agreement which we hope will include the Mat-Su Borough, State of Alaska/Department of Natural Resources, and perhaps the University of Alaska to seek even more support for our efforts going forward.

As part of the planning process, the City believes that TRIAD approach of systematic planning, dynamic work plans, and on-site analytical tools will be useful throughout the project, especially for handling new contamination that may be discovered during development. The City wants to support all phases, including hosting meetings and helping develop agenda, supporting documents, decision points and options, etc. The systematic planning is the most crucial hurdle, as described in AlaskChem's 8/16/12 email including decision logic diagram based on evaluating and minimizing health risks. The City would like to start there.

I have also asked Mr. Hulbert to suggest assessments that would likely be approved by owners and included in the E & E draft. I will pass those on to you when I receive them.

I hope this demonstrates the desire of the City of Palmer to move forward in a measured way to restore the Mat-Maid block for productive use either by the City or by the present property owners. This is tentative in its approach because this represents significant risk for a small town with limited means. I appreciate your patience and willingness to work with us on this project. The City Council has another meeting scheduled for February 5 to see what progress the Mat-Maid team has made in addressing the environmental remediation challenges on the Mat-Maid block. I will keep you posted. – Doug Griffin

From: Carnahan, John (DEC) [mailto:john.carnahan@alaska.gov]
Sent: Tuesday, January 08, 2013 8:56 AM
To: Douglas Griffin
Cc: Carnahan, John (DEC)
Subject: RE: Checking in
Importance: High

Greetings Doug – I received a call from EPA today regarding continuing interest in this project. Please advise if the City is still interested in a Triad facilitation meeting, or if the potential acquisition of the property by the City of Palmer has been cancelled altogether.

Thank you.

John

From: Carnahan, John (DEC)
Sent: Friday, January 04, 2013 2:47 PM
To: Doug Griffin
Cc: Carnahan, John (DEC)
Subject: Checking in

Hi Doug – I talked with Joanne Labaw recently and she is still very interested in a facilitated meeting to discuss the project in its entirety. If there is still interest in such an approach, please let me know. I have several irons in the fire right now (as I am sure you do), and won't spend time unless you are very interested. If so, I would like to discuss a communication and coordination plan with you before we move forward.

Regards,

- *John*

Brownfield redevelopment benefits everyone as it helps protect the environment by cleaning up existing contamination and preserves undeveloped land.

John B. Carnahan
Brownfield Coordinator - Contaminated Sites Program
ADEC Spill Prevention and Response
610 University Avenue, Fairbanks, Alaska 99709
Phone: (907) 451-2166
Facsimile: (907) 451-2155
Email: John.Carnahan@alaska.gov
Website: <http://www.dec.state.ak.us/spar/csp/brownfields.htm>

The information contained in this communication is confidential and privileged proprietary information intended only for the individual or entity to whom it is addressed.

January 16, 2013

Doug Griffin, Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, AK 99645

Re: Matanuska Maid Block; Remediation Comparisons

As requested, I have attached brief bullet summaries of two options for assessment and remediation of Mat-Maid block environmental issues. Option 1 describes historical protocols preferred by DEC/CSP and Option 2 describes Remediation Risk Management (RRM) outlined last summer in the August 21, 2012 environmental planning document.

The most significant difference is reduction of health risks. Option 1 does not calculate health risks and assumes that remediation, magically, has no adverse effects. Prescribed assessment and remediation procedures allow minimal site specific input, result in extensive delays and unpredictable costs, and often cause more harm than good, especially for dispersed weathered petroleum contamination and limited exposures expected on the Mat-Maid properties.

In Option 2, project life cycle health risks affecting the entire public are calculated for assessment and remediation options, enabling confident selection. Tools used include systematic planning, remediation risk management, site specific engineering/institutional controls, and TRIAD implementation to minimize risks. The required advance planning encourages development, since costs and liabilities can be more accurately estimated earlier in the project. Option 2 provides far greater assurance that health risks will be comprehensively addressed and reduced.

These tools are described in recent EPA, DEC, and interstate guidance and emphasized in the Brownfields program. DEC/CSP references the need for RRM but has yet to develop any guidance. The major hurdle is engaging DEC senior staff for proactive systematic planning decisions, which apparently are beyond the authority of Brownfields program staff.

I hope the upcoming meetings with DEC and EPA Brownfields staff will prompt this planning.

Sincerely,



Ralph Hulbert, P.E.

Attached: Comparing Options for Resolving Environmental Issues at Mat-Maid Block

Comparing Options for Resolving Environmental Issues at Mat-Maid Block

➤ Option 1: Historical Protocols

- ◆ Nominal program goal is protecting public health and the environment
- ◆ Contamination has predetermined regional health risk regardless of exposure
- ◆ Total health risks to the public are not quantified
- ◆ Health risks created by assessment and remediation need not be considered
- ◆ Reductions or increases in total health risks are not quantified
- ◆ Following discovery, rigid protocols for assessment and remediation, with numerous workplans each requiring approval, ensures an uncertain multi-year process
- ◆ Extent of contamination for each discovery, regardless of site risk, must be determined before remediation can be addressed
 - Contamination is often first stockpiled, thus rapid high-risk removals are preferred
 - Engineering and institutional controls to mitigate exposure are less favored
 - Costs can not reasonably be estimated until remediations are approved
- ◆ Average time between discovery and CSP closure is 4 years for Palmer sites
- ◆ Process is repeated for each new discovery during development of each site
- ◆ Total project costs and liabilities are unpredictable, discouraging developers

➤ Option 2: Remediation Risk Management (RRM)

- ◆ Goal is the calculated reduction of risks to public health and the environment
 - RRM evaluations consider all life cycle health risks to the entire public
 - Unbiased (neutral, probabilistic) risks are estimated using site specific data
 - Health risks from contamination include site specific exposure probabilities
 - Health risks from assessment and remedial actions are similarly calculated
 - The option suite with lowest total health risks to the entire public is preferred
- ◆ Systematic planning for RRM begins when contamination is reasonably suspected
 - A conceptual site model quantifies health risks for contamination scenarios
 - For each scenario, potential remediations and data requirements are identified (removals, treatments, engineering/institutional controls, and combinations)
 - Health risks and effectiveness are evaluated for assessment/remediation options for major defined scenarios, based on national and statewide empirical evidence
 - Workplan assessment/remediation approvals with “Cleanup Complete” terms are negotiated for suites with lowest net health risks for each defined scenario
 - Unanticipated scenarios will be similarly addressed when discovered
- ◆ Assessment/remediation is implemented using TRIAD process during development
 - Targeted sampling of information gaps improves efficiency and reduces costs during planning, extended development, and confirmation of remediation and mitigation
 - Since discoveries during development are anticipated and seamlessly remediated, more complete investigation, remediation, and reporting is encouraged
- ◆ Overall health risks, development delays, and expenses are minimized
- ◆ Total project costs and liabilities are more accurately determined at project beginning, encouraging the City and developers to evaluate buying the properties

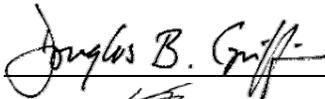
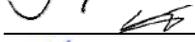
**CITY OF PALMER
ACTION MEMORANDUM NO. 13-005**

Subject: Providing Direction to the City Manager on Mat-Maid Property Acquisition Options

Agenda of: January 8, 2013

Council Action: Postponed to February 5, 2013

Approved for presentation by:

City Manager	
City Attorney	
City Clerk	

Certification of Funds:

Total amount of funds listed in legislation:	\$ _____
This legislation (✓):	
<input checked="" type="checkbox"/> Has no fiscal impact	
Creates:	
_____ A negative fiscal impact in the amount of:	\$ _____
_____ A positive fiscal impact in the amount of:	\$ _____
_____ Funds are budgeted from this (these) line item(s):	
➤	\$ _____
_____ 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:	

Attachment(s):

- Current Status of Mat-Maid Project Flowchart
- Mat-Maid Current Negotiated Purchase Price Summary
- Mat-Maid Block Environmental Update
- Draft Intergovernmental Cooperative Agreement
- Action Memorandum 12-015: Approve the Base Form of Agreement for the Sale and Purchase of Real Estate to be Used by the City Manager and Real Estate Consultant in Negotiations for Purchase of the Mat Maid Properties
- Action Memorandum 12-016: Authorize the City Manager to Negotiate the Purchase Price and Terms for Acquisition of Each of the Mat-Maid Block Properties, Such Terms to Include the Expenditure of up to \$30,000 for Deposits as Provided in the Agreements for the Sale and Purchase of Real Estate
- Resolution No. 10-046: Providing for the Submission to the Qualified Voters of the City of Palmer the Question of the Issuance of Not to Exceed Three Million Dollars

(\$3,000,000) of General Obligation Bonds to Pay Costs of Acquiring Real Property Located on the City Block Known as the Mat-Maid Block at an Election in and for the City of Palmer on October 5, 2010

- Resolution No. 13-003: Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the State of Alaska, Division of Agriculture for the Purchase of Real Property located at 513 South Valley Way (IM 13-002)
- Resolution No. 13-004: Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and Jeffrey Johnson for the Purchase of Real Property located at 585 South Valley Way and Authorizing the Expenditure of \$25,000 as an Initial Deposit under such Agreement (IM 13-003)
- Resolution No. 13-005: Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and William H. Ingaldson for the Purchase of Real Property located at 325 East Dahlia Avenue and Authorizing the Expenditure of \$5,000 as an Initial Deposit under such Agreement (IM 13-004)
- Resolution No.13-006 Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and the Palmer Arts Council for the Purchase of Real Property located at 237 East Dahlia Avenue and Authorizing the Expenditure of \$5,000 as an Initial Deposit under such Agreement (IM 13-005)

Summary statement: The City Manager is requesting direction from the City Council on the next steps to take in moving on the Mat-Maid Block (MMB) property acquisition. Four options have been identified and are described below.

Background: The administration has been working with its consultants on purchasing the seven lots comprising the 8.74 acres known as the MMB since early in 2011. The team contracted with Statewide Appraisal Services for Narrative Appraisal Reports on the six privately owned lots. The seventh lot is owned by Alaska Revolving Loan Fund, a division of the Alaska Department of Agriculture. A Phase I Environmental Site Assessment (ESA) of the Mat-Maid block has been conducted by AlasChem Engineering, and the City's real estate consultant, Glen Price, has engaged in purchase negotiations with all of the property owners.

An updated copy of the Status of Mat Maid Project flowchart, a table summarizing the negotiations to date, and the environmental update for the October 23, 2012 Council meeting are provided as attachments to AM 13-005. Additionally, the attachments include a draft Intergovernmental Agreement which would authorize the City, State and the Matanuska-Susitna Borough to work together to promote development of the MMB. Also attached for discussion, are four draft Informational Memorandums, resolutions, and owner signed purchase agreements for MMB parcels.

In preparing the FY 2013 Budget, Council approved \$50,000 to develop a Master Plan of the Downtown Area to include discussion of the Mat-Maid Block. This planning process would provide for public participation in determining the City's role in the development of the MMB.

Mat Maid Block Acquisition Options: Given the difficulties facing the City of Palmer in acquiring the parcels of the Mat Maid Block (MMB) on terms favorable to the City, a review of options regarding the future direction of the project is advisable. Factors that must be taken

into account include staying within a reasonable budget, assuming reasonable risk, and seeking to avoid long term delays in addressing environmental contamination issues.

There would appear to be four different options available to the City, with variations for each basic option. The options are as follows:

- Option #1 – Continue to pursue purchase of all seven parcels of the Mat Maid Block.
- Option #2 – Acquire the publicly held parcel owned presently by the Department of Natural Resources, Agricultural Revolving Loan Fund (ARLF).
- Option #3 – Buy only some of the parcels of the Mat Maid Block.
- Option #4 – Stop the acquisition process.

Option #1 – Continue to pursue purchase of all seven parcels of the Mat Maid Block.

The Mat-Maid Block land acquisition team knew that purchase of all seven parcels owned by separate owners was a challenging endeavor. There were several obstacles that were present that are not usually found in normal arms-length negotiations between buyers and sellers of property. These obstacles included:

- Public knowledge of how much money the City had to spend to acquire the property;
- The perceived importance that the City acquire every one of the seven parcels;
- Expectations by the property owners that the City would pay a premium price to acquire the property;
- Having to negotiate in public due to the use of public funds for the property acquisition;
- Having little, if any, leverage to encourage a fair price (at or near appraised value) and timely and responsive counteroffers from the property owners;
- Destruction by fire of one of the historic properties on the site;
- The desire of Crowley to continue to operate its parcel due to high moving costs and new construction costs and site remediation issues;
- Limitations regarding utilization of City acquired properties for a public purpose;
- Concerns regarding petroleum and chemical contamination of the property from prior owners and unknown costs and delays in remediation of the property; and
- Timing challenges of synchronizing purchases, environmental assessment and remediation, bond sales, and development planning and financing.

Over the last two years Option #1 was the path the City has pursued. This option has proven to be unattainable due to 1) the inability to persuade the ARLF Board to consider a land swap or other options to paying the full over-the-counter price, 2) the counter offers of most land owners seeking prices substantially higher than appraised values, inability to further negotiate a purchase from Crowley, and 3) lack of progress in getting assurances from the Department of Environment Conservation (DEC) to adopt agreed upon institutional controls regarding the types of environmental contamination anticipated to be found on the Mat Maid properties and to quantify potential remediation costs. Another important consideration is the City's ability to service an additional \$3,000,000 of debt from its general fund. Also, the cumulative proposed purchase prices from all sellers will exceed the \$3 million bond authority.

Unless there are some changes to the bullet points listed earlier, it would appear that the option to acquire all of the properties is not attainable at this time.

Option #2 – Acquire only the publicly held parcel owned presently by the Department of Natural Resources, Agricultural Revolving Loan Fund (ARLF).

The ARLF property is 3.025 acres and represents the largest single parcel in the block. The over-the-counter price is \$975,000 which is the purchase price presented for Council review in a Purchase Agreement signed by ARLF as an attachment to the AM. The City has not been successful in acquiring the parcel through a land swap despite the fact that the City has identified more suitable Department of Natural Resources owned agricultural land in Willow, which are on the road system and have partial utility connections. The City of Palmer Capital Projects list includes a request of grant funds for this property.

The advantages of this option are:

1. Potential of owning about 35% of the MMB without incurring any debt;
2. Ownership of a large enough portion of the MMB to create amenities to assist other private property owners in developing their properties as part of an overall development plan or in a way that does not conflict with the City's development of its parcel;
3. The City would limit its environmental contamination and clean-up exposure to one parcel and would have the State as a partner in addressing environmental contamination issues; and
4. The City could assist other private property owners in addressing environmental contamination issues with the DEC as part of a consortium to develop the entire block.

The disadvantages of this approach are:

1. The City would not own parcels with historically significant structures;
2. The City would not have direct control over how the remaining parcels are developed other than through the zoning; and
3. There would be considerable challenges to private development of the entire parcel due to the fractured ownership of the block property, and the possibility of DEC dealing with each property owner separately with respect to approaching environmental assessment and remediation.

Option #3 – Buy only some of the parcels of the Mat-Maid Block.

Based on review of the October 2010 bond language, it appears the City is not required to buy all of the properties in the MMB. Option #3 should include acquisition of the ARLF property based on the strategies mentioned in Option #2. Option #3 is Option #2 plus one or more additional properties in the MMB. Exercise of this option may require the sale of municipal bonds, but would represent the assumption of less debt and lower bond payments. The City should be strategic in its selection of which additional parcels it will attempt to acquire and will need to do some development planning to guide it in its negotiations to acquire other properties. The City would also have to consider how contiguous the acquired parcels would be, and the development plans of the other property owners and their willingness to work with the City in establishing compatible development goals.

The advantages of this approach are:

1. The City would incur less debt and lower bond repayment costs;
2. The City could possibly gain more leverage in its negotiations with the other private land owners;

3. The City could assist other private property owners in addressing environmental contamination issues as part of a consortium to develop the entire block as owner of a larger share of the entire block;
4. Assuming the ARLF parcel is obtained, the State would be a partner with the City in addressing environmental contamination issues;
5. The possibility of an Intergovernmental Cooperative Agreement between the City, Department of Natural Resources, Matanuska-Susitna Borough, and other governmental entities, such as the University of Alaska, to collectively coordinate efforts with DEC to address contamination and remediation; and
6. The City might own land with historically significant structures; and
7. The City would be able to undertake development planning as part of the Downtown Master Plan approved in the FY 2013 Budget to assist it in determining which parcels are most desirable.

The disadvantages are:

1. The cost and delay in producing a development plan to guide partial acquisition.
2. The City will not have as much control over how the remainder of the block is developed other than through zoning; and
3. There will be considerable challenges developing the entire parcel due to the fractured ownership of the block property.

Option #4 – Stop the acquisition process.

Consideration of any array of options should include a do nothing option terminating further efforts to acquire the MMB. In this case, the City would be ceasing the MMB development process for the foreseeable future due to the overwhelming challenges mentioned above. Individual property owners could still develop their individual parcels to the benefit of the City.

The advantages are:

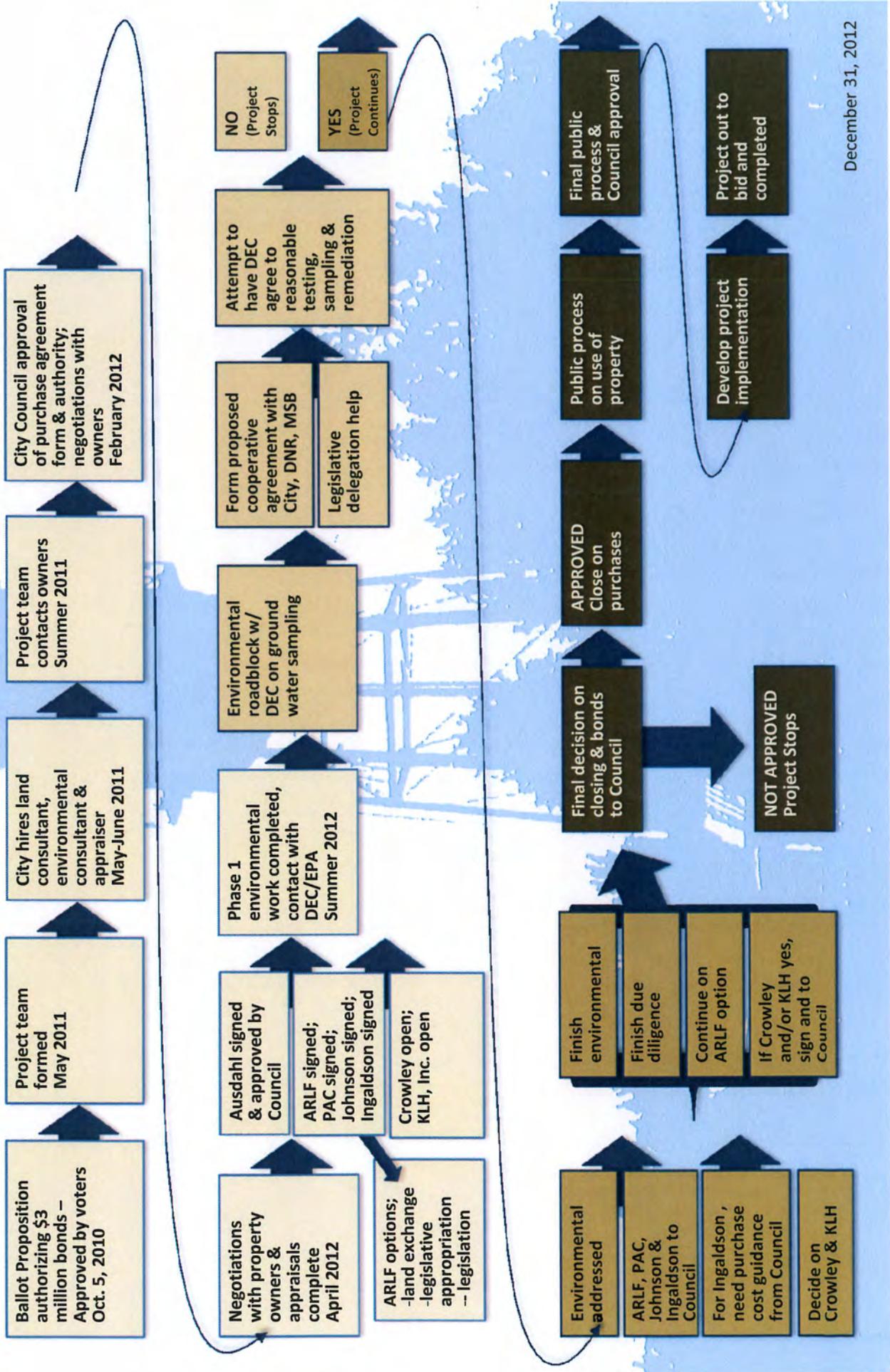
1. The City assumes no risk of incurring bonded indebtedness that would have to be repaid over twenty years.
2. The City assumes no environmental clean-up risk or liability; and
3. The City can put its time, resources, and energy into other endeavors.

The disadvantages are:

1. The City would continue to have several acres of valuable property in its core area that are blighted and not being used to enhance the aesthetics, tourism, and economy of the City;
2. The City will not have control over historically significant structures, except through zoning controls and any Planning and Zoning Commission approval requirements;
3. The City will not address environmental contamination and safety issues on land important for future development;
4. Funds expended to date by the City on the project for legal fees, consultants, appraisal services, as well as on non-refundable deposits under the Purchase Agreements would not be recouped; and
5. Any further opportunities to comprehensively develop the Mat-Maid Block would likely be lost.

Administration recommendation: The Administration recommends Option #3. This follows up on the Downtown development funding added to the 2013 budget and the Capital Projects Priority of seeking grants to acquire the ARLF Property.

STATUS OF MAT MAID PROJECT



Mat Maid Current Negotiated Purchase Price Summary ... As of January 2, 2013

Owner	Acreage	2012 Tax Assessed Value	Appraised Value	Square Footage	Appraised Value per SF	City Initial Offer	Current Negotiated Purchase Price	Current Deposits to Date	Deposit Required on Agreement Signing	Current Negotiated Purchase Price per SF	Annual Property Tax
<i>Johnson</i>	0.70 acres	\$281,800	\$330,000	30,313 SF	\$10.88 SF	\$330,000	\$412,000	\$0	\$25,000	\$13.59 SF	\$ 3,576.32
<i>Crowley</i>	1.11 acres	\$404,000	\$550,000	48,545 SF	\$11.32 SF	\$550,000	Open	\$0	Open	Open	\$ 5,127.16
<i>ARLF</i>	3.03 acres	\$402,500	\$975,000	131,986 SF	\$7.38 SF	\$200,000	\$975,000	None Required	None Required	\$7.38 SF	\$ 5,108.13
<i>KLH</i>	0.85 acres	\$134,000	\$250,000	37,091 SF	\$6.74 SF	\$225,000	Open	\$0	Open	Open	\$ 1,700.59
<i>Ausdahl</i>	0.18 acres	\$181,600	\$220,000	7,841 SF	\$28.05 SF	\$200,000	\$220,000	\$15,000	None req'd	\$28.05 SF	\$ 2,304.69
<i>Ingaldson</i>	2.51 acres	\$379,900	\$350,000	109,255 SF	\$3.20 SF	\$350,000	\$925,000	\$0	\$5,000	\$8.46 SF	\$ 4,821.31
<i>Palmer Arts Council</i>	0.36 acres	\$76,000	\$135,000	15,678 SF	\$8.61 SF	\$150,000	\$168,800	\$0	\$5,000	\$10.76 SF	Exempt
TOTAL:	8.74 acres	\$1,859,800	\$2,810,000	N/A	N/A	\$2,005,000	\$2,700,800	\$15,000	\$35,000	N/A	\$ 22,638.20

October 15, 2012

Doug Griffin, Manager
City of Palmer

Re: Mat-Maid Block Environmental Update for 10/23/12 Council Meeting

Buyers' and developers' fear of entanglement with the Department of Environmental Conservation Contaminated Sites Program (DEC/CSP) hinders redevelopment of older sites such as the Mat-Maid block. DEC/CSP listing of a site often appears trivial or random regardless of health risk, followed by an unpredictably long and expensive site closure process. Of the 38 sites listed by the CSP within Palmer, 30 have closed after being listed an average of 3.9 years. Until closed, sale or development requiring bank financing is very difficult. No Mat-Maid lot is listed now, but each could become listed after sampling of visible oil stains or suspected hotspots. Migration to groundwater (MtG) is the predominant health risk pathway.

A planning consensus with DEC/CSP may resolve these issues for owners, buyers, and developers. A pre-approved assessment and remediation plan for the expected contamination scenarios enables development planning and cost projections, giving buyers more confidence. By focusing on site health risks, assessment costs are reduced and owners may be more willing to allow access to EPA samplers. Since assessment rarely identifies all contamination, and more is often discovered during development, pre-approved plans also help avoid expensive construction delays.

Such planning emphasizes institutional controls (ICs) to identify and control site specific health risk pathways, such as ensuring contaminated groundwater does not become a drinking water source. Recent EPA and DEC guidance recommends "the need for ICs should be evaluated and addressed as early as possible in the site characterization and cleanup processes." Current CSP practice, however, prefers the site to be listed, responsible parties identified, and extent and magnitude of contamination known before developing ICs or any remediation plan.

Efforts to engage DEC/CSP in this planning have been continuous, but with limited progress. Events and documents, interspersed by numerous calls and emails, include:

- Early 2011: The city requested environmental planning assistance from the DEC/CSP.
- 12/21/11: Letter from the city to DEC/CSP delineating drinking water source protection areas in Palmer (near airport and golf course) and where groundwater is not a drinking water source due to hydrology and city code (central Palmer including the Mat-Maid block).
- February 2012: The city received a Targeted Brownfields Assistance offer from EPA to perform initial sampling.
- 3/31/12: Phase I Environmental Site Assessment (ESA) and 4/30/12 Addendum: The ESA identified ~50 Recognized Environmental Concerns (RECs), most presenting minimum health risk. No reportable releases or confirmed contaminated areas were found, although historical uses reasonably indicate substantial contaminated soil exceeding DEC MtG limits is present.

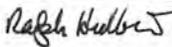
- 6/7/12: Overview of Environmental Issues: Major conflicts and questions facing stakeholders for assessment and remediation of health risks at the site are discussed. Site specific ICs were described following CSP guidance, which require negotiation with DEC/CSP.
- 6/28/12: Letter from the city to DEC/CSP reiterating need for consensus on risk reduction, especially the MtG pathway, prior to further assessment.
- 8/9/12: EPA submitted E&E's Sampling Approach: Mat Maid Block. Hotspot sampling for DEC/CSP site listing was proposed without consideration of health risks or ICs.
- 8/21/12: Environmental Planning document submitted to DEC/CSP included more detailed background and proposed ICs, repeating the need to agree on a sampling and remediation plan.
- 9/7/12: DEC/CSP Brownfield Coordinator emailed that a response is forthcoming.

We need to be realistic regarding both the importance of a pre-approved assessment and remediation plan and the willingness of DEC/CSP to participate or approve. I believe such a plan is critical for evaluating feasibility of developing the Mat-Maid block. Without it, a buyer or developer incurs ownership liabilities with unpredictable delays and potentially extreme remediation costs to keep on schedule.

Despite recent IC planning guidance and quantified reductions in health risks and costs, the desired planning is not yet DEC/CSP standard protocol; caution or decision delays should be expected at the program manager level. DEC/CSP has no protocols for quantifying cleanup health risks or feasibility (costs). However, cleanup decisions by the commissioner based on health risks and feasibility are mandated by statute.

I recommend the city continue efforts to negotiate a suitable pre-approved assessment and remediation plan with DEC/CSP. Because of lack of guidance at the program manager level, involvement at the commissioner level may be prudent.

Sincerely,



Ralph Hulbert

**INTERGOVERNMENTAL COOPERATIVE AGREEMENT
BY AND BETWEEN
THE CITY OF PALMER,
AND
THE MATANUSKA-SUSITNA BOROUGH,
AND
THE DEPARTMENT OF NATURAL RESOURCES**

THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT (Agreement) is made and entered into by and between the **CITY OF PALMER** (City), **MATANUSKA-SUSITNA BOROUGH** (MSB), and **DEPARTMENT OF NATURAL RESOURCES** (DNR), and sets forth the agreements and understandings of the parties, as governmental entities, to cooperatively work together to promote the rehabilitation, public-private development, and economic benefits of the **MAT-MAID BLOCK PROPERTIES** located in the Palmer Historic District in downtown Palmer, Alaska. The effective date of this Agreement shall be the last date this Agreement is signed by the authorized representative of each party.

