CITY OF PALMER
ACTION MEMORANDUM NO. 13-006

Subject: Authorize the City Manager to Award and Execute a One-Year Renewal for an Insurance Brokerage Agreement with Alaska USA Insurance Brokers

Agenda of: January 22, 2013

Council Action: Authorized

Approved for presentation by:

City Manager Douglas B. Griffin
City Attorney
City Clerk

Certification of Funds:

Total amount of funds listed in legislation:	$ 15,000
This legislation (√):	
____ Has no fiscal impact	
Creates:	
X A negative fiscal impact in the amount of:	$ 15,000
____ A positive fiscal impact in the amount of:	$
X Funds are budgeted from this (these) line item(s):	
➢ Various accounts	$ 15,000
➢	$
➢	$
____ 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):
- Professional Services Agreement

Summary statement: On December 9, 2011, the City issued Request for Proposals No. 11-01PS for Insurance Broker Services. Alaska USA Insurance Brokers was the winning proposer.

On February 28, 2012, the Palmer City Council passed Action Memorandum no. 12-018 authorizing the city manager to award and execute an agreement with Alaska USA Insurance Brokers for brokerage of the City's insurance policies.

The fee will remain unchanged from the current year ($15,000 per year). The attached agreement provides for a wide range of brokerage services, to include updating questionnaires

for submittal to underwriters, negotiation with underwriters, presentation of insurance proposals, reviews of polices, contracts, bonds and endorsements, and assistance in submitting claims. The initial contract term of one year ends March 15, 2013. This action memorandum authorizes the administration to exercise the first of two possible renewals. All renewals are at the sole discretion of the City.

Administration recommendation: Approve action memorandum 13-006.

Professional Services Agreement
for
Insurance Brokerage Services

THIS AGREEMENT made and entered into this _____day of _____ 2013, by and between the **CITY OF PALMER** and ***ALASKA USA INSURANCE BROKERS.***

Section 01 Definition

In this Agreement:

A. The term "City" means the City of Palmer.

B. The term "Consultant" means Alaska USA Insurance Brokers.

C. The term "Manager" means the manager of the City of Palmer or his authorized representative.

Section 02 Employment of Consultant

The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

Section 03 Scope of Services

The Consultant shall perform all the services provided for by this Agreement which are described with particularity in Section II of the RFP, entitled Scope of Work, attached hereto and incorporated by reference as if fully set forth herein.

Section 04 Personnel

Personnel shall be limited to employees of the consultant.

Section 05 Contract Period

The services of the Consultant shall commence upon execution of this Agreement by the Manager and had an initial contract term of one year with an effective date of March ___, 2012. The contract may be renewed up to two additional years at the sole discretion of the City. This Agreement is for the first such renewal.

Section 06 Compensation

A. Subject to the provisions of this Agreement, the City shall pay the Consultant $15,000 per year for all services and expenses for the term of this Agreement (as set forth in Appendix A of this Agreement).

B. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.

Section 07 Method and Time of Payment

A. The City will pay to the Consultant the amount set forth in Appendix A which shall constitute the full and complete compensation for the Consultant's professional services. That sum will be paid on receipt of billings submitted pursuant to a schedule set forth in Section 2.6 of the RFP; Normal billing cycle is 30 calendar days from receipt of an approved invoice. A billing is a summary of expenditures to date by line item categories (e.g., Personal Services, Travel, Contractual, Commodities and Equipment). Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the City requests said documentation.

B. Payment will be disbursed in accordance with Section 2.6 of the RFP.

C. All invoices must be submitted in duplicate and addressed as follows:

City of Palmer
Attention: Director of Finance
231 W Evergreen Ave
Palmer, Alaska 99645

D. It is expressly understood and agreed that in no event shall the total compensation due the Consultant exceed compensation listed in appendix A.

Section 08 Termination of Agreement for Cause

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Consultant under this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of section III of the RFP only for work completed to the City's satisfaction in accordance with section II of the RFP and the other terms of this Agreement.

Section 09 Termination for Convenience of 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 8 above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Consultant shall be entitled to

receive compensation in accordance with the payment provisions of Section III of the RFP only for work completed to the City's satisfaction in accordance with Section II of the RFP and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, Section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 10 Causes Beyond Control

In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of the Agreement as set forth herein. Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 11 Modifications

A. The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.

B. It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the Agreement will not be modified, under any circumstances, without prior written approval of the City.

Section 12 Equal Employment Opportunity

A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The Consultant agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical

handicap, age, or status as a disabled veteran, or veteran of the Vietnam War era. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

B. The Consultant shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in subsection 12 (A) for applicants for employment and employees as the City may require.

Section 13 Interest of Members of City and Others

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

Section 14 Assignability

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

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

Section 15 Interest of Consultant

The Consultant covenants, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.

Section 16 Findings Confidential

To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

Section 17 Publication, Reproduction and Use of Materials

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

Section 18 Audits and Inspections

At any time during normal business hours and as often as the City or the Comptroller General of the United States may deem necessary, there shall be made available for examination all of its records with respect to all matters covered by this Agreement and will permit representatives of the City or the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

Section 19 Jurisdiction; Choice of Law

Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 20 Non-Waiver

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

Section 21 Permits, Laws and Taxes

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

Section 22 Relationship of the Parties

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

Section 23 Agreement Administration

A. The Director of Administration, or their designee, will be the representative of the City administering this Agreement.

B. The services to be furnished by the Consultant shall be administered, supervised, and directed by Jan Martinson, Account Executive. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement is unable to serve for any reason, the Consultant shall appoint a successor in interest subject to a written approval of the City of Palmer.

