

**CITY OF PALMER
ACTION MEMORANDUM NO. 14-017**

Subject: Authorize the City Manager to Negotiate and Execute a Management Services Contract with Eagle Golf Course Management LLC

Agenda of: February 25, 2014

Council Action: Authorized _____

Approved for presentation by:

<p>City Manager City Attorney City Clerk</p>	<p style="text-align: center;"><i>J. B. Griffin</i> _____ _____ _____ <i>JW</i></p>
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Certification of Funds:

Total amount of funds listed in legislation:	\$ <u>628,850</u>
This legislation (√):	
<input type="checkbox"/> Has no fiscal impact	
Creates:	
<input type="checkbox"/> A negative fiscal impact in the amount of:	\$ _____
<input type="checkbox"/> A positive fiscal impact in the amount of:	\$ _____
<input checked="" type="checkbox"/> Funds are budgeted.	
Funds are budgeted from this (these) line item(s):	
a) ➤ 15-01-10-6030 Golf Course Contractual Services	\$ <u>628,850</u>
b) ➤	\$ _____
c) ➤	\$ _____
a) Funds originally budgeted in line item :	\$ _____
Difference in budgeted funds:	\$ _____
b) Funds originally budgeted in line item :	\$ _____
Difference in budgeted funds:	\$ _____
c) Funds originally budgeted in line item :	\$ _____
Difference in budgeted funds:	\$ _____
<input type="checkbox"/> Funds are not budgeted.	
Budget amendment required in the total amount of:	\$ _____
Affected line item(s):	
➤	\$ _____
➤	\$ _____
<input type="checkbox"/> General fund unassigned balance (after budget modification)	\$ _____
<input type="checkbox"/> Enterprise unrestricted net position (after budget modification)	\$ _____
Director of Finance signature certifying funds:	<i>[Signature]</i> _____

Attachment(s):

- Contract Between City of Palmer and Eagle Golf Course Management LLC for Golf Course Management Services
- 2009 Contract for Golf Course Management Services
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Summary statement: The proposed new contract with Eagle Golf Course Management LLC for Golf Course Management Services provides for management services for the Palmer Golf Course for a term of five years.

The Council approved a Contractual Services line item expense of \$628,850 for these services in the FY 2014 budget.

Administration recommendation: Approve action memorandum 14-017.

**CONTRACT FOR GOLF
COURSE MANAGEMENT
SERVICES**

This is a contract made and entered into effective _____, by and between the City of Palmer (City), an Alaska municipal corporation, and George Collum doing business as Eagle Golf Course Management LLC (Contractor).

The parties agree as follows:

Section 1. Internal Revenue Service Laws.

The City has financed its Golf Course using tax-exempt funds. An overriding purpose of this contract is to comply with law, to include without limitation Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39, to keep the funds tax exempt. To the extent that any provision herein would cause interest on the bonds to be subject to federal income taxation, that provision is void. To the extent that any provision not expressly included in this contract is needed to maintain the tax exemption for interest on the bonds that provision is hereby added to this contract. To the extent that the addition or deletion of such provisions harms either party, the parties agree to equitably remedy such harm.

Section 2. Contract .

The City hereby agrees to engage Contractor, and Contractor hereby agrees to perform the professional services hereafter set forth. Contractor accepts the relationship of trust and confidence between him and the City and agrees to perform his services under this contract with due diligence, due care, and in a good and professional manner.

Section 3. Scope of Services.

Subject to the terms of this contract, Contractor's scope of services is as follows:

- A. Contractor shall expend best efforts as an independent contractor of the City to operate and manage the City's Golf Course in accord with industry best practices and to duly maintain the facility.
- B. As a partial list of his powers to accomplish his goal, Contractor shall have the right to hire and dismiss his employees, to allow reduced-rate golf to his employees for non-prime time, and to set fees for the term of the contract. On behalf of the City, he shall sell season passes, collect greens fees and all other payments for goods and services related to the Golf Course. Contractor shall maintain the golf course and the related structures in a satisfactory manner.
- C. Contractor shall meet with the City Manager during the budget cycle each year to discuss the anticipated revenues and expenditures of the golf course. In the event of

unforeseen circumstances affecting revenues or expenses, the Contractor and City Manager may request Council approval of a contract amendment.

