

**CITY OF PALMER
ACTION MEMORANDUM NO. 13-024**

Subject: Authorize the City Manager to Negotiate and Execute an Agricultural Lease Containing Approximately 98 Acres with Kevin Frohling D/B/A Spring Creek Farms for Tracts A & B of the Palmer Municipal Airport Excluding Runways, Taxiways, Aprons, Lease Lots, City Storage Structures and Golf Course

Agenda of: March 26, 2013

Council Action: _____

Approved for presentation by:

City Manager	_____
City Attorney	_____
City Clerk	_____

J.B. Griff
JM

Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>4790.24</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>4790.24</u>
<input type="checkbox"/> Funds are budgeted from this (these) line item(s):	
➤	\$ _____
➤	\$ _____
➤	\$ _____
<input type="checkbox"/> Funds are not budgeted. Budget modification is required. Affected line item(s):	
➤ 03-00-00-3432	\$ <u>4790.24</u>
➤	\$ _____
➤	\$ _____
Unrestricted/undesignated fund balance (after budget modification)	\$ _____
Director of Finance signature certifying funds:	_____ <i>g</i>

Attachment(s):

- Proposed Lease Agreement
- Exhibit A depicting agricultural lease area

Summary statement: Kevin Frohling, D/B/A Spring Creek Farms, leased land surrounding the runways at the Palmer Municipal Airport for the purpose of conducting haying operations. The lease expired. This legislation authorizes the City Manager to negotiate and execute a lease with Spring Creek Farms to perform haying operations on ninety-eight (98) acres of airport land. The

land includes all grassy areas on the airport proper. The golf course, runways, aprons, lease lots, and structures are all excluded from the agricultural lease. This mowing provides a valuable service to the airport, keeping tall grasses from interfering with pilots' visibility as they taxi aircraft.

The lease rate of \$48.88 per acre per year is based upon the Fair Market Rent for agricultural properties at the airport, as determined by the real estate appraisal completed by Follett & Associates, July 2010.

The agricultural leases at the airport are recognized in the Palmer Airport Master Plan (2009) as a source of airport revenue and thus are in agreement with Federal Aviation Administration Sponsor Assurance #6, "Consistency with Local Plans".

PMC 3.20.090 (E) allows a lease for two years or less without the Notice requirement. The term of this lease is for two years.

Administration recommendation: Approve action memorandum 13-024.

HAY LEASE AGREEMENT

This is a lease between Kevin Frohling, D/B/A Spring Creek Farms, hereinafter "Lessee", whose address is 250 N. Lossing Rd., Palmer AK, and CITY OF PALMER, an Alaska Municipal Corporation, hereinafter, "Lessor", whose address is 231 W. Evergreen, Palmer, Alaska 99645.

1. Property and Rent. The property leased hereby is described in Exhibit A attached hereto and incorporated herein. The rent shall be \$48.88 per acre per year, or \$4790.24. This shall be paid in semi-annual payments of \$2,395.12, per the following schedule: Lessee agrees to pay one-half (1/2) of the annual rent upon written notification of award by the City. The second one-half (1/2) of the annual rent is due on or before December 1, 2013. Thereafter, Lessee agrees to pay one-half (1/2) of the annual rent on or before May 1, 2014; the second half of the annual rent is due on or before December 1, 2014. This lease rate is based upon the Fair Market Rent for agricultural properties at the airport, as determined by the real estate appraisal completed by Follett & Associates, July 2010.
2. Term. The term of this lease is from _____, 2013 until _____, 2015.
3. Use of Property. The Property shall be used only for the growing and harvesting of hay. The Property shall not be used for any other purpose.
4. Operations on Property. All operations conducted on the Property by the Lessee as incidents of use specified in paragraph 3 of this lease shall be conducted by the Lessee in accordance with the best course of husbandry practiced in the Matanuska-Susitna Borough. Should the Lessee fail to take any action required by said best course of husbandry or should the Lessee fail to conduct any operation undertaken by him on the Property in accordance with said best course of husbandry, the Lessor may, after serving ten (10) days written notice of such failure on the Lessee in the manner provided for service of notices in this lease, terminate this lease. While operating equipment on the subject parcel the lessee shall use a flashing yellow light atop the equipment.
5. Waste or Nuisance. The Lessee shall not commit or permit the commission by others any waste, petroleum products, or the release of any hazardous material on the Property; the Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance on the Property; and the Lessee shall not use or permit the use of the Property for any unlawful purpose. The Lessee shall not maintain any equipment or conduct any repairs on the Property.
6. Insurance Hazards. The Lessee shall not commit or permit the commission of any hazardous acts on the Property nor use or permit the use of the Property in any manner that will increase the existing rates for or cause the cancellation of any insurance policy insuring the Property. The Lessee shall, at his own cost and expense, comply with any and all requirements of Lessor's insurance carriers necessary for the continued maintenance at reasonable rates of reasonable insurance on the Property.

