

payment plan totaling an amount not to exceed \$96,170.15 for the purchase of this Golf Course irrigation equipment. The standard TCF Equipment Lease Financing Agreement has been reviewed and revised by the City Attorney. Alaska Public Employees Insurance

Administration recommendation: Approve action memorandum 11-040.

MASTER LEASE AGREEMENT

This "Master Lease": Master Lease Agreement Number 596525 Dated June __, 2011	
"Lessee"	
City of Palmer, AK, 231 W. Evergreen Avenue, Palmer, AK 99645	
"Lessor"	
TCF Equipment Finance, Inc., 1111 West San Marnan Dr., Waterloo, IA 50701	

Terms and Conditions -- *READ CAREFULLY BEFORE SIGNING*

TCF Equipment Finance, Inc. ("Lessor") and Lessee hereby enter into this Master Lease to establish the terms and conditions that will govern Equipment purchases and Equipment Schedules (each a "Schedule") that Lessor may finance for Lessee. Each Schedule shall be considered a separate lease pursuant to the terms of this Master Lease. The term "Lease" as used herein shall mean a Schedule incorporating therein the terms and conditions set forth in this Master Lease. In the event of a conflict between the terms of any Schedule and the terms of this Master Lease, the terms of the Schedule shall control. The Equipment, payment terms, and other pertinent information will be set forth in each Schedule. Lessee understands that among other factors, its current ownership forms part of the basis for extending credit under this Master Lease. Lessee agrees to immediately advise Lessor if there is any material adverse change in Lessee's financial condition during the term of this Master Lease. Capitalized terms have the meaning given to them in this Master Lease or in a Schedule.

1. LEASE: These Terms and Conditions apply to all Leases entered into between Lessor and Lessee. Each Lease will cover the equipment, fixtures, inventory, goods and software described in the applicable Schedule, together with all replacements, replacement parts, repairs, returns, substitutions, additions, accessories, and accessions incorporated therein or attached thereto when, and if, provided under the terms of the applicable schedule (collectively, the "Equipment"). The parties intend each Lease that is in substance a lease to be a "finance lease" under Article 2A of the UCC. Pursuant to Article 2A, Lessee is entitled to the promises and warranties, including those of any third party, provided to Lessor by the Equipment supplier. Lessee may communicate with the supplier of the Equipment and receive an accurate and complete statement of said promises and warranties, including any disclaimers and limitations of them or of remedies.

2. PAYMENTS: Lessee agrees to pay Lessor rental payments, subject to annual appropriation by Lessee's authorizing legislative body, during the initial Lease term as specified in the applicable Schedule. Unless otherwise noted in a Schedule, the initial term rental payments are due monthly, beginning the date designated by Lessor, and continuing on the same day of each month thereafter for the number of months shown in the Schedule. Lessee shall also pay a partial/interim payment in the amount equal to 1/30 of the monthly rental payment for each day between the date Lessee accepts the first item of Equipment under a Lease until the due date of Lessee's first Lease rental payment, payable on such rental payment date. Security deposits are refundable provided all Lessee's obligations under a Lease have been fulfilled. Security deposits may be commingled with payments and do not earn interest. Lessee agrees to pay Lessor a surcharge of up to \$30 or the maximum allowed under Alaska law for any dishonored payment.

3. DISCLAIMER OF WARRANTIES: THE EQUIPMENT IS BEING LEASED IN "AS IS" CONDITION. LESSEE AGREES THAT LESSOR IS NOT THE MANUFACTURER OR SUPPLIER OF THE EQUIPMENT. LESSEE HAS SELECTED THE EQUIPMENT BASED UPON ITS OWN JUDGMENT AND ACKNOWLEDGES THAT **LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, DESIGN, OPERATION, PERFORMANCE, OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, OR OTHERWISE.**

4. NO AGENCY: Lessee understands and agrees that neither the manufacturer nor supplier of the Equipment, nor any sales representative or other agent of manufacturer or supplier, nor any broker or other person have authority to act on behalf of the Lessor unless expressly set forth in this Master Lease.

5. TAXES: Lessee agrees to comply with all laws, regulations, and orders relating to each Lease, this Master Lease, and the Equipment. Lessee agrees to pay all taxes, fees, and governmental charges related to this Master Lease, each Lease, or the Equipment, which may now or hereafter be imposed. If Lessor pays any of the above for Lessee, Lessee agrees to reimburse Lessor on demand, plus interest, at a rate of up to 18% per annum, but in no event more than the maximum rate permitted by law. Lessor shall not be obligated to contest any valuation of or tax imposed on the Equipment, this Master Lease, or each Lease. The obligations arising under this paragraph shall survive payment of all other obligations herein and the cancellation or termination of this Master Lease and/or a Lease.