RECITALS

WHEREAS, during the 1930s, the federal government helped establish Palmer as a farming community; and

WHEREAS, in conjunction with the farming community, the historic Mat-Maid Block became a bustling center of commerce and social activity in Palmer; and

WHEREAS, in recognition of the historic significance of the Mat-Maid Block, and to preserve the historic buildings and properties in downtown Palmer, the City established a downtown Palmer Historic District in 1991, which includes properties in the Mat-Maid Block; and

WHEREAS, over the last twenty-five (25) years, many of the buildings and other structures located on the Mat-Maid Block have become vacant, dilapidated, with increasing safety hazards, are in need of major repairs; and

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to three (3) million dollars in general obligation bonds to finance the acquisition of the Mat-Maid Properties for public purposes of the City; and

WHEREAS, subsequent to the passage of the ballot proposition, the City (1) formed a Project Management Team; (2) hired a land consultant, property appraiser, and environmental consultant; (3) received City Council approval of a base form of Purchase Agreement; (4) received funding from both the Alaska Legislature and the U.S. Environmental Protection Agency (EPA) for environmental and due diligence investigation of the properties; (5) negotiated with the Mat-Maid Block property owners; (6) attempted a three-way land exchange between the City, ARLF and DNR which would have allowed the City to acquire the Agricultural Revolving Loan Fund (ARLF) Property at no cost; (7) completed environmental reports and health risk analyses and presented such information to both Alaska Department of Environmental Conservation (DEC) and EPA; (8) negotiated Purchase Agreements with five of the seven owners and presented signed Purchase Agreements to the City Council for approval; and 9) requested a legislative appropriation in the

City of Palmer Resolution No. 12-050 for \$975,000 to acquire the ARLF Parcel and preserve the three (3) million dollars in bond funding for the acquisition of the other parcels; and

WHEREAS, site environmental assessment revealed that common historical contamination will likely be discovered during development, resulting in significant and unpredictable expenses and potentially extensive delays from DEC oversight and requirements unrelated to actual health risks; and

WHEREAS, mitigating health risks from this contamination without creating greater health risks will require site specific remediations and institutional controls which, if established now in conjunction with DEC, will enable development planning to proceed; and

WHEREAS, despite entreaties, DEC has been unwilling to discuss site specific remediation or institutional controls until an owner identifies contamination and becomes liable for cleanup, which effectively dissuades owners from developing their properties or purchase by the City or developers; and

WHEREAS, unless this situation is resolved, the City likely must terminate the project, losing this development opportunity, leaving the properties in their state of increasing disrepair and safety hazards, and indefinitely delaying beneficial use of the Mat-Maid block; and

WHEREAS, resolving this situation would benefit from involving the State Administration and Legislature, thereby enabling timely beneficial development of the Mat-Maid block while minimizing health risks from contamination and remediation; and

WHEREAS, the City, MSB and the DNR believe that acting collectively in this effort will convince the State Administration and Legislature that it is in the best interests of the State, the residents of the Mat-Su Valley and the parties to join in this effort as provided under this Agreement; and

WHEREAS, Article XII, Section 2 of the Alaska Constitution, Alaska Statute 29.35.010(13), Chapter IX, Section 9.2 of the Palmer Charter, and MSB Code Article I, Section 1.10.010(4), authorize the City, State, and MSB to work cooperatively on matters of common interest; and

WHEREAS, utilizing this authority and in a manner consistent with their common interest, the parties agree to use their collective political influence and good faith, best efforts to promote the timely development of the Mat-Maid Block, along with the promotion of a reasonable cost-effective approach to addressing the environmental concerns related to the Mat-Maid Block to allow for its development; and

WHEREAS, the parties desire to set forth the terms and conditions of their government-to-government cooperative agreements and understandings;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

Section 1. Purpose. This Agreement sets forth the agreements and understandings between the City, MSB and DNR to use their collective political influence and good faith, best efforts to promote the continued development of the Mat-Maid Block, along with the promotion of a reasonable cost-effective approach to addressing the environmental concerns related to the Mat-

Maid Block to allow for its development.

Section 2. Authority. This Agreement is made pursuant to the Authority contained in Article XII, Section 2 of the Alaska Constitution, Alaska Statute 29.35.010(13), Chapter IX, Section 9.2 of the Palmer Charter, and MSB Code Article I, Section 1.10.010(4).

Section 3. Cooperative Intent. It is the intent of this Agreement that each party shall work cooperatively with the other to ensure coordination of efforts to successfully and timely satisfy the purposes set forth in Section 1.

Section 4. Shared Responsibilities of the City, MSB and DNR.

(a) The parties shall work cooperatively to promote the goals and purposes of both parties as set forth in this Agreement.

(b) The parties shall meet with state officials, legislative staff and individual Legislators, and DEC staff as necessary to carry out the intent of this Agreement.

(c) The parties shall also cooperate with other agencies and organizations as necessary to further the goals and purposes of the parties as set forth in this Agreement.

(d) The City, MSB and DNR shall each appoint a representative or representatives to represent it with respect to this Agreement. Such representatives shall meet periodically to discuss performance under this Agreement, additional ways to work cooperatively to further the mutual goals and purposes, plan for further Agreement implementation, and address other issues that may arise from time to time.

(e) The parties shall work together to obtain and agree to an environmental plan and timeline for addressing the environmental concerns at the Mat-Maid Block, and to memorialize their agreements with DEC in a Prospective Purchaser Agreement, no further action letter, or similar document.

Section 5. General Provisions.

(a) This Agreement does not obligate any party to spend funds not specifically appropriated for any actions described herein. Staff time shall be allocated by each party as such party deems necessary.

(b) This Agreement and the rights of the parties under it shall be governed by and construed in all respects in accordance with the laws of the State of Alaska.

(c) Notwithstanding anything else in this Agreement to the contrary, no party to this Agreement shall incur any liability to the other parties for the inability or failure to perform or delay in performing any obligation hereunder.

(d) This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings with respect to the subject matter hereof.

(e) This Agreement shall not be altered, modified or otherwise amended except by an instrument in writing signed by all of the parties.

(f) Neither this Agreement nor any of the rights, interests, obligations or duties hereunder may be assigned, encumbered, pledged, or otherwise transferred or delegated by any party without the prior written consent of the other parties, and any assignment, encumbrance, pledge, or other transfer or delegation in violation hereof shall be null and void and of no force or effect.

(g) This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

(h) Any party may terminate its participation in this Agreement upon written notification to the other parties.

(i) For the convenience of the parties hereto, this Agreement may be executed, including by facsimile signature, in counterparts, each identical to the other, so long as the counterparts in a set contain the signatures of all the parties to this Agreement.

IN WITNESSETH WHEREOF, the parties have executed this Agreement as of the effective date.

City of Palmer

By (Signature): _____
Name: _____
Title: _____
Date: _____

Matanuska-Susitna Borough

By (Signature): _____
Name: _____
Title: _____
Date: _____

State of Alaska, Department of Natural Resources

By (Signature): _____
Name: _____
Title: _____
Date: _____

analyze all aspects of the properties, including title, environmental conditions and historic preservation issues; and (iv) various conditions precedent to the City's obligation to close on the purchase the properties, including approval of due diligence issues, concurrent closings, coordination with the bond sale, and final approval of the closing by the City Council.

Administration recommendation: Approve action memorandum 12-015.

Attachment to AM 13-005

DRAFT (January 22, 2012)

**Agreement
for the
Sale and Purchase
of
Real Estate**

***Mat-Maid Block Properties
Palmer, Alaska
Tract _____***

***The City of Palmer, Purchaser
and
_____, Seller***

Effective Date _____, 2012

DRAFT (January 22, 2012)

Summary of Agreement Deadlines

<u>Agreement Requirement</u>	<u>Section</u>	<u>Agreement Deadline</u>	<u>Actual Due Date</u>
Effective Date	Preamble	Date of Execution by both parties	
Initial Deposit	Section 2(a)	20 days after Effective Date	
Seller's Information to City	Section 3	30 days after Effective Date	
Title Review Period Ends	Section 6(b)	45 days after Effective Date	
City's Title Objection Letter Due	Section 6(b)	Within 45-day Title Review Period	
Seller's Response to City's Title Objections letter	Section 6(d)	10 days after City letter received	
City's response to Seller's letter	Section 6(d)	10 days after Seller's letter received	
Seller's Deadline to remove Non-Monetary Title Objections	Section 6(c)	30 days after date of City's Title Objection letter	
Seller's Deadline to remove Monetary Title Objections	Section 6(c)	Closing Date	
Due Diligence Period	Section 7(b)	180 days after the Effective Date plus any 90-day extensions	
Closing Date	Section 11	15 days after execution of Notice of Satisfaction of Conditions Precedent by Title Company, City and Property Owners	

DRAFT (January 22, 2012)

AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

Mat-Maid Block Properties Palmer, Alaska Tract _____

This Agreement for the Sale and Purchase of Real Estate shall supersede any and all previous offers and counter-offers, either oral or written. If this Agreement is not signed by both parties, it shall not represent a binding agreement between the parties, or an offer to buy or sell by either party.

THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE ("Agreement") is made and entered into by and between **THE CITY OF PALMER**, a home rule city ("**City**"), and _____, a _____ ("**Seller**"). For purposes of this Agreement, the effective date of this Agreement ("**Effective Date**") shall be the last date of execution of this Agreement by the parties.

RECITALS

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to \$3 million in general obligation bonds ("**Bonds**") to finance the acquisition of the Mat-Maid Properties for public purposes of the City;

WHEREAS, the Mat-Maid Block ("**Mat-Maid Properties**") is 8.74 acres in size, and is comprised of seven separate parcels, with seven separate owners;

WHEREAS, the seven owners are: (i) *Jeffrey Johnson* (Tract B-1, Replat of Co-Op Garage Tract; 0.70 acres); (ii) *Palmer Arts Council* (Tract One, Matanuska Maid Power House Subdivision; 0.36 acres); (iii) *Crowley Petroleum Distribution, Inc.* (Tract A-1, Replat of the Co-Op Garage Tract; 1.11 acres); (iv) *State of Alaska, Division of Agriculture* (Tract A-1, Alaska State Land Survey No. 96-4; 3.03 acres); (v) *KLH, Inc.* (Tract B-1, Alaska State Land Survey No. 96-4; 0.85 acres); (vi) *William H. Ingaldson* (Tract B-2, Alaska State Land Survey No. 96-4; 2.51

DRAFT (January 22, 2012)

acres); and (vii) **David & Sharon Ausdahl** (portion of Section 33, Township 18N, Range 2E; 0.18 acres)(the foregoing parties hereinafter collectively referred to as the "**Property Owners**");

WHEREAS, the City and each of the Property Owners have negotiated and agreed to the sale of each Property Owner's parcel to the City;

WHEREAS, on February 14, 2012, the City Council approved the base form of Purchase Agreement, and authorized the City Manager to negotiate Purchase and Sale Agreements with the Property Owners;

WHEREAS, each Property Owner has agreed to the terms and conditions of the sale of its respective parcel to the City, and the City has agreed to purchase such parcel, under such terms and conditions as set forth in Agreements for the Sale and Purchase of Real Estate; and

WHEREAS, this Agreement sets forth the terms and conditions of the sale and purchase between this individual Seller and the City;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, agreements, and promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. The Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to the City, and the City agrees to purchase from Seller, the following:

A parcel of real property located in Palmer, Alaska, with an address of _____, and legally described as follows: _____, Palmer Recording District, Third Judicial District, State of Alaska. The parcel consists of _____ acres of real property, together with (i) all improvements, buildings and fixtures located thereon; (ii) all rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon; and (iii) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road, or alley, open or proposed, adjoining such land ((i)-(iii) all collectively the "**Property**").

DRAFT (January 22, 2012)

Section 2. Purchase Price and Terms of Payment. The purchase price for the Property ("**Purchase Price**") shall be _____ **DOLLARS AND NO/CENTS (\$_____, 000.00)**. The Purchase Price shall be paid as follows:

(a) An initial deposit in the amount of **FIVE THOUSAND DOLLARS AND NO/CENTS (\$5,000.00)** ("**Initial Deposit**"), to be paid in the form of a City of Palmer check, bank cashier's check or wire transfer, and to be deposited with and held in escrow by Mat-Su Title Insurance Agency, Inc. ("**Title Company**") **no later than twenty (20) days after the Effective Date**. The Initial Deposit shall be non-refundable to the City except as otherwise provided in this Agreement, **provided, that**, in the event the City closes this transaction, the Initial Deposit shall be applied towards the Purchase Price at Closing. The Title Company shall serve as the escrow agent to close the sale and purchases through escrow ("**Escrow**"), and the parties hereby appoint the Title Company as escrow and closing agent.

(b) In the event the City elects to exercise any of the Due Diligence extension options provided in Section 7, the Second Deposit, Third Deposit, and Fourth Deposit, as the case may be, shall be paid in the form of a City of Palmer check, bank cashier's check or wire transfer and deposited into Escrow with the Title Company. In the event the Second Deposit, Third Deposit, or Fourth Deposit are deposited in Escrow, such deposits shall also be applied to the Purchase Price at Closing.

(c) The balance of the Purchase Price shall be paid by a bank cashier's check or wire transfer into Escrow with the Title Company at Closing. The Purchase Price shall be subject to prorations and adjustments as provided for in this Agreement.

(d) The parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City's as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in Section 7.

DRAFT (January 22, 2012)

Section 3. Information to be Supplied to the City by Seller:

Within **thirty (30) days after the Effective Date**, Seller shall deliver to the City true and complete copies of the following, if the same is available and in Seller's possession or control:

(a) All documents and records of Seller related to the ownership, maintenance and repair of the Property, including without limitation, surveys, appraisals, environmental reports, engineering reports, geotechnical reports, historic preservation information, and title documents. Notwithstanding the foregoing, Seller shall not be required to share financial or other operating information on their business operations on the Property, except in the event the City notifies Seller that the City may be interested in assuming any Leases affecting the Property.

(b) All permits and licenses, including without limitation, applications for the issuance and any renewal of such permits and licenses, and correspondence to or from applicable governmental agencies with respect to the permits and licenses.

(c) Copies of all contracts, easements, licenses, access agreements, leases, subleases and similar use agreements (collectively "**Leases**") related to the Property. The Seller agrees that all Leases shall be terminated prior to Closing, unless otherwise agreed in writing by the City.

(d) Any environmental reports or studies related to the Property, including without limitation, Phase 1 and Phase 2 reports.

(e) All information and documents relating to the historical significance of the Property, including without limitation, any listing on the National Register of Historic Places, and compliance with state, Borough and City historic preservation requirements.

(f) All other documents in Seller's possession or control which are related to the Property which a purchaser of the Property would reasonably deem prudent to review as part of a due diligence review.

Section 4. Limited Representations, Warranties and Covenants of Seller: Seller represents, warrants and covenants to the City (which representations,

DRAFT (January 22, 2012)

warranties and covenants shall remain true at all times during this Agreement and shall survive Closing) as follows:

(a) Seller is the owner of fee simple title to the Property and has the full power, capacity and legal right to execute and deliver this Agreement and to sell the Property to the City, pursuant to the terms of this Agreement.

(b) Except for the Leases delivered to the City pursuant to Section 3(c), there are currently no leases, subleases or similar use agreements affecting the Property. From and after the Effective Date, Seller shall not sell, transfer, lease, allow any sublease or otherwise convey or allow use of all or any portion of the Property, or any interest therein, or grant or permit any easements, liens, mortgages, leases, use agreements, dumping or filling, encumbrances, or other interests or agreements with respect to the Property, without the City's prior written consent.

(c) There is no pending or threatened litigation, administrative action or examination, claim or demand, proceeding, judgment or order whatsoever relating to Seller or the Property which affects Seller's ability to convey the Property in accordance with the terms of this Agreement.

(d) Except for the information disclosed in the documents delivered pursuant to Section 3(d), to the best of Seller's knowledge, no party has spilled, discharged or released, or permitted the spill, discharge or release, from, at, on or under the Property, any petroleum, toxic, hazardous or regulated material, waste or substance, as such terms are or may be defined by any federal, state or local law ordinance or regulation ("**Hazardous Materials**"). Seller is not aware of nor has Seller received notice of any action, suit, proceeding or investigation pending or threatened for any violation of any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials with respect to the Property.

(e) Seller has not received any notice of any violation or alleged violation of any legal requirement affecting the Property, including without limitation any violation or alleged violation of any local, state or federal environmental or zoning ordinance, code, regulation, rule or order, and specifically including without limitation, variances, conditional uses, or special permits affecting the Property.

DRAFT (January 22, 2012)

(f) To the best of Seller's knowledge, the execution and delivery of, and performance by Seller of its obligations under this Agreement does not contravene, or constitute a default under, any agreement, judgment, injunction, order, or decree binding upon Seller.

(g) To the best of Seller's knowledge, there is no action, suit, or proceeding against or affecting Seller in any court or before any governmental body which (i) affects the validity or enforceability of this Agreement, or (ii) could prohibit Seller from performing its obligations hereunder, or under any document to be delivered pursuant hereto.

(h) Seller has no real estate broker, agent or licensee representing Seller in this transaction, and no commission is due to any broker, agent, or licensee.

Section 5. Limited Representations and Warranties by the City.

The City hereby represents and warrants to Seller that (i) the City has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; (ii) upon execution of this Agreement, the Agreement will be enforceable against the City in accordance with its terms; and (iii) the City has no real estate broker, agent or licensee, representing the City in this transaction, and no commission is due to any broker, agent, or licensee.

Section 6. Evidence of Title/Title Contingency.

(a) **Title Commitment.** The parties acknowledge that the City has ordered and received a preliminary commitment for title insurance ("**Title Commitment**") from the Title Company, which Title Commitment (i) reflects Seller as the owner of the Property; (ii) can be converted to either an ALTA Owner's Standard Coverage Policy or an ALTA Extended Owner's Policy, as determined by the City (although only the cost for the Standard Coverage Policy shall be paid for by Seller); and (iii) can include, at the City's sole discretion, and at the City's cost, such title endorsements as the City deems necessary and appropriate. Seller acknowledges that it has received, reviewed and understands, to Seller's satisfaction, a copy of the Title Commitment.

DRAFT (January 22, 2012)

(b) Title Review Period. The City shall have *forty-five (45) days after the Effective Date ("Title Review Period")* to review the state of title to the Property. Prior to the end of the Title Review Period, the City shall deliver written notice to Seller of any objections or defects to title noted in the Title Commitment to which the City objects ("***Title Objections***"). The City will be deemed to have waived the City's rights to object to any title objections or defects if the City fails to give Seller timely notice of such Title Objections. Any exceptions or defects to title which the City does not timely object during the Title Review Period shall be deemed to be "***Permitted Exceptions.***"

(c) Removal of Title Objections. With respect to monetary Title Objections ("***Monetary Title Objections***"), Seller shall have until the Closing to remove or otherwise render acceptable such Title Objections or to decline to correct such Title Objections. The Title Company shall provide that the funds to pay off such Monetary Title Exceptions shall be deducted from the Purchase Price, and shall reflect the payment amount on the appropriate Settlement Statements against Seller. With respect to non-monetary Title Objections ("***Non-Monetary Title Objections***"), Seller shall have *thirty (30) days* after the date of the City's Title Objections letter to remove such Title Objections.

(d) Response Letters. Upon receipt of the City's Title Objections letter, Seller shall notify the City in writing within *ten (10) days* after the receipt of the City's Title Objections letter which Title Objections Seller will remove. If Seller's notification indicates that Seller will not remove any, or remove only some, of the Title Objections, the City shall, within *ten (10) days* after Seller's letter, indicate to Seller in writing whether it agrees or disagrees with Seller's position. If The City disagrees with Seller's position, then the City shall in its letter of disagreement either (i) waive such uncured Title Objections and agree to accept title to the Property subject to such uncured Title Objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate an adjustment to the Purchase Price; or (ii) terminate this Agreement, and, in such event, neither the City nor Seller will thereafter have any further obligations or liabilities under this Agreement.

(e) Failure to Remove Title Objections. With respect to the Title Objections that Seller has agreed to remove, if Seller shall not correct or remove such Title Objections during the applicable period, then the City shall either (i) waive such

DRAFT (January 22, 2012)

uncured objections and accept title to the Property subject to such uncured Title Objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate necessary adjustments to the Purchase Price; (iii) sue for specific performance of this Agreement causing Seller to remove the agreed upon Title Objections; or (iv) terminate this Agreement by written notice to Seller, whereupon the all deposits except the Initial Deposit shall be promptly refunded to the City (without any further obligation on the parties to execute a rescission or similar agreement), and neither the City nor Seller will thereafter have any further obligations or liabilities under this Agreement.

(f) Title Policy/Statutory Warranty Deed. Seller acknowledges that the City may, at the City's sole discretion, elect to obtain an ALTA extended coverage owner's title policy as opposed to an ALTA standard coverage owner's policy, which requires an ALTA Survey. At Closing, Seller shall convey to the City fee simple and marketable title to the Property by Statutory Warranty Deed (in the form attached as ***Exhibit A***), subject only to the Permitted Exceptions. The grantee on the Statutory Warranty Deed shall be shown as "***The City of Palmer.***" Seller shall also cause the Title Company to issue the ALTA policy of title insurance at Closing in a policy amount equal to the Purchase Price, subject to the Permitted Exceptions, and including the endorsements required by the City. The insured shall be shown as "***The City of Palmer.***" Seller shall pay the premium amount related to an ALTA standard owner's title policy, and the City shall pay the additional premium cost related to the ALTA extended owner's policy, 100% of the cost for the ALTA survey, and the title endorsements requested by the City.

(g) Warranty Deed Exceptions. The Statutory Warranty Deed to be delivered at Closing shall convey fee simple title, and shall include all Permitted Exceptions, but shall exclude the standard title exceptions typically in Schedule B-Section II of a preliminary commitment from the Title Company, which shall not be considered Permitted Exceptions. Further, existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances shall be deemed Title Objections which shall be removed by Seller during the Monetary Objection Removal Period, and such exceptions do not need to be identified as Title Objections in the City's Title Objection letter. The City shall (within ***fifteen (15) days*** of receipt by the City) provide to Seller a copy of any ALTA survey obtained by the City.

DRAFT (January 22, 2012)

Section 7. The City's Due Diligence.

(a) **Scope of City's Due Diligence.** In addition to any other contingencies and conditions precedent elsewhere in this Agreement, the City's obligation to consummate the transactions contemplated by this Agreement and to close on the purchase of the Property, is conditioned upon satisfaction, in the sole discretion of the City, of the following:

(i) The condition of and issues related to the Property meet with the approval of the City, in the City's sole discretion. The City and any authorized representative, including employees and contractors (and their subcontractors) (collectively "***Contractors***") of the City shall have the right to enter upon and inspect the Property, and are hereby granted access to do the same (including for purposes of the ALTA survey). Such inspections may include, but shall not be limited to, an inspection for evidence of Hazardous Materials and any environmental problems, inspections of the improvements (if any), historic preservation review, geotechnical review, planning and zoning review, surveying, engineering review, and architectural reviews. All such inspections shall be at the City's sole cost and expense. Such inspections by the City or the City's Contractors shall be conducted in such a manner as not to physically damage any part of the Property to the greatest extent possible. The City's inspections shall not unreasonably interfere with the operation of any businesses on the Property.

(ii) Any other issue (as determined by the City in its sole discretion) related to the Property, including without limitation, proposed uses of the Property by the City, are acceptable to the City, in the City's sole discretion.

(b) **Initial Due Diligence Period.** The City will have ***one hundred eighty (180) days to conduct the foregoing due diligence, which one hundred eighty (180) day*** period shall commence the ***day after the Effective Date, and end one hundred eighty (180) days thereafter at 5:30 p.m. Alaska time ("Due Diligence Period")***, and to make a final determination on all contingencies and other issues related to the Property, and to determine if, in the sole discretion of the City, the Property is acceptable to the City. If in the City's sole discretion the Property is not acceptable to the City, the City will so notify Seller of such negative determination (which notice need not specify any reason why the Property is not suitable but merely

DRAFT (January 22, 2012)

state that the Property is not acceptable to the City) in writing prior to the expiration of the Due Diligence Period (or any extension thereof), in which case this Agreement will become null and void (with no further obligation of the parties to execute a rescission agreement or similar document).

In the alternative, instead of terminating this Agreement, the parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in this Section 7.

If the City determines it would like to proceed and close the transaction, the City will so notify Seller of such determination in writing. In the absence of any such timely notification, the foregoing contingency provisions will be deemed to be favorably resolved. The City will have the right to waive any or all contingency provisions within the time provided and to then proceed with Closing.

(c) Optional Extensions of the Due Diligence Period. In addition to the initial ***one hundred eighty (180) day*** Due Diligence Period, the City shall have the option, in the City's sole discretion, to extend the Due Diligence Period by up to ***three (3)*** successive ***ninety (90) day*** periods. Such extension periods shall be identified as the ***"First Option Period," "Second Option Period," and "Third Option Period"*** respectively. If an option period is exercised, each option exercised shall be deemed to be part of the Due Diligence Period. The purpose of each option extension is to provide the City with an additional ***ninety (90) day*** period to undertake the City's due diligence and thus extending the Due Diligence Period.

(i) To exercise the option for the First Option Period, the City shall (i) notify Seller in writing at least ***ten (10) days*** before the expiration of the initial Due Diligence Period of the City's election to exercise the First Option; and (ii) deposit an additional deposit of ***Five Thousand Dollars (\$5,000.00)*** (***"Second Deposit"***) in Escrow with the Title Company no later than ***ten (10) days*** after the beginning of the First Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Second Deposit shall be non-refundable

DRAFT (January 22, 2012)

except as otherwise provided in this Agreement. As with the Initial Deposit, the Second Deposit shall be applied towards the Purchase Price at Closing.

(ii) To exercise the option for the Second Option Period, the City shall (i) notify Seller in writing at least ***ten (10) days*** before the expiration of the First Option Period of the City's election to exercise the Second Option; and (ii) deposit an additional deposit of ***Five Thousand Dollars (\$5,000.00)*** ("***Third Deposit***") in Escrow with the Title Company no later than ***ten (10) days*** after the beginning of the Second Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Third Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit and the Second Deposit, the Third Deposit shall be applied towards the Purchase Price at Closing.

(iii) To exercise the option for the Third Option Period, the City shall (i) notify Seller in writing at least ***ten (10) days*** before the expiration of the Second Option Period of the City's election to exercise the Third Option; and (ii) deposit an additional deposit of ***Five Thousand Dollars (\$5,000.00)*** ("***Fourth Deposit***") in Escrow with the Title Company no later than ***ten (10) days*** after the beginning of the Third Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Fourth Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit, Second Deposit and Third Deposit, the Fourth Deposit shall be applied towards the Purchase Price at Closing.

Section 8. Interim Responsibility of Seller. Seller agrees that during the period between the Effective Date and the Closing Date:

(a) The Property will be maintained in as good a condition and state of repair as that existing on the Effective Date, normal wear and tear excepted.

(b) Seller will not enter into any new Leases without the prior written approval of the City.

(c) Seller will cause to be paid all normal costs of operation and maintenance of the Property.

DRAFT (January 22, 2012)

(d) Seller shall not allow any waste or nuisance to be committed on the Property by any of Seller's agents or representatives.

(e) Seller will not allow any liens, encumbrances, deeds of trust, mortgages, or other monetary obligations which may be secured by the Property or placed against the Property, and if such occurs, Seller shall cause them to be removed during the Monetary Objection Removal Period.

(f) Seller will maintain liability and other necessary insurance on the Property.

(g) Seller will timely pay all taxes due with respect to the Property. Seller acknowledges and agrees that the City shall not be assuming any debts or liabilities of Seller, all of which shall remain the responsibility of Seller.

Section 9. Damage to Property. Seller agrees to give the City prompt written notice of any fire or other casualty affecting the Property. If prior to the Closing there is material damage to the Property caused by fire or other casualty, the City may, at the City's option:

(a) Terminate this Agreement by written notice to Seller within ***ten (10) days*** after the City has received the notice referred to above or at the Closing, whichever is earlier, whereupon the applicable deposit for the current due diligence period (but not any of the other deposit amounts) shall be promptly refunded to the City (without any obligation on the parties to execute a rescission or similar agreement) and neither the City nor Seller will have any further obligations or liabilities under this Agreement; or

(b) Proceed with Closing, in which case the City will be entitled to any insurance proceeds which may be payable on account of such occurrence, which shall be assigned to the City at Closing.

Section 10. Conditions Precedent to City's Obligation to Close. The obligation of the City to close the transactions contemplated by this Agreement is subject to all of the following conditions precedent being satisfied or waived by the City:

DRAFT (January 22, 2012)

(a) **Approval of Contingencies.** An affirmative decision to move forward to Closing by the City under the title contingency and due diligence contingencies in Sections 6 and 7 respectively.

(b) **Approval by City Attorney.** Approval by the City Attorney.

(c) **Approval by City Council.** The Palmer City Council has duly authorized, by an approved Resolution, the issuance of the Bonds, payment of the Purchase Price to each of the Property Owners, and the Closing on the purchase of all of the Mat-Maid Properties.

(d) **Closing with all Property Owners.** All of the other Property Owners close the sale (as part of the same Escrow which closes on all of the Mat-Maid Properties and coordinates the application of the Bond proceeds towards the Purchase Prices) on each of their respective property comprising part of the Mat-Maid Properties, unless the City, in its sole discretion, decides to split-up the closings on one or more of the Properties.

(e) **Bonds.** The Bonds have been issued, and the required funds have been transferred into the Escrow to pay the Purchase Prices and the Closing costs of the City as required by the settlement statements.

(f) **Appropriation of Funds.** The City Council has appropriated all funds necessary to pay the Purchase Price and all of the City's Closing costs.

