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**Palmer City Council Meeting**

**Meeting Date:** 01/23/2024  
**Submitted For:** Brad Hanson, Community Development Director  
**Department:** Community Development  
**Agenda Category:** Action Memorandum  
**Legislation Number:** AM 24-008  **Approved**

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**Subject**

Authorizing the City Manager to Sign a Three Year Contract With the Palmer Museum of History and Art for a Management Service Contract Agreement for Operation of the Visitor Information Center in the Amount of \$75,115 to Reflect 2024 Payments and Adjusted 2.5% Thereafter Annually to Reflect Inflation

**Summary Statement/Background**

The Palmer Visitor Center is operated under a contract with the Palmer Museum of History and Art (PMHA). At the Council's direction, the attorney negotiated a new agreement, with the Palmer Museum of History and Art. The contract duration is January 23, 2024, thru December 31, 2026. The Visitor Information Management Service Contract is a fixed price of \$75,115.00 in year one and adjusted by 2.5% in subsequent years to reflect inflation. AM 24-008 supersedes the previous agreement that would have ended December 31, 2025.

The management service contract requires the PMHA to support and promote any City initiated marketing or promotional strategy and to staff seasonal operations from May 1 through Labor Day each year. Any alterations, additions, or improvements to the physical appearance of the Visitor Information Center facility or its grounds requires prior approval. PMHA has satisfactorily performed the duties and obligations for Visitor Information Services for the past 12 years.

PMHA was originally awarded a contract for visitor information services on March 24, 2009, and there were five one-year extensions to the 2009 contract. In March 2015, PMHA was awarded the contract in the amount of \$61,400 per year. The 2015 contract was extended to a five-year service agreement with allowance for two additional one-year periods extensions, by a mutual written agreement. In 2017 PMHA and the City negotiated a new Visitor Information Service Contract price of \$70,115 and continued for the 2018 and 2019 contract years. On December 10, 2019, City Council approved the current contract for a five-year period beginning in 2020 and ending December 31, 2025.

**Administration's Recommendation:**

To approve Action Memorandum No. 24-008 Authorizing the City Manager to Execute a Management Service Contract with the Palmer Museum of History and Art to provide Visitor Information Services.

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**Attachments**

Draft Contract

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# **Agreement For the Operations of the Palmer Visitor Information Center**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Palmer, Alaska, a municipal corporation (City) and The Palmer Museum of History and Art, a 501(C)(3) Alaskan nonprofit (PMHA). The City desires to retain the PMHA to operate the Palmer Visitor Information Center (VIC) according to the terms and conditions hereinafter set forth and PMHA is willing to perform such services.

## **Recitals:**

Whereas, the City of Palmer owns the Palmer Visitor Information Center (VIC), located at 723 S. Valley Way Palmer, Alaska; and

Whereas, VIC is a premier feature within the community and in need of continued management; and

Whereas, as the Palmer Museum of History and Art is prepared to operate the Palmer Visitor Information Center and to assist the City in efforts to promote visitation of Palmer; and

Whereas, the parties originally entered into an Agreement for the Operation and Management of the VIC on March 24, 2009; and the Agreement has been extended and supplemented by various Amendments; and on December 10, 2019 a new contract was drafted for a five year period with the option to extend an additional five years upon mutual agreement of the parties; and

Whereas, both parties would like to amend and rescind the 2019 agreement to be superseded with this Agreement; and

Whereas, this contract was mutually agreed to by the Palmer City Council and the Palmer Museum of History and Art on\_\_\_\_\_.

## **1. Definitions**

**"Annual Payment"** equals the annual contract payment [of \$75,115] plus applicable 2.5% annual inflation increase.

**"City"** is the City of Palmer.

**"PMHA"** is Palmer Museum of History and Art

**"VIC"** is Palmer Visitor Information Center

**"Manager"** is the manager of the City of Palmer or his/her authorized representative.

**"Term"** has the meaning set forth in Section 3.

**"Services"** mean the professional [and other] services to be provided by PMHA under this agreement, as described in more detail as PMHA's obligations under this Agreement.