6. USE; INSPECTION: Lessee agrees that the Equipment will be used lawfully and for business purposes only and that it will be operated in accordance with applicable manufacturer's instructions. Lessee shall maintain the Equipment in good repair and working order, at Lessee's sole expense, subject to any applicable warranty regarding the Equipment. Lessor shall have the right during normal business hours to enter upon Lessee's premises for the purpose of confirming the condition and proper maintenance of the Equipment. The Equipment shall be and remain based at the location noted on the applicable Schedule, but may be temporarily relocated elsewhere in the ordinary course of Lessee's business. At Lessee's own cost and expense, Lessee

will keep the Equipment eligible for any manufacturers' certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. Lessee will not make any alterations, additions or replacement to the Equipment without Lessor's prior written consent. All alterations additions and replacement will become part of the Equipment and Lessor's property at no cost or expense to Lessor. Unless Lessee purchases the Equipment in accordance with each Lease, at the end of a Lease, Lessee must immediately deliver the Equipment to Lessor in as good condition as when Lessee received it, except for ordinary wear and tear, to any place in the United States that Lessor designates. In addition, Lessee agrees that the Equipment being returned must meet the Standard Equipment Return Conditions as defined in this Master Lease. Lessee must pay all expenses of de-installing, crating, shipping, and Lessee will insure the Equipment for its full replacement value during shipping.

8. STANDARD EQUIPMENT RETURN CONDITIONS; A. Notwithstanding anything to the contrary in this Master Lease or Lease, and in addition to the terms and conditions contained herein, Lessee shall, at Lessee's sole cost and expense, return all, (not part) of such Equipment to Lessor's designee immediately upon expiration of the initial Lease term and with respect to each item of Equipment, as applicable, the following must be true: All safety equipment must be in place and meet applicable federal, state and other governmental standards. All covers and guards must be in place with no sheet metal, plastic or cowl damage. All parts, pieces, components and optional equipment must be present, installed and operational. All accessories shall be returned in proper order. All motors shall operate smoothly without overheating and shall have good bearings and bushings. All electronic controls shall operate per manufacturers' specifications. Controls which bypass normal operations shall be repaired at Lessee's expense. All electrical systems shall be able to provide electrical output as specified by the manufacturer. All batteries shall be in good, safe operating condition with no dead cells or cracked cases. Batteries shall hold a charge and provide adequate power to operate the Equipment. All Equipment shall have serviceable tires, with 50% remaining tread, retaining proper air pressure, and without repair patches. All oil and grease seals must contain lubrication in the manufacturer's designed reservoir. All Equipment must have a relatively clean appearance. All Equipment must be free from excessive wear necessitating major component repair or replacement caused by lack of recommended maintenance detailed in Equipment operation/maintenance manuals. All Equipment shall be free from structural damage or bent frames. Any usage or metering devices must not have been altered in any way. All Equipment attachments, if any, must be in good operating condition. All hydraulic cylinders must not be bent, gouged or leaking. If the Equipment is an electric golf car, then in addition to the other Standard Equipment Return Conditions: (i) the golf car must be able to transport two (2) people and their golf clubs; (ii) all batteries and battery terminals must be clean, free of corrosion and have proper battery water levels; and (iii) each golf car must include operable battery chargers. **B. Return Performance:** Each item of Equipment must be able to complete the following tests: Operate normally in forward and reverse directions through all its speed ranges or gears. Steer normally right and left in both forward and reverse. Have all functions and controls work in a normal manner. Be able to stop with its service brakes in a safe distance in both forward and reverse. Operate without leaking any fluids. Perform its designed functions in a satisfactory manner. All cutting units (if applicable) must be able to lower, turn on, run, raise and shut off as they are designed to do.

9. EVENTS OF DEFAULT: Any of the following constitute default under a Lease: (1) Lessee fails to pay any sum due Lessor under such Lease within 10 business days of such amount being due; (2) Lessee fails to observe or perform any term or condition of this Master Lease or such Lease; (3) Lessee encumbers or disposes of the Equipment subject to such Lease without Lessor's written consent; (4) The filing by or against Lessee, any guarantor of Lessee's obligations to Lessor ("Guarantor") of a petition under the Bankruptcy Code or any other insolvency law; (5) The voluntary or involuntary commencement of any formal or informal proceeding for dissolution, liquidation, settlement of claims against or winding up of Lessee's or a Guarantor's affairs, or Lessee or a Guarantor, if applicable, ceases doing business as a going concern; (6) Any representation or warranty made by Lessee or a Guarantor in connection with this Master Lease or such Lease proves to have been materially misleading; (7) Lessee is in default under any other Lease, contract or agreement with Lessor; or (8) any Guarantor repudiates or attempts to revoke any guaranty of Lessee's obligations to Lessor.

