

**CITY OF PALMER
ACTION MEMORANDUM NO. 13-019**

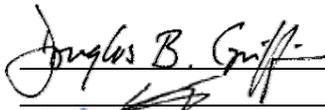
Subject: Authorize the City Manager to Negotiate and Execute an Extension of the Contract with Yukon Concession Alaska, LLC dba Alaska Mountain Enterprises until May 31, 2013

Agenda of: March 26, 2013

Council Action: _____

Approved for presentation by:

City Manager
City Attorney
City Clerk





Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>250</u>
This legislation (√):	
<input type="checkbox"/> Has no fiscal impact	
Creates:	
<input type="checkbox"/> A negative fiscal impact in the amount of:	\$ _____
<input checked="" type="checkbox"/> A positive fiscal impact in the amount of:	\$ <u>250</u>
<input checked="" type="checkbox"/> Funds are budgeted from this (these) line item(s):	
➤ 01-00-00-3018 Arena Concession Lease Revenue	\$ <u>250</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):

- Contract Interim Renewal
- Contract with Yukon Concession Alaska, LLC dba Alaska Mountain Enterprises for MTA Events Center concession services

Summary statement: The contract with Yukon Concessions Alaska, LLC has expired. This contract will allow for a temporary authorization for Yukon Concession Alaska, LLC dba Alaska Mountain Enterprises to provide concession services at the MTA Events Center until May 31, 2013. It is in the best interests of the City to continue this service while a new contract is negotiated.

Administration recommendation: Approve action memorandum 13-019.

CONCESSION SERVICES
Interim Renewal

The contract between the City of Palmer and Yukon Concession Alaska, LLC dba Alaska Mountain Enterprises, dated _____, 2013 is extended until May 31, 2013.

YUKON CONCESSION ALASKA, LLC
dba ALASKA MOUNTAIN ENTERPRISES CONTRACTOR

Date

STATE OF ALASKA)
) ss.
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 Amendment No. 1 of the Professional Services Agreement for Concession Services and he/she acknowledged that he/she signed it.

Notary Public
My Commission expires: _____

CITY OF PALMER

Douglas B. Griffin, City Manager

Date
STATE OF ALASKA)
) ss.
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: _____

**AGREEMENT
FOR
CONCESSION SERVICES**

This Concession Services Agreement ("Agreement") is dated effective this day of _____, 2011. The parties ("Parties") to this Agreement are the City of Palmer, Alaska ("City"), of 231 West Evergreen Avenue, Palmer, Alaska 99645, a political subdivision of the State of Alaska, organized and existing in accordance with the laws of the State of Alaska, and Yukon Concession Alaska, LLC dba Alaska Mountain Enterprises ("Concessionaire") a sole proprietorship business, P.O. Box 2695, Palmer, Alaska 99645.

A. The City seeks the concession services of a skilled independent contractor capable of working without direct supervision, to provide food and beverage services to the general public at the MTA Events Center located in Palmer, Alaska; and

B. The Concessionaire has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

Concessionaire shall provide services ("Services") as set forth in Exhibit "A" attached hereto and incorporated by this reference, at concession stand ("Concession Stand") located in the MTA Event Center, 1317 S. Kerry Weiland Ct, Palmer, Alaska and includes half the hallway adjacent to the concession stand containing a total of 435 square feet in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City.

1.1 Customer Service.

A. Concessionaire and all of its employees, agents, or representatives shall provide the highest quality of customer service and shall treat all customers with courtesy and respect. Concessionaire shall honor all reasonable requests for refunds including requests from customers that are dissatisfied with any food, beverage or other product sold by Concessionaire.

1) represent or permit itself to be represented to the public as an agent or employee of the City by the use of the name City of Palmer on letters, bills, signs, or by any other means. The Concessionaire, its servants, agents, and employees, are in no sense agents of the City, in which the concession exists, or of any other entity having to do with the operations of the City.

- 2) Sell or remove any property that is owned by the City or any other part of the City of Palmer and is used in the operation of the concession.
- 3) Give or offer any employee of the City, or any other part of the City of Palmer Government, any gift, privilege, special benefit, discount, or anything else of material or personal nature whereby the individual or employee would receive preferential treatment.

1.2 Employee Appearance. All of Concessionaire's employees, agents, representatives or licensees shall have a neat, clean and sanitary personal appearance and those who come in direct contact with the public shall wear clothing or identification, which distinguishes them as employees of Concessionaire.