7. Maintenance. The Lessee shall, at his own cost and expense, keep and maintain the Property in good order and in as safe and clean a condition as they were when received by him from the Lessor.
8. Alterations and Liens. The Lessee shall not make or permit any other person to make any alterations to the Property or to any improvement thereon or facility appurtenant thereto without the written consent of the Lessor first had and obtained. The Lessee shall keep the premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted thereon at the instance or request of Lessee.
9. Inspection by Lessor. The Lessee shall permit the Lessor or Lessor's agents, representatives, or employees to enter the Property at all times for the purpose of inspecting the Property to determine whether the Lessee is complying with the terms of this lease and for the purpose of doing other lawful acts that may be necessary to protect the Lessor's interest in the Property.
10. Acceptance by Lessee. The Lessee accepts the Property in its present condition. The Lessee agrees with, and represents to the Lessor, that the Property has been inspected by him and that he has been assured by means independent of the Lessor or any agent of the Lessor of the truth of all facts material to this lease and that the Property is being leased by the Lessee as a result of his inspection and investigation and not as a result of any representations made by the Lessor or any agent of the Lessor.
11. Hold Harmless. The Lessee agrees to indemnify and hold the Lessor and the Property free and harmless from any and all claims, liability, loss, damage, or expense resulting from the Lessee's occupation and use of the Property, specifically including without limitations any claim, liability, loss, or damage arising:
 - (a) By reason of the injury to person or property, from whatever cause, while in or on the Property or in any way connected with the property or with the personal property in or on the Property including any liability for injury to the persons or personal property of the Lessee, his agents, officers, or employees:
 - (b) By reason of any work performed on the Property or materials furnished to the Property at the instance or request of the Lessee, his agents, or employee:
 - (c) By reason of the Lessee's failure to perform any provision of this lease
or to comply with any requirement imposed on him or on the property by any duly authorized governmental agency or political

subdivisions; Because of the Lessee's failure or inability to pay as they become due any obligations incurred by him in the agricultural operations to be conducted by him on the Property.

12. Subleasing and Assigning. The Lessee shall not encumber, assign, sublet, or otherwise transfer this lease, any right or interest in this lease, or any right or interest in the Property, and any such transfer, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Lessor, terminate this lease. Neither shall the Lessee allow any other persons, other than the Lessee's agents, family and employees, to use the Property or any part thereof.
13. Abandonment by Lessee. Should the Lessee breach any provision of this lease or abandon the Property prior to the natural termination of the term of this lease, the Lessor may:
 - (a) Continue this lease in effect by not terminating the Lessee's right to possession of the Property, in which event the Lessor shall be entitled to enforce all his rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease: or
 - (b) Terminate this lease and recover from the Lessee:
 - (1) All rents that would come due under this lease;
 - (2) Any other amounts necessary to compensate the Lessor for all detriment proximately caused by the Lessee's failure to perform his obligations under this lease.
14. Default by Lessee. All covenants and agreements contained in this lease are declared to be conditions to this lease and to the term hereby demised to the Lessee. Should the Lessee default in the performance of any covenant, condition, or agreement contained in this lease the Lessor may terminate this lease and re-enter and regain possession of the Property in the manner then provided by the laws of unlawful detainer of the State of Alaska then in effect.
15. Insolvency of Lessee. The insolvency of the Lessee as evidenced by a receiver being appointed to take possession of all substantially all of the property of the Lessee, the making of a general assignment for the benefit of creditors by the Lessee, or the adjudication of the Lessee as a bankrupt under the Federal Bankruptcy Act shall terminate this lease and entitle the Lessor to reenter and regain possession of the Property.
16. Attorney's Fees. Should any litigation be commenced between the parties to this lease concerning the Property, this lease, or the rights and duties in relation thereto, the Lessor shall be entitled to reasonable attorney fees pursuant to Alaska Rule of Civil Procedure 82.

17. Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Lessee or to the Lessor at their above specified addresses. Either party, the Lessee or the Lessor, may change their address for the purpose of this paragraph by giving written notice of such change to the party in the manner provided in this paragraph.

18. Heirs and Successors. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this paragraph contained shall be construed as a consent by the Lessor to any assignment of this lease or any interest therein by the Lessee.

19. Miscellaneous.

(a) This instrument contains all of the agreements and conditions made between the parties to this lease and may not be modified orally or in any other manner than by an agreement in writing signed by all parties to this lease or their respective successors in interest, or assigns.

(b) Time is of the essence of each term and provision of this lease.

(c) The titles of the paragraphs of this lease shall not be considered to be part of the lease for purposes of construction and interpretation.

(d) If any terms or provisions of this lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this lease shall be valid and be enforced to the fullest extent permitted by law.

20. Waiver. The waiver of any breach or any of the provisions of this lease by the Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by the Lessee either of the same or of another provision of this lease.

21. Cancellation/Reduction. Any mortgage or statute notwithstanding, Lessor may cancel this lease at any time between and including November 1 and March 31 by so notifying Lessee and paying Lessee an amount equal to one-fourth (1/4) of the rent paid by Lessee for the previous year. Lessor may cancel the lease at any time between and including April 1 and October 31 by so notifying Lessee and paying

- Lessee an amount equal to (a) one-fourth (1/4) the previous year's rent payment plus (b) one and 2/10 (1.2) times the price of the fertilizer spread (if any) on the Property for the then current growing season, minus (c) 75/100 (.75) times (b), if the first hay crop has been removed. Lessor may exercise these rights to cancel the lease or reduce acreage with or without cause. In addition to Lessor's right to cancel, from time to time Lessor may reduce the acreage. The above formula shall be used on a prorata basis for such reductions in acreage.
22. Lessee agrees to apply a minimum rate of 200 pounds of fertilizer per acre annually. More than 200 pounds per acre will be at Lessee's discretion. Verification of fertilizer application shall be the responsibility of Lessee.
 23. Lessee agrees not to leave equipment unattended on the property from November 1 to March 31, inclusive. Lessee shall never leave equipment unattended in that part of the Airport Lands within 400 feet of centerline of runway 16/34, within 250 feet of centerline of runway 9/27 or within 200 feet of centerline of any taxiway. Lessee shall not allow equipment into the designated zone (Object Free Area, or "OFA") or within the Runway Protection Zone ("RPZ") except as necessary to farm said land.
 24. Lessee agrees to remove hay bales and any other obstacles from the designated OFA and RPZ at the time the bale is rolled to prevent an object being left inside the OFA and RPZ. Lessee shall in no event violate any FAA regulation.
 25. Lessee agrees that any time that he will be working equipment around runways or taxiways he will first notify Palmer Flight Service Station operator, or the City of Palmer Airport Manager in the event contact cannot be made with the Flight Service Station.
 26. Lessee agrees to cut grass within five (5) feet of runway-taxiway lights where possible on that property he is leasing on the airport lands. Also he will cut as close to ditches and bank slopes as practicable.
 27. Lessee shall, each year this agreement is in effect, give notice in writing on or before January 30th that he intends to operate and harvest the crop according to the agreement. Failure to do so shall be termination of the agreement and the Lessor may immediately seek a new tenant.

LESSOR:

CITY OF PALMER

DATE: _____

BY: _____
Douglas Griffin, City Manager

LESSEE:

DATE: _____

BY: _____

The property to be leased is described as:
Tracts A & B of the Palmer Municipal Airport
Excluding runways, taxiways, aprons, lease lots, structures, golf course. Contains approximately 98 acres.

