

AMENDED AGENDA

DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers VIA ZOOM

Thursday, December 2, 2021 - 5:00 PM

NOTE: The City of Des Moines is currently operating under a Proclamation of Emergency issued on March 5, 2020 and Governor Inslee's Stay-at-Home order issued March 23, 2020 in response to the COVID-19 Pandemic. Accordingly, this meeting will be held virtually using Zoom.

Public Comment continues to be encouraged and will be accepted in the following manner:

- (1)** In writing, either by completing a [council comment form](#) or by mail; Attn: City Clerk Office, 21630 11th Avenue S., Des Moines WA 98198 no later than 4:00 p.m. day of the meeting. Please provide us with your first and last name and the city in which you live. Your full name and the subject of your public comment will be read into the record at the Council meeting. Incomplete forms will not be read into the record, however the full correspondence will be attached to the Council packet and uploaded to the website as part of the permanent record.
- (2)** By participation via Zoom. If you wish to provide oral public comment please complete the [council comment form](#) no later than 4:00 p.m. day of the meeting to receive your Zoom log-in and personal identification number. Please note that Zoom attendees do not interact with one another; they join in listen-only mode until it is their turn to address the Council

City Council meeting can also be viewed live on Comcast Channel 21/321 or on the City's [YouTube](#) channel.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC VIA ZOOM/WRITTEN PUBLIC COMMENT

CITY MANAGER REPORT

CONSENT CALENDAR

- Item 1. HEMSTAD CONSULTING CONTRACT AMENDMENT 2
Motion is to approve Amendment 2 to the contract between the City and Hemstad Consulting, for the purpose of extending and updating the legislative advocacy contract through December 31, 2024.
[Hemstad Consulting Contract Amendment 2](#)
- Item 2. PETER PHILIPS CONSULTING CONTRACT AMENDMENT 2
Motion is to approve Amendment 2 to the contract between the City and Peter Philips, extending the consultant services contract through December 31, 2022.
[Peter Philips Consulting Contract Amendment 2](#)
- Item 3. 2022-2027 PARKS, RECREATION AND SENIOR SERVICE MASTER PLAN UPDATE
Motion is to adopt draft Resolution No. 21-053 approving the City of Des Moines 2022 – 2027 Parks, Recreation and Senior Services Master Plan.
[Parks, Recreation & Senior Services Master Plan Update](#)
- Item 4. AGREEMENT WITH THE SOUTH COUNTY AREA TRANSPORTATION BOARD (SCATBd) FOR CONTINUED CITY PARTICIPATION
Motion is to approve entering into an Agreement with the South County Area Transportation Board for a period of two years, ending December 31, 2023 with an automatic two-year extension, authorize the City to make an annual contribution of \$100, and for the City Manager to sign said Agreement substantially in the form submitted.
[Agreement with the South County Area Transportation Board \(SCATBd\) For continued City participation - done](#)

NEW BUSINESS

DISCUSSION OF 2022 CITY COUNCIL LEGISLATIVE PRIORITIES
Staff Presentation: City Manager Michael Matthias
[2022 Legislative Priorities Agenda ItemFinalMM](#)

INTRODUCTION OF ITEMS FOR FUTURE CONSIDERATION
10 Minutes

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

HUMAN SERVICES ADVISORY COMMITTEE

EXECUTIVE SESSION

NEXT MEETING DATE

December 09, 2021 City Council Regular Meeting

ADJOURNMENT

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Hemstad Consulting Contract
Amendment 2

ATTACHMENTS:

1. Consulting Contract Amendment 2
2. Consulting Contract

FOR AGENDA OF: November 4, 2021

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: October 27, 2021

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal /s/ MH _____
- ☒ Finance _____
- ☐ Courts _____
- ☐ Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of an Amendment to extend the existing contract with Hemstad Consulting for the purpose of legislative advocacy, intergovernmental relations and economic development on behalf of the City. The following motion will appear on the consent calendar:

Suggested Motion

Motion 1: "I move to approve Amendment 2 to the contract between the City and Hemstad Consulting, for the purpose of extending and updating the legislative advocacy contract through December 31, 2024."