10. REMEDIES: Remedies for event of nonappropriation. Upon the occurrence of an event of nonappropriation and if Lessee has no other funding source lawfully available to it for such purpose, the obligations of Lessee under the Master Lease and applicable Lease shall terminate, and such termination shall not constitute a default. The obligation of the Lessee to pay Lease payments, shall thereafter continue, but only to the extent of money available to the Lessee. Except as provided in the preceding sentence, all payment obligations of Lessee shall end as of such termination. In any event of nonappropriation occurs and is continuing, the Lessor, before, after or without declaring the principal of amounts due under the Lease immediately due and payable, may enforce each and every right granted under the Master Equipment Lease or any Lease, including terminating Lessee's rights to possession of the Equipment, and retaking possession thereof.

These remedies will be applied, to the extent allowed by law, cumulatively. No delay in exercising any right or remedy shall operate as a waiver of any right or remedy or modify the terms of a Lease. A waiver of default shall not be construed as a waiver of any other or subsequent default. In addition to all of its other rights and remedies Lessee agrees to pay Lessor all reasonable costs and expenses, including attorneys' fees, incurred by Lessor in exercising or attempting to exercise any of its rights or remedies. If a Lease is deemed to create a security interest, remedies will include those available under Article 9 of the UCC subject to the terms of this MASTER LEASE.

11. LOSS OR DAMAGE: Lessee shall bear all risk of loss associated with an item of Equipment, including the theft, destruction, or damage. No such loss shall relieve Lessee from any of its obligations under this the applicable Lease. In the event of any loss with respect to any particular Equipment, Lessee shall: (a) place such Equipment in good repair, condition and working order, or: (b) replace such Equipment with like equipment (of the same year, make, model and accessories, if possible) in good repair, condition and working order.

12. INSURANCE: Lessee shall keep in effect an "all risk" extended coverage property insurance policy covering the Equipment for an amount not less than its replacement cost. In addition, Lessee must carry comprehensive general liability (property damage and bodily injury) insurance. The Equipment property insurance policy shall name Lessor as loss payee thereof as Lessor's interests may appear for the sole purpose of causing. Each policy shall provide for no less than thirty (30) days' prior written notice of cancellation or non-renewal to Lessor and that such policy shall not be invalidated as against Lessor for the violation of any term of the policy by Lessee. Lessee shall furnish to Lessor evidence satisfactory that such insurance coverage is in effect, provided, however, that Lessor shall be under no duty either to ascertain the existence of or to examine such insurance policy or to advise Lessee if such insurance coverage does not comply with the requirements hereof. If Lessee fails to procure such insurance, Lessor at its option may obtain same and pay the amount due thereon. Lessee shall reimburse Lessor upon notice or demand and, if required by Lessor, shall pay interest on such sums due and owing at a rate of up to 18% per annum, but in no event more than the maximum rate permitted by law. With respect to any policy obtained by Lessor, Lessor may charge a monthly administrative fee. Any insurance proceeds received with respect to the Equipment will be applied, at Lessor's option, to repair, restore, or replace the Equipment or to pay amounts due and owing under this Master Lease and/or a Lease. Any proceeds from a general liability policy shall be made payable first on behalf of Lessor to the extent of its liability, if any. All insurance policies carried by Lessee, whether primary or excess, shall be primary as to any policies maintained by Lessor. Nothing in this paragraph shall relieve Lessee of its duty to procure required insurance.

13. PURCHASE OPTION; RETENTION OF EQUIPMENT: At the end of a Lease term, or appropriate renewal term when applicable, and provided Lessee is not in default, Lessee shall have the option to purchase all (not part) of the Equipment subject to the Lease at the Purchase Option Price shown on the related Schedule, plus any applicable taxes. Unless the Purchase Option Price is \$1.00, Lessee must give Lessor at least 90 days' written notice before the end of the applicable term that Lessee will purchase the Equipment or that Lessee will deliver the Equipment to Lessor. If Lessee does not give Lessor such written notice, or if Lessee does not purchase or deliver all of the Equipment in accordance with the terms and condition of this Master Lease and/or the Lease then the Lease will automatically convert to a month-to-month lease agreement. During any such renewal, the monthly rental payment will remain the same and all terms and conditions of this Master Lease and/or the Lease shall remain in full force and effect. If the Fair Market Value ("FMV") Purchase Option is available under the Lease, and Lessee has elected to exercise the FMV Option, Lessor will determine the Equipment FMV, on a retail, not wholesale, basis and otherwise in Lessor's sole discretion. Upon payment of the Purchase Option Price to Lessor plus any applicable taxes and other amounts due and owing in accordance with the terms of this Master Lease and/or the Lease, Lessor shall transfer its interests in the Equipment to Lessee "AS IS, WHERE IS" without any representations or warranties whatsoever.

