



three one year extensions.

**Administration recommendation:** Approve action memorandum 12-050.

## Sandra Garley

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**From:** Donald E. Carling [carling@mtaonline.net]  
**Sent:** Thursday, April 26, 2012 10:30 PM  
**To:** Sandra Garley  
**Subject:** garden budget and invoice  
**Attachments:** 2012, INVOICE #1.doc; 2012 BUDGET BREAKDOWN.xls

Sandra:

Attached please find the 2012 garden budget breakdown and an invoice for amount due May 1.

I can pick it up at City Hall. If it is to be mailed, please let me know that.

Don

Donald E. Carling  
[carling@mtaonline.net](mailto:carling@mtaonline.net)

## 2012 PALMER GARDEN BUDGET BREAKDOWN

### PAYMENT

DATE	CARLING	TECH. ASSIST.	SUPPLIES	TOTAL
1-Apr	7,660			7,660
1-May	4,000	16,000	8,000	28,000
1-Jun	3,000			3,000
1-Jul	3,000			3,000
1-Aug	4,000			4,000
TOTAL	21,660	16,000	8,000	45,660

## **PROFESSIONAL SERVICES AGREEMENT**

FOR

### **Beautification/Gardening Services**

THIS AGREEMENT made and entered into this 26 day of May 2011, by and between the City of Palmer, Alaska, a municipal corporation (City) and Don Carling (Consultant).

#### **Section 01 Definition**

In this Agreement:

- A. The term "City" means the City of Palmer.
- B. The term "Consultant" means Don Carling.
- C. The term "Manager" means the manager of the City of Palmer or his authorized representative.

#### **Section 02 Employment of Consultant**

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

#### **Section 03 Consultants Representation and Warranty, and Manner of Performance**

A. Consultant hereby represents and warrants to the City, and the City relies upon said representations and warranties, that Consultant is a professional in the subject area in which services are to be provided and the Consultant has more than adequate experience, skill, knowledge and competence to perform the services set forth in this Agreement.

B. Consultant accepts the relationship of trust and confidence between the Consultant and the City. Consultant covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.

#### **Section 04 Scope of Services**

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

#### **Section 05 Personnel**

Personnel shall be limited to employees of the Consultant.

#### **Section 06 Time of Performance**

The services of the Consultant shall commence upon execution of this Agreement by the City and shall terminate, subject to Sections 7, 9, and 10, one year after execution of this Agreement. This professional services agreement may be renewed for three additional one (1) year terms if deemed in the best interest of the City and only by the mutual written agreement of the parties.

### **Section 07 Compensation**

A. Subject to the provisions of this Agreement, the City shall pay the Consultant a total sum for all services and expenses for the term of this Agreement in accordance with the provisions of Appendix "B" attached hereto and incorporated herein by reference for services required by this Agreement.

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

### **Section 08 Method and Time of Payment**

A. The City will pay to the Consultant the amount set forth in Appendix "B" which shall constitute the full and complete compensation for the Consultant's professional services. That sum will be paid on receipt of billings submitted pursuant to a schedule set forth in Appendix "B". If not identified within Appendix "B", normal billing cycle is 30 calendar days from receipt of an approved invoice. A billing is a summary of expenditures to date by line item categories (e.g., Travel, Contractual, Commodities and Equipment).

B. No payment will be disbursed until the completed task and associated expenditures have been approved by the City.

C. All invoices must be submitted in duplicate and addressed as follows: City of Palmer, 231 W. Evergreen Avenue, Palmer, Alaska 99645

D. It is expressly understood and agreed that in no event shall the total compensation due the Consultant exceed \$42,725.

### **Section 09 Termination of Agreement for Cause**

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other

material prepared by the Consultant under this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Appendix "B" of this Agreement only for work completed to the City's satisfaction in accordance with Exhibit "A" of this Agreement and the other terms of this Agreement.

### **Section 10 Termination for Convenience of City**

The City may terminate this contract at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 9 above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Appendix "B" of this Agreement only for work completed to the City's satisfaction in accordance with Exhibit "A" of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, Section 9 of this Agreement shall govern the rights and liabilities of the parties.