Background

On an annual basis, the City Council establishes legislative priorities for support or opposition by the City for specific legislative and regulatory proposals forthcoming in the State or Federal legislatures.

Over the last several years, in an effort to facilitate successful outcomes for these legislative priorities, the City has contracted with Hemstad Consulting to advocate and lobby on the City's behalf.

Discussion

Since initially contracting with Anthony Hemstad of Hemstad Consulting, the City has seen a number of positive and successful outcomes in regards to the City legislative priorities. These outcomes include:

- a. Funding for the bulkhead - \$3,900,000
- b. SCORE – Increased funding from the State
- c. Redondo Fishing Pier - \$350,000 in state capital budget
- d. Various economic development activities including contacting developers to respond to the City's Marina redevelopment RFQ
- e. Attends StART Committee federal legislative policy subcommittee and also attends the siting of a second airport committee meetings as an observer

The proposed Amendment 2 will extend the current contract with Hemstad Consulting through December of 2024 under the same terms as currently exist.

Alternatives

Do not extend the Contract or extend it on a more limited basis. This is not recommended given the success that the City has seen since Hemstad Consulting has been engaged to advocate on the City's behalf.

Financial Impact

Funds for this Amendment have been included in the City budget for 2022 and will be included for future years as well.

Recommendation

Administration recommends approval of the motion.



CONTRACT AMENDMENT #2

CONTRACT FOR CONSULTING SERVICES BETWEEN THE CITY OF DES MOINES AND HEMSTAD CONSULTING

THIS AMENDMENT is entered into on this _____ day of December, 2021, pursuant to that certain Contract entered into on the 23rd day of December, 2019, and subsequent amendment between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and Hemstad Consulting, (hereinafter "Consultant"),

The parties herein agree that the Contract dated December 23, 2019 and subsequent amendment shall remain in full force and effect, except for the amendments/addendums set forth as follows:

I) **SECTION II** of the Contract is hereby amended to extend the time of completion through December 31, 2024. Exhibit A is also amended to reflect the extension of this Contract through the year 2024.

Except as modified hereby, all terms and conditions of contract dated December 23, 2019, and subsequent amendment shall remain in full force and effect.

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

Hemstad Consulting: By: _____ (signature) Print Name: _____ Its _____ (Title) DATE: _____	CITY OF DES MOINES: By: _____ (signature) Print Name: Michael Matthias Its City Manager (Title) DATE: _____ Approved as to form: _____ City Attorney DATE: _____
NOTICES TO BE SENT TO: HEMSTAD CONSULTING: Anthony R. Hemstad Hemstad Consulting 130 Sherman St. NW Olympia, WA 98502 anthony@hemstad.us	NOTICES TO BE SENT TO: CITY OF DES MOINES: Michael Matthias City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 MMatthias@desmoineswa.gov



CONSULTANT SERVICES CONTRACT between the City of Des Moines and Hemstad Consulting

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Hemstad Consulting organized under the laws of the State of Washington, located and doing business at 130 Sherman St. NW, Olympia, Washington, 98502 (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:

See Scope of Work attached as Exhibit A

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 immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by August 31, 2020.