14. APPOINTMENT OF ATTORNEY-IN-FACT: Lessee appoints Lessor, its successors and assigns, and Lessor's filing agent as Lessee's attorney-in-fact for the sole purpose of causing this Master Lease, each Schedule and any other ancillary document showing the interest of Lessor, including but not limited to UCC financing statements, to be filed or recorded.

15. SECURITY AGREEMENT: Because this Agreement may be determined to create a security interest and not a lease, Lessor is hereby granted a security interest in all Equipment financed by or leased from Lessor, wherever located, whether now owned or hereafter acquired, and all returns, repossessions, substitutions, replacement parts, accessories, and accessions thereto and thereof, and all proceeds thereof. In this paragraph, terms used to designate collateral shall have meaning set forth in the UCC.

17. INDEMNITY: Lessor is not responsible for any losses or injuries caused by the installation or use of the Equipment and Lessor shall not be liable for any specific performance of this Master Lease or a Lease, nor for any failure or delay in performance caused by circumstances beyond its control.

18. ASSIGNMENT: Lessee may not sublet, lend, assign, or pledge this Master Lease, any Lease, the Equipment, or any interest in any of them, or permit any lien or security interest thereon. Lessee acknowledges that Lessor may sell and/or assign, in whole or in part, its interest in any Lease and/or this Master Lease to one or more third parties without notice to Lessee. Each assignee shall be entitled to exercise all rights and remedies of Lessor with respect to any and all obligations assigned to such assignee, and all references herein to "Lessor" shall include Lessor's assignee, except that said assignee shall not be chargeable with any obligations or liabilities of Lessor hereunder. Any such assignment shall not impair the effectiveness or enforceability of this Master Lease or a Lease with respect to any interest that Lessor does not assign. Lessee agrees that in the event of any assignment by Lessor, and upon proper notice, it shall pay directly to Lessor's assignee, without abatement, deduction, or setoff, all amounts due under this Master Lease and/or the assigned Lease. Lessee further covenants and agrees that it will not assert against Lessor's assignee any defense, counterclaim or setoff on account of breach of warranty or otherwise in any action for payment or for possession brought by Lessor's assignee. Lessee also agrees to settle all mechanical, service, or other claims with respect to the Equipment directly with the Equipment manufacturer or supplier, and Lessee acknowledges that Lessor and Lessor's assignee(s) shall not be liable for such service or other claims.

19. NOTICES: Any notices required to be given hereunder or in a Lease shall be deemed delivered either when faxed to the other party with transmission confirmation or three (3) business days after deposit in the U.S. mail, first class with postage prepaid, to the address of the other party shown at the beginning of this Master Lease; provided that either party may change its notice address by giving the other party notice thereof in accordance with the terms of this Master Lease.

20. GENERAL: This Master Lease shall inure to the benefit of and is binding upon the parties and their heirs, personal representatives, successors, and assigns. A Lease may not be amended except in writing signed by the parties, but Lessor may modify the Standard Terms and Conditions of this Master Lease at any time by delivery of written notice to Lessee. Any provision of this Master Lease or a Lease which is deemed unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other

jurisdiction. If any Lease is deemed to be intended as security, it shall be construed so that interest, the applicable interest rate and other charges shall not exceed that allowed by applicable law, and any payment that otherwise would be deemed unlawful will be applied first to prepay principal and then refunded to Lessee. **Lessor complies with Sections 326 of the USA PATRIOT Act. This law mandates that Lessor verify certain information about Lessee while processing account applications.** Time is of the essence with respect to performance under each Lease and this Master Lease. This Master Lease and any Lease may be signed in any number of counterparts, including signatures transmitted by facsimile, each of which shall be deemed an original and all of which when taken together, shall constitute one and the same Master Lease /Lease. This Master Lease does not obligate Lessor, in any given instance, to make financing available to Lessee.

22. GOVERNING LAW; VENUE OF LITIGATION: BY SIGNING THIS MASTER LEASE AND/OR A LEASE, LESSEE AGREES THAT THIS MASTER LEASE AND/OR A LEASE SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALASKA (excluding conflicts laws); PROVIDED THAT ANY INTEREST AND FINANCE CHARGES HEREUNDER SHALL BE GOVERNED BY FEDERAL LAW AND, TO THE EXTENT APPLICABLE, THE SUBSTANTIVE LAWS OF THE STATE OF ALASKA. By signing below, Lessee acknowledges having read this Master Lease and unconditionally agrees to its terms and conditions. This Master Lease constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous negotiations, discussions, understandings or agreements concerning such subject matter. This Master Lease shall continue in full force and effect until such time as terminated in writing by Lessor. This Master Lease may not be amended, except as set forth herein.