(g) **Notice of Satisfaction of Conditions Precedent to be Signed by City, Title Company, and Property Owners.** The Title Company has notified the City in writing that (i) all the Property Owners are ready to close their respective sale; (ii) all necessary funds and documents are in Escrow pursuant to the approved Joint Closing Instructions provided to the Title Company; and (iii) the Title Company, City, and all Property Owners have signed (which may be done in counterparts and by facsimile signatures) the ***Notice of Satisfaction of Conditions Precedent***, the form of which is attached as ***Exhibit B***.

DRAFT (January 22, 2012)

Section 11. Time and Place for Closing. Subject to the satisfaction of the conditions precedent in Section 10, the closing ("**Closing**") of the transactions contemplated by this Agreement shall occur ***no later than fifteen (15) days*** after the latest date of execution of the Notice of Satisfaction of Conditions Precedent by the City, Title Company, and the Property Owners. Closing shall be on such date and time as agreed to by the parties. Closing shall take place at the office of the Title Company in Wasilla, Alaska. The actual date on which the Closing occurs is herein referred to as the "**Closing Date.**" The Closing Date may be extended by mutual written agreement by the parties. Seller shall surrender the Property to the City upon recording.

Section 12. Closing.

(a) At Closing, Seller shall:

(i) Execute and deliver to the City a Statutory Warranty Deed, in the form attached as ***Exhibit A***, conveying the Property to the City, subject only to the Permitted Exceptions.

(ii) Execute and deliver to the City, in such form and substance acceptable to the parties, an Assignment of those Leases to be assumed by the City.

(iii) Cause to be issued to the City by the Title Company the ALTA standard owner's title policy or ALTA extended owner's title policy referenced in Section 6, in an amount equal to the Purchase Price.

(iv) Provide the Title Company with any ALTA Lien Affidavits required in conjunction with any ALTA extended owner's title policy.

(v) Execute and deliver to the Title Company an IRS FIRPTA Certification.

(vi) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(vii) Deliver to the City possession of the Property and all keys thereto.

DRAFT (January 22, 2012)

(b) At Closing, the City shall:

(i) Deliver to the Title Company such evidence of the authority and capacity as the Title Company may reasonably require.

(ii) Execute and deliver the Assignment referenced in Section (a)(ii) above.

(iii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(c) Seller shall pay:

(i) The cost of the standard owner's title policy.

(ii) Seller's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and 1/2 of the recording fees.

(iv) Any other amounts identified as a Seller cost in the approved settlement statements.

(d) The City shall pay:

(i) Costs related to the additional policy premium amount for converting the standard owners title policy to the ALTA extended owners policy, 100% of the cost for the ALTA survey, and for any endorsements desired by the City.

(ii) The City's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and 1/2 of the recording fees.

DRAFT (January 22, 2012)

(iv) All costs related to the Bonds and the City's financing for the purchase.

(v) All costs related to the appraisals, title review, and due diligence conducted by or for the City.

(vi) Deliver to the Title Company the balance of the Purchase Price (less all deposits) and any Closing costs required of the City under the settlement statements.

(vii) Any other amounts identified as a cost of the City in the approved settlement statements.

(e) Real property taxes shall be prorated as of the recording date. Utilities shall be changed into the name of the City as of the Closing Date, and the parties shall cooperate with the utility companies to accomplish the change-over.

Section 13. Termination, Defaults and Remedies.

(a) **Default by Seller.** Seller will be in default hereunder upon the occurrence of any of the following events:

(i) Seller fails to materially meet, comply with, or perform any covenant, agreement or obligation required on Seller's part within the time limits and in the manner required in this Agreement, for any reason other than a default by the City hereunder.

(ii) Seller fails to deliver at the Closing any items required of Seller in Sections 12(a) and (c) of this Agreement.

In the event of a default by Seller hereunder, the City may, at the City's option, terminate this Agreement by written notice delivered to Seller at or prior to the Closing and receive back the Initial Deposit and all other deposits paid by the City to that date (with no obligation of the parties to execute a rescission or similar agreement). In the alternative, the City may sue for specific performance of this Agreement by Seller.

DRAFT (January 22, 2012)

(b) Default by the City. The City will be in default hereunder upon the occurrence of any of the following events:

(i) The City fails to materially meet, comply with, or perform any covenant, agreement or obligation required on the City's part within the time limits and in the manner required in this Agreement, for any reason other than a default by Seller hereunder.

(ii) The City fails to deliver at the Closing any items required of the City in Sections 12(b) and (d) of this Agreement.

Seller and the City agree that Seller's economic detriment resulting from the removal of the Property from the market and the carrying and other costs incurred thereafter and associated therewith, including any costs to be incurred by Seller in order to satisfy the conditions of escrow set forth herein, are impracticable or extremely difficult to ascertain. Seller and the City agree that the retention of the Initial Deposit and all other deposits paid to that date is a reasonable estimate of such damages in the event of the City's failure to perform according to the provisions of this Agreement. Such payment is intended to be liquidated damages and not intended to be a forfeiture or penalty. The termination of this Agreement and retention of the Initial Deposit and all other deposits made to that date (by written notice from Seller to the City and the Title Company) shall be the sole remedy available to Seller for breach or default by the City, and the City will not be liable for damages or specific performance, and Seller hereby waives any and all rights to damages and specific performance.

Section 14. Notices. Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing, and any such notice or communication will be deemed to have been given if and when delivered or mailed (or in the event the delivery or mailing is refused by the addressee) to any such party by courier, personal delivery, facsimile, e-mail, or certified mail, return receipt requested, addressed to such party at such party's address as provided below or such other address as either party may designate by notice similarly sent. Notice by mail is effective **three (3) days** after the date such notice is deposited in the mail. Notice given by courier or personal delivery is effective upon receipt. Notice given by facsimile is effective upon confirmation of successful transmission by the transmitting machine. Notice given by e-mail shall be successful upon transmission of

DRAFT (January 22, 2012)

the e-mail. Any party or additional notice party may change their notice address by providing notice to the other party as herein provided above.

If to Seller:

_____, Alaska 99____
Facsimile: (907) _____
E-Mail: _____

With a Copy to (which shall not constitute requisite notice):

_____, Alaska 99____
Facsimile: (907) _____
E-Mail: _____

If to the City:

Douglas Griffin, City Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, Alaska 99645
Facsimile: (907) 745-0930
E-Mail: dgriffin@palmerak.org

With a Copy to (which shall not constitute requisite notice):

Glen Price, Esq.
Law Office of Glen Price
P.O. Box 4739
Palmer, Alaska 99645
Facsimile: (907) 746-5971
E-Mail: gplaw@mtaonline.net

Section 15. Miscellaneous Provisions.

DRAFT (January 22, 2012)

(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no understandings, written or oral, which change, modify or enlarge this Agreement.

(b) **Waiver.** No provision of this Agreement may be waived except in writing signed by the party to be charged with such waiver. The failure of any party to insist upon strict performance of any term or condition of this Agreement shall not be deemed a waiver of any other rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default of any such term, covenant, or condition.

(c) **Amendments.** Any amendment or modification to this Agreement must be executed in writing by both the City and Seller.

(d) **Construction.** This Agreement shall not be construed more strongly against one party than the other. Both parties waive the benefit of any rule of construction that an agreement shall be construed against its drafter. The captions in this Agreement are for the convenience of the parties only and shall contain no independent significance.

(e) **Governing Law.** This Agreement shall be interpreted under and construed in accordance with Alaska law. Venue for any lawsuit shall be in the Superior Court for the State of Alaska, at Palmer, Alaska. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable, including reasonable attorneys' fees.

(f) **Representation by Counsel.** Both the City and Seller acknowledge that they have had the opportunity, if each party so desired, for the assistance of counsel in the preparation and review of this Agreement. The parties acknowledge and agree that Glen Price, Law Office of Glen Price has solely represented the City in this transaction and has not provided any advice to Seller, and _____ has solely represented Seller in this transaction and has not provided any advice to The City.

DRAFT (January 22, 2012)

(g) Successors. The covenants herein will bind and inure to the benefit of the personal representatives, heirs, executors, administrators, devisees, other legal representatives, and successors of the respective parties.

(h) No Partnership. Nothing in this Agreement shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.

(i) No Third Party Beneficiaries. Nothing in this Agreement shall be interpreted or construed as creating any rights or privileges whatsoever in persons or entities that are not parties to this Agreement.

(j) No Merger. The terms and provisions of this Agreement shall not merge in, but shall survive, the Closing of the transaction contemplated hereunder and the Closing documents to be delivered pursuant hereto.

(k) Severability. If any clause or term of this Agreement shall be deemed invalid by any court of law, the validity and enforcement of the other clauses and terms of the Agreement shall be unaffected.

(l) No Assignment. This Agreement may not be assigned, encumbered or otherwise transferred by either party, and any assignment, encumbrance or other transfer in violation hereof shall be null and void and of no force or effect.

(m) Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, including by facsimile signature, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement, notwithstanding the fact that all parties are not signatories to the original or the same counterpart.

(n) Time. Time is of the essence under this Agreement. In the event any deadline or contingency termination falls on a Saturday, Sunday or City, state or federal holiday, the deadline or contingency shall be extended to the first business day following the Saturday, Sunday or state or federal holiday.

DRAFT (January 22, 2012)

(o) **Recording.** This Agreement may not be recorded by either party. At the option of the City, the City may record a Memorandum of Agreement, and, in the event the City exercises the option, Seller shall cooperate with the City and sign the Memorandum of Agreement.

Section 16. Post-Closing Cooperation. Subsequent to the Closing, the parties agree to cooperate with one another, and, if necessary, to execute further reasonable documents, to implement the terms of this Agreement.

DATED as of the Effective Date.

SELLER:

By: _____

Its: _____

Date: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by _____.

Notary Public in and for Alaska
My commission expires:_____

DRAFT (January 22, 2012)

THE CITY OF PALMER

By: _____

Its: _____

Date: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, The City of Palmer.

Notary Public in and for Alaska
My commission expires: _____

ATTESTED TO:

By: _____

Its: City Clerk

**CITY OF PALMER
ACTION MEMORANDUM NO. 12-016**

Subject: Authorize the City Manager to Negotiate the Purchase Price and Terms for Acquisition of Each of the Mat-Maid Block Properties, Such Terms to Include the Expenditure of up to \$30,000 for Deposits as Provided in the Agreements for the Sale and Purchase of Real Estate

Agenda of: February 14, 2012

Council Action: Authorized

Approved for presentation by:

City Manager
City Attorney
City Clerk

Douglas B. Griff

Certification of Funds:

Total amount of funds listed in legislation: \$30,000

This legislation (✓):

____ Has no negative fiscal impact

✓ Funds are budgeted from this (these) line item(s): 08-01-10-7140

____ 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: *[Signature]*

Attachment(s):

- Map showing Mat-Maid Parcels

Summary statement: This Action Memorandum authorizes the City Manager to negotiate the purchase price and others terms for the City's acquisition of each of the Mat-Maid properties and to set forth the negotiated terms and conditions in Purchase Agreements (Action Memorandum No. 12-015, includes the base form of Purchase Agreement). The City Manager is also authorized to include a term in the Agreements providing for the expenditure of up to \$30,000 for deposits required under the Purchase Agreements. The Final Purchase Agreement for each of the Mat-Maid properties will be brought back to the Council for approval.

Background: The City is continuing in its efforts to purchase the seven properties comprising the Mat-Maid Block. As of the date of this Action Memorandum, the City has contracted with a Real Estate Consultant, Commercial Real Estate Appraiser, and Environmental Consultant to assist and advise the City regarding the purchase of the Mat-Maid Block properties. The City has also met with the various property owners to assess each property owner's willingness to enter into purchase negotiations for the purchase of their respective property. All property owners have expressed their willingness to negotiate a sale with the City.

The City is prepared to enter into negotiations with the property owners using the Purchase Agreement as the base form of agreement. The form of Purchase Agreement was presented to the Council in Action Memorandum No. 12-015. The City Manager is hereby authorized to negotiate the terms of each Purchase Agreement which are in the best interests of the City, taking into consideration all currently available information, including appraised values, assessed values, property conditions, and known environmental conditions.

Parcel	Owner	Acres
ASLS 96 – 4 Tract A-1	AK Division of Agriculture Revolving Loan Fund	3.025
ASLS 96 – 4 Tract B-1	KLH, Inc.	0.851
ASLS 96 – 4 Tract B - 2	William Ingaldson	2.509
Co-Op Garage Tract A - 1	Crowley Petroleum Distributors	1.11
Co-Op Garage Tract B – 1	Jeffery Johnson	0.70
T18NR02ESec 33 Lot C41	David and Sharon Ausdahl	0.18
Power House Tract	Palmer Arts Council	0.36

The City Manager is also authorized to include a term in the Agreements providing for the total expenditure of up to \$30,000 for deposits required under the Purchase Agreements. The final Agreements, including purchase prices, will be presented to the City Council for approval at a later date.

Administration recommendation: Approve action memorandum 12-016.

CITY OF PALMER INFORMATION MEMORANDUM No. 10-062

SUBJECT: Resolution No 10-046: Providing for the Submission to the Qualified Voters of the City of Palmer the Question of the Issuance of Not to Exceed Three Million Dollars (\$3,000,000) of General Obligation Bonds to Pay Costs of Acquiring Real Property Located on the City Block Known as the Mat-Maid Block at an Election in and for the City of Palmer on October 5, 2010

AGENDA OF: July 13, 2010

Council action:	Adopted
------------------------	---------

Approved for presentation by B.B. Allen, City Manager B.B. Allen

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

Attachment(s): Resolution no. 10-046
Map of the City Block

Certification of Funds:

	No fiscal impact.
	Funds are budgeted from this account number:
	Funds are not budgeted. Budget modification is required. Affected account number:

Director of Administration Signature: *[Signature]*

Summary statement: Resolution no. 10-046 proposes a ballot proposition for the October 5, 2010, election to ask the voters of the City of Palmer to approve a \$3,000,000 general obligation bond for the purchase of the Mat-Maid block for public purposes.

There are seven parcels of land in the entire block, for a total of 8.74 acres. The State of Alaska Agricultural Revolving Loan Fund controls the largest parcel which is the old Mat-Maid site and it

3.03 acres in size. The remaining six lots are held privately.

There have been numerous discussions about how the property could be used including a Community and Convention Center, a new police station, a park, or administrative offices. The property is located in the center of the City and provides a good opportunity for future development.

Administration recommendation: Approve resolution no. 10-046.

Approved by Voters on October 5, 2010

Introduced by: City Manager Allen
Date: July 13, 2010
Action: Adopted
Vote: Unanimous

Yes:	No:
Erbey	
Brown	
Hanson	
Best	

CITY OF PALMER, ALASKA

RESOLUTION NO. 10-046

A RESOLUTION OF THE PALMER CITY COUNCIL PROVIDING FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF THE CITY OF PALMER THE QUESTION OF THE ISSUANCE OF NOT TO EXCEED THREE MILLION DOLLARS (\$3,000,000) OF GENERAL OBLIGATION BONDS TO PAY COSTS OF ACQUIRING REAL PROPERTY LOCATED ON THE CITY BLOCK KNOWN AS THE MAT-MAID BLOCK AT AN ELECTION IN AND FOR THE CITY OF PALMER ON OCTOBER 5, 2010

WHEREAS, the City of Palmer, Alaska (the "City") is a home rule city and under Section 11 or Article X of the Alaska Constitution and may exercise all legislative power not prohibited by law or the City Charter; and

WHEREAS, under Section 11.1(a)(1)(a) of the City Charter, the City is authorized to issue general obligation bonds the principal and interest of which are payable from taxes levied upon the taxable real and personal property in the City, and from any other sources of revenue and for the payment of which the full faith and credit of the City are pledged without limitation as to the rate or amount ; and

WHEREAS, under Section 11.2 (a) of the City Charter, the general obligation indebtedness of the City shall not at any time exceed fifteen percent (15%) of the assessed value of all real and personal property in the City; and

WHEREAS, the certified real and personal property tax assessment roll for the City, as of May, 2010, is \$386,037,875; and

WHEREAS, the City's outstanding general obligation indebtedness is, as of July 13, 2010, \$4,920,220, an amount less than the fifteen percent (15%) minimum assessed valued required by the City Charter; and

WHEREAS, it is necessary and in the best interest of the City and its residents that the City authorize the issuance of general obligation bonds for the purposes described in this Resolution.

Passed and approved by the City Council of the City of Palmer, Alaska this thirteenth day of July, 2010.

/s/

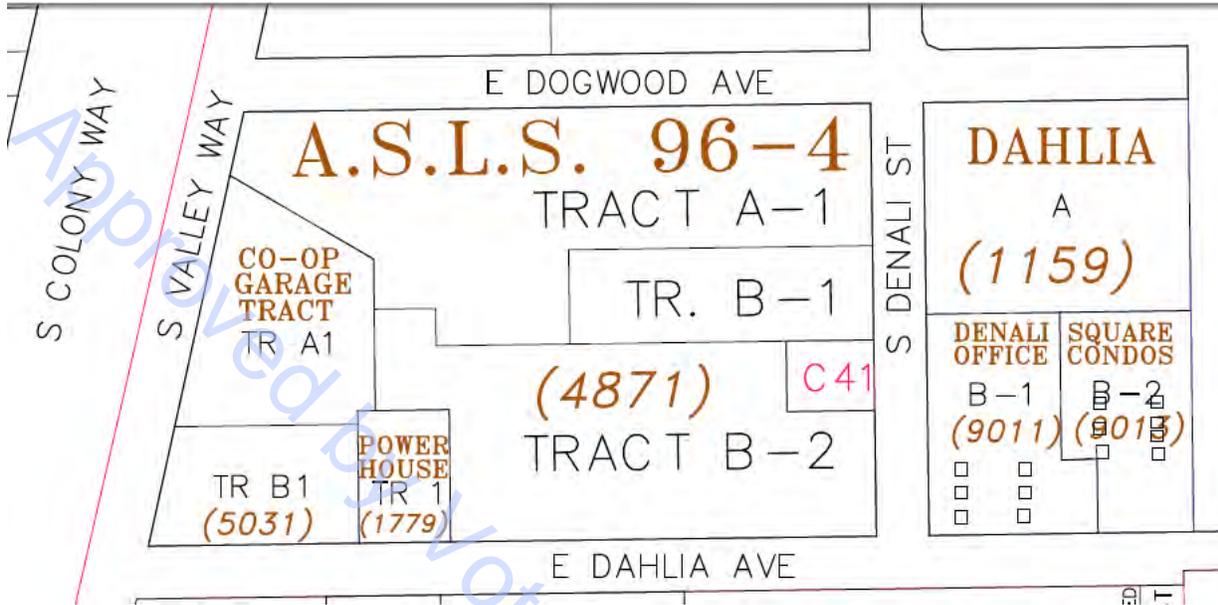
Richard W. Best, Mayor Pro-Tempore

/s/

Janette M. Bower, MMC, City Clerk

Approved by Voters on October 5, 2010

Mat-Maid Block



CITY OF PALMER
INFORMATIONAL MEMORANDUM NO. 13-002
RESOLUTION NO. 13-003

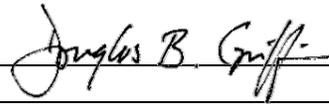
Subject: Resolution No. 13-003: Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate Between the State of Alaska, Division of Agriculture for the Purchase of Real Property located at 513 South Valley Way

Agenda of:

Council Action: _____

Approved for presentation by:

City Manager
City Attorney
City Clerk



Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>None</u>
This legislation (✓):	
<input checked="" type="checkbox"/> Has no fiscal impact	
Creates:	
____ A negative fiscal impact in the amount of:	\$ _____
____ A positive fiscal impact in the amount of:	\$ _____
____ Funds are budgeted from this (these) line item(s):	
➤	\$ _____
____ 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:	 _____

Attachment(s):

- Resolution No. 13-003
- Agreement for the Sale and Purchase of Real Estate owned by the State of Alaska, Division of Agriculture
- AM 12-015
- AM 12-016

Summary statement: This resolution approves and authorizes execution of an Agreement for the Sale and Purchase of Real Estate setting forth the terms and conditions pursuant to which the City will purchase the real property owned by the State of Alaska, Division of Agriculture. This property is one of the seven properties comprising the Mat Maid Block. This resolution approves the final Purchase Agreement and authorizes the Deputy Mayor to execute the

agreement on behalf of the City.

Background: The City is continuing in its efforts to purchase the seven properties comprising the Mat Maid Block. In AM 12-015 and AM 12-016, the Council approved the base form of purchase and sale agreement be used to purchase the seven properties, authorized the City Manager to negotiate purchase terms and conditions with each seller, and approved Initial Deposits of \$5,000 as one of the terms in the purchase agreements. The City has negotiated the terms and conditions of one of the purchase agreements with the State of Alaska, Division of Agriculture to purchase the property commonly known as the ARLF Property located at 513 South Valley Way.

The terms of the Purchase Agreement include:

1. Purchase Price of \$975,000;
2. No Initial Deposit required;
3. An initial 180-day due diligence period, with three optional 90-day extensions, with no additional deposits required; and
4. Various conditions precedent to the City's obligation to close on the sale (set forth in Section 7) following the completion of the Due Diligence Period, including:
 - a) Approval of the City Council;
 - b) Approval by the City Attorney;
 - c) Concurrent closing with all property owners (at the option of the City);
 - d) Issuance of the bonds; and
 - e) Appropriation of funds to pay the Purchase Price and the City's closing costs.

This resolution approves the final Purchase Agreement and authorizes the Deputy Mayor to execute the agreement on behalf of the City. The City is not required to close on the purchase of the property unless authorized by the Council after the due diligence is completed.

In addition to finalizing negotiations to purchase this property, as of May 21, 2012 the City has obtained appraisals on the various properties (except the ARLF Property, met with and made offers to each of the other sellers, finished the title review, completed a Phase I Environmental Review of the properties and is moving forward under the Triad process with the Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (DEC), and continued in its efforts to acquire the Crowley property and the KLH Property. In conjunction with the offers to the sellers, the City has developed various purchase scenarios to continue negotiations with the sellers. It is anticipated that additional Purchase Agreements for both the Crowley Property and the KLH Property will be presented to the Council for approval at upcoming City Council meetings provided agreement terms and the purchase price can be agreed to.

Administration recommendation: Presented as requested for Council consideration. The Administration has concluded negotiations with property owners. The final counteroffers are attached with this legislation. In aggregate, the counteroffers exceed the City Manager's benchmark amount for property acquisition.

Introduced by: City Manager Griffin

Date:

Action:

Vote:

Yes:

No:

CITY OF PALMER, ALASKA

Resolution No. 13-003

A Resolution of the Palmer City Council Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate Between the State of Alaska, Division of Agriculture for the Purchase of Real Property located at 513 South Valley Way

WHEREAS, on February 14, 2012, the City Council voted to authorize the City Manager to negotiate the purchase price and terms for the acquisition of each of the Mat Maid Block properties; and

WHEREAS, on February 14, 2012, the City Council also voted to approve the base form of Purchase and Sale Agreement ("Purchase Agreement") to be used by the City of Palmer for the purchase of the Mat Maid Block properties; and

WHEREAS, the State of Alaska owns a certain 3.03± acre parcel identified by Matanuska-Susitna Borough Tax Number 4871000T00A-1, located in the Mat Maid Block, commonly known as the ARLF Property ("ARLF Property"); and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070. G, the City contracted with Statewide Appraisal Services to prepare an appraisal of the ARLF Property; and

WHEREAS, Statewide Appraisal Services is in the process of completing the appraisal, and the City has been informed that the appraised value in excess of \$975,000; and

WHEREAS, the City Manager and the City's Land Consultant have met with the State of Alaska, Division of Agriculture, Board of Agriculture and Conservation, and have agreed to the terms and conditions of the purchase of the ARLF Property, with such terms including a Purchase Price of \$975,000; and

WHEREAS, the State of Alaska, Division of Agriculture has executed the final form of Purchase Agreement, which Purchase Agreement is attached to IM 13-002; and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070 G & H, the Purchase Agreement must be approved by the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council that the Agreement for Sale and Purchase of Real Estate to purchase the ARLF Property is hereby approved, the Deputy City Mayor is authorized to execute the Purchase Agreement on behalf of City of Palmer.

Passed and approved by the City Council of the City of Palmer, Alaska this ____th day of _____, 2013.

Brad Hanson, Deputy Mayor

Janette M. Bower, MMC, City Clerk

Attachment to Action Memorandum 13-005
DRAFT

Agreement
for the
Sale and Purchase
of
Real Estate

Mat-Maid Block Properties
Palmer, Alaska

"ARLF Property"
513 South Valley Way
MSB Tax Identification No. 4871000T00A-1

The City of Palmer, Purchaser
and
State of Alaska, Division of Agriculture, Seller

Effective Date August 1, 2012

AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

**Mat-Maid Block Properties
Palmer, Alaska
MSB Tax Identification No. 4871000T00A-1**

This Agreement for the Sale and Purchase of Real Estate shall supersede any and all previous offers and counter-offers, either oral or written. If this Agreement is not signed by both parties, it shall not represent a binding agreement between the parties, or an offer to buy or sell by either party.

THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE ("**Agreement**") is made and entered into by and between THE CITY OF PALMER, a home rule city ("**City**"), and the STATE OF ALASKA, DIVISION OF AGRICULTURE ("**Seller**"). For purposes of this Agreement, the effective date of this Agreement ("**Effective Date**") shall be the last date of execution of this Agreement by the parties.

RECITALS

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to \$3 million in general obligation bonds ("**Bonds**") to finance the acquisition of the Mat-Maid Properties for public purposes of the City;

WHEREAS, the Mat-Maid Block ("**Mat-Maid Properties**") is 8.74 acres in size, and is comprised of seven separate parcels, with seven separate owners;

WHEREAS, the seven owners are: (i) **Jeffrey Johnson** (Tract B-1, Replat of Co-Op Garage Tract; 0.70 acres); (ii) **Palmer Arts Council** (Tract One, Matanuska Maid Power House Subdivision; 0.36 acres); (iii) **Crowley Petroleum Distribution, Inc.** (Tract A-1, Replat of the Co-Op Garage Tract; 1.11 acres); (iv) **State of Alaska, Division of Agriculture** (Tract A-1, Alaska State Land Survey No. 96-4; 3.03 acres); (v) **KLH, Inc.** (Tract B-1, Alaska State Land Survey No. 96-4; 0.85 acres); (vi) **William H. Ingaldson** (Tract B-2, Alaska State Land Survey No. 96-4; 2.51 acres); and (vii) **David & Sharon Ausdahl** (portion of Section 33, Township 18N, Range 2E; 0.18 acres)(the foregoing parties hereinafter collectively referred to as the "**Property Owners**");

WHEREAS, the City and each of the Property Owners have entered into negotiations regarding the possible sale of each of the Mat-Maid Properties to the City;

WHEREAS, on February 14, 2012, the City Council approved the base form of Purchase Agreement, and authorized the City Manager to negotiate Purchase and Sale Agreements with the Property Owners;

WHEREAS, by a Corrective Trustee's Deed recorded on May 24, 1991, in Book 0650, at Page 0978, Palmer Recording District, Seller acquired title to the Property through foreclosure;

WHEREAS, Seller thereafter offered the Property for sale under ARLF Seal Bid Sale #09-01, with a minimum bid price of \$975,000, and with a bid closing date of September 30, 2009;

WHEREAS, no qualified bids were received, and pursuant to the bid sale terms, the Property has continued to be offered through an over-the counter offering;

WHEREAS, the City desires to purchase the Property from Seller, and Seller has agreed to sell the property to the City;

WHEREAS, this Agreement sets forth the terms and conditions of the sale and purchase between the Seller and the City;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, agreements, and promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. The Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to the City, and the City agrees to purchase from Seller, the following:

A parcel of real property located in Palmer, Alaska, commonly known as the "ARLF Property", 513 South Valley Way, Mat-Su Borough Tax Id. No. 4871000T00A-1, legally described as Tract A-1, Alaska State Land Survey No. 96-4, according to Plat No. 99-62, located in the Palmer Recording District, Third Judicial District, State of Alaska. The parcel consists of 3.03 acres of real property, together with (i) all improvements, buildings and fixtures located thereon; (ii) all rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon; and (iii) all right, title and interest of Seller, if any, in and to any land lying in the bed of any

street, road, or alley, open or proposed, adjoining such land ((i)-(iii) all collectively the "**Property**").

Section 2. Purchase Price and Terms of Payment. The purchase price for the Property ("**Purchase Price**") shall be **NINE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO/CENTS (\$975,000.00)**. The Purchase Price shall be paid by a bank cashier's check or wire transfer into escrow with Mat-Su Title Insurance Agency, Inc. ("**Title Company**") at Closing. The Purchase Price shall be subject to prorations and adjustments as provided for in this Agreement.

Section 3. Title to Property.

(a) Title Commitment. The parties acknowledge that the City has ordered and received a preliminary commitment for title insurance from the Title Company, which Title Commitment reflects Seller as the owner of the Property. The "**Title Commitment**" is defined as the Preliminary Commitment for an ALTA Standard Owner's Policy #MS86527, Amendment #1, and Amendment #2 issued by Mat-Su Title Insurance Agency effective on March 15, 2012 at 8:00 AM. Seller acknowledges that it has received, reviewed and understands, to Seller's satisfaction, a copy of the Title Commitment. Seller further acknowledges that the City may, at the City's sole discretion, elect to obtain an ALTA extended coverage owner's title policy as opposed to an ALTA standard coverage owner's policy, which requires an ALTA Survey.