- D. Contractor shall keep good and adequate records of the Golf Course operation. On at least a monthly basis, he shall deliver a copy of such records to the City. The records shall include, but not be limited to, total income, income by type (retail sales, fees, etc.), number of complimentary passes distributed, and number of rounds played. In addition, Contractor shall keep good and adequate inventory records and provide inventory information to the City upon request.
- E. Contractor shall assist the City in preparing the golf course budget and the City will consider Contractor's recommendations thereon.
- F. Contractor shall deliver to the Golf Course Account at the First National Bank each day all funds (including credit card materials) received under this contract. Contractor shall also provide the City with daily activity sheets and accurate cash register tapes.
- G. Contractor shall hire qualified personnel to assure compliance with proper accounting and reporting procedures. Contractor 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.
- H. Contractor shall provide the following information to the City by September 15 of each year:
 - 1) A list of all fees to be charged at the golf course during the budget year, and a projection of any possible fee changes for the following budget year.
 - 2) A detailed list of capital improvement and equipment replacement needs identified for the next budget year.
 - 3) Contractor shall notify the City Manager of the need for any capital improvements including equipment, building improvements, building additions, and/or course improvements costing \$5,000 or more anticipated in the next four year period.
 - 4) A marketing plan for the budget year, including estimated expenses.
- I. All equipment owned by the City at the golf course is for use only at the Palmer Golf Course.
- J. Marketing and promotion of the golf course is the responsibility of the Contractor and may involve distribution of complimentary golf passes, but such distribution shall be limited to the reasonable needs of the marketing plan. Golf passes are revenues of the City therefore complimentary golf passes shall not be given in exchange for goods or services, or as incentives or bonuses for other sales transactions not directly related to the Palmer Golf Course. Contractor shall estimate the number of complimentary golf passes to be distributed in the calendar year and include this amount in the marketing plan.

- K. The City Manager shall approve any capital project prior to the acquisition or construction thereof.
- L. Contractor shall comply with the following reporting requirements:
 - 1) Contractor shall provide to the City Manager a report monthly from April – October on the number of rounds played, significant events at the golf course, and information on any major maintenance, capital project or equipment issues for the period.
 - 2) Contractor shall provide as part of the monthly report a sequential record of all golf passes sold; the list shall include all complimentary passes distributed.
 - 3) By November 15 of each year, Contractor shall provide to the City a written year-end report. This report will include a summary of items listed under (1), above, as well as goals and objectives for the next year.

Section 4. Reserved.

Section 5. Time of Performance.

The services of Contractor shall commence on _____, 2014 and shall terminate on _____, 2019. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 6. Compensation.

- A. Subject to the provisions of this Contract, as compensation for all of Contractor's services, the City shall pay him annually the amount of \$628,850.
- B. The City shall pay Contractor as follows:

January 15	\$50,000 <i>(paid for 2014)</i>
March 15	\$82,692
April 15	\$82,692
May 15	\$82,692
June 15	\$82,692
July 15	\$82,692
August 15	\$82,692
November 15	\$82,698
- C. Except as otherwise provided in this contract, the City shall not provide any additional compensation, payment, service or other thing of value to Contractor in connection with performance of his contract duties; provided, however, that Contractor shall be able to use the Golf Course property to perform his duties hereunder.

Section 7. Payments.

- A. Subject to the annual appropriation of the funds by City Council, and to the provisions of this contract, the City shall pay the Contractor a lump sum for all services for the term

of this contract as authorized by the City Council in each fiscal year budget for services required by this contract as set forth in Section 6 A and B above.

- B. For audit purposes, Contractor agrees to provide documentation of the current expenditures, including without limitation copies of checks from the Golf Course account at First National Bank, invoices and other expenditure documents for all amounts over ten dollars (\$10). In addition, Contractor and the City agree to notify the Bank that duplicate copies of bank statements shall be sent to the City and to Contractor. Immediately upon receipt of canceled checks Contractor must present them to the City and allow the City to copy them. The City may reconcile the statements and Contractor shall cooperate fully in the reconciliation. Contractor shall also comply with other reasonable financial controls required by the City.
- C. As security for the performance of contracted management services, the City must be able to purchase a fidelity bond on Contractor from an insurance company admitted in Alaska in the amount of \$50,000.
- D. It is expressly understood and agreed that, in the absence of a written contract amendment approved by Council, funds available to Contractor shall not exceed those amounts corresponding to the amounts in the approved annual budget.
- E. All property purchased by Contractor for the golf course shall be the property of the City.

Section 8. Termination of Contract for Cause.

- A. If, through any cause, either party shall fail to fulfill in a timely and proper manner its obligations under this contract, or if either party shall violate any of the covenants, agreements, or stipulations of this contract, the other party shall thereupon have the right to terminate this contract by giving written notice to the breaching party of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. If the Contractor is the breaching party, all finished or unfinished documents, data, work papers, business records, or other material prepared by him under this contract shall become the property of the City and shall be delivered to the City by or upon the effective date of termination. Contractor shall be entitled to receive compensation in accordance with the payment provisions of Section 6 (B) pro rata to the effective date of termination.

Section 9. Causes Beyond Control.

