

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Peter Philips Consulting Contract
Amendment 3

FOR AGENDA OF: December 1, 2022

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

DATE SUBMITTED: November 22, 2022

1. Consulting Amendment 3
2. Consulting Amendment 2
3. Consulting Amendment 1
4. Consulting Contract

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Barbara W...*
- Human Resources _____
- Legal */s/ MH*
- Marina *SM*
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of an Amendment to extend the existing contract with Peter Philips for the purpose of assisting with passenger ferry service, marina redevelopment as well as other potential opportunities for the marina. The following motion will appear on the consent calendar:

Suggested Motion

Motion 1: "I move to approve Amendment 3 to the contract between the City and Peter Philips, extending the consultant services contract through December 31, 2023"

Background

The City entered into a consulting agreement with Peter Philips in 2020 in order to assist the City in developing strategies and implementation to achieve access to regional water taxi, ferry and other maritime transportation opportunities. Additional services included commercial engagement of the Marina floor and adjacent business district, including but not limited to ferries, commercial fishing boat expansion and sales and potential retail/dining opportunities.

The scope of the contract was expanded in June of 2021 to include the following additional tasks:

Assist the City in the sourcing and coordination of vendor companies tasked with feasibility, and if applicable, operations of maritime-related amenities: passenger-only ferries, off-boat fish sales and other opportunities as may arise from the continued development of the marina's physical infrastructure and supporting transportation opportunities around electrification.

Serve as the primary point of contact with vendor community to coordinate maritime transportation feasibility studies, resulting business plan(s) and, if determined by the city to be viable, startup of water taxi and/or water taxi pilot program(s).

Represent the City as the initial point of contact with the vendor community to provide them with a single point of contact for the city in achieving the above.

Provide periodic updates to Council Committees and City Council as determined by City Manager.

Mr. Philips has been very successful in providing preparation, coordination and implementation of Des Moines passenger ferry service to Seattle and back during the 2022 pilot study.

Discussion

The work Peter Philips has provided to the City has been extraordinary, and his assistance is vital as the City moves forward with marina redevelopment. He was instrumental in organizing the City's passenger ferry maiden voyage in September, 2021.

The contract amendment as proposed extends Peter Philips' contract through the end of 2023 at the rate of \$5,000/mo.

Alternatives

Do not extend the Contract or extend it on a more limited basis. This is not recommended.

Financial Impact

Funds for this Amendment have been included in the City budget for 2023.

Recommendation

Administration recommends approval of the motion.

CONTRACT AMENDMENT #3

**CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF DES MOINES AND PETER PHILIPS**

THIS AMENDMENT/ADDENDUM is entered into on this _____ day of December, 2022, pursuant to that certain Contract entered into on the 1st day of October, 2020, and subsequent amendment between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **PETER PHILIPS**, (hereinafter "Consultant").

The parties herein agree that the Contract dated October 1, 2020 and subsequent amendment, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

- 1) **SECTION 2** is amended to extend the term of the Agreement through December 31, 2023.

- 2) **SECTION 3** is hereby amended to increase the monthly compensation to \$5,000 per month beginning January 1, 2023 through the end of the term of this Contract.

Except as modified hereby, all terms and conditions of the existing contract and amendment remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the date first above written.

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CONTRACT AMENDMENT #2

**CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF DES MOINES AND PETER PHILIPS**

THIS SECOND AMENDMENT is entered into on this 26th day of August, 2022, pursuant to that certain Contract entered into on the 1st day of October, 2020, between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **PETER PHILIPS**, (hereinafter "Contractor").

The parties herein agree that the Contract dated October 1, 2020 as well as subsequent amendments, shall remain in full force and effect, except for the amendments set forth as follows:

1. **SECTION I** is hereby amended to add the following duties and responsibilities:

Contractor has excellerated efforts and performance to establish passenger ferry service between Des Moines and Seattle in a successful manner.