(b) Title Policy/Statutory Warranty Deed. At Closing, Seller shall convey to the City fee simple and marketable title to the Property by Statutory Warranty Deed (in the form attached as **Exhibit A**), subject only to the Permitted Exceptions. The grantee on the Statutory Warranty Deed shall be shown as "**The City of Palmer.**" Seller shall also cause the Title Company to issue the ALTA standard coverage owner's policy of title insurance at Closing in a policy amount equal to the Purchase Price, subject to the Permitted Exceptions, and including any endorsements required by the City. The insured shall be shown as "**The City of Palmer.**" Seller shall pay the premium amount related to an ALTA standard owner's title policy, and the City shall pay the additional premium cost related to the ALTA extended owner's policy (if one is obtained), 100% of the cost for the ALTA survey, and the title endorsements requested by the City.

(c) Warranty Deed Exceptions. The Statutory Warranty Deed to be delivered at Closing shall convey fee simple title, and shall include all Permitted

Exceptions, but shall exclude the standard title exceptions typically in Schedule B-Section 2 of a preliminary commitment from the Title Company, which shall not be considered Permitted Exceptions. Further, existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances shall be deemed Title Objections which shall be removed by Seller on or before Closing.

(d) Permitted Title Exceptions. The following title exceptions shall be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Permitted Exceptions**"): the title exceptions listed as #'s 8,9, and 13-18 in Section 2 of Schedule B of the Title Commitment.

(e) Title Objections: The following title exceptions shall not be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Title Objections**"): (i) the title exceptions listed as #'s 1-7, and 10-12 in Section 2 of Schedule B of the Title Commitment; (ii) existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances; if any exist, whether recorded or not recorded. Seller shall also pay all taxes and assessments due against the Property, including any City of Palmer or Mat-Su Borough assessments.

(f) Failure to Remove Title Objections. With respect to the Title Objections, if Seller shall not correct or remove such Title Objections on or before Closing, then the City shall either (i) waive such uncured objections and accept title to the Property subject to such uncured Title Objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate necessary adjustments to the Purchase Price; (iii) sue for specific performance of this Agreement causing Seller to remove the agreed upon Title Objections; or (iv) terminate this Agreement by written notice to Seller, whereupon neither the City or Seller will thereafter have any further obligations or liabilities under this Agreement.

Section 4. The City's Due Diligence.

(a) Scope of City's Due Diligence. In addition to any other contingencies and conditions precedent elsewhere in this Agreement, the City's obligation to consummate the transactions contemplated by this Agreement and to close on the purchase of the Property, is conditioned upon satisfaction, in the sole discretion of the City, of the following:

(i) The condition of and issues related to the Property meet with the approval of the City, in the City's sole discretion. The City and any authorized representative, including employees and contractors (and their subcontractors) (collectively "**Contractors**") of the City shall have the right to enter upon and inspect the Property, and are hereby granted access to do the same (including for purposes of the ALTA survey). Such inspections may include, but shall not be limited to, an inspection for evidence of Hazardous Materials and any environmental problems, inspections of the improvements (if any), historic preservation review, geotechnical review, planning and zoning review, surveying, engineering review, and architectural reviews. All such inspections shall be at the City's sole cost and expense. Such inspections by the City or the City's Contractors shall be conducted in such a manner as not to physically damage any part of the Property to the greatest extent possible.

(ii) Any other issue (as determined by the City in its sole discretion) related to the Property, including without limitation, proposed uses of the Property by the City, are acceptable to the City, in the City's sole discretion.

(iii) Seller is transferring the Property "**AS IS WHERE IS WITHOUT ANY IMPLIED OR EXPRESS WARRANTY OF CONDITION OR FITNESS FOR A PARTICULAR USE OR PURPOSE.**" Notwithstanding the foregoing, Seller acknowledges and agrees that the City has not agreed to (and is not permitted by applicable law), and has no responsibility for, any indemnification, defense or hold harmless obligations in this Agreement or otherwise, including, for hazardous materials, wastes, and substances, and any other condition of the Property.

(b) Initial Due Diligence Period. The City will have *one-hundred and eighty (180) days to conduct the foregoing due diligence, which one-hundred and eighty (180) day period shall commence the day after the Effective Date, and end one-hundred and eighty (180) days thereafter at 5:30 p.m. Alaska time ("Due Diligence Period")*, and to make a final determination on all contingencies and other issues related to the Property, and to determine if, in the sole discretion of the City, the Property is acceptable to the City. If in the City's sole discretion the Property is not acceptable to the City, the City will so notify Seller of such negative determination (which notice need not specify any reason why the Property is not suitable but merely state that the Property is not acceptable to the City) in writing prior to the expiration of the Due Diligence Period (or any extension thereof), in which case this Agreement will become null and void (with no further obligation of the parties to execute a rescission agreement or similar document).

In the alternative, instead of terminating this Agreement, the parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in this Section 4.

If the City determines it would like to proceed and close the transaction, the City will so notify Seller of such determination in writing. In the absence of any such timely notification, the foregoing contingency provisions will be deemed to be favorably resolved. The City will have the right to waive any or all contingency provisions within the time provided and to then proceed with Closing.

(c) **Optional Extensions of the Due Diligence Period.** In addition to the initial ***one-hundred and eighty (180) day*** Due Diligence Period, the City shall have the option, in the City's sole discretion, to extend the Due Diligence Period by up to ***three (3)*** successive ***ninety (90) day*** periods. Such extension periods shall be identified as the ***"First Option Period," "Second Option Period," and "Third Option Period"*** respectively. If an option period is exercised, each option exercised shall be deemed to be part of the Due Diligence Period. The purpose of each option extension is to provide the City with an additional ***ninety (90) day*** period to undertake the City's due diligence and thus extending the Due Diligence Period.

To exercise the option for the First Option Period, the City shall notify Seller in writing at least ***ten (10) days*** before the expiration of the initial Due Diligence Period of the City's election to exercise the First Option. To exercise the option for the Second Option Period, the City shall notify Seller in writing at least ***ten (10) days*** before the expiration of the First Option Period of the City's election to exercise the Second Option. To exercise the option for the Third Option Period, the City shall notify Seller in writing at least ***ten (10) days*** before the expiration of the Second Option Period of the City's election to exercise the Third Option.

Section 5. Interim Responsibility of Seller. Seller agrees that during the period between the Effective Date and the Closing Date:

(a) The Property will be maintained in as good a condition and state of repair as that existing on the Effective Date, normal wear and tear excepted.

(b) Seller will not enter into any new leases, subleases, use agreements, licenses, or similar agreements ("**Leases**") without the prior written approval of the City.

(c) Seller will cause to be paid all normal costs of operation and maintenance of the Property.

(d) Seller shall not allow any waste or nuisance to be committed on the Property by any of Seller's agents or representatives.

(e) Seller will not allow any liens, encumbrances, deeds of trust, mortgages, or other monetary obligations which may be secured by the Property or placed against the Property, and if such occurs, Seller shall cause them to be removed.

(f) Seller will maintain liability and other necessary insurance on the Property.

(g) Seller will timely pay all taxes and assessments due with respect to the Property. Seller acknowledges and agrees that the City shall not be assuming any debts or liabilities of Seller, all of which shall remain the responsibility of Seller.

Section 6. Damage to Property. Seller agrees to give the City prompt written notice of any fire or other casualty affecting the Property. If prior to the Closing there is material damage to the Property caused by fire or other casualty, the City may, at the City's option: (i) terminate this Agreement by written notice to Seller within **ten (10) days** after the City has received the notice referred to above or at the Closing, whichever is earlier (without any obligation on the parties to execute a rescission or similar agreement), and neither the City or Seller will have any further obligations or liabilities under this Agreement; or (ii) proceed with Closing, in which case the City will be entitled to any insurance proceeds which may be payable on account of such occurrence, which shall be assigned to the City at Closing.

Section 7. Conditions Precedent to City's Obligation to Close. The obligation of the City to close the transactions contemplated by this Agreement is subject to all of the following conditions precedent being satisfied or waived by the City:

(a) **Approval of Contingencies.** An affirmative decision to move forward to Closing by the City under the title contingency and due diligence contingencies in Sections 3 and 4 respectively.

(b) **Approval by City Attorney.** Approval by the City Attorney.

(c) **Approval by City Council.** The Palmer City Council has duly authorized, by an approved Resolution, the issuance of the Bonds, payment of the Purchase Price to each of the Property Owners, and the Closing on the purchase of all of the Mat-Maid Properties.

(d) **Closing with all Property Owners.** All of the other Property Owners close the sale (as part of the same Escrow which closes on all of the Mat-Maid Properties and coordinates the application of the Bond proceeds towards the Purchase Prices) on each of their respective property comprising part of the Mat-Maid Properties, unless the City, in its sole discretion, decides to split-up the closings on one or more of the Properties.

(e) **Bonds.** The Bonds have been issued, and the required funds have been transferred into the Escrow to pay the Purchase Prices and the Closing costs of the City as required by the settlement statements.

(f) **Appropriation of Funds.** The City Council has appropriated all funds necessary to pay the Purchase Price and all of the City's Closing costs.

(g) **Notice of Satisfaction of Conditions Precedent to be Signed by City, Title Company, and Property Owners.** The Title Company has notified the City in writing that (i) all the Property Owners are ready to close their respective sale; (ii) all necessary funds and documents are in Escrow pursuant to the approved Joint Closing Instructions provided to the Title Company; and (iii) the Title Company, City, and all Property Owners have signed (which may be done in counterparts and by facsimile signatures) the ***Notice of Satisfaction of Conditions Precedent***, the form of which is attached as ***Exhibit B***.

Section 8. Time and Place for Closing. Subject to the satisfaction of the conditions precedent in Section 7, the closing ("***Closing***") of the transactions contemplated by this Agreement shall occur ***no later than fifteen (15) days*** after the latest date of execution of the Notice of Satisfaction of Conditions Precedent by the City,

Title Company, and the Property Owners. Closing shall be on such date and time as agreed to by the parties. Closing shall take place at the office of the Title Company in Wasilla, Alaska. The actual date on which the Closing occurs is herein referred to as the "**Closing Date.**" The Closing Date may be extended by mutual written agreement by the parties. Seller shall surrender the Property to the City upon recording.

Section 9. Closing.

(a) At Closing, Seller shall:

(i) Execute and deliver to the City a Statutory Warranty Deed, in the form attached as **Exhibit A**, conveying the Property to the City, subject only to the Permitted Exceptions.

(ii) Cause to be issued to the City by the Title Company the ALTA standard owner's title policy or ALTA extended owner's title policy referenced in Section 3, in an amount equal to the Purchase Price.

(iii) Provide the Title Company with any ALTA Lien Affidavits required in conjunction with any ALTA extended owner's title policy.

(iv) Execute and deliver to the Title Company an IRS FIRPTA Certification.

(v) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(vi) Deliver to the City possession of the Property and all keys thereto.

(b) At Closing, the City shall:

(i) Deliver to the Title Company such evidence of the authority and capacity as the Title Company may reasonably require.

(ii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(c) Seller shall pay:

- (i) The cost of the standard owner's title policy.
- (ii) Seller's attorney's fees.
- (iii) One-half of the escrow closing fee of the Title Company and 1/2 of the recording fees.
- (iv) Any other amounts identified as a Seller cost in the approved settlement statements.

(d) The City shall pay:

- (i) Costs related to the additional policy premium amount for converting the standard owners title policy to the ALTA extended owners policy, 100% of the cost for the ALTA survey, and for any endorsements desired by the City.
- (ii) The City's attorney's fees.
- (iii) One-half of the escrow closing fee of the Title Company and 1/2 of the recording fees.
- (iv) All costs related to the Bonds and the City's financing for the purchase.
- (v) All costs related to the appraisals, title review, and due diligence conducted by or for the City.
- (vi) Deliver to the Title Company the balance of the Purchase Price (less all deposits) and any Closing costs required of the City under the settlement statements.

(vii) Any other amounts identified as a cost of the City in the approved settlement statements.

(e) Real property taxes shall be prorated as of the recording date. Seller shall pay, at or before Closing, all assessments due against the Property. Utilities shall be changed into the name of the City as of the Closing Date, and the parties shall cooperate with the utility companies to accomplish the change-over.

Section 10. Termination, Defaults and Remedies.

(a) **Default by Seller.** Seller will be in default hereunder upon the occurrence of any of the following events:

(i) Seller fails to materially meet, comply with, or perform any covenant, agreement or obligation required on Seller's part within the time limits and in the manner required in this Agreement, for any reason other than a default by the City hereunder.

(ii) Seller fails to deliver at the Closing any items required of Seller in Sections 9(a) and (c) of this Agreement.

In the event of a default by Seller hereunder, the City may, at the City's option, terminate this Agreement by written notice delivered to Seller at or prior to the Closing (with no obligation of the parties to execute a rescission or similar agreement). In the alternative, the City may sue for specific performance of this Agreement by Seller.

(b) **Default by the City.** The City will be in default hereunder upon the occurrence of any of the following events:

(i) The City fails to materially meet, comply with, or perform any covenant, agreement or obligation required on the City's part within the time limits and in the manner required in this Agreement, for any reason other than a default by Seller hereunder.

(ii) The City fails to deliver at the Closing any items required of the City in Sections 9(b) and (d) of this Agreement.

In the event of a default by the City hereunder, the Seller may, at the Seller's option, terminate this Agreement by written notice delivered to the City at or prior to the Closing (with no obligation of the parties to execute a rescission or similar agreement). The termination of this Agreement shall be the sole remedy available to Seller for breach or default by the City, and the City will not be liable for damages or specific performance, and Seller hereby waives any and all rights to damages and specific performance.

Section 11. Notices. Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing, and any such notice or communication will be deemed to have been given if and when delivered or mailed (or in the event the delivery or mailing is refused by the addressee) to any such party by courier, personal delivery, facsimile, e-mail, or certified mail, return receipt requested, addressed to such party at such party's address as provided below or such other address as either party may designate by notice similarly sent. Notice by mail is effective upon receipt or the date of rejection of the notice. Notice given by courier or personal delivery is effective upon receipt. Notice given by facsimile is effective upon confirmation of successful transmission by the transmitting machine. Notice given by e-mail shall be successful upon transmission of the e-mail. Any party or additional notice party may change their notice address by providing notice to the other party as herein provided above.

If to Seller:

Franci Havemeister, Director
Division of Agriculture
1800 Glenn Highway, Suite 12
Palmer, Alaska 99645
Facsimile: (907) 745-7112
E-Mail: Franci.Havemeister@alaska.gov

With a Copy to (which shall not constitute requisite notice):

Robert McFarlane
Assistant Attorney General
Attorney General's Office
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
Facsimile: (907) 276-8554
E-Mail: robert.mcfarlane@alaska.gov

If to the City:

Douglas Griffin, City Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, Alaska 99645
Facsimile: (907) 745-0930
E-Mail: dgriffin@palmerak.org

With a Copy to (which shall not constitute requisite notice):

Glen Price
Law Office of Glen Price
P.O. Box 4739
Palmer, Alaska 99645
Facsimile: (907) 746-5971
E-Mail: gplaw@mtaonline.net

Section 12. Miscellaneous Provisions.

(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no understandings, written or oral, which change, modify or enlarge this Agreement.

(b) **Waiver.** No provision of this Agreement may be waived except in writing signed by the party to be charged with such waiver. The failure of any party to insist upon strict performance of any term or condition of this Agreement shall not be deemed a waiver of any other rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default of any such term, covenant, or condition.

(c) **Amendments.** Any amendment or modification to this Agreement must be executed in writing by both the City and Seller.

(d) **Construction.** This Agreement shall not be construed more strongly against one party than the other. Both parties waive the benefit of any rule of

construction that an agreement shall be construed against its drafter. The captions in this Agreement are for the convenience of the parties only and shall contain no independent significance.

(e) **Governing Law.** This Agreement shall be interpreted under and construed in accordance with Alaska law. Venue for any lawsuit shall be in the Superior Court for the State of Alaska, at Palmer, Alaska. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable, including reasonable attorneys' fees.

(f) **Representation by Counsel.** Both the City and Seller acknowledge that they have had the opportunity, if each party so desired, for the assistance of counsel in the preparation and review of this Agreement. The parties acknowledge and agree that Glen Price, Law Office of Glen Price has solely represented the City in this transaction and has not provided any advice to Seller. The parties acknowledge and agree that Robert McFarlane has solely represented Seller in this transaction and has not provided any advice to the City.

(g) **No Third Party Beneficiaries.** Nothing in this Agreement shall be interpreted or construed as creating any rights or privileges whatsoever in persons or entities that are not parties to this Agreement.

(h) **No Merger.** The terms and provisions of this Agreement shall not merge in, but shall survive, the Closing of the transaction contemplated hereunder and the Closing documents to be delivered pursuant hereto.

(i) **Severability.** If any clause or term of this Agreement shall be deemed invalid by any court of law, the validity and enforcement of the other clauses and terms of the Agreement shall be unaffected.

(j) **No Assignment.** This Agreement may not be assigned, encumbered or otherwise transferred by either party, and any assignment, encumbrance or other transfer in violation hereof shall be null and void and of no force or effect.

(k) **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, including by facsimile signature, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement,

THE CITY OF PALMER

By: _____

Its: _____

Date: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, The City of Palmer.

Notary Public in and for Alaska
My commission expires: _____

ATTESTED TO:

By: _____

Its: City Clerk

Date: _____

Attachment to Action Memorandum 13-005

**CITY OF PALMER
INFORMATIONAL MEMORANDUM NO. 13-003
RESOLUTION No. 13-004**

Subject: Resolution No. 13-004: Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and Jeffrey Johnson for the Purchase of Real Property located at 585 South Valley Way and Authorizing the Expenditure of \$25,000 as an Initial Deposit under such Agreement

Agenda of: January 8, 2013

Council Action: _____

Approved for presentation by:

City Manager
City Attorney
City Clerk

Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>25,000</u>
This legislation (✓):	
<input type="checkbox"/> Has no fiscal impact	
Creates:	
<input checked="" type="checkbox"/> A negative fiscal impact in the amount of:	\$ <u>25,000</u>
<input type="checkbox"/> A positive fiscal impact in the amount of:	\$ _____
<input checked="" type="checkbox"/> Funds are budgeted from this (these) line item(s):	
➤ 08-01-10-7140	\$ <u>25,000</u>
➤	\$ _____
➤	\$ _____
<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:	_____

Attachment(s):

- Resolution No. 13-004
- Letter from Vince Coan, Statewide Appraisal Services, regarding Johnson Property appraisal
- Agreement for the Sale and Purchase of Real Estate owned by Jeffrey Johnson
- AM 12-015
- AM 12-016

Summary statement: This resolution approves and authorizes execution of an Agreement for the Sale and Purchase of Real Estate setting forth the terms and conditions pursuant to which the City will purchase the real property owned by Jeffrey Johnson. This property is one of the seven properties comprising the Mat Maid Block. The Purchase Agreement also authorizes the City to pay an Initial Deposit of \$25,000 towards the Purchase Price. This resolution approves the final Purchase Agreement, authorizes the Deputy Mayor to execute the agreement on behalf of the City, appropriates the \$25,000 Initial Deposit required under the Agreement, and authorizes the City Manager to expend such funds by depositing them with the Title Company as provided in the Purchase Agreement.

Background: The City is continuing in its efforts to purchase the seven properties comprising the Mat Maid Block. In AM 12-015 and AM 12-016, the Council approved the base form of purchase and sale agreement to be used to purchase the seven properties, authorized the City Manager to negotiate purchase terms and conditions with each seller, and approved Initial Deposits of \$5,000 as one of the terms in the purchase agreements, although this Purchase Agreement requires an Initial Deposit of \$25,000. The City has negotiated the terms and conditions of one of the purchase agreements with Jeffrey Johnson to purchase the property commonly known as the Mat-Valley Mini-Storage Property located at 585 South Valley Way.

The terms of the Purchase Agreement include:

1. Purchase Price of \$412,000;
2. An Initial Deposit of \$25,000;
3. An initial 180-day due diligence period, with three optional 90-day extensions, and no additional deposits;
4. That Initial Deposit is non-refundable if the City does not close on the purchase, however if the City closes on the purchases, the Initial Deposit will be applied towards the Purchase Price; and
5. Various conditions precedent to the City's obligation to close on the sale (set forth in Section 10) following the completion of the Due Diligence Period, including:
 - a) Approval of the City Council;
 - b) Approval by the City Attorney;
 - c) Concurrent closing with all property owners (at the option of the City);
 - d) Issuance of the bonds; and
 - e) Appropriation of funds to pay the Purchase Price and the City's closing costs.

This resolution approves the final Purchase Agreement, authorizes the Deputy Mayor to execute the agreement on behalf of the City, appropriates the \$25,000 Initial Deposit required under the Agreement, and authorizes the City Manager to expend such funds by depositing them with the Title Company as provided in the Purchase Agreement. The City is not required to close on the purchase of the property unless authorized by the Council after the due diligence is completed.

In addition to finalizing negotiations to purchase this property, as of May 21, 2012 the City has obtained appraisals on the various properties (except the ARLF Property), met with and made offers to each of the other sellers, finished the title review, completed a Phase I Environmental Review of the properties and is moving forward under the Triad process with the Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (DEC), and continued in its efforts to acquire the Crowley Property and KLH Property. In conjunction with the offers to the sellers, the City has developed various purchase scenarios to continue negotiations with the sellers. It is anticipated that additional Purchase Agreements will be presented to the Council for approval at up-coming City Council meetings if agreements can be

reached with Crowley and KLH.

Administration recommendation: Presented as requested for Council consideration. The Administration has concluded negotiations with property owners. The final counteroffers are attached with this legislation. In aggregate, the counteroffers exceed the City Manager's benchmark amount for property acquisition.

Attachment to Action Memorandum 13-005
DRAFT

Introduced by: City Manager Griffin

Date:

Action:

Vote:

Yes:

No:

CITY OF PALMER, ALASKA

Resolution No. 13-004

A Resolution of the Palmer City Council Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and Jeffrey Johnson for the Purchase of Real Property located at 585 South Valley Way and Authorizing the Expenditure of \$25,000 as an Initial Deposit under such Agreement

WHEREAS, on February 14, 2012 the City Council voted to authorize the City Manager to negotiate the purchase price and terms for the acquisition of each of the Mat Maid Block properties; and

WHEREAS, on February 14, 2012 the City Council also voted to approve the base form of Purchase and Sale Agreement ("Purchase Agreement") to be used by the City of Palmer for the purchase of the Mat Maid Block properties; and

WHEREAS, the Purchase Agreement includes a provision requiring the City to pay an Initial Deposit of \$25,000, which amount is to be placed in escrow with the Title Company; and

WHEREAS, Jeffrey Johnson owns a certain 0.70± acre parcel identified by Matanuska-Susitna Borough Tax Number 5031000T00B-1, located in the Mat Maid Block, commonly known as the Mat-Valley Mini-Storage Property ("Johnson Property"); and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070. G, the City contracted with Statewide Appraisal Services to prepare an appraisal of the Johnson Property; and

WHEREAS, Statewide Appraisal Services issued said appraisal report on March 10, 2012 (File No. 1058(B)-12), which report sets the appraised value for the Johnson Property at \$330,000; and

WHEREAS, the City Manager and the City's Land Consultant have met with Jeffrey Johnson, and have agreed to the terms and conditions of the purchase of the Johnson Property, with such terms including a Purchase Price of \$412,000; and

WHEREAS, Jeffrey Johnson has agreed to execute the final form of Purchase Agreement, which Purchase Agreement is attached to IM 13-003; and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070 G & H, the Purchase Agreement must be approved by the City Council.

NOW, THEREFORE, BE IT RESOLVED by the Palmer City Council that the Agreement for Sale and Purchase of Real Estate to purchase the Johnson Property is hereby approved, the Deputy City Mayor is authorized to execute the Purchase Agreement on behalf of City of Palmer, and the City Manager is authorized to expend \$25,000 as an Initial Deposit pursuant to the Agreement.

Passed and approved by the City Council of the City of Palmer, Alaska this ____th day of _____, 2013.

Brad Hanson, Deputy Mayor

Janette M. Bower, MMC, City Clerk

Agreement
for the
Sale and Purchase
of
Real Estate

***Mat-Maid Block Properties
Palmer, Alaska***

***Mat-Valley Mini-Storage Property
585 South Valley Way
MSB Tax Identification No. 5031000T00B-1***

***The City of Palmer, Purchaser
and
Jeffrey Johnson, Seller***

Effective Date _____, 2012

Summary of Agreement Deadlines

<u><i>Agreement Requirement</i></u>	<u><i>Section</i></u>	<u><i>Agreement Deadline</i></u>	<u><i>Actual Due Date</i></u>
Effective Date	Preamble	Date of Execution by both parties	
Initial Deposit	Section 2(a)	20 days after Effective Date	
Seller's Information to City	Section 3	30 days after Effective Date	
Due Diligence Period	Section 7(b)	180 days after the Effective Date plus any 90-day extensions	
Closing Date	Section 11	15 days after execution of Notice of Satisfaction of Conditions Precedent by Title Company, City and Property Owners	

AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

**Mat-Maid Block Properties
Palmer, Alaska
MSB Tax Identification No. 5031000T00B-1**

This Agreement for the Sale and Purchase of Real Estate shall supersede any and all previous offers and counter-offers, either oral or written. If this Agreement is not signed by both parties, it shall not represent a binding agreement between the parties, or an offer to buy or sell by either party.

THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE ("Agreement") is made and entered into by and between **THE CITY OF PALMER**, a home rule city ("**City**"), and **JEFFREY JOHNSON**, ("**Seller**"). For purposes of this Agreement, the effective date of this Agreement ("**Effective Date**") shall be the last date of execution of this Agreement by the parties.

RECITALS

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to \$3 million in general obligation bonds ("**Bonds**") to finance the acquisition of the Mat-Maid Properties for public purposes of the City;

WHEREAS, the Mat-Maid Block ("**Mat-Maid Properties**") is 8.74 acres in size, and is comprised of seven separate parcels, with seven separate owners;

WHEREAS, the seven owners are: (i) **Jeffrey Johnson** (Tract B-1, Replat of Co-Op Garage Tract; 0.70 acres); (ii) **Palmer Arts Council** (Tract One, Matanuska Maid Power House Subdivision; 0.36 acres); (iii) **Crowley Petroleum Distribution, Inc.** (Tract A-1, Replat of the Co-Op Garage Tract; 1.11 acres); (iv) **State of Alaska, Division of Agriculture** (Tract A-1, Alaska State Land Survey No. 96-4; 3.03 acres); (v) **KLH, Inc.** (Tract B-1, Alaska State Land Survey No. 96-4; 0.85 acres); (vi) **William H. Ingaldson** (Tract B-2, Alaska State Land Survey No. 96-4; 2.51 acres); and (vii) **David & Sharon Ausdahl** (portion of Section 33, Township 18N, Range 2E; 0.18 acres)(the foregoing parties hereinafter collectively referred to as the "**Property Owners**");

WHEREAS, the City and most of the Property Owners have negotiated and agreed to the sale of each Property Owner's parcel to the City;

WHEREAS, on February 14, 2012, the City Council approved the base form of Purchase Agreement, and authorized the City Manager to negotiate Purchase and Sale Agreements with the Property Owners;

WHEREAS, the selling Property Owners have agreed to the terms and conditions of the sale of its respective parcel to the City, and the City has agreed to purchase such parcel, under such terms and conditions as set forth in the respective Agreements for the Sale and Purchase of Real Estate; and

WHEREAS, this Agreement sets forth the terms and conditions of the sale and purchase between this individual Seller and the City;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, agreements, and promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. The Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to the City, and the City agrees to purchase from Seller, the following:

A parcel of real property located in Palmer, Alaska, commonly known as the "Mat-Valley Mini-Storage Property", 585 South Valley Way, Mat-Su Borough Tax Id. No. 5031000T00B-1, legally described as Tract B-1, Replat of Co-Op Garage Tract, according to plat No. 73-6, located in the Palmer Recording District, Third Judicial District, State of Alaska. The parcel consists of 0.70 acres of real property, together with (i) all improvements, buildings and fixtures located thereon; (ii) all rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon; and (iii) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road, or alley, open or proposed, adjoining such land ((i)-(iii) all collectively the "Property").

The parties acknowledge and agree that the City shall be receiving ownership of the buildings and structures, including the storage rental units and offices, at no additional cost to the City (other than the payment of the Purchase Price). Seller will use reasonable efforts to keep existing rentals in place until Closing and assign the Leases to the City, at the City's option. If the City does not elect to assume the Leases, Seller will terminate all Leases at Closing, at no cost or liability to the City. Any new rentals

not in the normal course of business or for the normal rental after the Effective Date and before Closing shall require the prior written approval of the City. Seller acknowledges and agrees has made no agreement or promise for any post-Closing lease of the Property to Seller.