III. COMPENSATION.

- A. The City shall pay the Consultant a flat rate of \$6,000 per month for the terms of this Contract plus expenses. The total amount shall not exceed **\$49,500** for the services described in this Contract unless this Agreement is amended. This is the maximum amount to be paid under this Contract for the work described in Section I above and Exhibit A, 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. The Consultant agrees that the amount budgeted for as set forth in Exhibit A for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

- 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 thirty (30) 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. INSURANCE. The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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:  Anthony R. Hemstad Its Principal DATE: 12/23/19	CITY OF DES MOINES: By:  (signature) Print Name: Michael Matthias Its City Manager (Title) DATE: 12/23/19 Approved as to form:  City Attorney DATE: 12/23/19
NOTICES TO BE SENT TO: CONSULTANT: Anthony R. Hemstad Hemstad Consulting 130 Sherman St. NW, Olympia, Washington 98502 (253) 335-9163 anthony@hemstad.us	NOTICES TO BE SENT TO: CITY OF DES MOINES: Michael Matthias City of Des Moines 21630 11 th Avenue S., Suite A Des Moines, WA 98198 (206) 870-6554 Mmatthias@desmoineswa.gov

EXHIBIT A - SCOPE OF WORK

LEGISLATIVE ADVOCACY

Background

The City Council's legislative priorities strategy establishes priorities for support or opposition by the City for specific legislative and regulatory proposals forthcoming in the State of Washington Legislature in the 2020 session. In order to facilitate successful outcomes for these legislative priorities, the City is engaging with the Consultant to perform the following tasks to accomplish legislative advocacy in support of successful outcomes for the legislative priorities.

Actions

The legislative advocate will support successful outcome for the City's Legislative Priorities, as adopted by City Council. These priorities will be provided to the legislative advocate upon approval by the Council.

The legislative advocate will:

- * Support enacting City legislative priorities through the entire state legislative process,
- * Provide weekly reports (may be verbal) to the City Manager (or designees) once the legislative session begins,
- * Develop appropriate legislative strategies,
- * Plan any testimony or support the City and its partners can provide to support passage of legislative initiatives, and
- * Work with our legislative delegation to support enactment of City's legislative priorities and see how the City can enhance those relationships

Meetings

- I. At least once during session and at the conclusion of session, the legislative advocate will provide a presentation to City Council summarizing outcomes.

Additional Items

Consultant shall also provide services to the City related to economic development and Marina finance as assigned by the City Manager.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Peter Philips Consulting Contract
Amendment 2

ATTACHMENTS:

1. Consulting Contract Amendment 2
2. Consulting Contract

FOR AGENDA OF: December 2, 2021

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: November 22, 2021

CLEARANCES:

- ☐ Community Development _____
- ☒ Marina *See*
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal /s/ TG
- ☒ Finance *Beth Anne Warr*
- ☐ Courts _____
- ☐ Police _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Michael Warr*

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 2 to the contract between the City and Peter Philips, extending the consultant services contract through December 31, 2022."

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 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.

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

Discussion

The existing contract expires in June of 2022 at a rate of \$3,000 per month. 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 2022 at the same rate as was previously established.

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 2022.

Recommendation

Administration recommends approval of the motion.



CONTRACT AMENDMENT #2

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

THIS AMENDMENT/ADDENDUM is entered into on this _____ day of December, 2021, 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:

I) **SECTION 2** is amended to extend the term of the Agreement through December 31, 2022.

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.

PETER PHILIPS: By: _____ (signature) Print Name: _____ Its _____ (Title) DATE: _____	CITY OF DES MOINES: By: _____ (signature) Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> (Title) DATE: _____ Approved as to form: _____ City Attorney DATE: _____
NOTICES TO BE SENT TO: PETER PHILIPS: Peter Philips 19679 Marine View Dr 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 11th Avenue S., Suite A Des Moines, WA 98198 (206) 870-6519 (telephone) BWilkins@desmoineswa.gov



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.