### **Section 11 Termination for Non-appropriation**

The continuation of this agreement beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the City Council. The City may terminate the agreement and the Consultant waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason funding is not appropriated or is withdrawn, limited, or impaired.

### **Section 12 Causes Beyond Control**

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

### **Section 13 Modifications**

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

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

#### **Section 14 Equal Employment Opportunity**

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

B. The Consultant shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in subsection 13 (A) for applicants for employment and employees as the City may require.

#### **Section 15 Interest of Members of City and Others**

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

#### **Section 16 Assignability**

A. The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City, thereto; provided, however that claims for money due or to become due to

the Consultant from the City under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City, or the Consultant shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to the Consultant.

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

### **Section 17 Interest of Consultant**

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

### **Section 18 Findings Confidential**

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

### **Section 19 Publication, Reproduction and Use of Materials**

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

### **Section 20 Audits and Inspections**

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

### **Section 21 Jurisdiction; Choice of Law**

Any civil action arising from this Agreement shall be brought in the superior court for the Third Judicial District of the State of Alaska at Palmer. The laws of the State of Alaska and the City of Palmer shall govern the rights and obligations of the parties.

### **Section 22 Non-Waiver**

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

### **Section 23 Permits, Laws and Taxes**

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

### **Section 24 Relationship of the Parties**

The Consultant shall perform its obligations hereunder as an independent Consultant of the City. Consultant is associated with the City only for the purposes and to the extent specified in this Agreement, and in respect to performance of the contracted professional services pursuant to this Agreement, Consultant is and shall be an independent contractor and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Consultant or any other party. Consultant shall be solely responsible for, and the City shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the City; (4) participation or contributions by either Consultant or the City to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the City. Neither the Consultant nor his employees, agents, or representatives shall be considered employees, agents, or representatives of the City. The City and Consultant shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Agreement to ensure that the independent contractor relationship remains as such.

### **Section 25 Agreement Administration**

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

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

### **Section 26 Integration**

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

### **Section 27 City Held Harmless**

A. The Consultant shall indemnify, defend, save and hold the City, its officers and employees, harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-consultant as a result of the Consultant's or any sub-consultant's performance pursuant to this Agreement.

B. The Consultant shall not indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of wrongful or negligent acts, errors or omissions solely of the City occurring during the course of or as a result of the performance of this Agreement.

C. Where lawsuits, actions, claims or liability, including reasonable attorney's fees and costs, arise out of wrongful or negligent acts of both the Consultant and the City occurring as a result of the performance of this Agreement, the Consultant shall indemnify, defend, save and hold the City harmless from only that portion of the lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-consultant as a result of the Consultant's or any sub-consultant's performance pursuant to this Agreement.

### **Section 28 Interpretation and Enforcement**

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

### **Section 29 Consultant Insurance**

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

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

The Consultant shall procure and maintain the following insurances:

- A. Auto Liability policy;

- B. Worker's Compensation and Employers Liability;
- C. Verification of Coverage

Consultant shall furnish the City with proof of insurance coverage required by this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. Each policy of insurance required by this section shall provide for no less than 30 days advance notice to the City prior to cancellation. Consultant's insurance coverage shall be primary to any coverage carried by the City that may cover the work specified in this Agreement.

- D. Lapse in Coverage

A lapse in insurance coverage is a material breach of this agreement, which shall result in immediate termination of the agreement, pursuant to Section 9.

### **Section 30 Severability**

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

### **Section 31 Understanding**

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

### **Section 32 Compliance with Law**

Consultant shall comply with all applicable federal, State of Alaska and City laws, regulations, statutes and ordinances in performing its duties hereunder.

### **Section 33 Notices**

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

City: City of Palmer  
231 West Evergreen Avenue  
Palmer, Alaska 99645

Consultant: Don Carling  
PO Box 871554  
Wasilla, AK 99687

### **Section 34 Consultants' Violations of Tax Obligations**

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

B. This Agreement can be terminated for cause, pursuant to Section 9, if it is determined that a Consultant whether the amounts owed are in the name of the Consultant as an individual or as a representative of a firm, business, corporation, or partnership, is in arrears of any taxation, lease or rental agreement that is due to the City that is not remedied within 10 calendar days of notification by regular mail.