Section 2. Purchase Price and Terms of Payment. The purchase price for the Property ("**Purchase Price**") shall be **FOUR HUNDRED TWELVE THOUSAND DOLLARS AND NO/CENTS (\$412,000.00)**. The Purchase Price shall be paid as follows:

(a) An initial deposit in the amount of **TWENTY-FIVE THOUSAND DOLLARS AND NO/CENTS (\$25,000.00)** ("**Initial Deposit**"), to be paid in the form of a City of Palmer check, bank cashier's check or wire transfer, and to be deposited with and held in escrow by Fidelity Title Agency of Alaska ("**Title Company**") **no later than twenty (20) days after the Effective Date**. The Initial Deposit shall be non-refundable to the City except as otherwise provided in this Agreement, **provided, that**, in the event the City closes this transaction, the Initial Deposit shall be applied towards the Purchase Price at Closing. The Title Company shall serve as the escrow agent to close the sale and purchase through escrow ("**Escrow**"), and the parties hereby appoint the Title Company as escrow and closing agent. The parties acknowledge and agree that no further deposits will be made by the City, including with respect to exercising due diligence extensions.

(b) The balance of the Purchase Price shall be paid by a bank cashier's check or wire transfer into Escrow with the Title Company at Closing. The Purchase Price shall be subject to prorations and adjustments as provided for in this Agreement.

(c) The parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in Section 7.

Section 3. Information to be Supplied to the City by Seller. Within **thirty (30) days after the Effective Date**, Seller shall deliver to the City true

and complete copies of the following, if the same is available and in Seller's possession or control:

(a) All documents and records of Seller related to the ownership, maintenance and repair of the Property, including without limitation, surveys, appraisals, environmental reports, engineering reports, geotechnical reports, historic preservation information, and title documents. Notwithstanding the foregoing, Seller shall not be required to share financial or other operating information on their business operations on the Property, except in the event the City notifies Seller that the City may be interested in assuming certain Leases affecting the Property.

(b) All permits and licenses, including without limitation, applications for the issuance and any renewal of such permits and licenses, and correspondence to or from applicable governmental agencies with respect to the permits and licenses.

(c) Copies of all contracts, easements, licenses, access agreements, leases, subleases and similar use agreements (collectively "**Leases**") related to the Property. The Seller agrees that all Leases shall be terminated prior to Closing, unless otherwise agreed in writing by the City.

(d) Any environmental reports or studies related to the Property, including without limitation, Phase 1 and Phase 2 reports, except those already procured by the City.

(e) All information and documents relating to the historical significance of the Property, including without limitation, any listing on the National Register of Historic Places, and compliance with state, Borough and City historic preservation requirements.

(f) All other documents in Seller's possession or control which are related to the Property which a purchaser of the Property would reasonably deem prudent to review as part of a due diligence review.

Section 4. Limited Representations, Warranties and Covenants of Seller: Seller represents, warrants and covenants to the City (which representations, warranties and covenants shall remain true at all times during this Agreement and shall survive Closing) as follows:

(a) Seller is the owner of fee simple title to the Property and has the full power, capacity and legal right to execute and deliver this Agreement and to sell the Property to the City, pursuant to the terms of this Agreement.

(b) Except for the Leases delivered to the City pursuant to Section 3(c), there are currently no leases, subleases or similar use agreements affecting the Property. From and after the Effective Date, Seller shall not sell, transfer, lease, allow any sublease or otherwise convey or allow use of all or any portion of the Property, or any interest therein, or grant or permit any easements, liens, mortgages, leases, use agreements, dumping or filling, encumbrances, or other interests or agreements with respect to the Property, without the City's prior written consent.

(c) There is no pending or threatened litigation, administrative action or examination, claim or demand, proceeding, judgment or order whatsoever relating to Seller or the Property which affects Seller's ability to convey the Property in accordance with the terms of this Agreement.

(d) Except for the information disclosed in the documents delivered pursuant to Section 3(d), to the best of Seller's knowledge, no party has spilled, discharged or released, or permitted the spill, discharge or release, from, at, on or under the Property, any petroleum, toxic, hazardous or regulated material, waste or substance, as such terms are or may be defined by any federal, state or local law ordinance or regulation ("**Hazardous Materials**"). Seller is not aware of nor has Seller received notice of any action, suit, proceeding or investigation pending or threatened for any violation of any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials with respect to the Property. Seller acknowledges and agrees that the City has not agreed to, and has no responsibility for, any indemnification, defense or hold harmless obligations to Seller or otherwise in this Agreement or otherwise, including, without limitation, for Hazardous Materials and any other condition of the Property.

(e) Seller has not received any notice of any violation or alleged violation of any legal requirement affecting the Property, including without limitation any violation or alleged violation of any local, state or federal environmental or zoning ordinance, code, regulation, rule or order, and specifically including without limitation, variances, conditional uses, or special permits affecting the Property.

(f) To the best of Seller's knowledge, the execution and delivery of, and performance by Seller of its obligations under this Agreement does not contravene, or constitute a default under, any agreement, judgment, injunction, order, or decree binding upon Seller.

(g) To the best of Seller's knowledge, there is no action, suit, or proceeding against or affecting Seller in any court or before any governmental body which (i) affects the validity or enforceability of this Agreement, or (ii) could prohibit Seller from performing its obligations hereunder, or under any document to be delivered pursuant hereto.

(h) Seller has no real estate broker, agent or licensee representing Seller in this transaction, and no commission is due to any broker, agent, or licensee.

Section 5. Limited Representations and Warranties by the City.

The City hereby represents and warrants to Seller that (i) the City has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; (ii) upon execution of this Agreement, the Agreement will be enforceable against the City in accordance with its terms; and (iii) the City has no real estate broker, agent or licensee, representing the City in this transaction, and no commission is due to any broker, agent, or licensee.

Section 6. Title to Property.

(a) **Title Commitment.** The parties acknowledge that the City has ordered and received a preliminary commitment for title insurance from the Title Company, which Title Commitment reflects Seller as the owner of the Property. The "**Title Commitment**" is defined as the Preliminary Commitment for an ALTA Standard Owner's Policy #F-30835 issued by the Title Company on May 11, 2011 at 8:00 AM, as amended by the Amendment #1 to such policy dated March 15, 2012 at 8:00 AM. Seller acknowledges that it has received, reviewed and understands, to Seller's satisfaction, a copy of the Title Commitment. Seller further acknowledges that the City may, at the City's sole discretion, elect to obtain an ALTA extended coverage owner's title policy as opposed to an ALTA standard coverage owner's policy, which requires an ALTA Survey.

(b) **Title Policy/Statutory Warranty Deed.** . At Closing, Seller shall convey to the City fee simple and marketable title to the Property by Statutory Warranty

Deed (in the form to be attached as **Exhibit A**), subject only to the Permitted Exceptions. The grantee on the Statutory Warranty Deed shall be shown as "**The City of Palmer.**" Seller shall also cause the Title Company to issue the ALTA standard coverage owner's policy of title insurance at Closing in a policy amount equal to the Purchase Price, subject to the Permitted Exceptions, and including any endorsements required by the City. The insured shall be shown as "**The City of Palmer.**" Seller shall pay the premium amount related to an ALTA standard owner's title policy, and the City shall pay the additional premium cost related to the ALTA extended owner's policy (if one is obtained), 100% of the cost for the ALTA survey, and the title endorsements requested by the City.

(c) **Warranty Deed Exceptions.** The Statutory Warranty Deed to be delivered at Closing shall convey fee simple title, and shall include all Permitted Exceptions, but shall exclude the standard title exceptions typically in Schedule B-Section 2 of a preliminary commitment from the Title Company, which shall not be considered Permitted Exceptions. Further, existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances shall be deemed Title Objections which shall be removed by Seller on or before Closing.

(d) **Permitted Title Exceptions.** The following title exceptions shall be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Permitted Exceptions**"): the title exceptions listed as #'s 8 and 12, in Section 2 of Schedule B of the Title Commitment.

(e) **Title Objections:** The following title exceptions shall not be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Title Objections**"): (i) the title exceptions listed as #'s 1-7, 9-11, 13, and 14 in Section 2 of Schedule B of the Title Commitment; and (ii) existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances, whether recorded or not recorded, including, without limitation, the Deeds of Trust shown as items #13 and 14 in the Title Commitment. Seller shall also pay all taxes and assessments due against the Property, including any City of Palmer or Mat-Su Borough assessments.

(f) **Failure to Remove Title Objections.** With respect to the Title Objections, if Seller shall not correct or remove such Title Objections on or before Closing, then the City shall either (i) waive such uncured objections and accept title to the Property subject to such uncured Title Objections (which shall be deemed to be

included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate necessary adjustments to the Purchase Price; (iii) sue for specific performance of this Agreement causing Seller to remove the agreed upon Title Objections; or (iv) terminate this Agreement by written notice to Seller, whereupon the Initial Deposit shall be promptly refunded to the City (without any further obligation on the parties to execute a rescission or similar agreement), and neither the City nor Seller will thereafter have any further obligations or liabilities under this Agreement.

Section 7. The City's Due Diligence.

(a) Scope of City's Due Diligence. In addition to any other contingencies and conditions precedent elsewhere in this Agreement, the City's obligation to consummate the transactions contemplated by this Agreement and to close on the purchase of the Property, is conditioned upon satisfaction, in the sole discretion of the City, of the following:

(i) The condition of and issues related to the Property meet with the approval of the City, in the City's sole discretion. The City and any authorized representative, including employees and contractors (and their subcontractors) (collectively "**Contractors**") of the City shall have the right to enter upon and inspect the Property, and are hereby granted access to do the same (including for purposes of the ALTA survey). Such inspections may include, but shall not be limited to, an inspection for evidence of Hazardous Materials and any environmental problems, inspections of the improvements (if any), historic preservation review, geotechnical review, planning and zoning review, surveying, engineering review, and architectural reviews. All such inspections shall be at the City's sole cost and expense. Such inspections by the City or the City's Contractors shall be conducted in such a manner as not to physically damage any part of the Property to the greatest extent possible. The City's inspections shall not unreasonably interfere with the operation of any businesses on the Property.

(ii) Any other issue (as determined by the City in its sole discretion) related to the Property, including without limitation, proposed uses of the Property by the City, are acceptable to the City, in the City's sole discretion.

(b) Initial Due Diligence Period. The City will have **one hundred eighty (180) days** to conduct the foregoing due diligence, which **one hundred eighty (180) day** period shall commence the **day after the Effective Date, and**

end one hundred eighty (180) days thereafter at 5:30 p.m. Alaska time ("Due Diligence Period"), and to make a final determination on all contingencies and other issues related to the Property, and to determine if, in the sole discretion of the City, the Property is acceptable to the City. If in the City's sole discretion the Property is not acceptable to the City, the City will so notify Seller of such negative determination (which notice need not specify any reason why the Property is not suitable but merely state that the Property is not acceptable to the City) in writing prior to the expiration of the Due Diligence Period (or any extension thereof), in which case this Agreement will become null and void (with no further obligation of the parties to execute a rescission agreement or similar document).

In the alternative, instead of terminating this Agreement, the parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in this Section 7.

If the City determines it would like to proceed and close the transaction, the City will so notify Seller of such determination in writing. In the absence of any such timely notification, the foregoing contingency provisions will be deemed to be favorably resolved. The City will have the right to waive any or all contingency provisions within the time provided and to then proceed with Closing.

(c) Optional Extensions of the Due Diligence Period. In addition to the initial **one hundred eighty (180) day** Due Diligence Period, the City shall have the option, in the City's sole discretion, to extend the Due Diligence Period by up to **three (3) successive ninety (90) day** periods. Such extension periods shall be identified as the **"First Option Period," "Second Option Period," and "Third Option Period"** respectively. If an option period is exercised, each option exercised shall be deemed to be part of the Due Diligence Period. The purpose of each option extension is to provide the City with an additional **ninety (90) day** period to undertake the City's due diligence and thus extending the Due Diligence Period.

(i) To exercise the option for the First Option Period, the City shall notify Seller in writing at least **ten (10) days** before the expiration of the initial Due Diligence Period of the City's election to exercise the First Option.

(ii) To exercise the option for the Second Option Period, the City shall notify Seller in writing at least **ten (10) days** before the expiration of the First Option Period.

(iii) To exercise the option for the Third Option Period, the City shall notify Seller in writing at least **ten (10) days** before the expiration of the Second Option Period of the City's election to exercise the Third Option.

Section 8. Interim Responsibility of Seller. Seller agrees that during the period between the Effective Date and the Closing Date:

(a) The Property will be maintained in as good a condition and state of repair as that existing on the Effective Date, normal wear and tear excepted.

(b) Seller will not enter into any new Leases without the prior written approval of the City.

(c) Seller will cause to be paid all normal costs of operation and maintenance of the Property.

(d) Seller shall not allow any waste or nuisance to be committed on the Property by any of Seller's agents or representatives.

(e) Seller will not allow any liens, encumbrances, deeds of trust, mortgages, or other monetary obligations which may be secured by the Property or placed against the Property, and if such occurs, Seller shall cause them to be removed as soon as practicable, but no later than the Closing Date.

(f) Seller will maintain liability and other necessary insurance on the Property.

(g) Seller shall timely pay all taxes and assessments due with respect to the Property. Seller acknowledges and agrees that the City shall not be assuming any debts or liabilities of Seller, all of which shall remain the responsibility of Seller.

Section 9. Damage to Property. Seller agrees to give the City prompt written notice of any fire or other casualty affecting the Property. If prior to the

Closing there is material damage to the Property caused by fire or other casualty, the City may, at the City's option:

(a) Terminate this Agreement by written notice to Seller within ***ten (10) days*** after the City has received the notice referred to above or at the Closing, whichever is earlier (without any obligation on the parties to execute a rescission or similar agreement) and neither the City nor Seller will have any further obligations or liabilities under this Agreement; or

(b) Proceed with Closing, in which case the City will be entitled to any insurance proceeds which may be payable on account of such occurrence, which shall be assigned to the City at Closing.

Section 10. Conditions Precedent to City's Obligation to Close.

The obligation of the City to close the transactions contemplated by this Agreement is subject to all of the following conditions precedent being satisfied or waived by the City:

(a) **Approval of Contingencies.** An affirmative decision to move forward to Closing by the City under the title contingency and due diligence contingencies in Sections 6 and 7 respectively.

(b) **Approval by City Attorney.** Approval by the City Attorney.

(c) **Approval by City Council.** The Palmer City Council has duly authorized, by an approved Resolution, the issuance of the Bonds, payment of the Purchase Price to each of the Property Owners, and the Closing on the purchase of all of the Mat-Maid Properties.

(d) **Closing with all Property Owners.** All of the other Property Owners close the sale (as part of the same Escrow which closes on all of the Mat-Maid Properties and coordinates the application of the Bond proceeds towards the Purchase Prices) on each of their respective property comprising part of the Mat-Maid Properties, unless the City, in its sole discretion, decides to split-up the closings on one or more of the Properties.

(e) **Bonds.** The Bonds have been issued, and the required funds have been transferred into the Escrow to pay the Purchase Prices and the Closing costs of the City as required by the settlement statements.

(f) **Appropriation of Funds.** The City Council has appropriated all funds necessary to pay the Purchase Price and all of the City's Closing costs.

(g) **Notice of Satisfaction of Conditions Precedent to be Signed by City, Title Company, and Property Owners.** The Title Company has notified the City in writing that (i) all the Property Owners are ready to close their respective sale; (ii) all necessary funds and documents are in Escrow pursuant to the approved Joint Closing Instructions provided to the Title Company; and (iii) the Title Company, City, and all Property Owners have signed (which may be done in counterparts and by facsimile signatures) the ***Notice of Satisfaction of Conditions Precedent***, the form of which shall be attached as ***Exhibit B***.

Section 11. Time and Place for Closing. Subject to the satisfaction of the conditions precedent in Section 10, the closing ("***Closing***") of the transactions contemplated by this Agreement shall occur ***no later than fifteen (15) days*** after the latest date of execution of the Notice of Satisfaction of Conditions Precedent by the City, Title Company, and the Property Owners. Closing shall be on such date and time as agreed to by the parties. Closing shall take place at the office of the Title Company in Wasilla, Alaska. The actual date on which the Closing occurs is herein referred to as the "***Closing Date***." The Closing Date may be extended by mutual written agreement by the parties. Seller shall surrender the Property to the City upon recording.

Section 12. Closing.

(a) **At Closing, Seller shall:**

(i) Execute and deliver to the City a Statutory Warranty Deed, in the form attached as ***Exhibit A***, conveying the Property to the City, subject only to the Permitted Exceptions.

(ii) Execute and deliver to the City, in such form and substance acceptable to the parties, an Assignment of those Leases to be assumed by the City.

(iii) Cause to be issued to the City by the Title Company the ALTA standard owner's title policy or ALTA extended owner's title policy referenced in Section 6, in an amount equal to the Purchase Price.

(iv) Provide the Title Company with any ALTA Lien Affidavits required in conjunction with any ALTA extended owner's title policy.

(v) Execute and deliver to the Title Company an IRS FIRPTA Certification.

(vi) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(vii) Deliver to the City possession of the Property and all keys thereto.

(b) At Closing, the City shall:

(i) Deliver to the Title Company such evidence of the authority and capacity as the Title Company may reasonably require.

(ii) Execute and deliver the Assignment referenced in Section (a)(ii) above.

(iii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(c) Seller shall pay:

(i) The cost of the standard owner's title policy.

(ii) Seller's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and 1/2 of the recording fees.

(iv) Any other amounts identified as a Seller cost in the approved settlement statements.

(d) The City shall pay:

(i) Costs related to the additional policy premium amount for converting the standard owners title policy to the ALTA extended owners policy, 100% of the cost for the ALTA survey, and for any endorsements desired by the City.

(ii) The City's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and ½ of the recording fees.

(iv) All costs related to the Bonds and the City's financing for the purchase.

(v) All costs related to the appraisals, title review, and due diligence conducted by or for the City.

(vi) Deliver to the Title Company the balance of the Purchase Price (less the Initial Deposits) and any Closing costs required of the City under the approved settlement statements.

(vii) Any other amounts identified as a cost of the City in the approved settlement statements.

(e) Real property taxes shall be prorated as of the recording date. Seller shall pay, at or before Closing, all assessments due against the Property. Utilities shall be changed into the name of the City as of the Closing Date, and the parties shall cooperate with the utility companies to accomplish the change-over.

Section 13. Termination, Defaults and Remedies.

(a) **Default by Seller.** Seller will be in default hereunder upon the occurrence of any of the following events:

(i) Seller fails to materially meet, comply with, or perform any covenant, agreement or obligation required on Seller's part within the time limits and in the manner required in this Agreement, for any reason other than a default by the City hereunder.

(ii) Seller fails to deliver at the Closing any items required of Seller in Sections 12(a) and (c) of this Agreement.

In the event of a default by Seller hereunder, the City may, at the City's option, terminate this Agreement by written notice delivered to Seller at or prior to the Closing and receive back the Initial Deposit (with no obligation of the parties to execute a rescission or similar agreement). In the alternative, the City may sue for specific performance of this Agreement by Seller.

(b) Default by the City. The City will be in default hereunder upon the occurrence of any of the following events:

(i) The City fails to materially meet, comply with, or perform any covenant, agreement or obligation required on the City's part within the time limits and in the manner required in this Agreement, for any reason other than a default by Seller hereunder.

(ii) The City fails to deliver at the Closing any items required of the City in Sections 12(b) and (d) of this Agreement.

Seller and the City agree that Seller's economic detriment resulting from the removal of the Property from the market and the carrying and other costs incurred thereafter and associated therewith, including any costs to be incurred by Seller in order to satisfy the conditions of escrow set forth herein, are impracticable or extremely difficult to ascertain. Seller and the City agree that the retention of the Initial Deposit is a reasonable estimate of such damages in the event of the City's failure to perform according to the provisions of this Agreement. Such payment is intended to be liquidated damages and not intended to be a forfeiture or penalty. The termination of this Agreement and retention of the Initial Deposit (by written notice from Seller to the City and the Title Company) shall be the sole remedy available to Seller for breach or default by the City, and the City will not be liable for damages or specific performance, and Seller hereby waives any and all rights to damages and specific performance.

Section 14. Notices. Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing, and any such notice or communication will be deemed to have been given if and when delivered or mailed (or in the event the delivery or mailing is refused by the addressee) to any such party by courier, personal delivery, facsimile, e-mail, or certified mail,

return receipt requested, addressed to such party at such party's address as provided below or such other address as either party may designate by notice similarly sent. Notice by mail is effective upon receipt or of the date of rejection of the notice. Notice given by courier or personal delivery is effective upon receipt. Notice given by facsimile is effective upon confirmation of successful transmission by the transmitting machine. Notice given by e-mail shall be successful upon transmission of the e-mail. Any party or additional notice party may change their notice address by providing notice to the other party as herein provided above.

If to Seller:

Jeffrey Johnson
P.O. Box 2627
Palmer, Alaska 99645
Facsimile: (907) _____
E-Mail: MRJJ@mtaonline.net

With a Copy to (which shall not constitute requisite notice):

Kenneth D. Albertsen
P.O. Box 4368
Palmer, Alaska 99645
Facsimile: (907) 746-7700
E-Mail: Kenneth@AlaskaRealEstateLaw.com

If to the City:

Douglas Griffin, City Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, Alaska 99645
Facsimile: (907) 745-0930
E-Mail: dgriffin@palmerak.org

With a Copy to (which shall not constitute requisite notice):

Glen Price, Esq.
Law Office of Glen Price
P.O. Box 4739
Palmer, Alaska 99645
Facsimile: (907) 746-5971

Section 15. Miscellaneous Provisions.

(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no understandings, written or oral, which change, modify or enlarge this Agreement.

(b) **Waiver.** No provision of this Agreement may be waived except in writing signed by the party to be charged with such waiver. The failure of any party to insist upon strict performance of any term or condition of this Agreement shall not be deemed a waiver of any other rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default of any such term, covenant, or condition.

(c) **Amendments.** Any amendment or modification to this Agreement must be executed in writing by both the City and Seller.

(d) **Construction.** This Agreement shall not be construed more strongly against one party than the other. Both parties waive the benefit of any rule of construction that an agreement shall be construed against its drafter. The captions in this Agreement are for the convenience of the parties only and shall contain no independent significance.

(e) **Governing Law.** This Agreement shall be interpreted under and construed in accordance with Alaska law. Venue for any lawsuit shall be in the Superior Court for the State of Alaska, at Palmer, Alaska. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable, including reasonable attorneys' fees.

(f) **Representation by Counsel.** Both the City and Seller acknowledge that they have had the opportunity, if each party so desired, for the assistance of counsel in the preparation and review of this Agreement. The parties acknowledge and agree that Glen Price, Law Office of Glen Price has solely represented the City in this transaction and has not provided any advice to Seller, and Kenneth D. Albertsen has solely represented Seller in this transaction and has not provided any advice to the City.

(g) **Successors.** The covenants herein will bind and inure to the benefit of the personal representatives, heirs, executors, administrators, devisees, other legal representatives, permitted assigns, and successors of the respective parties.

(h) **No Partnership.** Nothing in this Agreement shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.

(i) **No Third Party Beneficiaries.** Nothing in this Agreement shall be interpreted or construed as creating any rights or privileges whatsoever in persons or entities who are not parties to this Agreement.

(j) **No Merger.** The terms and provisions of this Agreement shall not merge in, but shall survive, the Closing of the transaction contemplated hereunder and the Closing documents to be delivered pursuant hereto.

(k) **Severability.** If any clause or term of this Agreement shall be deemed invalid by any court of law, the validity and enforcement of the other clauses and terms of the Agreement shall be unaffected.

(l) **No Assignment.** This Agreement may not be assigned, encumbered or otherwise transferred by Seller, and any assignment, encumbrance or other transfer in violation hereof shall be null and void and of no force or effect. The City may, without any prior approval of Seller being required, assign this Agreement to (i) a joint venture, LLC, corporation or similar entity; (ii) a development partner or other person or entity, which the City may or not be a member of; or (iii) any similar or other entity or person, in conjunction with or for the purposes of the development of the Property and/or addressing any environmental issues or concerns with the Property or other Mat-Maid Properties. The City shall provide notice of any such assignment to Seller.

(m) **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, including by facsimile signature, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement, notwithstanding the fact that all parties are not signatories to the original or the same counterpart.

(n) **Time.** Time is of the essence under this Agreement. In the event any deadline or contingency termination falls on a Saturday, Sunday or City, state or

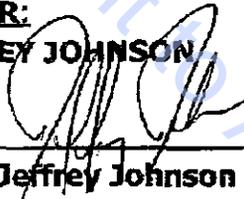
federal holiday, the deadline or contingency shall be extended to the first business day following the Saturday, Sunday or state or federal holiday.

(o) **Recording.** This Agreement shall not be recorded by either party.

Section 16. Post-Closing Cooperation. Subsequent to the Closing, the parties agree to cooperate with one another, and, if necessary, to execute further reasonable documents, to implement the terms of this Agreement.

DATED as of the Effective Date.

SELLER:
JEFFREY JOHNSON

By: 
Jeffrey Johnson

Date: 12-18-12

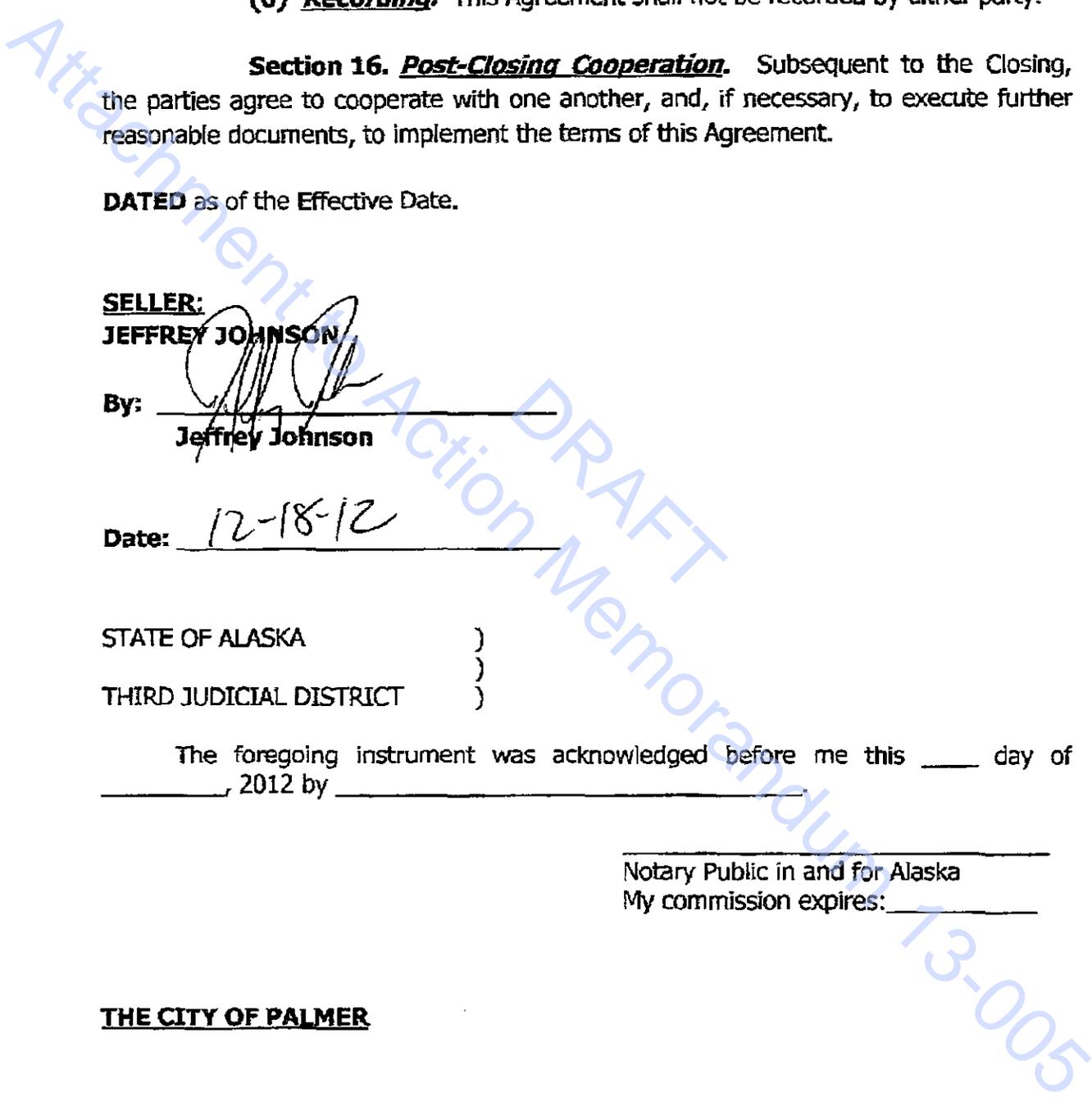
STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by _____

Notary Public in and for Alaska
My commission expires: _____

THE CITY OF PALMER

By: _____



Its: _____

Date: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, _____, The City of Palmer.

Notary Public in and for Alaska
My commission expires: _____

ATTESTED TO:

By: _____

Its: City Clerk

Attachment to Action Memorandum 13-005
DRAFT

Statewide Appraisal Svcs.