CONSULTANT SERVICES CONTRACT 6
(Various)

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

CONSULTANT: By: <u>[Signature]</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>[Signature]</u> (signature) Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> (Title) DATE: <u>10-1-2020</u> Approved as to form: <u>/s/ Tim George</u> 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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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2022-2027 Parks, Recreation and Senior Service Master Plan Update

ATTACHMENTS:

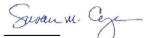
1. Resolution 21-053

FOR AGENDA OF: December 2, 2021

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: November 23, 2021

CLEARANCES:

☒ Community Development 

☐ Marina _____

☒ Parks, Recreation & Senior Services 

☒ Public Works _____

CHIEF OPERATIONS OFFICER: _____

☒ Legal /s/ MH

☒ Finance 

☐ Courts _____

☐ Police _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is for the City Council to adopt Draft Resolution 21-053 (Attachment 1) approving the 2022-2027 City of Des Moines Parks, Recreation and Senior Services Master Plan. Throughout the plan process, updates have been provided via the website, presentations to Council, and public engagement via open houses, a community survey, and written comment.

The 2022-2027 PRSS Master Plan update, including policy recommendations, survey results and community input, was presented during the November 4, 2021 City Council meeting, and this finalized draft plan is on today's agenda for adoption.

Suggested Motion

“I move to adopt draft Resolution No. 21-053 approving the City of Des Moines 2022 – 2027 Parks, Recreation and Senior Services Master Plan.”

Background:

Parks, Recreation and Senior Services staff, along with consultants at AHBL, have been working on the 2022-2027 PRSS Master Plan update since early this year. The State-required review and update of the Master Plan is due on or before December 31, 2021. Once adopted, the update will be incorporated into 2022’s Comprehensive Plan update.

The Master Plan update has incorporated changed conditions since the last update in 2016 and responds to community needs and input. This project built on and utilized information from the current plan. Plan functionality has been increased by editing for brevity and clarity. The plan must continue to meet the planning requirements of the State of Washington Recreation and Conservation Office (RCO).

Discussion:

A robust public involvement program was included in the update to assure that the plan update is responsive to the needs of the City’s residents. This has included multiple community engagement opportunities, input requested via our website, a community survey that was successfully administered and returned by over 400 households, and research into past projects and needs.

Both the Municipal Facilities and Economic Development Committees have been briefed, and Council was updated during September and November 2021 Council meetings.

Recommendations are provided in the plan for park capital improvements and programs that may be considered for implementation and/or inclusion in future Capital Improvement Programs (CIPs) as funding and capacity allows. Recommendations provided will enhance our local parks, respond to community desires, and strive to create and maintain safe and functional facilities and open space for our citizens to utilize.

Financial Impact:

There is no financial impact of plan adoption and future projects will proceed as included in CIPs and budgeted. Plan adoption will maintain the City’s eligibility for State grants.

Alternatives

- 1) Council may adopt the plan as submitted.
- 2) Council may adopt the plan with revisions.

Recommendation:

Staff recommends the City Council approve 2022-2027 Parks, Recreation and Senior Service Master Plan by adopting Draft Resolution 21-053.

CITY ATTORNEY'S FIRST DRAFT 12/2/2021

DRAFT RESOLUTION NO. 21-053

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, approving the Parks, Recreation and Senior Services Master Plan for the City of Des Moines for the years 2022 through 2027.

WHEREAS, the Growth Management Act (chapter 36.70A RCW) requires that agencies prepare a Parks and Recreation Element to the Des Moines' Comprehensive Plan that shall include estimates of park and recreation demand for a ten-year period, an evaluation of facilities and service needs, and an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand, and

WHEREAS, to qualify for funding from the State Department of Community, Trade and Economic Development and the Recreation and Conservation Funding Board the City must update and approve its Parks and Recreation Master Plan every six years, and

WHEREAS, the last update to the City's Parks, Recreation and Senior Services Master Plan was adopted by Ordinance No. 1468 in December 2015, for years 2016-2021, and

WHEREAS, the 2016 Parks, Recreation and Senior Services Master Plan Section 5 adopted by City Council in December 2015, as amended by Ordinance No. 1664 as amended by Ordinance No. 1712 as amended by Ordinance No. 1731 is the current Chapter 6 - Parks, Recreation and Open Space Element of the Des Moines Comprehensive Plan, and