In the event either party is prevented by a cause or causes beyond its control from performing any obligation of this contract, non-performance resulting from such cause or causes shall not be deemed to be a breach of this contract which will render it liable for damages or give rights to the cancellation of the contract for cause. However, if and when such cause or causes cease to prevent performance, said party 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 anyone or more of the following causes which are not attributable to the fault or negligence of said party and which prevent his performance: 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 party from performing the terms of the contract as set forth herein. Events which are peculiar to such party and which would not prevent another person from performing, including, but not limited to financial difficulties, are not causes beyond the control of said party.

Section 10. Modifications.

- A. The parties may mutually agree to modify the terms of the contract. Modifications to the contract shall be incorporated into the contract by written amendments as approved by City Council.
- B. Contractor acknowledges that a change to the contract requires Council action, and he understands that an additional notice period is necessary for Council action.

Section 11. Equal Employment Opportunity.

Contractor shall not discriminate against any person regarding employment in violation of law, to include, without limitation, because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy or parenthood.

Section 12. Interest of Members of City and Others.

No officer 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 contract which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this contract or the proceeds thereof.

Section 13. Assignability.

- A. Contractor shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or notation) without the prior written consent thereto by the City Council.
- B. Contractor shall not delegate contract management obligations or services under this contract without the prior written approval of the City Council.

Section 14. Interest of Contractor.

Contractor covenants that he 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 contract. Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed.

Section 15. Records Confidential.

To the extent permitted by law, Contractor shall keep confidential any business records, reports, information, data, etc., given to or prepared or assembled by him under this contract.

Section 16. Officials Not to Benefit.

No members of the Congress of the United States and no resident commissioner shall be admitted to any share or part thereof or to any benefit to arise from this contract. No member of the legislature or officer of the state of Alaska or the City shall be admitted to any share or part hereof or to any benefit to arise from this contract.

Section 17. Audits and Inspections.

Upon prior notice and during normal business hours at times that are not unduly disruptive of the golf course operation and as often as the City may deem necessary, Contractor shall make available for examination all of his records with respect to all matters covered by this contract and he will permit the City or its representatives to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, goods, equipment, invoices, receipts, checks, materials, payrolls, and other data relating to all matters covered by this contract. In-addition, the City may enter and inspect the Golf Course property at any time in a manner that is not unduly disruptive.

Section 18. Golf Course Beer and Wine License.

The City holds a Golf Course License (AS 4.11.115) which is limited to the sale of beer and wine. Contractor shall manage beer and wine sales for the Golf Course under the City's license, and he shall learn and comply with all applicable alcoholic beverage laws. In particular, the Contractor shall be responsible to inform the City of staff who are authorized to serve alcoholic beverages and to provide City Manager with proof that they all have current alcohol server training. City shall have the right to monitor Contractor's acts under this provision. All notices from the State of Alaska regarding the City's beer and wine license shall be directed to the City Manager.

Section 19. Non-Waiver.

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

Section 20. Permits and Taxes.

Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this contract. Contractor shall comply with all applicable statutes, ordinances, rules and regulations involved in the performance of this contract. In particular, Contractor shall pay taxes pertaining to his performance under this contract.

Section 21. Relationship of the Parties.

Contractor shall perform his obligations hereunder as an independent contractor of the City. The City may administer this contract and monitor his compliance with this contract, but shall not supervise or otherwise direct Contractor except to provide recommendations and to provide approvals pursuant to this contract.

Section 22. Contract Administration.

The City Manager, or his designee, will be the representative of the City administering this Contract.

Section 23. Integration.

This instrument and all exhibits 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 contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

Section 24. City Held Harmless.

Contractor shall indemnify, defend, and hold and save the City, its elected and appointed officers, agents and employees harmless from any and all claims, liability, or damages arising out of or connected with in any way Contractor's performance or failure to perform his duties under this contract. In addition, Contractor shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, deprivation of constitutional rights, or any other kind of loss sustained by any person, or property arising out of Contractor's, or his agents', employees', supplier's, and subcontractor's performance or failure to perform this contract in anyway whatsoever.

Section 25. Interpretation and Enforcement.

This contract 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 contract are not to be construed as limitations or definitions but are for identification purposes only.

Section 26. Contractor Insurance.