## **2. Term and Non-Appropriations Clause**

- A. Term. The services of the PMHA shall commence upon execution of this Agreement by the City and shall terminate, subject to the provisions of this Agreement or three (3) years after execution of this Agreement.
- B. Previous Agreements. All previous agreements between the Parties related to the operation of the VIC are superseded by this Agreement.
- C. Non-Appropriations Clause. Any continuation or renewal 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 PMHA waives any and all claim(s) for damages, effective immediately upon receipt of written notice if, for any reason, funding is not appropriated.

### **3. PMHA's Obligations**

The PMHA will provide the following services:

- A. Operations. Operate the Palmer Visitor Information Center as an independent contractor of the City of Palmer.
  - 1. PMHA will provide a phone number and email contacts for information requests and inquiries by the public throughout the year.
  - 2. PMHA will provide service to the public through answering questions and dissemination of information about the City of Palmer, the history of Palmer and the region, as well as about local businesses and attractions in the City and Greater Palmer area.
  - 3. PMHA will provide professional staff during all operating hours of the required period of operation by this contract with knowledgeable and trained individuals, on-scene, to accomplish the above services.
  - 4. Minimum operating hours shall be 9am to 6pm Monday through Saturday and 9am to 2pm on Sunday from May 1<sup>st</sup> through the Tuesday following Labor Day. During the winter season following Labor Day through April 30, the Palmer Visitor Information Center will be open twenty (20) hours a week, subject to weather and events.
  - 5. Additional hours of operation may be added to the regular operations schedule for special events. including but not limited to Colony Christmas, Colony Days, the Summer Garden and Art Faire.
  - 6. Maintain a walking map of the City of Palmer.
  - 7. The Palmer Visitor Information Center shall be staffed with at least 1 employee during operating hours; preference being 2 employees.
  - 8. The PMHA as an independent contractor shall have the right to hire and dismiss their employees.
  - 9. The PMHA is responsible for general operations of the VIC, overseeing the facility and grounds. PMHA will contact the City or the Palmer Police if there are trespassers or other disturbances or concerns.
- B. Reports. Submit the below written reports to the City Council detailing the results of services provided:
  - a. Summer Seasonal Report Due on October 1

- b. Winter/Spring Seasonal Report Due on April 1
- c. Reports shall include:
  - 1. A summary of the VIC's activities of the previous season such as art classes, nature walks, tours and other applicable events.
  - 2. The number of tourism companies that stop at the VIC for a tour.
  - 3. The number of people who have visited the VIC.
  - 4. A summary of challenges and successes of the previous season's activities.
  - 5. An explanation of how those numbers are tracked and counted.
  - 6. A summary of the projected next season activities such as advertisements, walks, tours, activities, and community events.
- C. Provide Public Restroom services within the VIC. Will notify the Public Works Department and/or the Palmer Police Department of any issues with outdoor community restrooms. The outdoor community restrooms are maintained by the City.
- D. Provide janitorial services for the VIC.
- E. Attend scheduled quarterly meetings with the City of Palmer and initiate additional meetings as needed.
- F. Designated Administrator. The services shall be administered, supervised, and directed by the PMHA's Designated Administrator.
- G. Compensation. PMHA is responsible for all PMHA personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.
- H. Independent Contractor. PMHA is an independent-contractor of the City. PMHA shall operate and manage the VIC in accordance with industry best practices.
- I. Security System. PMHA will maintain a building security system.
- J. Amendment. This contract may be amended from time to time with written agreement of both the PMHA and the City.

#### **4. City's Obligations**

The City Shall:

- A. Designate an Administrator. The City Manager will be the administrator and the point of contact for the PMHA for this Agreement.
- B. Use of the VIC Building. The City Manager will provide such access to the VIC building for the purposes of performing the obligations of this Agreement.