WHEREAS, in 2021 the City hired Consultant group AHBL, Inc. to assess the City's parks and facilities and prepared graphics and cost estimates to be used as a guide for future acquisition, new development, renovation and repair, and maintenance capital projects, and

WHEREAS, AHBL, along with Parks and Recreation City Staff has held bi-monthly meetings since May, 2021 to review data; evaluate public feedback regarding community recreation needs; assess conditions at City parks and facilities and make recommendations for the prioritization of future acquisition, renovations and repairs, new development and maintenance needs, and

Resolution No. ____

Page 2 of 3

WHEREAS, the City conducted extensive public engagement and outreach, including information booths at the Des Moines Farmers Market, open houses at Midway Park and the Des Moines Senior Activity Center, a statistically valid survey, school classroom visit, and interviews/conversations with stakeholders, and

WHEREAS, the Council Municipal Facilities and Economic Development Committees have received regular updates and have provided guidance for the Draft 2022 Parks, Recreation and Senior Services Master Plan update, and

WHEREAS, on September 16, 2021 and November 4, 2021 the Draft 2022 Parks, Recreation and Senior Services Master Plan was presented to City Council for review and comment, and

WHEREAS, pursuant to WAC 197-11-630 the SEPA Official issued a Determination of Nonsignificance for the 2022 Des Moines Parks, Recreation and Senior Services Master Plan, fulfilling the requirements of the State Environmental Policy Act (SEPA), and

WHEREAS, on November 5, 2021, through November 23, 2021, City Council and public were provided the opportunity to review the full draft plan and provide comments for inclusion in the Draft 2022 Parks, Recreation and Senior Services Master Plan, and

WHEREAS, based on the City Council comments and information presented at such public meetings the City Council finds it to be in the public interest to approve the Parks, Recreation and Senior Services Master Plan attached to this Resolution; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. Approved.

(1) The December 2021 Draft Parks, Recreation and Senior Services Master Plan as presently constituted or as may be subsequently amended entitled "2022 Parks, Recreation and Senior Services Master Plan" attached to this Resolution is hereby approved as the official Parks, Recreation and Senior Services Master Plan for the City of Des Moines.

Resolution No. ____
Page 3 of 3

(2) Not less than one (1) copy of the Des Moines Parks, Recreation and Senior Services Master Plan is filed in the office of the City Clerk and is available for use and examination by the public.

Sec. 2. The capital improvement projects and program priorities included in the plan, shall be reviewed annually in order to aid in the preparation of the City's six-year municipal capital improvement and capital improvement program, at which time such program priorities may be amended, revised, or extended for an additional six-year period.

Sec. 3. The plan approved by this Resolution shall be used to update the Parks, Recreation and Open Space Element of the Des Moines Comprehensive Plan.

Sec. 4. The City Clerk is directed to file a certified copy of this Resolution and attachment with the Recreation and Conservation Office (RCO), Olympia, Washington, within thirty (30) days of the date of approval of this Resolution.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of December, 2021 and signed in authentication thereof this ____ day of December, 2021.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Agreement with the South County
Area Transportation Board (SCATBd)
For continued City participation.

ATTACHMENTS:

1. SCATBd Agreement

FOR AGENDA OF: December 2, 2021

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 23, 2021

CLEARANCES:

- ☐ Community Development N/A
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Public Works R. H. C.

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal /s/ MH
- ☒ Finance Beth Lane W. Doe
- ☐ Courts N/A
- ☐ Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation:

The purpose of this item is to approve the City of Des Moines' continued participation with the South County Area Transportation Board (SCATBd) by entering into an agreement through 2023 with an automatic two-year extension. The following motion will appear on the consent calendar:

Suggested Motion:

Motion: "I move to approve entering into an Agreement with the South County Area Transportation Board for a period of two years, ending December 31, 2023 with an automatic two-year extension, authorize the City to make an annual contribution of \$100, and for the City Manager to sign said Agreement substantially in the form submitted."