- A. Contractor will secure and maintain and will file with the City proper and acceptable insurance coverage, including defense and indemnification of the City. The insurance coverage will be secured with an insurance company admitted by the State and acceptable to the City and shall be primary to any coverage carried by the City, which may cover the work specified in this Contract.
- 1) Worker's Compensation Insurance in compliance with the laws of the state of Alaska, AS 23.30 et seq., and federal Jurisdiction where the work is being performed, covering all employees engaged in the performance of the work specified in this Contract. Employer's liability limits shall be: \$100,000 each accident; \$500,000 disease-policy limit; and \$100,000 disease-each employee.
 - 2) Comprehensive General Liability or Commercial General Liability Coverage: Limit \$1,000,000 Bodily Injury and Property Damage, combined Single Limit. Coverage to include:
 - Premises Operation
 - Products/Completed Operations
 - Independent Contractors
 - Blanket Contractual
 - Personal Injury with exclusion "C" deleted
 - 3) Unemployment insurance by payment of employment security taxes for all employees hired by Contractor to work on this project.
- B. A lapse in insurance coverage is a material breach of this contract which shall result in immediate termination of the contract, pursuant to Section 8.
- C. Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the City prior to cancellation. Each policy (other than for worker's compensation) shall name the City as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage. Contractor's insurance coverage shall be primary to any coverage carried by the City which may cover the services and work specified in this contract.

Section 27. Understanding.

Contractor acknowledges that he has read and understands the terms of this contract, and that he has engaged his attorney to review this contract for him.

Section 28. Severability.

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

Section 29. 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, only. The laws of the state of Alaska and the City of Palmer shall govern the rights and obligations of the parties.

Section 30. Miscellaneous.

- A. Contractor shall comply with all laws and ordinances and any lawful regulations or orders of any regulatory board, commission or agency of the City of Palmer, the Matanuska - Susitna Borough, the State of Alaska, or the Federal Government relating in any way to his duties and responsibilities under this Contract.
- B. Contractor shall not solicit, accept, or attempt to accept any kickback. The term kickback means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to Contractor, any relative by blood or marriage of Contractor, any person having a financial relation with Contractor, or any employee of Contractor for the purpose of improperly obtaining or rewarding favorable treatment in connection with Contractor's duties and responsibilities under this Contract.

Section 31. Notices.

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

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

George Collum III
Eagle Golf Course Management LLC
3408 N. Arabian Lane
Palmer, AK 99645

EAGLE GOLF COURSE MANAGEMENT LLC

Date: _____

George Collum III

CITY OF PALMER

Date: _____

Douglas B. Griffin, City Manager

STATE OF ALASKA)
) ss.

THIRD JUDICIAL DISTRICT)

On _____, 2014, George Collum III 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 _____ and he acknowledged that he signed it.

 Notary Public
 My Commission expires: _____

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

On _____, 2014, 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: _____

CONTRACT FOR GOLF COURSE
MANAGEMENT SERVICES

This is a contract made and entered into effective April 1, 2009, by and between the City of Palmer (City), an Alaska municipal corporation, and George Collum (Collum).

The parties agree as follows:

Section 1. Internal Revenue Service Laws.

The City has financed its Golf Course using tax-exempt funds. An overriding purpose of this contract is to comply with law, to include without limitation Rev. Proc. 93-19, as modified by Rev. Proc. 2001-39, to keep the funds tax exempt. To the extent that any provision herein would cause interest on the bonds to be subject to federal income taxation, that provision is void. To the extent that any provision not expressly included in this contract is needed to maintain the tax exemption for interest on the bonds that provision is hereby added to this contract. To the extent that the addition or deletion of such provisions harms either party, the parties agree to equitably remedy such harm.

Section 2. Contract with Collum.

The City hereby agrees to engage Collum and Collum hereby agrees to perform the professional services hereafter set forth. Collum accepts the relationship of trust and confidence between him and the City and agrees to perform his services under this contract with due diligence, due care, and in a good and professional manner.

Section 3. Scope of Services.

Subject to the terms of this contract, Collum's scope of services is as follows:

- A. Collum shall expend his full time and best efforts as an independent contractor of the City to operate and manage the City's Golf Course in accord with industry best practices and City budgets, as adopted and amended from time to time.
- B. Collum's goal shall be to maximize net income (or minimize net losses) in the long term and to duly maintain the facility.
- C. As a partial list of his powers to accomplish his goal, he shall have the right (without approval by the City) to hire and dismiss his employees, to allow reduced-rate golf to his employees for non-prime time, and to set fees for the term of the contract. On behalf of the City, he shall sell season passes, collect greens fees and all other payments for goods and services related to the Golf Course. On behalf of the City, in accordance with the adopted City budget for the Golf Course, he will purchase personal property necessary to operate and maintain the Golf Course, and all property purchased shall belong to the City. Purchases of supplies, services, equipment and construction must be

made in accordance with City purchasing procedures. Collum shall obtain the City Manager's prior written approval for any lease, rental or purchase of equipment with a total value of more than \$1,000. Collum shall obtain the City Manager's prior approval for any travel expense proposed to be paid to Collum's employees for travel outside the Municipality of Anchorage or the Matanuska Susitna Borough. The City will not pay for travel within those areas.