March 10, 2012

Douglas B. Griffin
City Manager
City of Palmer
231 West Evergreen Avenue
Palmer, Alaska 99645

RE: Narrative Appraisal Report
"Mat-Valley Mini-Storage" (real property only)
585 S. Valley Way
Palmer, Alaska 99645 (File No. 1058(B)-12)

Dear Mr. Griffin:

Following this transmittal letter is a narrative appraisal of the property known locally as "Mat-Valley Mini-Storage", located in downtown Palmer, Alaska. Current configuration is 123 varying-size storage units, with a 720 SF lease bay which was vacant as of the report date; the last tenant was a retail user. Mat-Su Borough records indicate construction beginning in the 1970's; however, an aerial photo dated 1939 appears to include part of the existing project that was utilized as dry storage at that time.

The lessor reported that he typically leases the bay at less than market levels, with the lessee managing the storage units and paying all utilities, including electricity for the storage units. This type of arrangement is an anomaly; most projects include some type of hired manager. Since the lease bay is relatively small and was vacant, no detrimental encumbrances or fractional interests are known to exist. **For analysis purposes, the property will be treated as a typical storage facility with hired management, with ancillary rental space. The purpose of the appraisal is therefore to estimate the "As Is Value" of the fee-simple estate.**

It is understood that the appraisal is to be utilized by the client (City of Palmer) for negotiations with the owner for possible purchase of the property. Intended users are the client (City of Palmer), as well as the owner. As agreed, pertinent information, methodology, and analyses have been presented in a summary report format. The development of the appraisal complies with the "Scope of Work Rule" and Standards Rule 1-1(h) of the Uniform Standards of Professional Appraisal Practice. Reporting of the appraisal complies with Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice, as well as local standards, regarding narrative summary appraisal report preparation.

Part of the project is very dated and in poor condition. All buildings have concrete pilaster foundation, and none of the storage units include electricity or mechanical. The storage buildings could probably be easily moved. However, since the project has been operated as a commercial storage facility for at least 30 years, I have elected to analyze the property as a typical small, commercial storage facility with commercial lease bay.

Users of this appraisal report are advised to read the statements under the general heading "Appraisal Premise", beginning on page 4 in the body of the report. The appraisal can not be understood without familiarity with the statements included in the following sub-headings.

- Scope of Work (page 4)
- Assumptions and Limiting Conditions (page 5)
 - Special Economic Assumptions (page 5)
 - Extraordinary Assumptions (page 6)
 - General Assumptions and Limiting Conditions (page 7)

Following is my estimate of the "As Is Value" of the FEE-SIMPLE ESTATE of the subject property, subject to the statements included under the headings "special economic assumptions", "extraordinary assumptions", and general assumptions and limiting conditions", beginning on page 5 in the body of the report. The effective date of the value estimate is **March 10, 2012.**

THREE HUNDRED THIRTY-THOUSAND DOLLARS
\$ 330,000

Allocation: Land @ \$240,000
Buildings @ \$90,000

This estimate is based on cash or equivalent terms. Readers are advised that acceptance and use of this appraisal report signifies understanding of the statements cited under the general heading "Appraisal Premise" (page 4 in the body of the report). All assumptions and limiting conditions are summarized in this section. The premise of the appraisal can not be understood without familiarity with these statements.

The "Certification of Appraisal" follows, and is incorporated into this transmittal letter. If questions regarding the appraisal report or property arise, please contact me at your convenience.

Respectively submitted,



Vince Coan, AA-132
Certified General Real Estate Appraiser

**CITY OF PALMER
INFORMATIONAL MEMORANDUM NO. 13-004
RESOLUTION NO. 13-005**

Subject: Resolution No. 13-005: Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and William H. Ingaldson for the Purchase of Real Property located at 325 East Dahlia Avenue and Authorizing the Expenditure of \$5,000 as an Initial Deposit under such Agreement

Agenda of:

Council Action: _____

Approved for presentation by:

City Manager
City Attorney
City Clerk

Certification of Funds:

Total amount of funds listed in legislation:	\$ _____ 5,000
This legislation (✓):	
____ Has no fiscal impact	
Creates:	
<input checked="" type="checkbox"/> A negative fiscal impact in the amount of:	\$ _____ 5,000
____ A positive fiscal impact in the amount of:	\$ _____
<input checked="" type="checkbox"/> Funds are budgeted from this (these) line item(s):	
➤ 08-01-10-7140	\$ _____ 5,000
➤	\$ _____
➤	\$ _____
____ 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:	_____ 

Attachment(s):

- Resolution No. 13-005
- Letter from Vince Coan, Statewide Appraisal Services, regarding Ingaldson Property appraisal
- Agreement for the Sale and Purchase of Real Estate owned by William H. Ingaldson
- AM 12-015
- AM 12-016

Summary statement: This resolution approves and authorizes execution of an Agreement for the Sale and Purchase of Real Estate setting forth the terms and conditions pursuant to which the City will purchase the real property owned by William H. Ingaldson. This property is one of the seven properties comprising the Mat Maid Block. The Purchase Agreement also authorizes the City to pay an Initial Deposit of \$5,000 towards the Purchase Price. This resolution approves the final Purchase Agreement, authorizes the Deputy Mayor to execute the agreement on behalf of the City, appropriates the \$5,000 Initial Deposit required under the Agreement, and authorizes the City Manager to expend such funds by depositing them with the Title Company as provided in the Purchase Agreement.

Background: The City is continuing in its efforts to purchase the seven properties comprising the Mat Maid Block. In AM 12-015 and AM 12-016, the Council approved the base form of purchase and sale agreement to be used to purchase the seven properties, authorized the City Manager to negotiate purchase terms and conditions with each seller, and approved Initial Deposits of \$5,000 as one of the terms in the purchase agreements. The City has negotiated the terms and conditions of one of the purchase agreements with William H. Ingaldson to purchase the property commonly known as the Old Mat Maid Warehouse Property located at 325 East Dahlia Avenue.

The terms of the Purchase Agreement include:

1. Purchase Price of \$925,000;
2. An Initial Deposit of \$5,000;
3. An initial 180-day due diligence period, with three optional 90-day extensions, and with additional \$5,000 deposits;
4. That deposits are non-refundable if the City does not close on the purchase, however if the City closes on the purchases, all deposits will be applied towards the Purchase Price; and
5. Various conditions precedent to the City's obligation to close on the sale (set forth in Section 10) following the completion of the Due Diligence Period, including:
 - a) Approval of the City Council;
 - b) Approval by the City Attorney;
 - c) Concurrent closing with all property owners (at the option of the City);
 - d) Issuance of the bonds; and
 - e) Appropriation of funds to pay the Purchase Price and the City's closing costs.

This resolution approves the final Purchase Agreement, authorizes the Deputy Mayor to execute the agreement on behalf of the City, appropriates the \$5,000 Initial Deposit required under the Agreement, and authorizes the City Manager to expend such funds by depositing them with the Title Company as provided in the Purchase Agreement. The City is not required to close on the purchase of the property unless authorized by the Council after the due diligence is completed.

In addition to finalizing negotiations to purchase this property, as of May 21, 2012 the City has obtained appraisals on the various properties (except the ARLF Property), met with and made offers to each of the other sellers, finished the title review, completed a Phase I Environmental Review of the properties and is moving forward under the Triad process with the Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (DEC), and continued in its efforts to acquire the Crowley Property and KLH Property. In conjunction with the offers to the sellers, the City has developed various purchase scenarios to continue negotiations with the sellers. It is anticipated that additional Purchase Agreements will be presented to the Council for approval at up-coming City Council meetings if agreements can be

reached with Crowley and KLH.

Administration recommendation: Presented as requested for Council consideration. The Administration has concluded negotiations with property owners. The final counteroffers are attached with this legislation. In aggregate, the counteroffers exceed the City Manager's benchmark amount for property acquisition.

Attachment to Action Memorandum 13-005
DRAFT

Introduced by: City Manager Griffin
Date:
Action:
Vote:

Yes: _____ No: _____

CITY OF PALMER, ALASKA

Resolution No. 13-005

A Resolution of the Palmer City Council Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and William H. Ingaldson for the Purchase of Real Property located at 325 East Dahlia Avenue and Authorizing the Expenditure of \$5,000 as an Initial Deposit under such Agreement

WHEREAS, on February 14, 2012, the City Council voted to authorize the City Manager to negotiate the purchase price and terms for the acquisition of each of the Mat Maid Block properties; and

WHEREAS, on February 14, 2012, the City Council also voted to approve the base form of Purchase and Sale Agreement ("Purchase Agreement") to be used by the City of Palmer for the purchase of the Mat Maid Block properties;

WHEREAS, the Purchase Agreement includes a provision requiring the City to pay an Initial Deposit of \$5,000, which amount is to be placed in escrow with the Title Company; and

WHEREAS, William H. Ingaldson owns a certain 2.51± acre parcel identified by Matanuska-Susitna Borough Tax Number 4871000T00B-2, located in the Mat Maid Block, commonly known as the Old Mat Maid Warehouse Property ("Ingaldson Property"); and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070. G, the City contracted with Statewide Appraisal Services to prepare an appraisal of the Ingaldson Property; and

WHEREAS, Statewide Appraisal Services issued said appraisal report on May 1, 2012 (File No. 1058(F)-12), which report sets the appraised value for the Ingaldson Property at \$350,000; and

WHEREAS, the City Manager and the City's Land Consultant have met with William H. Ingaldson, and, after further review of the square footage values for the other Mat Maid Properties with William H. Ingaldson, have agreed to the terms and conditions of the purchase of the Ingaldson Property, with such terms including a Purchase Price of \$925,000; and

WHEREAS, William H. Ingaldson has agreed to execute the final form of Purchase Agreement, which Purchase Agreement is attached to IM 13-004; and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070 G & H, the Purchase Agreement must be approved by the City Council.

NOW, THEREFORE, BE IT RESOLVED by the Palmer City Council that the Agreement for Sale and Purchase of Real Estate to purchase the Ingaldson Property is hereby approved, the Deputy City Mayor is authorized to execute the Purchase Agreement on behalf of City of Palmer, and the City Manager is authorized to expend \$5,000 as an Initial Deposit pursuant to the Agreement.

Passed and approved by the City Council of the City of Palmer, Alaska this ____th day of _____, 2013.

Brad Hanson, Deputy Mayor

Janette M. Bower, MMC, City Clerk

Statewide Appraisal Svcs.

May 1, 2012

Douglas B. Griffin
City Manager
City of Palmer
231 West Evergreen Avenue
Palmer, Alaska 99645

RE: Narrative Appraisal Report
"Old Mat Maid Warehouse"
325 E. Dahlia Ave.
Palmer, Alaska 99645 (File No. 1058(F)-12)

Dear Mr. Griffin

Following this transmittal letter is a narrative appraisal of the "Old Mat Maid Warehouse", located on the historical "Mat Maid Block" in downtown Palmer. Included in the Federal Register of Historical Places, improvements consist of a dilapidated, frame warehouse built in 1935, and the Palmer Water Tower. **As instructed, a "hypothetical condition" has been utilized giving no consideration to possible environmental contamination of the subject and other properties on the "Mat Maid Block".** Readers are advised that I was not provided access to the interior of the building, which requires the use of several "extraordinary assumptions" for analysis purposes. Before more definitive analyses is possible, the following will be required:

- access to the interior of the building
- engineering/inspection reports and subsequent bid estimates for "cost to cure" items to bring the building to some type of "usable" condition
- water tower maintenance costs

Following are the most significant among several unique valuation issues associated with this property.

- "As Is", the building exhibits a dilapidated exterior appearance, is a detriment to the size, is inconsistent with the zoning district, and should be removed
- It is not legally possible to remove the warehouse or water tower; 36.5% of site area is therefore restricted from future development or change in use
- There is a recorded covenant which requires preservation and maintenance
- The façade of the warehouse can not be penetrated; among other restrictions, restoration of the building can not include typical fenestration
- New construction commensurate with the zoning district for the south portion of the site is possible; however, new buildings must be architecturally consistent in the Palmer Historical District, and can not "overshadow" the warehouse; i.e. footprint and height are restricted for future development
 - the warehouse and water tower encumber the northerly 39,924 SF (36.5%) of the site from any type of future development
 - the warehouse is a restriction to development of the front portion of the site (69,331 SF, 63.5%) by the requirement of incorporating it into new development, and restricting size/height of new development

It is understood that the appraisal is to be utilized by the client (City of Palmer) for negotiations with the owner for possible purchase of the property. As agreed, pertinent information, methodology, and analyses have been presented in a summary report format. **Lack of access to the interior of the building, engineering reports, and bid estimates for "cost to cure" of apparent significant deferred maintenance requires the use of several "hypothetical conditions" and "extraordinary assumptions".** Under these conditions and assumptions, the development of the appraisal complies with the "Scope of Work Rule" and Standards Rule 1-1(h) of the *Uniform Standards of Professional Appraisal Practice*. Reporting of the appraisal complies with Standards Rule 2-2(b) of the *Uniform Standards of Professional Appraisal Practice*, as well as local standards, regarding narrative summary appraisal report preparation.

Users of this appraisal report are advised to read the statements under the general heading "Appraisal Premise", beginning on page 5 in the body of the report. Several "hypothetical conditions" and "extraordinary assumptions" are required for analysis. The appraisal can not be understood without familiarity with the statements included in the following sub-headings.

- Scope of Work (page 5)
- Assumptions and Limiting Conditions (page 6)
 - Special Economic Assumptions (page 6)
 - Hypothetical Conditions (page 7)
 - Extraordinary Assumptions (page 8)
 - General Assumptions and Limiting Conditions (page 9)

Following is my estimate of the market value of the **FEE-SIMPLE ESTATE** of the subject property, "As Is". This estimate is subject to the statements included under the headings "special economic assumptions", "hypothetical conditions", "extraordinary assumptions", and general assumptions and limiting conditions", beginning on page 5 in the body of the report. This reconciliation assumes that "cost to cure" of \$28.47/SF is adequate to bring the building to condition for utilization for dry, unheated storage, and that there are no environmental concerns. The effective date of the value estimate is **May 1, 2012**. The estimate is based on cash or equivalent terms.

THREE HUNDRED FIFTY THOUSAND DOLLARS	
\$ 350,000	
Allocation Land: \$	460,000
Allocation Bldg.: \$	(110,000)
(includes "excess land" estimated at \$290,000)	

The "Certification of Appraisal" follows, and is incorporated into this transmittal letter. If questions regarding the appraisal report or property arise, please contact me at your convenience.

Respectively submitted,



Vince Coan, AA-132
Certified General Real Estate Appraiser

Agreement
for the
Sale and Purchase
of
Real Estate

Mat-Maid Block Properties
Palmer, Alaska

"Old Mat Maid Warehouse Property"
325 East Dahlia Avenue
MSB Tax Identification No. 4871000T00B-2

The City of Palmer, Purchaser
and
William H. Ingaldson, Seller

Effective Date _____, 2012

Summary of Agreement Deadlines

<u>Agreement Requirement</u>	<u>Section</u>	<u>Agreement Deadline</u>	<u>Actual Due Date</u>
Effective Date	Preamble	Date of Execution by both parties	
Initial Deposit	Section 2(a)	20 days after Effective Date	
Seller's Information to City	Section 3	30 days after Effective Date	
Due Diligence Period	Section 7(b)	180 days after the Effective Date plus any 90-day extensions	
Closing Date	Section 11	15 days after execution of Notice of Satisfaction of Conditions Precedent by Title Company, City and Property Owners	

AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

**Mat-Maid Block Properties
Palmer, Alaska
MSB Tax Identification No. 4871000T00B-2**

This Agreement for the Sale and Purchase of Real Estate shall supersede any and all previous offers and counter-offers, either oral or written. If this Agreement is not signed by both parties, it shall not represent a binding agreement between the parties, or an offer to buy or sell by either party.

THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE ("Agreement") is made and entered into by and between THE CITY OF PALMER, a home rule city ("City"), and WILLIAM H. INGALDSON ("Seller"). For purposes of this Agreement, the effective date of this Agreement ("Effective Date") shall be the last date of execution of this Agreement by the parties.

RECITALS

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to \$3 million in general obligation bonds ("**Bonds**") to finance the acquisition of the Mat-Maid Properties for public purposes of the City;

WHEREAS, the Mat-Maid Block ("**Mat-Maid Properties**") is 8.74 acres in size, and is comprised of seven separate parcels, with seven separate owners;

WHEREAS, the seven owners are: (i) **Jeffrey Johnson** (Tract B-1, Replat of Co-Op Garage Tract; 0.70 acres); (ii) **Palmer Arts Council** (Tract One, Matanuska Maid Power House Subdivision; 0.36 acres); (iii) **Crowley Petroleum Distribution, Inc.** (Tract A-1, Replat of the Co-Op Garage Tract; 1.11 acres); (iv) **State of Alaska, Division of Agriculture** (Tract A-1, Alaska State Land Survey No. 96-4; 3.03 acres); (v) **KLH, Inc.** (Tract B-1, Alaska State Land Survey No. 96-4; 0.85 acres); (vi) **William H. Ingaldson** (Tract B-2, Alaska State Land Survey No. 96-4; 2.51 acres); and (vii) **David & Sharon Ausdahl** (portion of Section 33, Township 18N, Range 2E; 0.18 acres)(the foregoing parties hereinafter collectively referred to as the "**Property Owners**");

WHEREAS, the City and most of the Property Owners have negotiated and agreed to the sale of each Property Owner's parcel to the City;

WHEREAS, on February 14, 2012, the City Council approved the base form of Purchase Agreement, and authorized the City Manager to negotiate Purchase and Sale Agreements with the Property Owners;

WHEREAS, the selling Property Owners have agreed to the terms and conditions of the sale of its respective parcel to the City, and the City has agreed to purchase such parcel, under such terms and conditions as set forth in the respective Agreement for the Sale and Purchase of Real Estate; and

WHEREAS, this Agreement sets forth the terms and conditions of the sale and purchase between this individual Seller and the City;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, agreements, and promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. The Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to the City, and the City agrees to purchase from Seller, the following:

A parcel of real property located in Palmer, Alaska, commonly known as the "Old Mat Maid Warehouse Property", 325 East Dahlia Avenue, Mat-Su Borough Tax Id. No. 4871000T00B-2, legally described as Tract B-2, Alaska State Land Survey No. 96-4, according to Plat No. 99-62, located in the Palmer Recording District, Third Judicial District, State of Alaska. The parcel consists of 2.51 acres of real property, together with (i) all improvements, buildings and fixtures located thereon; (ii) the Palmer Water Tower; (iii) all rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon; and (iv) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road, or alley, open or proposed, adjoining such land ((i)-(iv) all collectively the "**Property**").

Section 2. Purchase Price and Terms of Payment. The purchase price for the Property ("**Purchase Price**") shall be **NINE HUNDRED TWENTY-FIVE**

THOUSAND DOLLARS AND NO/CENTS (\$925,000.00). The Purchase Price shall be paid as follows:

(a) An initial deposit in the amount of **FIVE THOUSAND DOLLARS AND NO/CENTS (\$5,000.00)** ("**Initial Deposit**"), to be paid in the form of a City of Palmer check, bank cashier's check or wire transfer, and to be deposited with and held in escrow by Fidelity Title Agency of Alaska ("**Title Company**") **no later than twenty (20) days after the Effective Date.** The Initial Deposit shall be non-refundable to the City except as otherwise provided in this Agreement, ***provided, that,*** in the event the City closes this transaction, the Initial Deposit shall be applied towards the Purchase Price at Closing. The Title Company shall serve as the escrow agent to close the sale and purchase through escrow ("**Escrow**"), and the parties hereby appoint the Title Company as escrow and closing agent.

(b) In the event the City elects to exercise any of the Due Diligence extension options provided in Section 7, the Second Deposit, Third Deposit, and Fourth Deposit, as the case may be, shall be paid in the form of a City of Palmer check, bank cashier's check or wire transfer and deposited into Escrow with the Title Company. In the event the Second Deposit, Third Deposit, or Fourth Deposit are deposited in Escrow, such deposits shall also be applied to the Purchase Price at Closing.

(c) The balance of the Purchase Price shall be paid by a bank cashier's check or wire transfer into Escrow with the Title Company at Closing. The Purchase Price shall be subject to prorations and adjustments as provided for in this Agreement.

(d) The parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in Section 7.

Section 3. Information to be Supplied to the City by Seller: Within **thirty (30) days after the Effective Date,** Seller shall deliver to the City true and complete copies of the following, if the same is available and in Seller's possession or control:

(a) All documents and records of Seller related to the ownership, maintenance and repair of the Property, including without limitation, surveys, appraisals, environmental reports, engineering reports, geotechnical reports, historic preservation information, and title documents. Notwithstanding the foregoing

(b) All permits and licenses, including without limitation, applications for the issuance and any renewal of such permits and licenses, and correspondence to or from applicable governmental agencies with respect to the permits and licenses.

(c) Copies of all contracts, easements, licenses, access agreements, leases, subleases and similar use agreements (collectively "**Leases**") related to the Property. The Seller agrees that all Leases shall be terminated prior to Closing, unless otherwise agreed in writing by the City.

(d) Any environmental reports or studies related to the Property, including without limitation, Phase 1 and Phase 2 reports, except those already procured by the City.

(e) All information and documents relating to the historical significance of the Property, including without limitation, any listing on the National Register of Historic Places, and compliance with state, Borough and City historic preservation requirements.

(f) All other documents in Seller's possession or control which are related to the Property which a purchaser of the Property would reasonably deem prudent to review as part of a due diligence review.

Section 4. Limited Representations, Warranties and Covenants of Seller: Seller represents, warrants and covenants to the City (which representations, warranties and covenants shall remain true at all times during this Agreement and shall survive Closing) as follows:

(a) Seller is the owner of fee simple title to the Property and has the full power, capacity and legal right to execute and deliver this Agreement and to sell the Property to the City, pursuant to the terms of this Agreement.

(b) Except for the Leases delivered to the City pursuant to Section 3(c), there are currently no leases, subleases or similar use agreements affecting the Property. From and after the Effective Date, Seller shall not sell, transfer, lease, allow

any sublease or otherwise convey or allow use of all or any portion of the Property, or any interest therein, or grant or permit any easements, liens, mortgages, leases, use agreements, dumping or filling, encumbrances, or other interests or agreements with respect to the Property, without the City's prior written consent.

(c) There is no pending or threatened litigation, administrative action or examination, claim or demand, proceeding, judgment or order whatsoever relating to Seller or the Property which affects Seller's ability to convey the Property in accordance with the terms of this Agreement.

(d) Except for the information disclosed in the documents delivered pursuant to Section 3(d), to the best of Seller's knowledge, no party has spilled, discharged or released, or permitted the spill, discharge or release, from, at, on or under the Property, any petroleum, toxic, hazardous or regulated material, waste or substance, as such terms are or may be defined by any federal, state or local law ordinance or regulation ("**Hazardous Materials**"). Seller is not aware of nor has Seller received notice of any action, suit, proceeding or investigation pending or threatened for any violation of any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials with respect to the Property. Seller acknowledges and agrees that the City has not agreed to, and has no responsibility for, any indemnification, defense or hold harmless obligations to Seller or otherwise in this Agreement or otherwise, including, without limitation, for Hazardous Materials and any other condition of the Property.

(e) Seller has not received any notice of any violation or alleged violation of any legal requirement affecting the Property, including without limitation any violation or alleged violation of any local, state or federal environmental or zoning ordinance, code, regulation, rule or order, and specifically including without limitation, variances, conditional uses, or special permits affecting the Property.

(f) To the best of Seller's knowledge, the execution and delivery of, and performance by Seller of its obligations under this Agreement does not contravene, or constitute a default under, any agreement, judgment, injunction, order, or decree binding upon Seller.

(g) To the best of Seller's knowledge, there is no action, suit, or proceeding against or affecting Seller in any court or before any governmental body which (i) affects the validity or enforceability of this Agreement, or (ii) could prohibit

Seller from performing its obligations hereunder, or under any document to be delivered pursuant hereto.

(h) Seller has no real estate broker, agent or licensee representing Seller in this transaction, and no commission is due to any broker, agent, or licensee.

Section 5. Limited Representations and Warranties by the City.

The City hereby represents and warrants to Seller that (i) the City has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; (ii) upon execution of this Agreement, the Agreement will be enforceable against the City in accordance with its terms; and (iii) the City has no real estate broker, agent or licensee, representing the City in this transaction, and no commission is due to any broker, agent, or licensee.

Section 6. Title to Property.

(a) **Title Commitment.** The parties acknowledge that the City has ordered and received a preliminary commitment for title insurance from the Title Company, which Title Commitment reflects Seller as the owner of the Property. The "**Title Commitment**" is defined as the Preliminary Commitment for an ALTA Standard Owner's Policy F-30839-AMENDMENT #1, issued by the Title Company effective on March 15, 2012 at 8:00 AM. Seller acknowledges that it has received, reviewed and understands, to Seller's satisfaction, a copy of the Title Commitment. Seller further acknowledges that the City may, at the City's sole discretion, elect to obtain an ALTA extended coverage owner's title policy as opposed to an ALTA standard coverage owner's policy, which requires an ALTA Survey.

(b) **Title Policy/Statutory Warranty Deed.** At Closing, Seller shall convey to the City fee simple and marketable title to the Property by Statutory Warranty Deed (in the form to be attached as ***Exhibit A***), subject only to the Permitted Exceptions. The grantee on the Statutory Warranty Deed shall be shown as "***The City of Palmer.***" To the extent required by the Title Company, Seller's spouse shall execute the Statutory Warranty Deed and other title related documents. Seller shall also cause the Title Company to issue the ALTA standard coverage owner's policy of title insurance at Closing in a policy amount equal to the Purchase Price, subject to the Permitted Exceptions, and including any endorsements required by the City. The insured shall be shown as "***The City of Palmer.***" Seller shall pay the premium amount related to an ALTA standard owner's title policy, and the City shall pay the

additional premium cost related to the ALTA extended owner's policy (if one is obtained), 100% of the cost for the ALTA survey, and the title endorsements requested by the City.

(c) Warranty Deed Exceptions. The Statutory Warranty Deed to be delivered at Closing shall convey fee simple title, and shall include all Permitted Exceptions, but shall exclude the standard title exceptions typically in Schedule B-Section 2 of a preliminary commitment from the Title Company, which shall not be considered Permitted Exceptions. Further, existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances shall be deemed Title Objections which shall be removed by Seller on or before Closing. The parties acknowledge that the Property is subject to certain recorded restrictive covenants, with the State of Alaska as beneficiary. Seller agrees to provide reasonable assistance to the City (both before and after Closing), and sign any reasonable documents related to the modification or removal of such covenants, upon the request of the City and at the City's sole cost and expense.

(d) Permitted Title Exceptions. The following title exceptions shall be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Permitted Exceptions**"): (i) the title exceptions listed as #'s 8,9, and 14-21 in Section 2 of Schedule B of the Title Commitment.

(e) Title Objections: The following title exceptions shall not be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Title Objections**"): (i) the title exceptions listed as #'s 1-7, 10-13, and 22 in Section 2 of Schedule B of the Title Commitment; (ii) existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances; if any exist, whether recorded or not recorded. Seller shall also pay all taxes and assessments due against the Property, including any City of Palmer or Mat-Su Borough assessments.

(f) Failure to Remove Title Objections. With respect to the Title Objections, if Seller shall not correct or remove such Title Objections on or before Closing, then the City shall either (i) waive such uncured objections and accept title to the Property subject to such uncured Title Objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate necessary adjustments to the Purchase Price; (iii) sue for specific performance of this Agreement causing Seller to remove the agreed upon Title Objections; or (iv) terminate this Agreement by written notice to Seller, whereupon all

deposits shall be promptly refunded to the City (without any further obligation on the parties to execute a rescission or similar agreement), and neither the City nor Seller will thereafter have any further obligations or liabilities under this Agreement.

Section 7. The City's Due Diligence.

(a) **Scope of City's Due Diligence.** In addition to any other contingencies and conditions precedent elsewhere in this Agreement, the City's obligation to consummate the transactions contemplated by this Agreement and to close on the purchase of the Property, is conditioned upon satisfaction, in the sole discretion of the City, of the following:

(i) The condition of and issues related to the Property meet with the approval of the City, in the City's sole discretion. The City and any authorized representative, including employees and contractors (and their subcontractors) (collectively "**Contractors**") of the City shall have the right to enter upon and inspect the Property, and are hereby granted access to do the same (including for purposes of the ALTA survey). Such inspections may include, but shall not be limited to, an inspection for evidence of Hazardous Materials and any environmental problems, inspections of the improvements (if any), historic preservation review, geotechnical review, planning and zoning review, surveying, engineering review, and architectural reviews. All such inspections shall be at the City's sole cost and expense. Such inspections by the City or the City's Contractors shall be conducted in such a manner as not to physically damage any part of the Property to the greatest extent possible. The City's inspections shall not unreasonably interfere with the operation of any businesses on the Property.

(ii) Any other issue (as determined by the City in its sole discretion) related to the Property, including without limitation, proposed uses of the Property by the City, are acceptable to the City, in the City's sole discretion.