23. GOVERNMENTAL ENTITY ADDENDUM: The provisions set forth in the "Governmental Entity Addendum" are hereby incorporated by reference.

Lessor: TCF Equipment Finance, Inc. By: _____ Operations T.C.

Lessee: City of Palmer, AK By: _____ Douglas Griffin, City Manager

INSURANCE AUTHORIZATION

PROPERTY COVERAGE

Insurance Agent

Company Name

Address

City, State, Zip

Phone Number

Fax Number

Email Address

GENERAL/PRODUCT LIABILITY

Insurance Agent

Company Name

Address

City, State, Zip

Phone Number

Fax Number

Email Address

This is to notify you that TCF Equipment Finance, Inc. ("Lessor") has financed certain goods to City of Palmer, AK (the "Lessee") pursuant to a Lease between Lessor and Lessee (the "Lease").

THE TERMS OF THE LEASE REQUIRE THAT: TCF Equipment Finance, Inc. be named LOSS PAYEE under the PROPERTY DAMAGE provisions of the undersigned Lessee's "all risk" extended coverage policy and the goods be insured for an amount no less than their replacement cost.

Each policy shall provide for no less than thirty (30) days' prior written notice of cancellation or non-renewal to Lessor and that such policy shall not be invalidated as against Lessor for the violation of any term of the policy by Lessee.

The undersigned Lessee requests that insurance coverage described above be provided under the policy referenced above. **In addition, please issue endorsements adding TCF Equipment Finance, Inc., its successors and assigns, as additional insured and lender's loss payee on all such insurance policies.** Lessee further requests that proof of coverage, with endorsements, be sent to:

TCF Equipment Finance, Inc. 1111 West San Marnan Dr., Waterloo, IA 50701

Please Reference:

Lessee: City of Palmer, AK

Contract: 0596525

The undersigned Lessee agrees that Lessor or the insurer may accept a facsimile copy of this document bearing facsimile signatures, which shall be deemed an original for all purposes.

Lessee: City of Palmer, AK

By: _____ Douglas Griffin, City Manager

GOVERNMENT ENTITY ADDENDUM

The "Lease": 008-0596525-300
"Lessee"
City of Palmer, AK, 231 E. Evergreen Avenue, Palmer, AK 99645
"Lessor"
TCF Equipment Finance, Inc., 1111 West San Marnan Dr., Waterloo, IA 50701

This Addendum is attached to and made a part of the above-referenced Lease between Lessee and Lessor. Any capitalized terms used but not defined in this Addendum shall have the meanings assigned in the Lease. All terms and conditions of the Lease shall remain in full force and effect except to the extent modified by this Addendum.

1. Lessee represents and warrants to Lessor that as of the date hereof: (a) Lessee is a political subdivision of the state in which it is located and is organized and existing under the constitution and laws of such state; (b) Lessee has complied, and will comply, fully with all applicable laws, rules, ordinances, and regulations governing open meetings, public bidding and appropriations required in connection with the Lease, the performance of its obligations under the Lease and the acquisition and use of the Equipment; (c) the person(s) signing the Lease and any other documents required to be delivered in connection with the Lease (collectively, the "Documents") have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signatures, each of which are genuine; (d) the Documents are valid, legal and binding Leases, and are enforceable against Lessee in accordance with their terms; and (e) use of the Equipment by Lessee is within the scope of its authority and will be used during the term of the Lease only by Lessee. Lessee further represents and warrants to Lessor that, as of the date each item of Equipment becomes subject to the Lease and any applicable schedule, it has funds available to pay all Lease payments payable thereunder until the end of Lessee's then current fiscal year, and, in this regard and upon Lessor's request, Lessee shall deliver in a form acceptable to Lessor a resolution enacted by Lessee's governing body, authorizing the appropriation of funds for the payment of Lessee's obligations under the Lease during Lessee's then current fiscal year.

2. To the extent permitted by applicable law, Lessee agrees to take all reasonably necessary and timely action during the Lease term to obtain and maintain funds appropriations sufficient to satisfy its payment obligations under the Lease (the "Obligations"), including, without limitation, providing for the Obligations in each budget submitted to Lessee's authorizing legislative body to seek a current year appropriation.

3. Notwithstanding anything to the contrary provided in the Lease, if Lessee does not appropriate funds sufficient to make all payments due during any fiscal year under the Lease and Lessee does not otherwise have funds available to lawfully pay the Lease payments (a "Non-Appropriation Event"), and provided Lessee is not in default of any of Lessee's obligations under such Lease as of the effective date of such termination, Lessee may terminate such Lease effective as of the end of Lessee's last funded fiscal year ("Termination Date") without liability for future payments or the early termination charge under such Lease, if any, by giving at least 60 days' prior written notice of termination ("Termination Notice") to Lessor.