Section 24 Integration

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement; the following documents are incorporated by reference into this Agreement as if fully set forth herein:

Request for Proposal Sections l-V (RFP)	City of Palmer Business License
Certificate of Insurance	State of Alaska Business License
Appendix A, Fees/Compensation	Professional License

Section 25 Defense and Indemnification

A. 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 agreement. 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.

Section 26 Interpretation and Enforcement

This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 27 Consultant Insurance

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

It is highly recommended that Consultant confer with their respective insurance companies or brokers to determine if their insurance program complies with the City's Insurance requirements.

The Consultant shall procure and maintain the following insurances:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 01/96) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 6/92) covering Automobile Liability, symbol 1 "any auto".
3. Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.
4. Professional Liability insurance against liability arising out of the rendering or failure to render professional services under this agreement on a form acceptable to the City.

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability:
$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury. The general aggregate limit shall be $2,000,000. The general aggregate limits shall apply separately to each project.

If the general liability insurance is written on a claims made form, the Consultant shall provide insurance for a period of two years after final payment of this agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this agreement.

2. Auto Liability:

$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability:

Worker's Compensation shall be statutory as required by the State of Alaska. Employer’s liability shall be endorsed to the following minimum limits:

Bodily injury by Accident -	$500,000 each accident
Bodily injury by Disease -	$500,000 each employee
Bodily injury by Disease -	$500,000 policy limit

4. Professional Liability:

$1,000,000 per each claim. The general aggregate limit shall be $2,000,000. The professional liability insurance shall be maintained in effect until final acceptance by the City of the completed project.

If the professional liability insurance is written on a claims made form, the Consultant shall provide insurance for a period of two years after final payment of this agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this agreement.

5. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the Consultant to combine an excess liability or umbrella policy with the general liability, auto liability or employer's liability. In the instance where the Consultant purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to work commencing any deductible or self-insured retention must be declared and approved by the City. The Consultant may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the City, the Consultant shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability

a. The City, its Administrator, officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant premises owned, occupied or used by the Consultant or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitation on the scope of protection afforded to the City, its Administrator, officers, officials, employees and volunteers.

b. The Consultant's insurance coverage shall be primary insurance as respects the City, its Administrator, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its Administrator, officers, officials, employees and volunteers shall be excess of the Consultant insurance and shall not contribute to it.

c. The Consultant insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the City, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Consultant or any subcontractor for the City.

3. All Insurance

Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Consultant or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the City. Such notice shall be mailed by the Consultant to the attention of the Director of Administration.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII.

F. Verification of Coverage

Consultant shall furnish the City with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the City. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors

Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

H. Lapse in Coverage

A lapse in insurance coverage is a material breach of this agreement which shall result in immediate termination of the agreement, pursuant to Section 8.

Section 28 <u>Severability</u>

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 29 Understanding

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

Section 30 Notices

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

City: 231 W Evergreen Avenue, Palmer, Alaska 99645

Consultant: Insert vendor's address here

Section 31 Consultants' Violations of Tax Obligations

A. Any consultant in arrears on a City obligation, including, but not limited to tax, assessment, lease, sale, or rental payments, whether as an individual, or as a representative of a business, organization, firm, corporation, or partnership, shall not be awarded the Agreement if the delinquency is not cured within ten calendar days of receipt of written notice sent by the City of the delinquency.

B. This Agreement can be terminated for cause, pursuant to Section 8, if it is determined that a Consultant whether the amounts owed are in the name of the Consultant as an individual or as a representative of a firm, business, corporation, or partnership, is in arrears of any taxation, lease or rental agreement that is due to the City that is not remedied within 10 calendar days of notification by regular mail.

C. The City reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent City taxes, moneys owed on sales, assessments, leases and rental agreements, against any amount owing to the same under a Agreement between the City and the same.

Section 32 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

Section 33 Survival of Representations and Warranties

The representations, warranties, covenants, and agreements of the parties under this Agreement, and the remedies of either party for the breach of such representations, warranties, covenants, and agreements by the other party shall survive the execution and termination of this Agreement.

Section 34 **<u>Fund Verification</u>**

Fund source and verification of funds for this project:

Funding Source: _____

_____ _____

Verified by Date

CITY OF PALMER **ALASKA USA INSURANCE BROKERS**

_____ _____

Douglas B. Griffin, City Manager Title: _____

STATE OF ALASKA

Third Judicial District

On _____, 2013, _____ personally appeared before me,

1. [ ] who is personally known to me

2. [ ] whose identity I proved on the basis of _____

3. [ ] whose identity I proved on the oath/affirmation of _____, a credible witness to be the signer of the **Agreement for Insurance Brokerage Services** and he/she acknowledged that he/she signed it.

_____

Notary Public

My Commission expires: _____

STATE OF ALASKA

Third Judicial District

On _____, 2013, Douglas B. Griffin, City Manager, personally appeared before me, who is personally known to me, to be the signer of the above document, and he acknowledged that he signed it on behalf of the City of Palmer.

_____

Notary Public

My Commission expires: _____

Appendix A

FEES and COMPENSATION

From Page 21 in Alaska USA Insurance Brokers response to RFP.

Year 1. $15,000
Year 2, $15,000
Year 3, $15,000

Alaska USA Insurance Brokers agrees to return all commissions received to the City of Palmer or make other arrangement s with the carriers to reduce the premium by the amount of the commission.