(b) **Initial Due Diligence Period.** The City will have ***one-hundred and eighty (180) days to conduct the foregoing due diligence, which one-hundred and eighty (180) day period shall commence the day after the Effective Date, and end one-hundred and eighty (180) days thereafter at 5:30 p.m. Alaska time ("Due Diligence Period")***, and to make a final determination on all contingencies and other issues related to the Property, and to determine if, in the sole

discretion of the City, the Property is acceptable to the City. If in the City's sole discretion the Property is not acceptable to the City, the City will so notify Seller of such negative determination (which notice need not specify any reason why the Property is not suitable but merely state that the Property is not acceptable to the City) in writing prior to the expiration of the Due Diligence Period (or any extension thereof), in which case this Agreement will become null and void (with no further obligation of the parties to execute a rescission agreement or similar document).

In the alternative, instead of terminating this Agreement, the parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in this Section 7.

If the City determines it would like to proceed and close the transaction, the City will so notify Seller of such determination in writing. In the absence of any such timely notification, the foregoing contingency provisions will be deemed to be favorably resolved. The City will have the right to waive any or all contingency provisions within the time provided and to then proceed with Closing.

(c) Optional Extensions of the Due Diligence Period. In addition to the initial **one-hundred and eighty (180) day** Due Diligence Period, the City shall have the option, in the City's sole discretion, to extend the Due Diligence Period by up to **three (3)** successive **ninety (90) day** periods. Such extension periods shall be identified as the **"First Option Period," "Second Option Period," and "Third Option Period"** respectively. If an option period is exercised, each option exercised shall be deemed to be part of the Due Diligence Period. The purpose of each option extension is to provide the City with an additional **ninety (90) day** period to undertake the City's due diligence and thus extending the Due Diligence Period.

(i) To exercise the option for the First Option Period, the City shall (i) notify Seller in writing at least **ten (10) days** before the expiration of the initial Due Diligence Period of the City's election to exercise the First Option; and (ii) deposit an additional deposit of **Five Thousand Dollars (\$5,000.00)** ("**Second Deposit**") in Escrow with the Title Company no later than **ten (10) days** after the beginning of the First Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Second Deposit shall be non-refundable

except as otherwise provided in this Agreement. As with the Initial Deposit, the Second Deposit shall be applied towards the Purchase Price at Closing.

(ii) To exercise the option for the Second Option Period, the City shall (i) notify Seller in writing at least **ten (10) days** before the expiration of the First Option Period of the City's election to exercise the Second Option; and (ii) deposit an additional deposit of **Five Thousand Dollars (\$5,000.00)** ("**Third Deposit**") in Escrow with the Title Company no later than **ten (10) days** after the beginning of the Second Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Third Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit and the Second Deposit, the Third Deposit shall be applied towards the Purchase Price at Closing.

(iii) To exercise the option for the Third Option Period, the City shall (i) notify Seller in writing at least **ten (10) days** before the expiration of the Second Option Period of the City's election to exercise the Third Option; and (ii) deposit an additional deposit of **Five Thousand Dollars (\$5,000.00)** ("**Fourth Deposit**") in Escrow with the Title Company no later than **ten (10) days** after the beginning of the Third Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Fourth Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit, Second Deposit and Third Deposit, the Fourth Deposit shall be applied towards the Purchase Price at Closing.

Section 8. Interim Responsibility of Seller. Seller agrees that during the period between the Effective Date and the Closing Date:

(a) The Property will be maintained in as good a condition and state of repair as that existing on the Effective Date, normal wear and tear excepted.

(b) Seller will not enter into any new Leases without the prior written approval of the City.

(c) Seller will cause to be paid all normal costs of operation and maintenance of the Property.

(d) Seller shall not allow any waste or nuisance to be committed on the Property by any of Seller's agents or representatives.

(e) Seller will not allow any liens, encumbrances, deeds of trust, mortgages, or other monetary obligations which may be secured by the Property or placed against the Property, and if such occurs, Seller shall cause them to be removed as soon as practicable, but no later than the Closing Date.

(f) Seller shall maintain liability and other necessary insurance on the Property.

(g) Seller will timely pay all taxes and assessments due with respect to the Property. Seller acknowledges and agrees that the City shall not be assuming any debts or liabilities of Seller, all of which shall remain the responsibility of Seller.

(h) Seller shall, at Seller's sole cost and expense, clean-up the Property and dispose of the burned debris as soon as weather permits and the Fire Marshall authorizes the clean-up and disposal.

Section 9. Damage to Property. Seller agrees to give the City prompt written notice of any fire or other casualty affecting the Property. If prior to the Closing there is material damage to the Property caused by fire or other casualty, the City may, at the City's option:

(a) Terminate this Agreement by written notice to Seller within ***ten (10) days*** after the City has received the notice referred to above or at the Closing, whichever is earlier, whereupon the applicable deposit for the current due diligence period (but not any of the other deposit amounts) shall be promptly refunded to the City (without any obligation on the parties to execute a rescission or similar agreement) and neither the City nor Seller will have any further obligations or liabilities under this Agreement; or

(b) Proceed with Closing, in which case the City will be entitled to any insurance proceeds which may be payable on account of such occurrence, which shall be assigned to the City at Closing.

Section 10. Conditions Precedent to City's Obligation to Close.

The obligation of the City to close the transactions contemplated by this Agreement is subject to all of the following conditions precedent being satisfied or waived by the City:

(a) **Approval of Contingencies.** An affirmative decision to move forward to Closing by the City under the title contingency and due diligence contingencies in Sections 6 and 7 respectively.

(b) **Approval by City Attorney.** Approval by the City Attorney.

(c) **Approval by City Council.** The Palmer City Council has duly authorized, by an approved Resolution, the issuance of the Bonds, payment of the Purchase Price to each of the Property Owners, and the Closing on the purchase of all of the Mat-Maid Properties.

(d) **Closing with all Property Owners.** All of the other Property Owners close the sale (as part of the same Escrow which closes on all of the Mat-Maid Properties and coordinates the application of the Bond proceeds towards the Purchase Prices) on each of their respective property comprising part of the Mat-Maid Properties, unless the City, in its sole discretion, decides to split-up the closings on one or more of the Properties.

(e) **Bonds.** The Bonds have been issued, and the required funds have been transferred into the Escrow to pay the Purchase Prices and the Closing costs of the City as required by the settlement statements.

(f) **Appropriation of Funds.** The City Council has appropriated all funds necessary to pay the Purchase Price and all of the City's Closing costs.

(g) **Notice of Satisfaction of Conditions Precedent to be Signed by City, Title Company, and Property Owners.** The Title Company has notified the City in writing that (i) all the Property Owners are ready to close their respective sale; (ii) all necessary funds and documents are in Escrow pursuant to the approved Joint Closing Instructions provided to the Title Company; and (iii) the Title Company, City, and all Property Owners have signed (which may be done in counterparts and by facsimile signatures) the ***Notice of Satisfaction of Conditions Precedent***, the form of which shall be attached as ***Exhibit B***.

Section 11. Time and Place for Closing. Subject to the satisfaction of the conditions precedent in Section 10, the closing ("**Closing**") of the transactions contemplated by this Agreement shall occur **no later than fifteen (15) days** after the latest date of execution of the Notice of Satisfaction of Conditions Precedent by the City, Title Company, and the Property Owners. Closing shall be on such date and time as agreed to by the parties. Closing shall take place at the office of the Title Company in Wasilla, Alaska. The actual date on which the Closing occurs is herein referred to as the "**Closing Date.**" The Closing Date may be extended by mutual written agreement by the parties. Seller shall surrender the Property to the City upon recording.

Section 12. Closing.

(a) At Closing, Seller shall:

(i) Execute and deliver to the City a Statutory Warranty Deed, in the form attached as **Exhibit A**, conveying the Property to the City, subject only to the Permitted Exceptions.

(ii) Execute and deliver to the City, in such form and substance acceptable to the parties, an Assignment of those Leases to be assumed by the City.

(iii) Cause to be issued to the City by the Title Company the ALTA standard owner's title policy or ALTA extended owner's title policy referenced in Section 6, in an amount equal to the Purchase Price.

(iv) Provide the Title Company with any ALTA Lien Affidavits required in conjunction with any ALTA extended owner's title policy.

(v) Execute and deliver to the Title Company an IRS FIRPTA Certification.

(vi) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(vii) Deliver to the City possession of the Property and all keys thereto.

(b) At Closing, the City shall:

(i) Deliver to the Title Company such evidence of the authority and capacity as the Title Company may reasonably require.

(ii) Execute and deliver the Assignment referenced in Section (a)(ii) above.

(iii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(c) Seller shall pay:

(i) The cost of the standard owner's title policy.

(ii) Seller's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and ½ of the recording fees.

(iv) Any other amounts identified as a Seller cost in the approved settlement statements.

(d) The City shall pay:

(i) Costs related to the additional policy premium amount for converting the standard owners title policy to the ALTA extended owners policy, 100% of the cost for the ALTA survey, and for any endorsements desired by the City.

(ii) The City's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and ½ of the recording fees.

(iv) All costs related to the Bonds and the City's financing for the purchase.

(v) All costs related to the appraisals, title review, and due diligence conducted by or for the City.

(vi) Deliver to the Title Company the balance of the Purchase Price (less all deposits) and any Closing costs required of the City under the approved settlement statements.

(vii) Any other amounts identified as a cost of the City in the approved settlement statements.

(e) Real property taxes shall be prorated as of the recording date. Seller shall pay, at or before Closing, all assessments due against the Property. Utilities shall be changed into the name of the City as of the Closing Date, and the parties shall cooperate with the utility companies to accomplish the change-over.

Section 13. Termination, Defaults and Remedies.

(a) **Default by Seller.** Seller will be in default hereunder upon the occurrence of any of the following events:

(i) Seller fails to materially meet, comply with, or perform any covenant, agreement or obligation required on Seller's part within the time limits and in the manner required in this Agreement, for any reason other than a default by the City hereunder.

(ii) Seller fails to deliver at the Closing any items required of Seller in Sections 12(a) and (c) of this Agreement.

In the event of a default by Seller hereunder, the City may, at the City's option, terminate this Agreement by written notice delivered to Seller at or prior to the Closing and receive back the Initial Deposit and all other deposits paid by the City to that date (with no obligation of the parties to execute a rescission or similar agreement). In the alternative, the City may sue for specific performance of this Agreement by Seller.

(b) Default by the City. The City will be in default hereunder upon the occurrence of any of the following events:

(i) The City fails to materially meet, comply with, or perform any covenant, agreement or obligation required on the City's part within the time limits and in the manner required in this Agreement, for any reason other than a default by Seller hereunder.

(ii) The City fails to deliver at the Closing any items required of the City in Sections 12(b) and (d) of this Agreement.

Seller and the City agree that Seller's economic detriment resulting from the removal of the Property from the market and the carrying and other costs incurred thereafter and associated therewith, including any costs to be incurred by Seller in order to satisfy the conditions of escrow set forth herein, are impracticable or extremely difficult to ascertain. Seller and the City agree that the retention of the Initial Deposit and all other deposits paid to that date is a reasonable estimate of such damages in the event of the City's failure to perform according to the provisions of this Agreement. Such payment is intended to be liquidated damages and not intended to be a forfeiture or penalty. The termination of this Agreement and retention of the Initial Deposit and all other deposits made to that date (by written notice from Seller to the City and the Title Company) shall be the sole remedy available to Seller for breach or default by the City, and the City will not be liable for damages or specific performance, and Seller hereby waives any and all rights to damages and specific performance.

Section 14. Notices. Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing, and any such notice or communication will be deemed to have been given if and when delivered or mailed (or in the event the delivery or mailing is refused by the addressee) to any such party by courier, personal delivery, facsimile, e-mail, or certified mail, return receipt requested, addressed to such party at such party's address as provided below or such other address as either party may designate by notice similarly sent. Notice by mail is effective upon receipt or the date of rejection of the notice. Notice given by courier or personal delivery is effective upon receipt. Notice given by facsimile is effective upon confirmation of successful transmission by the transmitting machine. Notice given by e-mail shall be successful upon transmission of the e-mail. Any party or additional notice party may change their notice address by providing notice to the other party as herein provided above.

If to Seller:

William Ingaldson
Ingaldson, Maassen & Fitzgerald, PC
813 west 3rd Avenue
Anchorage, Alaska 99501
Facsimile: (907) 258-8751
E-Mail: bill@impc-law.com

If to the City:

Douglas Griffin, City Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, Alaska 99645
Facsimile: (907) 745-0930
E-Mail: dgriffin@palmerak.org

With a Copy to (which shall not constitute requisite notice):

Glen Price
Law Office of Glen Price
P.O. Box 4739
Palmer, Alaska 99645
Facsimile: (907) 746-5971
E-Mail: gplaw@mtaonline.net

Section 15. Miscellaneous Provisions.

(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no understandings, written or oral, which change, modify or enlarge this Agreement.

(b) **Waiver.** No provision of this Agreement may be waived except in writing signed by the party to be charged with such waiver. The failure of any party to insist upon strict performance of any term or condition of this Agreement shall not be deemed a waiver of any other rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default of any such term, covenant, or condition.

(c) **Amendments.** Any amendment or modification to this Agreement must be executed in writing by both the City and Seller.

(d) **Construction.** This Agreement shall not be construed more strongly against one party than the other. Both parties waive the benefit of any rule of construction that an agreement shall be construed against its drafter. The captions in this Agreement are for the convenience of the parties only and shall contain no independent significance.

(e) **Governing Law.** This Agreement shall be interpreted under and construed in accordance with Alaska law. Venue for any lawsuit shall be in the Superior Court for the State of Alaska, at Palmer, Alaska. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable, including reasonable attorneys' fees.

(f) **Representation by Counsel.** Both the City and Seller acknowledge that they have had the opportunity, if each party so desired, for the assistance of counsel in the preparation and review of this Agreement. The parties acknowledge and agree that Glen Price, Law Office of Glen Price has solely represented the City in this transaction and has not provided any advice to Seller. The parties acknowledge that Seller is an attorney and has represented himself in this transaction, and has not provided any advice to the City.

(g) **Successors.** The covenants herein will bind and inure to the benefit of the personal representatives, heirs, executors, administrators, devisees, other legal representatives, permitted assigns and successors of the respective parties.

(h) **No Partnership.** Nothing in this Agreement shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.

(i) **No Third Party Beneficiaries.** Nothing in this Agreement shall be interpreted or construed as creating any rights or privileges whatsoever in persons or entities who are not parties to this Agreement.

(j) **No Merger.** The terms and provisions of this Agreement shall not merge in, but shall survive, the Closing of the transaction contemplated hereunder and the Closing documents to be delivered pursuant hereto.

(k) **Severability.** If any clause or term of this Agreement shall be deemed invalid by any court of law, the validity and enforcement of the other clauses and terms of the Agreement shall be unaffected.

(l) **No Assignment.** This Agreement may not be assigned, encumbered or otherwise transferred by the Seller, and any assignment, encumbrance or other transfer in violation hereof shall be null and void and of no force or effect. The City may, without any prior approval of Seller being required, assign this Agreement to (i) a joint venture, LLC, corporation or similar entity; (ii) a development partner or other person or entity, which the City may or not be a member of; or (iii) any similar or other entity or person, in conjunction with or for the purposes of the development of the Property and/or addressing any environmental issues or concerns with the Property or other Mat-Maid Properties. The City shall provide notice of any such assignment to Seller.

(m) **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, including by facsimile signature, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement, notwithstanding the fact that all parties are not signatories to the original or the same counterpart.

(n) **Time.** Time is of the essence under this Agreement. In the event any deadline or contingency termination falls on a Saturday, Sunday or City, state or federal holiday, the deadline or contingency shall be extended to the first business day following the Saturday, Sunday or state or federal holiday.

(o) **Recording.** This Agreement shall not be recorded by either party.

Section 16. Post-Closing Cooperation. Subsequent to the Closing, the parties agree to cooperate with one another, and, if necessary, to execute further reasonable documents, to implement the terms of this Agreement.

DATED as of the Effective Date.

SELLER:

WILLIAM H. INGALDSON

By: 
William H. Ingaldson

Date: 12/17/12

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 17th day of December, 2012, by William H. Ingaldson.

Colleen A. Guffey
Notary Public in and for Alaska

My commission expires: 6/26/16



THE CITY OF PALMER

By: _____

Its: _____

Date: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, The City of Palmer.

Notary Public in and for Alaska
My commission expires: _____

ATTESTED TO:

By: _____

Its: City Clerk

Attachment to Action Memorandum 13-005
DRAFT

**CITY OF PALMER
INFORMATIONAL MEMORANDUM NO. 13-005
RESOLUTION NO. 13-006**

Subject: Resolution No. 13-006: Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and the Palmer Arts Council for the Purchase of Real Property located at 237 East Dahlia Avenue and Authorizing the Expenditure of \$5,000 as an Initial Deposit under such Agreement

Agenda of:

Council Action: _____

Approved for presentation by:

City Manager
City Attorney
City Clerk

Certification of Funds:

Total amount of funds listed in legislation:	\$ _____ 5,000
This legislation (✓):	
____ Has no fiscal impact	
Creates:	
✓ A negative fiscal impact in the amount of:	\$ _____ 5,000
____ A positive fiscal impact in the amount of:	\$ _____
____ X Funds are budgeted from this (these) line item(s):	
➤ 08-01-10-7140	\$ _____ 5,000
➤	\$ _____
➤	\$ _____
____ 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:	_____ 

Attachment(s):

- Resolution No. 13-006
- Letter from Vince Coan, Statewide Appraisal Services, regarding PAC appraisal
- Agreement for the Sale and Purchase of Real Estate owned by the Palmer Arts Council
- AM 12-015
- AM 12-016

Summary statement: This resolution approves and authorizes execution of an Agreement for the Sale and Purchase of Real Estate setting forth the terms and conditions pursuant to which the City will purchase the real property owned by the Palmer Arts Council. This property is one of the seven properties comprising the Mat Maid Block. The Purchase Agreement also authorizes the City to pay an Initial Deposit of \$5,000 towards the Purchase Price. This resolution approves the final Purchase Agreement, authorizes the Deputy Mayor to execute the agreement on behalf of the City, appropriates the \$5,000 Initial Deposit required under the Agreement, and authorizes the City Manager to expend such funds by depositing them with the Title Company as provided in the Purchase Agreement.

Background: The City is continuing in its efforts to purchase the seven properties comprising the Mat Maid Block. In AM 12-015 and AM 12-016, the Council approved the base form of purchase and sale agreement to be used to purchase the seven properties, authorized the City Manager to negotiate purchase terms and conditions with each seller, and approved Initial Deposits of \$5,000 as one of the terms in the purchase agreements. The City has negotiated the terms and conditions of one of the purchase agreements with the Palmer Arts Council to purchase the property commonly known as the Old Mat Maid Power House Property located at 237 East Dahlia Avenue.

The terms of the Purchase Agreement include:

1. Purchase Price of \$168,800;
2. An Initial Deposit of \$5,000;
3. An initial 180-day due diligence period, with three optional 90-day extensions, and with an additional \$5,000 deposits;
4. That deposits are non-refundable if the City does not close on the purchase, however if the City closes on the purchases, all deposits will be applied towards the Purchase Price;and
5. Various conditions precedent to the City's obligation to close on the sale (set forth in Section 10) following the completion of the Due Diligence Period, including:
 - a) Approval of the City Council;
 - b) Approval by the City Attorney;
 - c) Concurrent closing with all property owners (at the option of the City);
 - d) Issuance of the bonds; and
 - e) Appropriation of funds to pay the Purchase Price and the City's closing costs.

This resolution approves the final Purchase Agreement, authorizes the Deputy Mayor to execute the agreement on behalf of the City, appropriates the \$5,000 Initial Deposit required under the Agreement, and authorizes the City Manager to expend such funds by depositing them with the Title Company as provided in the Purchase Agreement. The City is not required to close on the purchase of the property unless authorized by the Council after the due diligence is completed.

In addition to finalizing negotiations to purchase this property, as of May 21, 2012 the City has obtained appraisals on the various properties (except the ARLF Property, met with and made offers to each of the other sellers, finished the title review, completed a Phase I Environmental Review of the properties and is moving forward under the Triad process with the Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (DEC), and continued in its efforts to acquire the Crowley Property and KLH Property. In conjunction with the offers to the sellers, the City has developed various purchase scenarios to continue negotiations with the sellers. It is anticipated that additional Purchase Agreements will be presented to the Council for approval at up-coming City Council meetings if agreements can be

reached with Crowley and KLH.

Administration recommendation: Presented as requested for Council consideration. The Administration has concluded negotiations with property owners. The final counteroffers are attached with this legislation. In aggregate, the counteroffers exceed the City Manager's benchmark amount for property acquisition.

Attachment to Action Memorandum 13-005
DRAFT

Introduced by: City Manager Griffin

Date:

Action:

Vote:

Yes:

No:

CITY OF PALMER, ALASKA

Resolution No. 13-006

A Resolution of the Palmer City Council Authorizing the City Manager to Negotiate and Execute Agreement for the Sale and Purchase of Real Estate between the City of Palmer and the Palmer Arts Council for the Purchase of Real Property located at 237 East Dahlia Avenue and Authorizing the Expenditure of \$5,000 as an Initial Deposit under such Agreement

WHEREAS, on February 14, 2012 the City Council voted to authorize the City Manager to negotiate the purchase price and terms for the acquisition of each of the Mat Maid Block properties; and

WHEREAS, on February 14, 2012 the City Council also voted to approve the base form of Purchase and Sale Agreement ("Purchase Agreement") to be used by the City of Palmer for the purchase of the Mat Maid Block properties; and

WHEREAS, the Purchase Agreement includes a provision requiring the City to pay an Initial Deposit of \$5,000, which amount is to be placed in escrow with the Title Company; and

WHEREAS, the Palmer Arts Council owns a certain 0.36± acre parcel identified by Matanuska-Susitna Borough Tax Number 1779000T001, located in the Mat Maid Block, commonly known as the Old Mat Maid Power House Property ("PAC Property"); and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070. G, the City contracted with Statewide Appraisal Services to prepare an appraisal of the PAC Property; and

WHEREAS, Statewide Appraisal Services issued said appraisal report on April 20, 2012 (File No. 1058(E)-12), which report sets the appraised value for the PAC Property at \$135,000; and

WHEREAS, the City Manager and the City's Land Consultant have met with the Palmer Arts Council, and have agreed to the terms and conditions of the purchase of the PAC Property, with such terms including a Purchase Price of \$168,800; and

WHEREAS, the Palmer Arts Council has executed the final form of Purchase Agreement, which Purchase Agreement is attached to IM 13-005; and

WHEREAS, pursuant to Palmer Municipal Code 3.20.070 G & H, the Purchase Agreement must be approved by the City Council.

NOW, THEREFORE, BE IT RESOLVED by the Palmer City Council that the Agreement for Sale and Purchase of Real Estate to purchase the PAC Property is hereby approved, the Deputy City Mayor is authorized to execute the Purchase Agreement on behalf of City of Palmer, and the City Manager is authorized to expend \$5,000 as an Initial Deposit pursuant to the Agreement.

Passed and approved by the City Council of the City of Palmer, Alaska this ____th day of _____, 2013.

Brad Hanson, Deputy Mayor

Janette M. Bower, MMC, City Clerk

Statewide Appraisal Svcs.

April 21, 2012

Douglas B. Griffin
City Manager
City of Palmer
231 West Evergreen Avenue
Palmer, Alaska 99645

RE: Narrative Appraisal Report
"Old Mat Maid Power House"
237 E. Dahlia Ave.
Palmer, Alaska 99645 (File No. 1058(E)-12)

Dear Mr. Griffin

Following this transmittal letter is a narrative appraisal of the "Old Mat Maid Power House", located on the historical "Mat Maid Block" in downtown Palmer. Utilized from the 1930's to the 1960's for providing steam heat via a uitlidor system, it appears that the property has not been used for several years. Condition is dilapidated, and the building is a detriment to the site. Neighborhood characteristics and general commercial zoning dictate that uses other than office/institutional office/retail are an under-utilization of the site.

As instructed by the client, analyses are predicated under two main "hypothetical conditions"; this term is summarized as "that which is known to be false, but is assumed to be true for analysis purposes":

1. that the building is capable of utilization for the most apparent use it could support, giving no consideration to deferred maintenance or "cost-to-cure" items to bring it to usable condition;
2. that there are no environmental concerns associated with the subject, or other properties, on the "Mat Maid Block".

It is understood that the appraisal is to be utilized by the client (City of Palmer) for negotiations with the owner for possible purchase of the property. As agreed, pertinent information, methodology, and analyses have been presented in a summary report format. The development of the appraisal complies with the "Scope of Work Rule" and Standards Rule 1-1(h) of the *Uniform Standards of Professional Appraisal Practice*. Reporting of the appraisal complies with Standards Rule 2-2(b) of the *Uniform Standards of Professional Appraisal Practice*, as well as local standards, regarding narrative summary appraisal report preparation.

There several issues that impact the subject property. Users of this appraisal report are advised to read the statements under the general heading "Appraisal Premise", beginning on page 4 in the body of the report. The appraisal can not be understood without familiarity with the statements included in the following sub-headings.

- **Scope of Work (page 4)**
- **Assumptions and Limiting Conditions (page 5)**
 - **Special Economic Assumptions (page 5)**
 - **Hypothetical Conditions (page 6)**
 - **Extraordinary Assumptions (page 6)**
 - **General Assumptions and Limiting Conditions (page 7)**

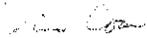
Following is my estimate of the market value of the FEE-SIMPLE ESTATE of the subject property, subject to the statements included under the headings "hypothetical conditions", "special economic assumptions", "extraordinary assumptions", and general assumptions and limiting conditions", beginning on page 5 in the body of the report. This reconciliation assumes that the building is capable of utilization for dry, unheated storage as of the report date, and that there are no environmental concerns. The effective date of the value estimate is **April 20, 2012**.

ONE HUNDRED THIRTY FIVE THOUSAND DOLLARS	
\$ 135,000	
Allocation Land:	\$ 90,000
Allocation Bldg.:	\$ 45,000 (hypothetical condition)

This estimate is based on cash or equivalent terms. Readers are advised that acceptance and use of this appraisal report signifies understanding of the statements cited under the general heading "Appraisal Premise" (page 4 in the body of the report). All assumptions and limiting conditions are summarized in this section. The premise of the appraisal can not be understood without familiarity with these statements.

The "Certification of Appraisal" follows, and is incorporated into this transmittal letter. If questions regarding the appraisal report or property arise, please contact me at your convenience.

Respectively submitted,



Vince Coan, AA-132
Certified General Real Estate Appraiser

Agreement
for the
Sale and Purchase
of
Real Estate

**Mat-Maid Block Properties
Palmer, Alaska**

"Old Mat Maid Power House Property"
237 East Dahlia Avenue
MSB Tax Identification No. 1779000T001

**The City of Palmer, Purchaser
and
Palmer Arts Council, Seller**

Effective Date _____, 2012

Summary of Agreement Deadlines

<u>Agreement Requirement</u>	<u>Section</u>	<u>Agreement Deadline</u>	<u>Actual Due Date</u>
Effective Date	Preamble	Date of Execution by both parties	
Initial Deposit	Section 2(a)	20 days after Effective Date	
Seller's Information to City	Section 3	30 days after Effective Date	
Due Diligence Period	Section 7(b)	180 days after the Effective Date plus any 90-day extensions	
Closing Date	Section 11	15 days after execution of Notice of Satisfaction of Conditions Precedent by Title Company, City and Property Owners	

AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

**Mat-Maid Block Properties
Palmer, Alaska
MSB Tax Identification No. 1779000T001**

This Agreement for the Sale and Purchase of Real Estate shall supersede any and all previous offers and counter-offers, either oral or written. If this Agreement is not signed by both parties, it shall not represent a binding agreement between the parties, or an offer to buy or sell by either party.

THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE ("Agreement") is made and entered into by and between **THE CITY OF PALMER**, a home rule city ("**City**"), and **PALMER ARTS COUNCIL**, an Alaska Nonprofit Corporation ("**Seller**"). For purposes of this Agreement, the effective date of this Agreement ("**Effective Date**") shall be the last date of execution of this Agreement by the parties.

RECITALS

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to \$3 million in general obligation bonds ("**Bonds**") to finance the acquisition of the Mat-Maid Properties for public purposes of the City;

WHEREAS, the Mat-Maid Block ("**Mat-Maid Properties**") is 8.74 acres in size, and is comprised of seven separate parcels, with seven separate owners;

WHEREAS, the seven owners are: (i) **Jeffrey Johnson** (Tract B-1, Replat of Co-Op Garage Tract; 0.70 acres); (ii) **Palmer Arts Council** (Tract One, Matanuska Maid Power House Subdivision; 0.36 acres); (iii) **Crowley Petroleum Distribution, Inc.** (Tract A-1, Replat of the Co-Op Garage Tract; 1.11 acres); (iv) **State of Alaska, Division of Agriculture** (Tract A-1, Alaska State Land Survey No. 96-4; 3.03 acres); (v) **KLH, Inc.** (Tract B-1, Alaska State Land Survey No. 96-4; 0.85 acres); (vi) **William H. Ingaldson** (Tract B-2, Alaska State Land Survey No. 96-4; 2.51 acres); and (vii) **David & Sharon Ausdahl** (portion of Section 33, Township 18N, Range 2E; 0.18 acres)(the foregoing parties hereinafter collectively referred to as the "**Property Owners**");

WHEREAS, the City and each of the Property Owners have negotiated and agreed to the sale of each Property Owner's parcel to the City;

WHEREAS, on February 14, 2012, the City Council approved the base form of Purchase Agreement, and authorized the City Manager to negotiate Purchase and Sale Agreements with the Property Owners;

WHEREAS, each Property Owner has agreed to the terms and conditions of the sale of its respective parcel to the City, and the City has agreed to purchase such parcel, under such terms and conditions as set forth in Agreements for the Sale and Purchase of Real Estate; and

WHEREAS, this Agreement sets forth the terms and conditions of the sale and purchase between this individual Seller and the City;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, agreements, and promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. The Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to the City, and the City agrees to purchase from Seller, the following:

A parcel of real property located in Palmer, Alaska, commonly known as the "Old Mat Maid Power House Property", 237 East Dahlia Avenue, Mat-Su Borough Tax Id. No. 1779000T001, legally described as set forth in **Schedule 1**, located in the Palmer Recording District, Third Judicial District, State of Alaska. The parcel consists of 0.36 acres of real property, together with (i) all improvements, buildings and fixtures located thereon; (ii) all rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon; and (iii) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road, or alley, open or proposed, adjoining such land ((i)-(iii) all collectively the "**Property**").