1.3 Employee Training. Concessionaire shall provide a training program for its employees, agents, or representatives for the development of the skills and techniques necessary to perform its obligations under this Agreement including but not limited to promoting customer service, and service presentation, cleanliness, positive attitude and promoting the City's philosophy and policy.

1.4 Hours of Operation. The Concession Stand shall remain open during the hours of operation to coincide with the Alaska Avalanche, Palmer High School Hockey games, and hockey and soccer tournaments. unless the City notifies the Concessionaire of other hours of operation, and such hours of operation shall be posted in a conspicuous place on the Concession Stand.

2. Concession Equipment.

2.1 Rent of City Equipment. Concessionaire agrees to rent from the City the machines and equipment at the rental rate described in Exhibit "B" attached hereto and incorporated by this reference ("Concession Equipment").

2.2 Alterations. Concessionaire shall not make any alterations, additions or improvements to the Concession Stand or to the Concession Equipment without the City's prior written consent. In the event the City consents to the making of any alterations, additions or improvements to the Concession Stand and/or Concession Equipment, the same shall be made at Concessionaire's sole cost and expense, and in the event such alterations, additions or improvements are made to a structure, building or other improvement attached to the real property, the same will become a part of the real property and be surrendered to the City upon the termination of this Agreement. The City has no obligation to alter, remodel, improve, repair, decorate or paint the Concession Stand.

2.3 Removal of Equipment. In the event the City notifies Concessionaire that it desires the removal of the Concession Equipment at any time, Concessionaire shall, at its sole cost and expense, remove the Concession Equipment and repair any damage to the real property caused by such removal within thirty (30) days.

2.4 Maintenance. Concessionaire shall, at its sole cost and expense, maintain the Concession Stand and Concession Equipment and the surrounding real property in good condition and repair, including, but not limited to, maintaining the Concession Stand in a neat, clean and sanitary condition and removing all garbage, trash or other debris on a regular basis pursuant to the City's instructions.

2.5 Damage to Concession Stand. If the Concession Stand or any part thereof are damaged by any cause other than the sole negligence of the City, its employees or agents, Concessionaire shall, at its sole cost and expense, restore the Concession Stand to a condition equivalent to or better than their condition immediately prior to such damage.

2.6 City Reimbursement. In the event Concessionaire fails to remove the Concession Equipment pursuant to paragraph 2.3, maintain the Concession Stand or Equipment pursuant to paragraph 2.4, or repair the Concession Stand pursuant to paragraph 2.5, the City may, but in no event is the City obligated to, remove the Concession Equipment or perform the maintenance or repair and the Concessionaire shall, upon demand, immediately pay the City the costs and expenses of such removal, maintenance or repair. In the event Concessionaire fails to comply with the terms of this paragraph, the City may confiscate the Concession Equipment or any part thereof and sell the same, the proceeds of which sale will be credited against any costs or expenses incurred by the City. The sale of the Concession Equipment shall not constitute an election of remedies by the City but will be in addition to any remedies available to the City at law, in equity, by statute or under this Agreement.

2.7 Utilities, Taxes and Expenses.

A. Concessionaire will pay the City \$167 per month for utilities, to include water, sewer, garbage and electrical service. Such payment shall be due at the same time concession payments are due. Concessionaire shall pay directly, before delinquency, any and all taxes levied or assessed upon its leasehold improvements, equipment, furniture, fixtures and personal property located on the City's property.

B. Concessionaire shall immediately notify the City Arena Manager of any maintenance problems with its Concession area described in paragraph 1.

3. Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than one (1) year from the effective date, plus three (3) one (1) year options approved by the City Council ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Concessionaire.

4. Termination.

Prior to the expiration of the Term, the City may terminate this Agreement immediately, with or without cause and with a thirty (30) day notice.

5. Compensation.

5.1 Total Compensation. The Concessionaire agrees to pay the City an amount equal to ten percent (10%) of the Concessionaire's gross monthly revenue plus the ("Percentage Payment").

The term "Gross Monthly Revenue" shall mean the total amount charged by Concessionaire, its employees, agents, or licensees, for all goods and merchandise sold or services performed, whether for cash or other consideration or on credit, and regardless of collections, including but not limited to orders taken at the Concession Stand but filled elsewhere and orders taken elsewhere but filled at the Concession Stand.