4. If Lessee terminates the Lease prior to the expiration of the end of the Lease's initial term, or any extension or renewal thereof, as permitted under Section 3 above, Lessee shall (i) on or before the Termination Date, or as soon as reasonably practical, return the Equipment in accordance with the return requirements set forth in the Lease, (ii) provide in the Termination Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (iii) deliver to Lessor, upon request by Lessor, an opinion of Lessee's counsel (addressed to Lessor) verifying that the Non-Appropriation Event as set forth in the Termination Notice has occurred, and (iv) pay Lessor all sums payable to Lessor under the Lease up to and including the Termination Date subject to available appropriated funds of the Lessee.

5. Lessee acknowledges and agrees that, in the event of the termination of the Lease and the return of the Equipment as provided for herein, Lessee shall have no interest whatsoever in the Equipment or proceeds thereof and Lessor shall be entitled to retain for its own account the proceeds resulting from any disposition or re-leasing of the Equipment along with any advance rentals, security deposits or other sums previously paid by Lessee pursuant to the terms of the Lease.

6. Any provisions in this Addendum that are in conflict with any applicable statute, law or rule shall be deemed omitted, modified or altered to the extent required to conform thereto, but the remaining provisions hereof shall remain enforceable as written.

Dated as of: June , 2011

Lessee: City of Palmer, AK

By: _____ Douglas Griffin, City Manager

EQUIPMENT SCHEDULE

The "Lease": Equipment Schedule **008-0596525-300**
Pursuant to Master Lease Agreement **596525**

"Lessee"
City of Palmer, AK, 231 W. Evergreen Avenue, Palmer, AK 99645
"Lessor"
TCF Equipment Finance, Inc., 1111 West San Marnan Dr., Waterloo, IA 50701

Number of Rental Payments	Amount of each Rental Payment	Advances	Purchase Option
36	\$2,664.42	First: \$2,664.42 Last: \$0.00 Total: \$2,644.42	Purchase \$1

EQUIPMENT LOCATION & DESCRIPTION

231 Evergreen Avenue, Palmer, AK 99645: Irrigation Equipment listed on Western Equipment Distributors Inc. Quote #2-672418.1 dated 6/___/11
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When signed by the parties hereto, this Equipment Schedule (this "Schedule") is entered into pursuant to and incorporates the terms of the Master Lease Agreement identified above (except as expressly modified by this Schedule) between Lessor and Lessee (the "Master Lease" and, together with this Schedule, this "Lease"). Said terms and conditions are by this reference incorporated herein as though fully set forth herein.

By signing below, Lessor and Lessee agree to the lease of the Equipment referenced above and on any schedule attached hereto, for the term and Lease rental payments specified above, and to the purchase option specified above. Lessee shall have accepted the Equipment for purposes of this Lease upon, Lessee's delivery of a signed delivery and acceptance certificate to Lessor. Lessee's acceptance shall be conclusive and irrevocable. In connection with said acceptance, Lessee requests that Lessor countersign this Lease and requests and hereby authorizes Lessor to pay the Equipment manufacturer/supplier. **THIS LEASE SHALL BE NONCANCELABLE.** This Lease may be signed in any number of counterparts, including signatures transmitted by facsimile, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same Lease.

Dated: _____

Lessor: TCF Equipment Finance, Inc. By: _____ Operations T.C.
 Lessee: City of Palmer, AK By: _____ Douglas Griffin, City Manager

This Lease is not binding until countersigned by Lessor.

Wohlforth | Brecht | Cartledge | Brooking

A PROFESSIONAL CORPORATION

Julius J. Brecht
Cheryl Rawls Brooking
Cynthia L. Cartledge
Michael Gatti
Clyde W. Hutchins Jr.
Leila R. Kimbrell
Eric E. Wohlforth

ATTORNEYS AT LAW
900 WEST 5TH AVENUE, SUITE 600
ANCHORAGE, ALASKA 99501-2048

TELEPHONE
907.276.6401

FACSIMILE
907.276.5093

WEBSITE
WWW.AKATTY.COM

June __, 2011

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

TCF Equipment Finance, Inc.
1111 W. San Marnan Dr.
Waterloo, IA 50701

Re: Agreement Between TCF Equipment Finance, Inc. and City of Palmer
Our File No. 3155.0100

Dear Ladies and Gentlemen:

We are counsel to the City of Palmer ("Lessee"), in connection with the Lease Agreement, dated as of _____, 2011, between City of Palmer, as Lessee, and TCF Equipment Finance, Inc., as Lessor (the "Agreement").