Section 2. Purchase Price and Terms of Payment. The purchase price for the Property ("**Purchase Price**") shall be **ONE HUNDRED SIXTY EIGHT**

THOUSAND EIGHT HUNDRED DOLLARS AND NO/CENTS (\$168,800.00). The Purchase Price shall be paid as follows:

(a) An initial deposit in the amount of **FIVE THOUSAND DOLLARS AND NO/CENTS (\$5,000.00)** ("**Initial Deposit**"), to be paid in the form of a City of Palmer check, bank cashier's check or wire transfer, which shall be paid directly to Seller **no later than twenty (20) days after the Effective Date.** The Initial Deposit shall be non-refundable to the City except as otherwise provided in this Agreement, **provided, that,** in the event the City closes this transaction, the Initial Deposit shall be applied towards the Purchase Price at Closing. Fidelity Title Agency of Alaska (the "**Title Company**") shall serve as the escrow agent to provide title insurance and close the sale and purchases through escrow ("**Escrow**"), and the parties hereby appoint the Title Company as escrow and closing agent.

(b) In the event the City elects to exercise any of the Due Diligence extension options provided in Section 7, the Second Deposit, Third Deposit, and Fourth Deposit, as the case may be, shall be paid in the form of a City of Palmer check, bank cashier's check or wire transfer and deposited into Escrow with the Title Company. In the event the Second Deposit, Third Deposit, or Fourth Deposit are deposited in Escrow, such deposits shall also be applied to the Purchase Price at Closing.

(c) The balance of the Purchase Price shall be paid by a bank cashier's check or wire transfer into Escrow with the Title Company at Closing. The Purchase Price shall be subject to prorations and adjustments as provided for in this Agreement.

(d) The parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City's as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in Section 7.

Section 3. Information to be Supplied to the City by Seller.

Within **thirty (30) days after the Effective Date,** Seller shall deliver to the City true and complete copies of the following, if the same is available and in Seller's possession or control:

(a) All documents and records of Seller related to the ownership, maintenance and repair of the Property, including without limitation, surveys, appraisals, environmental reports, engineering reports, geotechnical reports, historic preservation information, and title documents. Notwithstanding the foregoing, Seller shall not be required to share financial or other operating information on their business operations on the Property, except in the event the City notifies Seller that the City may be interested in assuming any Leases affecting the Property.

(b) All permits and licenses, including without limitation, applications for the issuance and any renewal of such permits and licenses, and correspondence to or from applicable governmental agencies with respect to the permits and licenses.

(c) Copies of all contracts, easements, licenses, access agreements, leases, subleases and similar use agreements (collectively "**Leases**") related to the Property. The Seller agrees that all Leases shall be terminated prior to Closing, unless otherwise agreed in writing by the City.

(d) Any environmental reports or studies related to the Property, including without limitation, Phase 1 and Phase 2 reports.

(e) All information and documents relating to the historical significance of the Property, including without limitation, any listing on the National Register of Historic Places, and compliance with state, Borough and City historic preservation requirements.

(f) All other documents in Seller's possession or control which are related to the Property which a purchaser of the Property would reasonably deem prudent to review as part of a due diligence review.

Section 4. Limited Representations, Warranties and Covenants of Seller: Seller represents, warrants and covenants to the City (which representations, warranties and covenants shall remain true at all times during this Agreement and shall survive Closing) as follows:

(a) Seller is the owner of fee simple title to the Property and has the full power, capacity and legal right to execute and deliver this Agreement and to sell the Property to the City, pursuant to the terms of this Agreement.

(b) Except for the Leases delivered to the City pursuant to Section 3(c), there are currently no leases, subleases or similar use agreements affecting the Property. From and after the Effective Date, Seller shall not sell, transfer, lease, allow any sublease or otherwise convey or allow use of all or any portion of the Property, or any interest therein, or grant or permit any easements, liens, mortgages, leases, use agreements, dumping or filling, encumbrances, or other interests or agreements with respect to the Property, without the City's prior written consent.

(c) There is no pending or threatened litigation, administrative action or examination, claim or demand, proceeding, judgment or order whatsoever relating to Seller or the Property which affects Seller's ability to convey the Property in accordance with the terms of this Agreement.

(d) Except for the information disclosed in the documents delivered pursuant to Section 3(d), to the best of Seller's knowledge, no party has spilled, discharged or released, or permitted the spill, discharge or release, from, at, on or under the Property, any petroleum, toxic, hazardous or regulated material, waste or substance, as such terms are or may be defined by any federal, state or local law ordinance or regulation ("**Hazardous Materials**"). Seller is not aware of nor has Seller received notice of any action, suit, proceeding or investigation pending or threatened for any violation of any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials with respect to the Property. Seller acknowledges and agrees that the City has not agreed to, and has no responsibility for, any indemnification, defense or hold harmless obligations to Seller, including, without limitation, for Hazardous Materials and any other condition of the Property.

(e) Seller has not received any notice of any violation or alleged violation of any legal requirement affecting the Property, including without limitation any violation or alleged violation of any local, state or federal environmental or zoning ordinance, code, regulation, rule or order, and specifically including without limitation, variances, conditional uses, or special permits affecting the Property.

(f) To the best of Seller's knowledge, the execution and delivery of, and performance by Seller of its obligations under this Agreement does not contravene, or constitute a default under, any agreement, judgment, injunction, order, or decree binding upon Seller.

(g) To the best of Seller's knowledge, there is no action, suit, or proceeding against or affecting Seller in any court or before any governmental body which (i) affects the validity or enforceability of this Agreement, or (ii) could prohibit Seller from performing its obligations hereunder, or under any document to be delivered pursuant hereto.

(h) Seller has no real estate broker, agent or licensee representing Seller in this transaction, and no commission is due to any broker, agent, or licensee.

Section 5. Limited Representations and Warranties by the City.

The City hereby represents and warrants to Seller that (i) the City has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; (ii) upon execution of this Agreement, the Agreement will be enforceable against the City in accordance with its terms; and (iii) the City has no real estate broker, agent or licensee, representing the City in this transaction, and no commission is due to any broker, agent, or licensee.

Section 6. Title to Property.

(a) **Title Commitment.** The parties acknowledge that the City has ordered and received a preliminary commitment for title insurance from the Title Company, which Title Commitment reflects Seller as the owner of the Property. The "**Title Commitment**" is defined as the Preliminary Commitment for an ALTA Standard Owner's Policy #MS86526-AMENDMENT #1, issued by Mat-Su Title Insurance Agency effective on March 15, 2012 at 8:00 AM. Seller acknowledges that it has received, reviewed and understands, to Seller's satisfaction, a copy of the Title Commitment. Seller further acknowledges that the City may, at the City's sole discretion, elect to obtain an ALTA extended coverage owner's title policy as opposed to an ALTA standard coverage owner's policy, which requires an ALTA Survey.

(b) **Title Policy/Statutory Warranty Deed.** At Closing, Seller shall convey to the City fee simple and marketable title to the Property by Statutory Warranty Deed, in the form to be attached as ***Exhibit A***, subject only to the Permitted Exceptions. The grantee on the Statutory Warranty Deed shall be shown as "***The City of Palmer.***" Seller shall also cause the Title Company to issue the ALTA standard coverage owner's policy of title insurance at Closing in a policy amount equal to the Purchase Price, subject to the Permitted Exceptions, and including any endorsements required by the City. The insured shall be shown as "***The City of Palmer.***" Seller

shall pay the premium amount related to an ALTA standard owner's title policy, and the City shall pay the additional premium cost related to the ALTA extended owner's policy (if one is completed), 100% of the cost for the ALTA survey, and the title endorsements requested by the City.

(c) **Warranty Deed Exceptions.** The Statutory Warranty Deed to be delivered at Closing shall convey fee simple title, and shall include all Permitted Exceptions, but shall exclude the standard title exceptions typically in Schedule B-Section 2 of a preliminary commitment from the Title Company, which shall not be considered Permitted Exceptions. Further, existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances shall be deemed Title Objections which shall be removed by Seller on or before Closing.

(d) **Permitted Title Exceptions.** The following title exceptions shall be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Permitted Exceptions**"): (i) the title exceptions listed as #'s 8,12,13,14, and 15 in Section 2 of Schedule B of the Title Commitment.

(e) **Title Objections:** The following title exceptions shall not be included in the Statutory Warranty Deed to be delivered to the City at Closing ("**Title Objections**"): (i) the title exceptions listed as #'s 1-7, 9-11, 16, and 17 in Section 2 of Schedule B of the Title Commitment; (ii) existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances; including, without limitation, the Deed of Trust shown as item #16 in the Title Commitment.

(f) **Failure to Remove Title Objections.** With respect to the Title Objections, if Seller shall not correct or remove such Title Objections on or before Closing, then the City shall either (i) waive such uncured objections and accept title to the Property subject to such uncured Title Objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate necessary adjustments to the Purchase Price; (iii) sue for specific performance of this Agreement causing Seller to remove the agreed upon Title Objections; or (iv) terminate this Agreement by written notice to Seller, whereupon the all deposits shall be promptly refunded to the City (without any further obligation on the parties to execute a rescission or similar agreement), and neither the City nor Seller will thereafter have any further obligations or liabilities under this Agreement.

Section 7. The City's Due Diligence.

(a) **Scope of City's Due Diligence.** In addition to any other contingencies and conditions precedent elsewhere in this Agreement, the City's obligation to consummate the transactions contemplated by this Agreement and to close on the purchase of the Property, is conditioned upon satisfaction, in the sole discretion of the City, of the following:

(i) The condition of and issues related to the Property meet with the approval of the City, in the City's sole discretion. The City and any authorized representative, including employees and contractors (and their subcontractors) (collectively "**Contractors**") of the City shall have the right to enter upon and inspect the Property, and are hereby granted access to do the same (including for purposes of the ALTA survey). Such inspections may include, but shall not be limited to, an inspection for evidence of Hazardous Materials and any environmental problems, inspections of the improvements (if any), historic preservation review, geotechnical review, planning and zoning review, surveying, engineering review, and architectural reviews. All such inspections shall be at the City's sole cost and expense. Such inspections by the City or the City's Contractors shall be conducted in such a manner as not to physically damage any part of the Property to the greatest extent possible. The City's inspections shall not unreasonably interfere with the operation of any businesses on the Property.

(ii) Any other issue (as determined by the City in its sole discretion) related to the Property, including without limitation, proposed uses of the Property by the City, are acceptable to the City, in the City's sole discretion.

(b) **Initial Due Diligence Period.** The City will have **one-hundred and eighty (180) days to conduct the foregoing due diligence, which one-hundred and eighty (180) day** period shall commence the **day after the Effective Date, and end one-hundred and eighty (180) days thereafter at 5:30 p.m. Alaska time ("Due Diligence Period")**, and to make a final determination on all contingencies and other issues related to the Property, and to determine if, in the sole discretion of the City, the Property is acceptable to the City. If in the City's sole discretion the Property is not acceptable to the City, the City will so notify Seller of such negative determination (which notice need not specify any reason why the Property is not suitable but merely state that the Property is not acceptable to the City) in writing prior to the expiration of the Due Diligence Period (or any extension thereof), in which

case this Agreement will become null and void (with no further obligation of the parties to execute a rescission agreement or similar document).

In the alternative, instead of terminating this Agreement, the parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in this Section 7.

If the City determines it would like to proceed and close the transaction, the City will so notify Seller of such determination in writing. In the absence of any such timely notification, the foregoing contingency provisions will be deemed to be favorably resolved. The City will have the right to waive any or all contingency provisions within the time provided and to then proceed with Closing.

(c) Optional Extensions of the Due Diligence Period. In addition to the initial **one-hundred and eighty (180) day** Due Diligence Period, the City shall have the option, in the City's sole discretion, to extend the Due Diligence Period by up to **three (3)** successive **ninety (90) day** periods. Such extension periods shall be identified as the **"First Option Period," "Second Option Period," and "Third Option Period"** respectively. If an option period is exercised, each option exercised shall be deemed to be part of the Due Diligence Period. The purpose of each option extension is to provide the City with an additional **ninety (90) day** period to undertake the City's due diligence and thus extending the Due Diligence Period.

(i) To exercise the option for the First Option Period, the City shall (i) notify Seller in writing at least **ten (10) days** before the expiration of the initial Due Diligence Period of the City's election to exercise the First Option; and (ii) deposit an additional deposit of **Five Thousand Dollars (\$5,000.00)** (**"Second Deposit"**) in Escrow with the Title Company no later than **ten (10) days** after the beginning of the First Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Second Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit, the Second Deposit shall be applied towards the Purchase Price at Closing.

(ii) To exercise the option for the Second Option Period, the City shall (i) notify Seller in writing at least **ten (10) days** before the expiration of the First

Option Period of the City's election to exercise the Second Option; and (ii) deposit an additional deposit of **Five Thousand Dollars (\$5,000.00)** ("**Third Deposit**") in Escrow with the Title Company no later than **ten (10) days** after the beginning of the Second Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Third Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit and the Second Deposit, the Third Deposit shall be applied towards the Purchase Price at Closing.

(iii) To exercise the option for the Third Option Period, the City shall (i) notify Seller in writing at least **ten (10) days** before the expiration of the Second Option Period of the City's election to exercise the Third Option; and (ii) deposit an additional deposit of **Five Thousand Dollars (\$5,000.00)** ("**Fourth Deposit**") in Escrow with the Title Company no later than **ten (10) days** after the beginning of the Third Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Fourth Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit, Second Deposit and Third Deposit, the Fourth Deposit shall be applied towards the Purchase Price at Closing.

Section 8. Interim Responsibility of Seller. Seller agrees that during the period between the Effective Date and the Closing Date:

(a) The Property will be maintained in as good a condition and state of repair as that existing on the Effective Date, normal wear and tear excepted.

(b) Seller will not enter into any new Leases without the prior written approval of the City.

(c) Seller will cause to be paid all normal costs of operation and maintenance of the Property.

(d) Seller shall not allow any waste or nuisance to be committed on the Property by any of Seller's agents or representatives.

(e) Seller will not allow any liens, encumbrances, deeds of trust, mortgages, or other monetary obligations which may be secured by the Property or placed against the Property, and if such occurs, Seller shall cause them to be removed

within **ninety (90) days**, unless a longer removal period is agreed to in writing by the City.

(f) Seller will maintain liability and other necessary insurance on the Property.

(g) Seller shall pay all taxes and assessments due with respect to the Property. Seller acknowledges and agrees that the City shall not be assuming any debts or liabilities of Seller, all of which shall remain the responsibility of Seller.

Section 9. Damage to Property. Seller agrees to give the City prompt written notice of any fire or other casualty affecting the Property. If prior to the Closing there is material damage to the Property caused by fire or other casualty, the City may, at the City's option:

(a) Terminate this Agreement by written notice to Seller within **ten (10) days** after the City has received the notice referred to above or at the Closing, whichever is earlier, whereupon the applicable deposit for the current due diligence period (but not any of the other deposit amounts) shall be promptly refunded to the City (without any obligation on the parties to execute a rescission or similar agreement) and neither the City nor Seller will have any further obligations or liabilities under this Agreement; or

(b) Proceed with Closing, in which case the City will be entitled to any insurance proceeds which may be payable on account of such occurrence, which shall be assigned to the City at Closing.

Section 10. Conditions Precedent to City's Obligation to Close. The obligation of the City to close the transactions contemplated by this Agreement is subject to all of the following conditions precedent being satisfied or waived by the City:

(a) **Approval of Contingencies.** An affirmative decision to move forward to Closing by the City under the title contingency and due diligence contingencies in Sections 6 and 7 respectively.

(b) **Approval by City Attorney.** Approval by the City Attorney.

(c) **Approval by City Council.** The Palmer City Council has duly authorized, by an approved Resolution, the issuance of the Bonds, payment of the Purchase Price to each of the Property Owners, and the Closing on the purchase of all of the Mat-Maid Properties.

(d) **Closing with all Property Owners.** All of the other Property Owners close the sale (as part of the same Escrow which closes on all of the Mat-Maid Properties and coordinates the application of the Bond proceeds towards the Purchase Prices) on each of their respective property comprising part of the Mat-Maid Properties, unless the City, in its sole discretion, decides to split-up the closings on one or more of the Properties.

(e) **Bonds.** The Bonds have been issued, and the required funds have been transferred into the Escrow to pay the Purchase Prices and the Closing costs of the City as required by the settlement statements.

(f) **Appropriation of Funds.** The City Council has appropriated all funds necessary to pay the Purchase Price and all of the City's Closing costs.

(g) **Notice of Satisfaction of Conditions Precedent to be Signed by City, Title Company, and Property Owners.** The Title Company has notified the City in writing that (i) all the Property Owners are ready to close their respective sale; (ii) all necessary funds and documents are in Escrow pursuant to the approved Joint Closing Instructions provided to the Title Company; and (iii) the Title Company, City, and all Property Owners have signed (which may be done in counterparts and by facsimile signatures) the **Notice of Satisfaction of Conditions Precedent**, the form of which is shall be attached as **Exhibit B**.

Section 11. Time and Place for Closing. Subject to the satisfaction of the conditions precedent in Section 10, the closing ("**Closing**") of the transactions contemplated by this Agreement shall occur **no later than fifteen (15) days** after the latest date of execution of the Notice of Satisfaction of Conditions Precedent by the City, Title Company, and the Property Owners. Closing shall be on such date and time as agreed to by the parties. Closing shall take place at the office of the Title Company in its Wasilla, Alaska office (the Mat-Su Title Insurance Agency office). The actual date on which the Closing occurs is herein referred to as the "**Closing Date**." The Closing Date may be extended by mutual written agreement by the parties. Seller shall surrender the Property to the City upon recording.

Section 12. Closing.

(a) At Closing, Seller shall:

(i) Execute and deliver to the City a Statutory Warranty Deed, in the form to be attached as **Exhibit A**, conveying the Property to the City, subject only to the Permitted Exceptions.

(ii) Execute and deliver to the City, in such form and substance acceptable to the parties, an Assignment of those Leases to be assumed by the City.

(iii) Cause to be issued to the City by the Title Company the ALTA standard owner's title policy or ALTA extended owner's title policy referenced in Section 6, in an amount equal to the Purchase Price.

(iv) Provide the Title Company with any ALTA Lien Affidavits required in conjunction with any ALTA extended owner's title policy.

(v) Execute and deliver to the Title Company an IRS FIRPTA Certification.

(vi) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(vii) Deliver to the City possession of the Property and all keys thereto.

(b) At Closing, the City shall:

(i) Deliver to the Title Company such evidence of the authority and capacity as the Title Company may reasonably require.

(ii) Execute and deliver the Assignment referenced in Section (a)(ii) above.

(iii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(c) Seller shall pay:

- (i) The cost of the standard owner's title policy.
- (ii) Seller's attorney's fees.
- (iii) One-half of the escrow closing fee of the Title Company and ½ of the recording fees.
- (iv) Any other amounts identified as a Seller cost in the approved settlement statements.

(d) The City shall pay:

- (i) Costs related to the additional policy premium amount for converting the standard owners title policy to the ALTA extended owners policy, 100% of the cost for the ALTA survey, and for any endorsements desired by the City.
- (ii) The City's attorney's fees.
- (iii) One-half of the escrow closing fee of the Title Company and ½ of the recording fees.
- (iv) All costs related to the Bonds and the City's financing for the purchase.
- (v) All costs related to the appraisals, title review, and due diligence conducted by or for the City.
- (vi) Deliver to the Title Company the balance of the Purchase Price (less all deposits) and any Closing costs required of the City under the approved settlement statements.

(vii) Any other amounts identified as a cost of the City in the approved settlement statements.

(e) Real property taxes shall be prorated as of the recording date. Seller shall pay, at or before Closing, all assessments due against the Property. Utilities shall be changed into the name of the City as of the Closing Date, and the parties shall cooperate with the utility companies to accomplish the change-over.

Section 13. Termination, Defaults and Remedies.

(a) **Default by Seller.** Seller will be in default hereunder upon the occurrence of any of the following events:

(i) Seller fails to materially meet, comply with, or perform any covenant, agreement or obligation required on Seller's part within the time limits and in the manner required in this Agreement, for any reason other than a default by the City hereunder.

(ii) Seller fails to deliver at the Closing any items required of Seller in Sections 12(a) and (c) of this Agreement.

In the event of a default by Seller hereunder, the City may, at the City's option, terminate this Agreement by written notice delivered to Seller at or prior to the Closing and receive back the Initial Deposit and all other deposits paid by the City to that date (with no obligation of the parties to execute a rescission or similar agreement). In the alternative, the City may sue for specific performance of this Agreement by Seller.

(b) **Default by the City.** The City will be in default hereunder upon the occurrence of any of the following events:

(i) The City fails to materially meet, comply with, or perform any covenant, agreement or obligation required on the City's part within the time limits and in the manner required in this Agreement, for any reason other than a default by Seller hereunder.

(ii) The City fails to deliver at the Closing any items required of the City in Sections 12(b) and (d) of this Agreement.

Seller and the City agree that Seller's economic detriment resulting from the removal of the Property from the market and the carrying and other costs incurred thereafter and associated therewith, including any costs to be incurred by Seller in order to satisfy the conditions of escrow set forth herein, are impracticable or extremely difficult to ascertain. Seller and the City agree that the retention of the Initial Deposit and all other deposits paid to that date is a reasonable estimate of such damages in the event of the City's failure to perform according to the provisions of this Agreement. Such payment is intended to be liquidated damages and not intended to be a forfeiture or penalty. The termination of this Agreement and retention of the Initial Deposit and all other deposits made to that date (by written notice from Seller to the City and the Title Company) shall be the sole remedy available to Seller for breach or default by the City, and the City will not be liable for damages or specific performance, and Seller hereby waives any and all rights to damages and specific performance.

Section 14. Notices. Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing, and any such notice or communication will be deemed to have been given if and when delivered or mailed (or in the event the delivery or mailing is refused by the addressee) to any such party by courier, personal delivery, facsimile, e-mail, or certified mail, return receipt requested, addressed to such party at such party's address as provided below or such other address as either party may designate by notice similarly sent. Notice by mail is effective upon receipt or the date of rejection of the notice. Notice given by courier or personal delivery is effective upon receipt. Notice given by facsimile is effective upon confirmation of successful transmission by the transmitting machine. Notice given by e-mail shall be successful upon transmission of the e-mail. Any party or additional notice party may change their notice address by providing notice to the other party as herein provided above.

If to Seller:

Rose Hendrickson, President
Palmer Arts Council
_____ Baily Street
Palmer, Alaska 99645
Facsimile: (907) 749-3247
E-Mail: *damascus@gci.net*

With a Copy to (which shall not constitute requisite notice):

Helene M. Antel

Attorney at Law, P.C.
12050 E. Lady Slipper Lane
Palmer, Alaska 99645
Facsimile: (907) 749-3247
E-Mail: hma@mtaonline.net

If to the City:

Douglas Griffin, City Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, Alaska 99645
Facsimile: (907) 745-0930
E-Mail: dgriffin@palmerak.org

With a Copy to (which shall not constitute requisite notice):

Glen Price
Law Office of Glen Price
P.O. Box 4739
Palmer, Alaska 99645
Facsimile: (907) 746-5971
E-Mail: gplaw@mtaonline.net

Section 15. Miscellaneous Provisions.

(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no understandings, written or oral, which change, modify or enlarge this Agreement.

(b) **Waiver.** No provision of this Agreement may be waived except in writing signed by the party to be charged with such waiver. The failure of any party to insist upon strict performance of any term or condition of this Agreement shall not be deemed a waiver of any other rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default of any such term, covenant, or condition.

(c) **Amendments.** Any amendment or modification to this Agreement must be executed in writing by both the City and Seller.

(d) Construction. This Agreement shall not be construed more strongly against one party than the other. Both parties waive the benefit of any rule of construction that an agreement shall be construed against its drafter. The captions in this Agreement are for the convenience of the parties only and shall contain no independent significance.

(e) Governing Law. This Agreement shall be interpreted under and construed in accordance with Alaska law. Venue for any lawsuit shall be in the Superior Court for the State of Alaska, at Palmer, Alaska. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable, including reasonable attorneys' fees.

(f) Representation by Counsel. Both the City and Seller acknowledge that they have had the opportunity, if each party so desired, for the assistance of counsel in the preparation and review of this Agreement. The parties acknowledge and agree that Glen Price, Law Office of Glen Price has solely represented the City in this transaction and has not provided any advice to Seller. The parties acknowledge and agree that Helene M. Antel, Attorney at Law, P.C. has solely represented Seller in this transaction and has not provided any advice to the City.

(g) Successors. The covenants herein will bind and inure to the benefit of the personal representatives, heirs, executors, administrators, devisees, other legal representatives, permitted assigns, and successors of the respective parties.

(h) No Partnership. Nothing in this Agreement shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.

(i) No Third Party Beneficiaries. Nothing in this Agreement shall be interpreted or construed as creating any rights or privileges whatsoever in persons or entities that are not parties to this Agreement.

(j) No Merger. The terms and provisions of this Agreement shall not merge in, but shall survive, the Closing of the transaction contemplated hereunder and the Closing documents to be delivered pursuant hereto.

(k) **Severability.** If any clause or term of this Agreement shall be deemed invalid by any court of law, the validity and enforcement of the other clauses and terms of the Agreement shall be unaffected.

(l) **Assignment.** This Agreement may not be assigned, encumbered or otherwise transferred by Seller, and any assignment, encumbrance or other transfer in violation hereof shall be null and void and of no force or effect. The City may, without any prior approval of Seller being required, assign this Agreement to (i) a joint venture, LLC, corporation or similar entity; (ii) a development partner or other person or entity, which the City may or not be a member of; or (iii) any similar or other entity or person, in conjunction with or for the purposes of the development of the Property and/or addressing any environmental issues or concerns with the Property or other Mat-Maid Properties. The City shall provide notice of any such assignment to Seller.

(m) **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, including by facsimile signature, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement, notwithstanding the fact that all parties are not signatories to the original or the same counterpart.

(n) **Time.** Time is of the essence under this Agreement. In the event any deadline or contingency termination falls on a Saturday, Sunday or City, state or federal holiday, the deadline or contingency shall be extended to the first business day following the Saturday, Sunday or state or federal holiday.

(o) **Recording.** This Agreement shall not be recorded by either party.

Section 16. Post-Closing Cooperation. Subsequent to the Closing, the parties agree to cooperate with one another, and, if necessary, to execute further reasonable documents, to implement the terms of this Agreement.

DATED as of the Effective Date.

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, _____, The City of Palmer.

Notary Public in and for Alaska
My commission expires: _____

ATTESTED TO:

By: _____

Its: City Clerk

Attachment to Action Memorandum 13-005
DRAFT

Schedule 1 to Purchase Agreement
COMMITMENT FOR TITLE INSURANCE



Commitment Number: MS86526-AMENDMENT #1

SCHEDULE A

1. Effective Date: March 15, 2012 at 08:00 AM

2. Policy or Policies to be issued:		Amount
(a) <input checked="" type="checkbox"/> Owner's Policy Proposed Insured:	(ALTA Standard Owners Policy Not Disclosed-Minimum)	Policy Amount: Premium: \$ 250.00
City of Palmer		
(b) _____ Loan Policy Proposed Insured:	(ALTA Extended Loan Policy)	Policy Amount: Premium:

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:
Palmer Arts Council, an Alaska Non-Profit Corporation

5. The land referred to in the Commitment is described as follows:

Tract One, Matanuska Maid Power House Subdivision, according to Plat No. 79-434, and further described as follows:

Beginning at a point 1192.40 feet (more or less) East of the Southwest corner of said Section 33 and 273.75 feet North of said point; said point being located on the Northerly right of way line of Co-op Avenue; thence North 150 feet to a point; thence East 104.52 feet to a point; thence South 150 feet to a point on the North right of way line of Co-op Avenue; thence West along said right of way line a distance of 104.52 feet to the Point of Beginning, located in the Palmer Recording District, Third Judicial District, State of Alaska.

Fidelity National Title Insurance Company

By: 

Mat-Su Title Insurance Agency
Steve Dennis (907)376-1818

ALTA Commitment
Schedule A (6/17/06)

(MS86526.PFD/MS86526/B)

Page 1 of 1