- D. Collum shall conform to the City budget for the golf course, provided that he shall not spend from or encumber line items 6021, 6030, 6038, 6062, 6076, and 6019. Also, Collum may not expend \$3,500 from 6037, which funds the City may use to cover its insurance expenses, to include a \$50,000 fidelity bond on Collum; Collum may not decrease line Items 6037 or 6045. Collum may vary from the provisions of this subsection only with the prior written and signed authorization from the City Manager, and Collum understands that Section 11 (B) covers such changes.
- E. Subsection (D) notwithstanding, Collum shall meet with the City Manager and/or the Budget Review Committee during the budget cycle each year to discuss the revenues and expenditures of the golf course. If revenues or expenditures are significantly different from what had been anticipated, as shown by a deviation from the budget, then at the meeting Collum and the City Manager shall negotiate a new budget to address the changes, which budget shall be subject to Council approval.
- F. Collum shall keep good and adequate records of the Golf Course operation. On at least a monthly basis he shall deliver a copy of such records to the City in a timely manner. The records shall include, but not be limited to, total income, income by line item, total expense, expense by line item, and number of rounds played. In addition, Collum shall keep good and adequate inventory records and on a bi-weekly basis deliver a copy of such records to the City.
- G. Collum shall assist the City in preparing the golf course budget and the City will consider Collum's recommendations thereon. Collum shall conform to such budgets, subject to the provisions of subsection D above.
- H. Collum shall immediately, at least once a day, deposit all funds (including credit card materials) received under this contract in the City account at first National Bank Alaska. Collum shall also provide the City with daily reconciliation sheets (by line item) and accurate cash register tapes.
- I. Collum shall conform to reasonable financial procedures outlined by the City to provide for financial controls that are mutually consented to, provided that Collum shall not unreasonably withhold his consent. Collum shall continue to hire qualified personnel to assure compliance with proper accounting and reporting procedures.
- J. Collum shall prepare and deliver to the City his plan for bookkeeping and inventory procedures, and he shall use his best efforts to follow his plan.

- K. , Collum shall provide the following information to the City by the date specified in the budget schedule:
1. A written staffing plan, showing anticipated staffing needs by position, hours of work per week per position, rates of pay, and total estimated staff payroll.
 2. A list of all fees to be charged at the golf course during the budget year, and a projection of any possible fee changes for the following budget year.
 3. A detailed capital improvement and equipment replacement plan and budget for the budget year and for the next budget year.
 4. A capital improvement and equipment replacement plan for the four years following the budget year.
 5. A marketing plan for the budget year, including estimated expenses.
- L. The general policy is that all equipment owned by the City at the golf course is for use only at the Palmer Golf Course.
- M. Marketing and promotion of the golf course may involve distribution of complimentary golf passes, but such distribution shall be limited to the reasonable needs of a marketing plan. Complimentary golf passes shall not be given in exchange for goods or services, or as incentives or bonuses for other sales transactions not directly related to the Palmer Golf Course. Collum shall estimate the number of complimentary golf passes to be distributed in the calendar year and include this amount in the marketing plan. Collum shall maintain a sequential record of all golf passes sold which list shall include all complimentary golf passes and shall provide the City a copy of such list on a monthly basis.
- N. Collum shall submit to the City Manager for prior approval all plans and estimated cost or value for contributions-in-aid to the golf course over \$2,000, including improvements to the grounds or structures, or the purchase, lease or rental of equipment paid for or contributed by any individual, organization or corporation. Collum shall provide the City Manager upon completion of these improvements or purchases an accounting of their cost or value. Any construction improvement to the golf course with a value of more than \$2,000 shall comply with State wage and hour regulations regarding public construction.
- O. Collum shall comply with the following reporting requirements:
1. At the time of the monthly reports required in Section F, Collum shall also provide information on the number of rounds played, significant events at the golf course, and information on any major maintenance, capital project or equipment issues for the period.
 2. By November 15 of each year, Collum shall provide to the City a written year-end report. This report will include items listed under (I), above. The year-end report as well as goals and objectives shall be included in the budget for the next year.

Section 4. Reserved.

Section 5. Time of Performance.

The services of Collum shall commence on April 1, 2009, and shall terminate on March 31, 2014. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 6. Compensation.

A. Subject to the provisions of this Contract, as compensation for all of Collum's services, the City shall pay him the amount of \$45,600 plus four percent (4%) of the adjusted gross revenues of the Golf Course each calendar year of this contract, provided, in accordance with Rev. Proc. 93-19, as modified by Rev. Proc. 2001-39, the amount of the percentage payment shall never exceed \$45,000. (The parties anticipate that the actual percentage payment will be in the range of from \$20,000 to \$35,000 per year.) The term "adjusted gross revenues" means gross revenues (excluding sales tax) less revenues derived from the sale of beer, wine and any other alcoholic beverage, as the Alcoholic Beverage Control Board laws prohibit compensation to Collum based on a percentage of sales of alcoholic beverages.