Background:

The City of Des Moines has been an active member of SCATBd for many years now. The current SCATBd Agreement will expire on December 31, 2021. Deputy Mayor Matt Mahoney currently represents the City in this group along with the City's Public Works Director, who serves as the alternate. SCATBd provides a forum for sharing information and coordinating interrelated projects as well as providing a strong voice for making sure that South County transportation needs are considered in this region. Without a unified South County voice, the strong East County and Seattle transportation

interests would be expected to dominate King County decision making on this important topic. The City of Des Moines has benefited on a number of occasions by having SCATBd backing for our street and transit needs.

Discussion:

The purpose of the Agreement is to identify the voting and non-voting members of the South County Area Transportation Board and to provide for its continuation. SCATBd is the South County forum for information sharing, consensus building and coordination to resolve transportation issues, which affect the South County area. SCATBd is a forum that allows input into decisions and other transportation-related issues as determined by membership, issues such as:

- Development of King County Metro Six-Year Transit and Sound Transit Development Plans
- Implementation of transit service priorities
- Recommendations for regional project identification and Countywide project selection
- Recommendations for modifications to Sound Transit service implementation-related services, projects and development of future Phase II planning efforts

It is especially important to have a voice during these tight economic times. The more South County works cooperatively, the better chance the cities have to benefit from decisions made by this Board.

Alternatives:

Council could decide not to participate, but Des Moines would be left out of the loop for input, decisions and resources that will affect our role in transportation issues in the South County area. We would have to handle our issues without the support and networking of the surrounding agencies which would have a negative effect on our ability to gain funding and support for outside resources and build consensus to promote our interests.

Financial Impact:

Under Section 5 of the Agreement, King County is providing the general administrative and program support for SCATBd. Section 6 requires cities to contribute \$100 annually to support special events, public education or other expenses authorized by SCATBd. This is a minimal amount in comparison to the benefits that are reaped by participation in this forum.

Recommendation:

Staff recommends that the City continue its participation in the South County Area Transportation Board and that Council approve the motion.

Concurrence:

The Legal, Finance and Public Works Departments concur.

South County Area Transportation Board Agreement

Parties to Agreement

City of Algona
City of Auburn
City of Black Diamond
City of Burien
City of Covington
City of Des Moines
City of Enumclaw
City of Federal Way
City of Kent
City of Maple Valley
City of Milton
City of Normandy Park
City of Pacific
City of Renton
City of SeaTac
City of Tukwila
Muckleshoot Indian Tribe
King County

Transmitted to parties for approval and signature on_____.

THIS AGREEMENT is made and entered into by and among the CITY OF ALGONA, hereafter called “Algona”; the CITY OF AUBURN, hereafter called “Auburn”; the CITY OF BLACK DIAMOND, hereafter called “Black Diamond”; the CITY OF BURIEN, hereafter called “Burien”; the CITY OF COVINGTON, hereafter called “Covington”; the CITY OF DES MOINES, hereafter called “Des Moines”; the CITY OF ENUMCLAW, hereafter called “Enumclaw”; the CITY OF FEDERAL WAY, hereafter called “Federal Way”; the CITY OF KENT, hereafter called “Kent”; the CITY OF MAPLE VALLEY, hereafter called “Maple Valley”; the CITY OF MILTON, hereafter called “Milton”; the CITY OF NORMANDY PARK, hereafter called “Normandy Park”; the CITY OF PACIFIC, hereafter called “Pacific”; the CITY OF RENTON, hereafter called “Renton”; the CITY OF SEATAC, hereafter called “SeaTac”; the CITY OF TUKWILA, hereafter called “Tukwila”; the MUCKLESHOOT INDIAN TRIBE; and KING COUNTY, a legal subdivision of the State of Washington, hereafter called “King County” as members of the South County Area Transportation Board.