5.2 Payment Due Date. Concessionaire shall deliver the Percentage Payment to the City on or before the 15th day of each month for Gross Monthly Revenue received during the preceding month ("Due Date").

5.3 Access to Records. Concessionaire shall provide a written statement to the City on the Due Date showing the total Gross Monthly Revenue for the preceding month ("Statement"). Concessionaire will provide the City or the City's agents or representatives reasonable access to the books and records of Concessionaire for the purposes of auditing and inspecting the same to verify the Statement. The records shall include documents from which the original transaction entry was made, including sales slips, cash register tapes, and/or purchase invoices.

5.4 Cash Registers. All sales shall be recorded by cash registers, which display to the customer the amount of the sale and automatically issue receipts certifying the transaction amount. The cash registers shall be equipped with devices which lock in sales totals, transaction records, produce duplicate audit tape, contain counters which cannot be reset and which record the transaction numbers and sales details on such tape. Any errors shall be noted by Concessionaire on the audit tape with an explanation. Cash register readings shall be recorded by Concessionaire at the beginning and the end of each business day.

5.5 Late Fee. Concessionaire acknowledges that late payment to the City of the Percentage Payment will cause the City to incur costs not contemplated by this Agreement, the exact amount of which will be difficult to ascertain. Accordingly, if the Percentage Payment is not received by the City on the Due Date, Concessionaire agrees to pay a late fee equal to Twenty-Five and No/100 Dollars (\$25.00).

5.6 Concessionaire Responsible for Taxes. The Concessionaire shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

6. Compliance with Laws.

Concessionaire shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended, including but not limited to the following:

- (i) Federal, state and local health, safety and licensing laws relating to the sale of concession goods; and
- (ii) City code provisions requiring any person or entity doing business in the City to obtain a business license.

7. Warranty.

The Concessionaire warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being licensed to do business in the City.

8. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Concessionaire shall be an independent contractor and that the City shall be neither liable nor obligated to pay Concessionaire sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Concessionaire shall pay all income and other taxes as due. Insurance, which is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Concessionaire, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Concessionaire may or will be performing concession services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with Concessionaire's ability to perform the Services. Concessionaire agrees to resolve any such business conflicts in favor of the City.

9. Indemnification.

9.1 Contractor Indemnification. The Concessionaire agrees to indemnify, defend, and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting

from, or connected with this Agreement to the extent caused by any and all acts, errors or omissions of the Concessionaire, its partners, shareholders, agents, employees, or by the Concessionaire's breach of this Agreement. Concessionaire waives any immunity that may be granted to it by law. Concessionaire's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs.

9.2 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

10. Equal Opportunity Employer.

In all Concessionaire's activities, including the performance of the Services and all hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Concessionaire or by Concessionaire's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Concessionaire shall not violate any of the terms of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Concessionaire's breach, may result in ineligibility for further City agreements.

11. 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 Concessionaire confer with their respective insurance companies or brokers to determine if their insurance program complies with the City's Insurance requirements. The Concessionaire 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 12/07) covering Commercial General Liability.
- 2) Insurance Services office form number CA 0001 (Edition 3/06) covering Automobile Liability, symbol 1 "any auto".
- 3) Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.

B. Minimum Limits of Insurance

Concessionaire shall maintain limits no less than:

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

If the general liability insurance is written on a claims made form, the Concessionaire 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: \$100,000 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. Employers liability shall be endorsed to the following minimum limits:

Bodily injury by Accident -	\$1,000,000 each accident
Bodily injury by Disease -	\$1,000,000 each employee
Bodily injury by Disease -	\$1,000,000 policy limit

- 4) Excess Liability: In order to meet the required minimum limits of insurance it is permissible for the Concessionaire to combine an excess liability or umbrella policy with the general liability, auto liability or employers liability. In the instance where the Concessionaire 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 Concessionaire 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 Concessionaire shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the Concessionaire 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 Concessionaire; products and completed operations of the Concessionaire premises owned, occupied or used by the Concessionaire or automobiles owned, leased, hired or borrowed by the Concessionaire. 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 Concessionaire'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 Concessionaire insurance and shall not contribute to it.

c. The Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire to the attention of the City's Purchasing Officer.