Based upon the foregoing, we are of the opinion that, under existing law:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State of Alaska.
2. Lessee has all requisite power and authority to enter into the Agreement to perform its obligations thereunder.
3. All proceedings of Lessee and its governing body relating to the authorization and approval of the Agreement, the execution thereof and the transactions contemplated thereby have been conducted in accordance with public notice.
4. The Agreement has been duly executed and delivered by Lessee and constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof except insofar as the enforcement thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws of equitable principals of general application affecting remedies or creditors' rights generally, and the exercise of judicial discretion in appropriate cases.

City of Palmer
Re: Agreement Between TCF Equipment Finance, Inc. & City of Palmer
June 14, 2011
Page 2 of 2

Sincerely,

WOHLFORTH, BRECHT,
CARTLEDGE & BROOKING

MRG/nr

DRAFT

**CITY OF PALMER
ACTION MEMORANDUM NO. 11-032**

Subject: Authorize the City Manager to Award a Proprietary Procurement Purchase to Western Equipment Distributors in the Amount of \$96,170.15 for a New Irrigation System for the Palmer Golf Course

Agenda of: April 26, 2011

Council Action: Postponed to the May 10 meeting Authorized

Approved for presentation by:

City Manager *Douglas B. Griffin*
City Attorney *[Signature]*
City Clerk *JG*

Route To:	Department/Individual:	Initials:	Remarks:
X	Originator – Director of Community Development	<i>JG</i>	
	Director of Administration		
	Director of Community Development		
	Director of Public Safety		
	Director of Public Works		

Certification of Funds:

Total amount of funds listed in legislation: \$ 96,170.15 (2011=\$21,371.20)
 Future years \$32,056.80/yr subject to council appropriation.

This legislation (√):

Has no fiscal impact
 Funds are budgeted from this (these) line item(s): 15-01-10-6040 Irrigation supplies
 Funds are not budgeted. Budget modification is required. Affected line item(s):

Unrestricted/undesignated fund balance (after budget modification) \$ _____

Director of Administration signature certifying funds: *[Signature]*

Attachment(s):

- 4/20/11 Memo from City Manager Griffin Re: Proprietary Procurement Purchase Recommendation
- Quote from Western Equipment and Irrigation
- 3/24/11 Memo from Golf Course Director Collum requesting Proprietary Procurement
- 3/25/11 Letter from Toro regarding Service Area designation for Western Equipment

- Quote from Rain Bird

Summary statement: As described during FY 2011 Budget presentations by City Contractor George Collum, the irrigation electronics system currently in place at the Palmer Golf course is antiquated and in need of replacement. Mr. Collum has researched the availability of equipment and has found that a Toro Lynx Synergy Central system would be the best replacement as the Golf Course already has a Toro system in place that can be upgraded with the least amount of disruption to the golf course. If another system was introduced, over 200 sprinkler heads would need to be dug up and the sensors changed.

The quote from Western Equipment Distributors for this equipment, installation and training for Eagle Golf Course Management employees is \$96,170.15. This purchase is offered on a thirty-six month interest free payment plan which Mr. Collum proposes to pay for within the golf course budget over the next three years. Mr. Collum also received a price quote from Rain Bird for comparative purposes. Rain Bird also offered a three year payment plan, but with interest, bringing the total price to \$101,941.62.

Compatibility with the current water system, less disruption to the golf course, and an interest free thirty six month payment plan make the Toro system the recommended option for a proprietary procurement purchase.

This must be subject to an annual appropriation and any agreements must so reflect.

Administration recommendation: Approve action memorandum 11-032.



MEMORANDUM

TO: The Honorable Mayor and Members of the Palmer City Council
FROM: Douglas B. Griffin, City Manager
DATE: April 19, 2011
RE: Golf Course Irrigation Controls Proprietary Procurement Justification
PMC 3.21.230 A.3

The above-referenced item which is coming before the City Council for authorization to purchase of a Toro Lynx Synergy Central System, does not lend itself to a competitive bid process. I offer justification for this determination under PMC 3.21.230 A.3 as follows.

The irrigation system presently used at the Palmer Golf Course is manufactured by Toro and for purposes of compatibility and continuity the choice of the City was limited. The City contractor at the Golf Course, George Collum also received a formal quote from Rain Bird, the only other major vendor of these systems for comparative purposes. While the Toro system was a couple thousand dollars more, Toro offered a better extended payment plan with no interest over 36 months. Rain Bird also offered a three year purchase, but with interest. As a lease/purchase the Toro system will be less expensive to the City.