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

**Section 35 Fund Verification**

Fund source and verification of funds for this project: FY 2011

Funding Source: 01-01-20-6030 \$42,725

*[Signature]*  
Verified by

5/26/11  
Date

**City of Palmer**

*[Signature]*  
Douglas B. Griffin, City Manager

**Consultant**

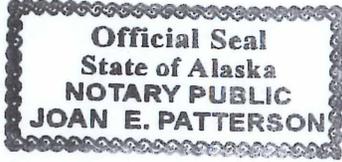
*[Signature]*  
Don Carling

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

On May 26, 2011, Don Carling personally appeared before me,

- 1. [ ] who is personally known to me
- 2. [x] whose identity I proved on the basis of Alaska Drivers License
- 3. [ ] whose identity I proved on the oath/affirmation of \_\_\_\_\_,  
a credible witness

to be the signer of the Agreement for Beautification/Gardening Svc. and he acknowledged that he signed it.

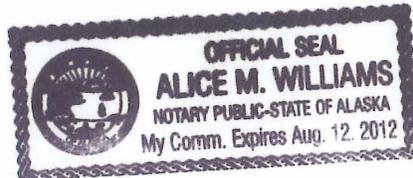


Joan E. Patterson  
Notary Public  
My Commission expires: with office

STATE OF ALASKA            )  
                                          ) ss.  
THIRD JUDICIAL DISTRICT )

On May 26, 2011, 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.

Alice M. Williams  
Notary Public  
My Commission expires: Aug 12, 2012



**EXHIBIT "A"**  
**Scope of Services**  
Beautification/Gardening Services

A. Description of Activities:

1. Spring cleanup, fertilization and other early season maintenance.
2. Acquisition and planting of seed and transplants of annual crops.
  - i. Colorful annual flowering plants, and
  - ii. Periodic planting of vegetable crops that are commercially produced in the Matanuska Valley.
3. Season long maintenance of Visitor Garden to include mowing, planting, weeding, watering as well as general cleanup and repair as needed. (Watering of hanging baskets and planters and plots located away from Garden/Visitor Center will be handled by Public Works summer crew as in previous years.)
4. Appropriated cleanup and close up at end of season (approximate finish date is September 10.)

B. Planting and Maintenance Activities:

1. Visitor Garden and nearby trees and shrubs;
2. Annual and perennial plants around and near the Visitor Center and restroom buildings;
3. Depot planter;
4. Two main intersections beds;
5. Planters located along Main Street and Fireweed Avenue;
6. Planters located in park adjacent to Library parking lot;
7. Welcome to Palmer planter.

C. Plant Material Acquisition:

1. All annual plants required for the above mentioned spaces;
2. Forty (or more, number to be decided by Public Works or City management) hanging baskets for placement by Public Works around the City;

3. Potted plants for placement in front of City Hall and other locations mentioned above.

D. Ongoing Activities to be Continued:

1. Inventorying and labeling of plant species in and around the Visitor Center and Visitor Garden;
2. Removal of pruning of selected overgrown or declining trees and shrubs in the Visitor Garden;
3. Additional plot reconstruction;

E. Periodic Assistance Expected from Public Works

1. Short term assistance for placement of any large perennial plants;
2. Watering and fertilization of hanging baskets, planters and plots located away from Visitor Center/ Garden site.
3. Use of City (Community Development) pick-up truck on an as needed basis.

## APPENDIX B

### Budget Proposal

	Carling	Tech Asst/Labor	Plants/Supplies	Fee
April 1	\$6,750			6,725
May 1	\$4,000	\$15,000	\$7,000	26,000
June 1	\$3,000			3,000
July 1	\$3,000			3,000
August 1	\$4,000			4,000
<b>TOTAL</b>	\$20,750	\$15,000	\$7,000	\$42,725

Fund/Budget Approved \$42,725 from 01-01-20-6030  
AM 11-020 Approved by Council April 12, 2011