- C. Regular Communication: The City will meet with the PMHA on a minimum quarterly basis and be responsive to additional requests from the PMHA.
- D. Make Payment. The City will make payments to PMHAs according to the Timetable listed on Exhibit A.
- E. Non-Exclusive Revocable License. The City will continue to provide the PMHA a non-exclusive revocable license for use of:
  - a. The Name "Palmer Visitor Information Center"
  - b. The Phrase "Alaska at its Best"
  - c. The City Logo
  - d. All existing brochures and handouts both printed and electronic
- F. Interior and Exterior Maintenance. The City shall provide interior and exterior maintenance services for the building and the grounds.

## 5. Payment Terms

- A. Subject to the provisions of this Agreement, payment of the total sum for all services of **\$75,115** will be paid according to Exhibit A attached hereto and incorporated herein by reference, with 2.5% increase annually for inflation.
- B. Any modifications or amendments of payment terms must be agreed to in writing by both parties.
- C. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service, or other thing(s) of value to the PMHA in connection with performance of this Agreement duties. The parties understand and agree that administrative overhead and other indirect or directs costs the PMHA may incur in the performance of its obligations under this Agreement have already been considered and are included in this Agreement.
- D. The City will pay to the PMHA the amount set forth in Exhibit A which shall constitute the full and complete compensation for the PMHA's professional services. That sum will be paid on receipt of invoices submitted two weeks prior to the schedule set forth in Exhibit A.
- E. All invoices must be submitted in duplicate and addressed as follows: City of Palmer, Community Development Dept., 645 E. Cope Industrial Way, Palmer, AK 99645
- F. It is expressly understood and agreed that the total compensation paid to the PMHA shall not exceed **\$75,115 without written agreement by the City.**

## 6. Lease

This Agreement does not constitute a deed or grant of an easement by City and does not constitute a lease.

## 7. Right to Enter

City, through the City Manager or his/her authorized representative may, upon reasonable notice, enter into the premises, at any and all reasonable times during the term of this Agreement for the purpose of determining whether PMHA is complying with the terms and conditions hereof or for any other purpose incidental to the rights of City for emergency reasons. PMHA shall be required to submit a key to all locked doors to the police department and shall also provide a key or other device to turn off the alarm system.

## **8. Utilities**

- A. The City shall be responsible for prompt payment of utilities for the VIC building, to include electricity, natural gas, water, trash pickup and internet. PMHA will be responsible for long-distance phone charges. The installed telephone system and phones will remain the property of the City.

## **9. Improvements**

- A. PMHA shall inform the CITY in writing of requests for major alterations, additions, or improvements at the VIC building and/or property. Work will not commence without written approval from the City.

## **10. Website Ownership and Control, Social Media Management and Brand Protection for the City of Palmer.**

- A. Website Ownership: PMHA will produce and maintain a website with current information about Palmer's visitor information services and attractions. The City shall have the right to remove language or information associated with the visitor information center. The City shall notify in writing PMHA of its concerns and request to remove language.
  
- B. Social Media: PMHA agrees to provide a social media platform and social media management services such as a Facebook page solely for the Palmer Visitor Information Center. This social media page is separate from the PMHA's non-profits or internal social media accounts. Social media management services may include content creation, scheduling, monitoring and public engagement. The City reserves the right to request that posts be removed or created at the discretion of the City. At all times, social media posts and engagement will refrain from any social justice or political related topics. All social media posts must remain with the purpose and scope of the history of, visiting of, and promotion of, the City of Palmer.
  
- C. Brand Protection:
  - 1. The parties agree that the City retains full ownership and control of the brand of the City of Palmer, the City of Palmer Seal or Logo and the slogan "Alaska at its Best."
  - 2. In the event the City updates their social media guidelines, they will provide a written updated policy to the PMHA. The PMHA shall actively protect and promote the City's brand identity, image, and reputation across social media platforms. This includes adhering to the City's brand guidelines, tone of voice, and style, as well as promptly addressing any negative or damaging content that may arise. The PMHA shall exercise due diligence in monitoring and moderating user-generated content, ensuring it aligns with the City's brand values.