WHEREAS, the parties to this agreement recognize that multi-jurisdictional transportation planning and coordinated transportation plans benefit their citizens; and

WHEREAS, the South County Area Transportation Board has served as the central forum for information sharing, consensus building, and coordination to develop recommendations for transportation policies, projects and programs for the south King County area;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1.0 Purpose of this Agreement

The purpose of this Agreement is to recognize the South County Area Transportation Board as the transportation board for the south King County area to share information, build consensus, and provide advice on plans, programs, policies and priorities for countywide, regional, state and federal transportation decisions.

2.0 Members and Voting

Members shall have full voting rights, limited voting rights or shall be non-voting members, as follows:

2.1 Members with Full Voting Rights: Only jurisdictions which are signatories to this agreement shall have full voting rights on all of the following issues before the South County Area Transportation Board, unless otherwise noted, including:

1. Administrative issues, such as additional members and use of dues.
2. Recommendations to Sound Transit on policies and capital and service plans and implementation.
3. Recommendations to King County on Metro Transit planning, development and implementation of products and services.
4. Identification of projects for the regional competition, if prescribed by the process approved by the King County caucus of the Transportation Policy Board.
5. Recommendations to WSDOT on policies, programs and projects.
6. Recommendations to the PSRC on plans, policies, programs and projects such as Transportation 2040 updates and regional funding policies, strategies or programs.
7. Input to the State Legislature and committees and commissions established by the Legislature on transportation policy, budget and priorities and legislative proposals and studies.
8. Recommendations to the federal delegation on federal legislation including reauthorization and funding priorities and other transportation-related programs.

2.2 Members with Limited Voting Rights: The South County Area Transportation Board may add members with limited voting rights on the issues such as those listed below by unanimous vote of the parties to this agreement in attendance at a regular meeting.

1. Recommendations to WSDOT on policies, programs and projects.
2. Recommendations to the PSRC on plans, policies, programs and projects such as Transportation 2040 updates and regional funding policies, strategies or programs.
3. Input to the State Legislature and committees and commissions established by the Legislature on transportation policy, budget and priorities and legislative proposals and studies.
4. Recommendations to the federal delegation on federal legislation including reauthorization and funding priorities and other transportation-related programs.

2.2(a) Such members and voting rights, if any, shall be listed in operating procedures to be adopted by the South County Area Transportation Board.

2.3 Non-Voting Members: The South County Area Transportation Board may add non-voting members by unanimous vote of the parties to this agreement in attendance at a regular meeting. The South County Area Transportation Board may remove non-voting members by a unanimous vote of the parties to the agreement at a regular meeting.

2.3(a) Such members shall be included in operating procedures to be adopted by the South County Area Transportation Board.

3.0 Representation and Conduct

3.1 Representation of city and county members shall be as follows:

Full Voting Members	Number of Representatives
City of Algona	1
City of Auburn	1
City of Black Diamond	1
City of Burien	1
City of Covington	1
City of Des Moines	1
City of Enumclaw	1
City of Federal Way	1
City of Kent	1
City of Maple Valley	1
City of Milton	1
City of Normandy Park	1
City of Pacific	1
City of Renton	1
City of SeaTac	1
City of Tukwila	1
Muckleshoot Indian Tribe	1
King County	3

3.2 Elected officials shall be appointed to the South County Area Transportation Board by their cities and counties for a one-year term. King County representation shall be a maximum of two Councilmembers and the King County Executive.

3.3 Each city or county participating member may appoint an alternate for a one-year term. Designated alternates may vote in place of designated voting representatives in the absence of the designated representative.

4.0 Operating Procedures

4.1 The South County Area Transportation Board shall adopt operating procedures to specify limited voting members and non-voting members, if any, dues for limited and non-voting members, if any, and operational issues such as election of officers, formation of subcommittees and rules of order. A chair and vice-chair shall be elected per the operating procedures and shall be responsible for setting meeting agenda, running meetings and any other activities identified in the operating procedures.