B. The City shall pay Collum as follows:

April 15	\$5,000
May 15	\$5,000
June 15	\$5,000
July 15	\$5,000
August 15	\$5,000
September 15	\$5,000
October 15	\$5,000
November 15	\$5,000
December 15	\$5,000
February 15	the remaining balance.

C. Except as otherwise provided in this contract, the City shall not provide any additional compensation, payment, service or other thing of value to Collum in connection with performance of his contract duties; provided, however, that Collum shall be able to use the Golf Course property to perform his duties hereunder. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs Collum may incur in the performance of his obligations under this contract have already been included in computation of Collum's fee and may not be charged to the City.

Section 7. Reimbursement and Advance.

- A. Upon proper presentation, the City will reimburse Collum up to the amount in the City budget (as may be amended from time to time):
1. less the amounts in line items 6021, 6038, 6030, 6062, 6076, and 6079;
 2. less the partial reduction from line item 6037 as described in section 3(D); and
 3. plus or minus the difference between the final amount due under §6 (A) and the amount in line item 6030; for expenditures necessarily and reasonably made for the Golf Course management and operation. The City will not reimburse Collum for expenditures not properly presented.
- B. To properly present to the City expenditures for reimbursement, Collum must submit a weekly billing summary to date by line item categories, along with documentation of the current expenditures, to include without limitation copies of checks from his special Golf Course account of First National Bank Alaska, invoices and other expenditure documents for all amounts over ten dollars (\$10). In addition, Collum and the City agree to notify the Bank that duplicate copies of bank statements shall be sent to the City and to Collum. Immediately upon receipt of canceled checks Collum must present them to the City and allow the City to copy them. The City may reconcile the statements and Collum shall cooperate fully in the reconciliation. If any check is voided, Collum shall not present it to the City for reimbursement. Collum shall notify the City in a timely manner if any check is not cashed, and said amount shall be reversed, i.e., said amount shall be deducted from the next reimbursement to Collum. Collum shall also comply with other reasonable financial controls required by the City.
- C. Pursuant to section 7(D) of the December 20, 2007 agreement between the City and Jeff Barnhart DBA North Course Golf Management (Barnhart) assigned to Collum on March 27, 2007, for management of the Golf Course, the City paid by check to Barnhart \$50,000 for deposit into the special golf course account of First National Bank of Anchorage as an advance reimbursement to Barnhardt for golf course expenses prior to February 15, 2008, Collum, who as assignee is responsible for this obligation, shall present to the City a complete reconciliation of the special Golf Course account. Such reconciliation must show that the deposited \$50,000 is in the special Golf Course account for each successive year of this agreement. Collum shall present to the City by February 15 of each year a reconciliation of the special Golf Course account which shows that the \$50,000 is in the account. Also, Collum must sign a letter to the City auditors as part of the City's regular annual audit confirming that the \$50,000 is owed by Collum from the special Golf Course account to the City. This special Golf Course account shall be used by Collum and the City only for transactions of funds related to this contract.
- D. On or before December 31, 2009, or at any time upon the incidence of termination of the contract, the City shall have the right to recover the \$50,000 from Collum.

- E. As security for the \$50,000 advance reimbursement, the City must be able to purchase a fidelity bond on Collum from an insurance company admitted in Alaska in the amount of \$50,000 for a premium not to exceed \$1,000, which amount shall be billed to line item 6037.
- F. It is expressly understood and agreed that, in the absence of a written modification signed by the City Manager, total reimbursement available to Collum shall not exceed those amounts corresponding to the amounts in the approved annual budget.
- G. All property purchased with City budgeted funds or funds to be reimbursed shall belong to the City.
- H. In recognition of Collum's goal to maximize net income (or minimize net losses) in the long term and to duly maintain the facility, Collum shall not expend the entire budget amount if such expenditure is not prudent.

Section 8. Termination of Contract for Cause.

- A. If, through any cause, either party shall fail to fulfill in a timely and proper manner its obligations under this contract, or if either party shall violate any of the covenants, agreements, or stipulations of this contract, the other party shall thereupon have the right to terminate this contract by giving written notice to the breaching party of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. If Collum is the breaching party, all finished or unfinished documents, data, work papers, business records, or other material prepared by him under this contract shall become the property of the City and shall be delivered to the City by or upon the effective date of termination. Collum shall be entitled to receive compensation in accordance with the payment provisions of Section 6 (B) pro rata to the effective date of termination (to include the percentage payment, which would be payable on the next February 15), all subject to any offsets the City may have.

Section 9. Vehicles.