The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

12. Non-Exclusive Right. This Agreement does not grant Concessionaire an exclusive right to distribute its products. The City reserves the right to grant to other persons or entities any of the rights contained herein or otherwise.
13. Signs. Concessionaire shall be limited to placing a sign on the concession stand only. Concessionaire shall not place any sign, notice or advertising matter in or about the City's real property, without the City's prior written consent, which consent may be withheld for any reason. If required by City code, Concessionaire shall obtain all necessary permits in connection with any such signs.
14. General Provisions.
 - 14.1. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.
 - 14.2. Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.
 - 14.3. Full Force and Effect. Any provision of this Agreement, which is declared invalid or illegal shall in no way, affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
 - 14.4. Assignment. Neither the Concessionaire nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.
 - 14.5. Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties.
 - 14.6. No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
 - 14.7. Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Alaska and the City of Palmer, Alaska.
 - 14.8. Authority. Each individual executing this Agreement on behalf of the City and Concessionaire represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Concessionaire or the City.

14.9. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

14.10. Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

14.11. Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Concessionaire's performance of this Agreement.

14.12. Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

14.13. Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

14.14. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

DATED 3-5-12

CITY OF PALMER

By: *Angela B. Griffin*
Its: City Manager

DATED 2/24/12

YUKON CONCESSION ALASKA, LLC
dba ALASKA MOUNTAIN ENTERPRISES

By: *[Signature]*
Its: _____

ATTEST:

Karen Moss
City Clerk, Comm Expires 8-10-14
Notary State of AK
Palmer, AK



**OFFICIAL SEAL
KAREN MOSS
NOTARY PUBLIC - STATE OF ALASKA**

EXHIBIT A

The Concessionaire agrees to provide concession services described below:

1. Provide food and beverage service at the MTA Arena and Events Center, during hockey games and other activities conducted at the MTA Event Center and adjacent soccer fields as agreed upon by both parties.
2. Comply with all applicable laws pertaining to wages, worker's compensation, equal opportunity, and so forth, as implemented by the City of Palmer directives and required by law.
3. Keep the concession clean, orderly, attractive, secure, and in a safe and sanitary condition to the satisfaction of the City's authorized representative.
4. At the Concessionaire's expense, obtain all permits, give all necessary notices; pay all license fees and comply with all local, state, municipal, rules ordinances, and regulations, relating to public health or applicable to the business carried on under this agreement and assume complete and sole liability for national, state, and local taxes applicable to property.
5. The Concessionaire is responsible to ensure that all garbage generated from the preparation or food service operation of the concession is placed into designated trash or recycling containers.



EXHIBIT B

MTA Events Center Concessionaire Equipment

Annual rental fee for the following City owned concession equipment is \$106:

Stand up Freezer
Refrigerator
Hot Dog Cooker
Chip Warmer
Chili Heater
Nacho Cheese Cooker
Condiment Container

EXHIBIT B

Concessions Price Schedule

1. Concessionaire will pay the City an amount of 10% gross sales for concessions and use of the kitchen for concession monthly.
2. Concessionaire will pay the City \$167.00 per month for services, to include water, sewer, garbage and electrical service for monthly periods. Such payment shall be due at the same time concession payments are due.
3. Equipment Rental: Concessionaire will utilize certain food service equipment items owned by the City. These are: a hot dog cooker, chip warmer, Chili heater, and Frigidaire freezer. Concessionaire shall pay the City \$106.00 per year as rent for this equipment, with payment to be made within ten days of signing contract and within ten days of subsequent renewal date. This rental payment is calculated by multiplying and estimated value of the equipment by fifteen percent, then multiplying by sixty-six percent to account for the equipment being in use eight months of the year. Concessionaire shall be responsible for maintaining this equipment and for replacing this equipment if the equipment is damaged or fails during the period Concessionaire uses the equipment.
4. Key Deposit: Concessionaire will be required to pay a \$50.00 key deposit. Deposit will be returned following expiration or termination of concession contract, a final inspection of the concession area, and return of the key.
5. Cleaning Deposit: Concessionaire will be required to pay a \$200.00 cleaning deposit for the concession area. The concession area will be cleaned and all supplies and equipment not belonging to the City is to be removed within 30 days of the expiration or termination of the contract. The MTA Events Center manager will conduct an inspection of the area to determine if any or all of the cleaning deposit must be retained to offset cleaning or disposal expenses incurred by the City.