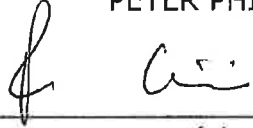

2. **SECTION II** is hereby amended to extend the term of the Contract through December 31, 2022.

3. **SECTION III** is hereby amended to increase the monthly compensation to \$4,100 per month beginning September 1, 2022 through the end of the term of this Contract.

Except as modified hereby, all terms and conditions of the Contract and subsequent amendments remain in full force and effect.

PP
9/20/22

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the date first above written.

<p>PETER PHILIPS:</p> <p>By: <u></u> (signature)</p> <p>Print Name: <u>Peter Philips</u> Its <u>Owner</u> (Title)</p> <p>DATE: <u>9/20/22</u></p>	<p>CITY OF DES MOINES:</p> <p>By: <u></u> (signature)</p> <p>Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> (Title)</p> <p>DATE: _____</p> <p>Approved as to form:</p> <p><u>/s/ Tim George</u> City Attorney</p> <p>DATE: <u>September 21, 2022</u></p>
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CONTRACT AMENDMENT 1

**CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF DES MOINES AND PETER PHILIPS**

THIS AMENDMENT/ADDENDUM is entered into on this 3 day of June, 2021, pursuant to that certain Contract entered into on the 1st day of October, 2021, between the CITY OF DES MOINES, WASHINGTON (hereinafter "City"), and Peter Philips, (hereinafter "Consultant"), 2020 - TK

The parties herein agree that the Contract dated October 1, 2020, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

1. **SECTION 1** of the Contract, is hereby amended to expand the Scope of Work as follows:

Assist the City in developing strategies and implementation to achieve access to regional water taxi, ferry and other maritime transportation opportunities.

Assist the city in the promoting to the private sector the opportunities around commercial engagement of the marina floor and adjacent business district, including but not limited to the development of regional water taxi, ferry and maritime transportation opportunities.

Assist the City in the sourcing and coordination of vendor companies tasked with feasibility, and if applicable, operations of maritime-related amenities: passenger-only ferries, off-boat fish sales and other opportunities as may arise from the continued development of the marina's physical infrastructure and supporting transportation opportunities around electrification.

Serve as the primary point of contact with vendor community to coordinate maritime transportation feasibility studie(s), resulting business plan(s) and, if determined by the city to be viable, startup of water taxi and/or water taxi pilot program(s)

Represent the city as the initial point of contact with the vendor community to provide them with a single point of contact for the city in achieving the above.

MP
6/3/21

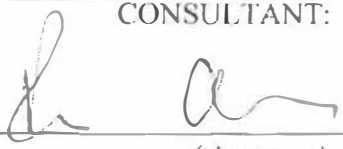
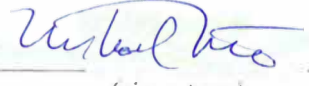
Provide periodic updates to Council Committees and City Council as determined by City Manager.

2. **SECTION 2** of the Contract is amended to extend the term of the contract through May 31, 2022.

3. **SECTION 3** of the Contract is amended to increase the compensation to a maximum of \$3,000 per month unless prior approval by the City is given.

Except as modified hereby, all terms and conditions of contract dated October 1, 2020, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the date first above written.

<p>CONSULTANT:</p> <p>By: <u></u> (signature) Print Name: <u>Peter Philips</u> Its <u>Owner</u> (Title) DATE: <u>06.03.21</u></p>	<p>CITY OF DES MOINES:</p> <p>By: <u></u> (signature) Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> (Title) DATE: <u>06.04.2021</u></p> <p>Approved as to form: <u>/s/ Tim George</u> City Attorney DATE: <u>June 3, 2021</u></p>
<p>NOTICES TO BE SENT TO:</p> <p>CONSULTANT:</p> <p>Peter Philips 19679 Marine View Dr SW Normandy Park, WA 98166 (206) 284-8285 (telephone) Peter@colibriNW.com (Email)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Bonnie Wilkins City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 (206) 870-6519 (telephone) BWilkins@desmoineswa.gov (Email)</p>



CONSULTANT SERVICES CONTRACT between the City of Des Moines and

Peter Philips

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Peter Philips, located and doing business at 19679 Marine View Drive SW, Normandy Park WA 98166 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

Consultant shall perform the following services for the City in accordance with the following described plans and/or specifications:

Assist the City in developing strategies and implementation to achieve access to regional water taxi, ferry and other maritime transportation opportunities.