- D. Parties agree that the process to determine and document any ownership of items donated or acquired by the PMHA will be determined by the mutually agreed upon Palmer Museum's Collections Policy and Procedure.

## **11. Representations and Warranties**

*Each party represents and warrants to the other party that:*

- A. It is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of the State of Alaska.
- B. It has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder.
- C. The execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party.
- D. When executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

*PMHA's Representation and Warranty, and Manner of Performance.*

- A. PMHA hereby represents and warrants to the City, and the City relies upon said representations and warranties, that PMHA is a professional in the subject area in which services are to be provided and the PMHA has the experience, skill, knowledge, and competence to perform the services set forth in this Agreement.
- B. PMHA accepts the relationship of trust and confidence between the PMHA and the City. PMHA covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.

## **12. Termination.**

- A. Termination for Cause. If, through any cause, either party shall fail to fulfill in a timely and proper manner the obligations under this Agreement OR if the failing party shall violate any of the covenants, agreements, or stipulations of this Agreement, then the other party shall have the right to terminate this Agreement by giving written notice of at least ten (10) business days before the effective date of such termination. PMHA shall receive payment up to the date of termination.
- B. Termination Without Cause. The City at its sole discretion may terminate this agreement in whole or in part at any time without cause by providing at least thirty (30) days prior written notice to the other party. The PMHA shall be entitled to receive the remainder of the pro-rated annual equivalent of 6 months of annual payment from termination date.
- C. Effects of Termination or Expiration. Upon expiration or termination of this Agreement for any reason, PMHA shall within 10 working days deliver to City all finished or unfinished documents, data, studies, surveys and reports or other material prepared by the PMHA under this Agreement.

**13. Modifications**

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

**14. Audits and Inspections.**

The City, after giving notice, may conduct on-going quality assurance in order to assure that the PMHA is providing quality and consistent visitor information services.

**15. PMHA's Requirement to Pay City Tax Obligations.**

The PMHA has an obligation to the City to keep their taxes current. Any violation of lack of payment of tax, assessment, lease, sale or rental payments, whether as an individual, or as a representative of a business, organization, firm, corporation, or partnership, shall cause the PMHA to not be awarded this Agreement or if already awarded, this Agreement may be terminated for cause. The PMHA has ten (10) calendar days from receipt of written notice sent by the City to cure delinquency. 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 an Agreement between the City and the PMHA.

**16. Eminent Domain**

If the entire premises shall be taken by condemnation by any governmental authority or conveyed in lieu of condemnation, or if a portion of the premises shall be so taken or conveyed so as to render the premises untenable for the purposes of this Agreement, this Agreement shall terminate as of the date possession shall be required by said governmental authority, and the parties shall be released from all further liability hereunder. If only a portion of the premises shall be so taken or conveyed and the remainder of the premises is not thereby rendered untenable for the purposes of this Agreement, CITY shall, at its expense, restore the premises, and this Agreement shall continue in force, otherwise unaffected. The entire award or compensation on account of such condemnation or conveyance shall belong and shall be paid to CITY without deduction therefrom for any estate vested in PMHA, and PMHA shall receive no part of any such award or compensation except any portion of the award or compensation made specifically for PMHA's trade fixtures and equipment, provided that said portion shall in no way decrease the amount of award or compensation which would otherwise be payable to CITY. The value of such improvements shall be negotiated and agreed upon between PMHA and CITY. The date of the taking for purposes hereof shall be the date PMHA is required to relinquish possession.

Provided however that notwithstanding anything to the contrary herein, CITY shall pay to PMHA, from the condemnation payment or award, a sum representing the "agreed value" of PMHA's approved improvements to the VIC.