City vehicles are to be used only for golf course business. In particular, City vehicles are not to be "taken home at night," provided, however, City vehicles may be taken home at night when it is in the best interests of the City, e.g., when Collum needs to pick something up in Anchorage the next day. Collum shall notify the Director of Administration, in writing, of the names and Alaska driver's license numbers of all of his employees who may drive a licensed City vehicle. He shall provide such notice at least three (3) working days before any such person can drive a City vehicle. This notification is to allow the City to notify its insurance carrier of such use, and the City's carrier may prohibit any such named driver from driving. No person may drive a City vehicle unless approved by the City's carrier. Collum shall attempt to minimize the number of his employees who drive City vehicles.

Section 10. Causes Beyond Control.

In the event either party is prevented by a cause or causes beyond its control from performing any obligation of this contract, non-performance resulting from such cause or causes shall not be deemed to be a breach of this contract which will render it liable for damages or give rights to the cancellation of the contract for cause. However, if and when such cause or causes cease to prevent performance, said party 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 anyone or more of the following causes which are not attributable to the fault or negligence of said party and which prevent his performance: 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 party from performing the terms of the contract as set forth herein. Events which are peculiar to such party and which would not prevent another person from performing, including, but not limited to financial difficulties, are not causes beyond the control of said party.

Section 11. Modifications.

- A. The parties may mutually agree to modify the terms of the contract. Modifications to the contract shall be incorporated into the contract by written amendments.
- B. The parties recognize that the budget amount and line item amounts are estimates. Though the budget amounts must be followed in accordance with Section 3 (D), if circumstances warrant, Collum will provide reasonable notice and information to the City Manager so that the parties can amend the budget and modify the contract. Collum acknowledges that a change to the total budget requires Council action, and he understands that an additional notice period is necessary for Council action.

Section 12. Equal Employment Opportunity.

Collum shall not discriminate against any person regarding employment in violation of law, to include, without limitation, because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy or parenthood.

Section 13. Interest of Members of City and Others.

No officer 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 contract which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this contract or the proceeds thereof.

Section 14. Assignability.

- A. Collum shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or notation) without the prior written consent thereto by the City.
- B. Collum shall not delegate duties or otherwise subcontract work or services under this contract without the prior written approval of the City.

Section 15. Interest of Collum.

Collum covenants that he 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 contract. Collum further covenants that in the performance of this contract, no person having any such interest shall be employed.

Section 16. Records Confidential.

To the extent permitted by law, Collum shall keep confidential any business records, reports, information, data, etc., given to or prepared or assembled by him under this contract.

Section 17. Officials Not to Benefit.

No members of the Congress of the United States and no resident commissioner shall be admitted to any share or part thereof or to any benefit to arise from this contract. No member of the legislature or officer of the state of Alaska or the City shall be admitted to any share or part hereof or to any benefit to arise from this contract.

Section 18. Audits and Inspections.

Upon prior notice and during normal business hours at times that are not unduly disruptive of the golf course operation and as often as the City may deem necessary, Collum shall make available for examination all of his records with respect to all matters covered by this contract and he will permit the City or its representatives to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, goods, equipment, invoices, receipts, checks, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this contract. In addition, the City may enter and inspect the Golf Course property at any time in a manner that is not unduly disruptive.

Section 19. Liquor License.

The City holds a beer and wine license for the Golf Course. Collum shall manage beer and wine sales for the Golf Course under the City's license, and he shall learn and comply with all applicable alcoholic beverage laws. In particular, the City shall have the right to monitor Collum's acts under this provision. All notices from the State of Alaska regarding the City's beer and wine license shall be directed to the City Manager.

Section 20. Collum agrees not to work at or for another golf course.

Section 21. Non-Waiver.

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

Section 22. Permits and Taxes.

Collum shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this contract. Collum shall comply with all applicable statutes, ordinances, rules and regulations involved in the performance of this contract. In particular, Collum shall pay all taxes pertaining to his performance under this contract.

Section 23. Relationship of the Parties.

Collum shall perform his obligations hereunder as an independent contractor of the City. The City may administer this contract and monitor his compliance with this contract, but shall not supervise or otherwise direct Collum except to provide recommendations and to provide approvals pursuant to this contract.

Section 24. Contract Administration.

The City Manager, or his designee, will be the representative of the City administering this Contract.

Section 25. Integration.

This instrument and all exhibits 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 contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

Section 26. City Held Harmless.

Collum shall indemnify, defend, and hold and save the City, its elected and appointed officers, agents and employees harmless from any and all claims, liability, or damages arising out of or connected with in any way Collum's performance or failure to perform his duties under this contract. In addition, Collum shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, deprivation of constitutional rights, or any other kind of loss sustained by any person, or property arising out of Collum's, or his agents', employees', supplier's, and subcontractor's performance or failure to perform this contract in anyway whatsoever.

Section 27. Interpretation and Enforcement.

This contract 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 contract are not to be construed as limitations or definitions but are for identification purposes only.

Section 28. Collum Insurance.