Commercial engagement of the Marina floor and adjacent business district, including but not limited to ferries and commercial fishing boat expansion.

Consultant further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above starting October 1, 2020 through December 31, 2021.

III. COMPENSATION.

- A. The City shall pay the Consultant for the services described in this Contract with a total amount not to exceed \$18,000.00 per year. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract.

RP
9/30/20

- B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant has the ability to control and direct the performance and details of its work; however, the City shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

V. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Consultant determines, for any reason, that a change order is necessary, Consultant must submit a written change order request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Consultant knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Consultant's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Consultant on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Consultant shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Consultant fails to require a change order within the time specified in this paragraph, the Consultant waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Consultant disagrees with the equitable adjustment, the Consultant must complete the change order work; however, the Consultant may elect to protest the adjustment as provided in subsections A through E of Section VI, Claims, below.

The Consultant accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Consultant as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

VI. CLAIMS. If the Consultant disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Consultant may file a claim as provided in this section. The Consultant shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Consultant knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Consultant unless a

timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Consultant's written claim shall include the information set forth in subsections A, items 1 through 5 below.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
 - 1. The date of the Consultant's claim;
 - 2. The nature and circumstances that caused the claim;
 - 3. The provisions in this Contract that support the claim;
 - 4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
 - 5. An analysis of the progress schedule showing the schedule change or disruption if the Consultant is asserting a schedule change or disruption.

- B. Records. The Consultant shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Consultant's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Consultant's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.

- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Consultant also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Consultant completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

VII. LIMITATION OF ACTIONS. CONSULTANT MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONSULTANT'S ABILITY

TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

VIII. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

IX. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

X. INDEMNIFICATION. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Contract.

XI. Reserved

XII. EXCHANGE OF INFORMATION. The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Contract.

XIII. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Consultant for this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

XIV. CITY'S RIGHT OF INSPECTION. Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XVI. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. **Alternative Dispute Resolution.** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

2. **Applicable Law and Jurisdiction.** This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western

District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section X of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.

F. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

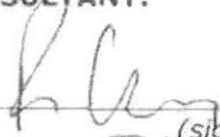

G. Compliance with Laws. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

H. Business License. Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Des Moines Municipal Code.

I. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

J. Records Retention and Audit. During the progress of the Work and for a period not less than three (3) years from the date of completion of the Work or for the retention period required by law, whichever is greater, records and accounts pertaining to the Work and accounting therefore are to be kept available by the Parties for inspection and audit by representatives of the Parties and copies of all records, accounts, documents, or other data pertaining to the Work shall be furnished upon request. Records and accounts shall be maintained in accordance with applicable state law and regulations.

IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.

CONSULTANT: By: <u></u> (signature) Print Name: <u>Peter Philips</u> Its: <u>owner</u> (Title) DATE: <u>9.30.20</u>	CITY OF DES MOINES: By: <u></u> (signature) Print Name: <u>Michael Matthias</u> Its: <u>City Manager</u> (Title) DATE: <u>10-1-2020</u> Approved as to form: /s/ Tim George City Attorney DATE: <u>10/01/2020</u>
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NOTICES TO BE SENT TO: CONSULTANT: Peter Philips 19679 Marine View Drive SW Normandy Park WA 98166 206-284-8285 (telephone) Peter@ColibriNW.com (email)	NOTICES TO BE SENT TO: CITY OF DES MOINES: Bonnie Wilkins City of Des Moines 21630 11 th Avenue S., Suite A Des Moines, WA 98198 (206)870-6519 (telephone) BWilkins@desmoineswa.gov (email)
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