Once it was determined that the Toro option made the most sense, inquiry was made whether other vendors also are selling Toro products. Mr. Collum provided me with a letter dated March 25, 2011, verifying that Western Equipment Distributors is the "sole Toro distributor of Commercial Equipment and Golf Irrigation Products and Services in the designated 'Service Area', which includes the entire State of Alaska."

The compatibility issue in staying with Toro is significant. In speaking with the Mr. Collum and Course Superintendent Mike Barnhart, switching to Rain Bird would require digging up over 200 sprinkler heads to replace sensors. That additional labor represents a minimum additional cost of \$12,000 cost, in addition to the disruption it would cause for the golf course. The circumstances warranted that this purchase was justified under provisions of PMC 3.21.230 A.3. This section of the Palmer Municipal Code states that:

"A. The purchasing officer may contract with the use of the competitive source selection procedures of this chapter, for the following supplies, services, professional services, or construction: ...3. For contracts where the purchasing officer determines in writing that the city's requirements reasonably limit the source for the supplies, services, professional service or construction to one person."

This upgraded control system will also save money over time in more efficient use of water and labor. Even given the short season for the Palmer Golf Course compared to courses in warmer climates, Mr. Collum believes the system will pay for itself in 10 years due to these labor, water, and fuel savings.



PROPOSAL

DATE **31-Mar-11**

710 SW 174 Terrace
 Pembroke Pines, FL 33029
okeefe@bankgrouponline.com

(954) 450-4343
 (954) 450-4352 Fax
 (800) 603-1644 Toll Free

A product offered by Bankgroup Financial Services

CLUB INFORMATION		
CLUB NAME Palmer Golf Course	PHONE NO. (907) 745-4653	EMAIL eaglegolf@mtaonline.net
ADDRESS 100 Lepak Avenue	CITY, STATE AND ZIP CODE Palmer, AK 99645	
DISTRIBUTOR INFORMATION		
DISTRIBUTOR NAME Horizon	PHONE NO. (206) 396-1382	SALES REP George Collum

PROPOSAL

EQUIPMENT DESCRIPTION	PROJECT COST	STRUCTURE
Controller Package	ESTIMATED PROJECT COST \$93,000.00	3-4-5 year terms Annual Payments Finance Lease

TERM		PAYMENT
3 years	@	\$33,980.54
4 years	@	\$26,026.14
5 years	@	\$21,259.63

CONDITIONS / ADDITIONAL ITEMS REQUIRED

- Subject to receipt and satisfactory review of credit application and will possibly need financial disclosure from city.
- Contract can be written as a finance lease (\$ 1 option) with first payments due at signing.
- Municipal contracts will be used.
- Proposal based on current market conditions and subject to change prior to approval.

THE ABOVE TERMS AND CONDITIONS HAVE BEEN READ AND UNDERSTOOD BY PROPOSED

Palmer Golf Course

Signature _____

Title _____

Date _____

Memo

To: Doug Griffin
From: George Collum
CC: Kelli Veech and Sandra Garley
Date: 3/24/2011
Re: Golf Course Irrigation Electronics System

I am requesting a proprietary procurement (Section 3.21.230) of a new irrigation electronics system for Palmer Golf Course. We have determined that Toro's Lynx Synergy Central system will best fit our particular situation. We already have Toro equipment in the ground, so the Lynx Synergy Central system can easily upgrade what we already have with the least amount of disruption to the golf course. The quote we received from Western Equipment Distributors (owner of Toro) is \$96,170.15. However, they offer a thirty-six month interest free payment plan, making it possible to pay for this within our golf course budget over the next few years. This quote includes equipment, installation and training.



Toro Irrigation

5825 Jasmine Street • Riverside • California • 92504-1183 • (951) 688-9221

March 25, 2011

Subject: Western Equipment Distributors

Mr. George Collum
Director of Golf
Palmer Golf Course
PO Box 4773
Palmer, AK 99645

Dear Mr. Collum,

This letter is to give some history and state the role and "service area" for Western Equipment Distributors.

Western Equipment Distributors is a wholly owned subsidiary of the Toro Company for the **service area** of Oregon, Washington, Northern Idaho, and Alaska. Toro's intent is to take a first-hand approach of building a local distributor outlet that would fulfill our vision of supplying Turf Maintenance Systems packaged with high levels of service and support.

Western Equipment Distributors is the Sole Toro distributor of Commercial Equipment and Golf Irrigation Products and Services In the designated "Service Area". This includes the entire State of Alaska.

Please let me know if you have any question concerning this or any other issue. Thank you for your interest in Toro Products.

Best Regards,

William Thornton

A handwritten signature in cursive script that reads "William S. Thornton".

Western Region Sales Manager
2071 Blue Water Drive
Fruita, CO 81521
970-396-4355