- A. Collum will secure and maintain and will file with the City proper and acceptable insurance coverage, including defense and indemnification of the City. The insurance coverage will be secured with an insurance company admitted by the State and acceptable to the City and shall be primary to any coverage carried by the City, which may cover the work specified in this Contract. The City will reimburse Collum from line item 6031 an amount sufficient for such coverage. Collum can, within the limitations imposed by §3 (D), charge the funds to allowable line items in the budget. In particular, this insurance amount may not be charged to line item 6038, nor to the amount reserved in section 3(0) to the City under line item 6037.
1. Worker's Compensation Insurance in compliance with the laws of the state of Alaska, AS 23.30 et seq., and federal Jurisdiction where the work is being performed, covering all employees engaged in the performance of the work specified in this Contract. Employer's liability limits shall be: \$100,000 each accident; \$500,000 disease--policy limit; and \$100,000 disease--each employee.
 2. Comprehensive General Liability or Commercial General Liability Coverage: Limit \$1,000,000 Bodily Injury and Property Damage, combined Single Limit. Coverage to include:
 - Premises Operation
 - Products/Completed Operations
 - Independent Contractors
 - Blanket Contractual
 - Personal Injury with exclusion "C" deleted
 3. Unemployment insurance by payment of employment security taxes for all employees hired by Collum to work on this project. In the event of Collum's failure to pay such taxes, the City may withhold an amount sufficient to pay such taxes from any payments owed to Collum by the City. The City also reserves the right to contact the Alaska State Department of Labor, in order to determine whether unemployment security taxes have been paid by Collum. The City further reserves the right to withhold that portion of employment security taxes owed to any employees pending notification of Collum's unemployment security tax clearance from the Alaska State Department of Labor.

- B. A lapse in insurance coverage is a material breach of this contract which shall result in immediate termination of the contract, pursuant to Section 8.
- C. Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the City prior to cancellation. Each policy (other than for worker's compensation) shall name the City as an additional insured. Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage. Collum's insurance coverage shall be primary to any coverage carried by the City which may cover the services and work specified in this contract.

Section 29. Understanding.

Collum acknowledges that he has read and understands the terms of this contract, and that he has engaged his attorney to review this contract for him.

Section 30. Severability.

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

Section 31. 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, only. The laws of the state of Alaska and the City of Palmer shall govern the rights and obligations of the parties.

Section 32. Miscellaneous.

- A. Collum shall comply with all laws and ordinances and any lawful regulations or orders of any regulatory board, commission or agency of the City of Palmer, the Matanuska-Susitna Borough, the State of Alaska, or the Federal Government relating in any way to his duties and responsibilities under this Contract.
- B. Collum shall not solicit, accept, or attempt to accept any kickback. The term kickback means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to Collum, any relative by blood or marriage of Collum, any person having a financial relation with Collum, or any employee of Collum for the purpose of improperly obtaining or rewarding favorable treatment in connection with Collum's duties and responsibilities under this Contract.
- C. Not only does Collum owe the City the general duty of loyalty of agent to principal and manager to owner, but in particular he shall comply with the business opportunity rule.

For example, any sales of supplies or equipment to a person that reasonably arise out of the Palmer Golf Course business shall be sold through the Palmer Golf Course.

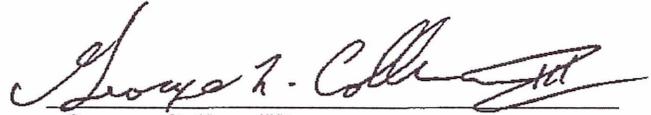
Section 33. Notices.

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

City Manager	George Collum III
City of Palmer	3408 N. Arabian Lane
231 W. Evergreen Ave.	Palmer, AK 99645
Palmer, AK 99645	

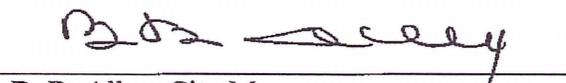
GEORGE COLLUM

Date: 3/26/09


George Collum III

CITY OF PALMER

Date: March 26, 2009


B. B. Allen, City Manager

ATTEST:


Janette Bower, City Clerk

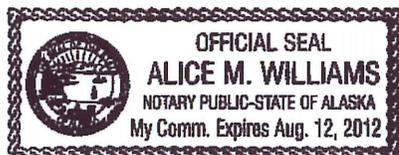
STATE OF ALASKA

Third Judicial District

On March 26, 2009, George Collum 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 **Contract for Golf Course Management Services** and he/she acknowledged that he/she signed it.



Alice M Williams
 Notary Public for the State of Alaska
 My Commission expires: Aug 12, 2012

STATE OF ALASKA

Third Judicial District

On March 26, 2009, B. B. Allen, 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.



Alice M Williams
 Notary Public for the State of Alaska
 My Commission expires: Aug 12, 2012