**17. Indemnification and Hold Harmless Agreement:**

PMHA shall defend, indemnify, and hold harmless City and its officers, directors, employees, agents, successors, and permitted from and against all Losses arising out of



or resulting from any third-party claim, suit, action, or proceeding including attorney fees, arising out of or resulting from: (1) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the willful, fraudulent, or negligent acts or omissions of PMHA or PMHA Personnel; and (2) PMHA's breach of any representation, warranty, or obligation of PMHA set forth in this Agreement.

## **18. Insurance Requirements:**

During the Term of this agreement, PMHA will procure and maintain, at its sole cost, at least the following types and amounts of insurance coverage.

### **A. Minimum Limits of Insurance.**

PMHA shall maintain limits no less than:

1. Commercial General Liability Insurance: (Form CG0001) 4/13 or equivalent
  - \$1,000,000 Combined Single limit of liability per occurrence.
  - \$1,000,000 Personal/Advertising Injury Limit of Liability per occurrence
  - \$1,000,000 Participant Legal Liability
  - \$2,000,000 Annual General Aggregate Limit of Liability
  - \$2,000,000 Annual Products/Completed Operations Aggregate limit of liability
  - \$100,000 Fire Damage Limit of Liability any one fire
  - \$5,000 Medical Payment Limit of any one person
  
2. Workers' Compensation and Employers Liability:
  - Workers' Compensation shall be statutory as required by the State of Alaska.
  - Employer's liability shall be endorsed to the following minimum limits:

Bodily Injury by Accident -	\$500,000 each accident
Bodily Injury by Disease -	\$500,000 each employee
Bodily Injury by Disease -	\$500,000 policy limit

### **B. Verification of Coverage**

PMHA shall furnish the City with certificates of insurance and with certified copies of all endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the City. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

### **C. Lapse in Coverage**

A lapse in insurance coverage is a material breach of this Agreement, which shall result in immediate termination of the Agreement.

## **19. Force Majeure**

No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or

performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including without limitation the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, OTHER POTENTIAL DISASTER(S) OR CATASTROPHE(S), SUCH AS EPIDEMICS, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; (g) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue.

## **20. Miscellaneous Provisions**

- A. Jurisdiction; Choice of Law. Any civil action arising from this Agreement shall be brought in the Superior Court of the Third Judicial District of the State of Alaska in Palmer. The laws of the State of Alaska and the City of Palmer shall govern the rights and obligations of the parties.
- B. Dispute Resolution: Prior to litigation, the parties shall first attempt in good faith to settle by mediation any dispute arising out of or relating to this Agreement or its breach. Each party may suggest a neutral mediator, should the parties not agree upon a mediator than the Mediation will be conducted by a retired Alaska Court Judge who provides mediation services. If the mediation is unsuccessful, only then may the parties resort to arbitration or litigation in the Third Judicial District Court located in Palmer, Alaska.
- C. Non-Waiver. The failure of the either party 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 the Agreement or any part thereof, or the right of either party thereafter to enforce each and every protection hereof.
- D. Permits, Laws and Taxes. The PMHA 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 PMHA under this Agreement shall comply with all applicable statutes, ordinances, rules, and regulations. The PMHA shall pay all taxes pertaining to its performance under this Agreement.
- E. Relationship of the Parties. The PMHA shall fulfill its obligations hereunder as an independent contractor of the City. PMHA 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. 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 the PMHA or any other party.
- F. 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.

G. Notice. 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  
Community Development Dept.  
645 E. Cope Industrial Way  
Palmer, AK 99645

PMHA: The Palmer Museum of History and Art  
Attn: The Palmer Museum of History and Art  
723 S. Valley Way  
Palmer, AK 99645

H. Entire Agreement. This Agreement, together with all Schedules, Exhibits, and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

I. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the remainder of this Agreement shall remain in full force and effect.

J. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

K. Assignment. Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement.

**City of Palmer**

**Palmer Visitor Information Center**

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John Moosey, City Manager

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The Palmer Museum of History and Art

## **Exhibit A: Payment Schedule**