5.0 Lead Agency

5.1 King County will be the Lead Agency for receipt and disbursement of funds collected through annual dues, and general administrative and program support for the South County Area Transportation Board. King County assumes wage and benefit costs of its staff performing Lead Agency responsibilities to the extent that King County appropriates such funds. The Lead Agency, in its sole discretion, shall determine the level of staffing available based upon funding.

5.2 Lead Agency responsibilities may be limited to: maintaining the South County Area Transportation Board membership rosters and distribution lists; arranging for Board meetings, including

scheduling, agendas and rooms; collecting, administering and disbursing Board dues; providing Board meeting support to the chair and vice chair; attending Board meetings; and preparing Board meeting summaries.

6.0 Financing and Cost Sharing Guidelines

6.1 Yearly Dues: The South County Area Transportation Board members shall pay a minimum of \$100.00 per full voting representatives in annual dues to remain members in good standing. The Lead Agency will bill annually at the end of each year, and dues are to be paid within ninety days after receipt of the invoice. Members not in good standing shall lose voting rights until the required dues are paid. Additional dues above \$100.00, and any dues required by limited or non-voting members, will be determined by the South County Area Transportation Board as prescribed in the operating procedures. Revenue from dues shall be used for special events, public education, or other expenses authorized by the South County Area Transportation Board. The designated Lead Agency shall not be required to pay yearly dues.

6.2 Annual Review of Financing: The South County Area Transportation Board shall determine by June 30 of each year whether additional annual dues above \$100.00 per voting representatives will be required of the South County Area Transportation Board member jurisdictions for the following year.

6.3 Additional financial contributions: If additional financial contributions beyond an increase in dues are determined to be necessary, costs shall be shared among all voting members, with an option for King County to recuse itself from further financial obligations. Recused members may not vote on determining the additional financial contribution or uses for the additional funds.

6.4 Modification to Agreement Required: If additional funds are determined to be necessary, a modification to this agreement specifying cost-sharing, purpose, scope of work, administration, collection and disbursement of funds and other details is required in order to obligate a member jurisdiction to funding participation.

7.0 Withdrawal of a Party from this Agreement

Each party, for its convenience and without cause or for any reason whatsoever, may withdraw from participation in this Agreement by providing written notice, sent certified mail, return receipt required, to the chair of the South County Area Transportation Board at least thirty (30) days in advance of the effective date of the withdrawal. A withdrawing party shall not be entitled to a refund of any payments to the South County Area Transportation Board and shall pay any dues required to be paid under this Agreement for costs which had been obligated prior to the effective date of the withdrawal. All obligations other than dues cease upon withdrawal.

Each party's funding to perform its obligations under the Agreement, beyond the current appropriation year, is conditional upon appropriation by the party's governing body of sufficient funds. Should such an appropriation not be approved for a future year, a party may exercise its right to withdraw from the Agreement.

8.0 Duration

This Agreement shall take effect upon being duly adopted by the governing bodies of all parties and executed by the authorized representatives of all parties. This Agreement shall remain in effect until December 31, 2023~~19~~, provided that unless terminated earlier in accordance with Section 9.0, this

Agreement shall be automatically extended upon the same terms or conditions for another term commencing January 1, 202~~4~~⁹, and ending no later than December 31, 202~~5~~¹.

9.0 Termination

All parties to this Agreement must agree to terminate this Agreement in order for such termination to be effective. If all parties desire to terminate this Agreement, they shall execute a Statement of Termination. Upon termination, no party shall be required to make any additional contributions. Any remaining funds shall be refunded to the parties to this Agreement according to Section 11.0.

10.0 Real and Personal Property

The acquisition of real property is not anticipated under this Agreement. Any personal property acquired pursuant to this Agreement shall be held by the Lead Agency. In the event this Agreement expires or is terminated in accordance with Section 8.0 or 9.0, any personal property other than cash shall remain with the Lead Agency.

11.0 Return of Funds

At such time as this Agreement expires without being extended or revised, or is terminated in accordance with Section 9.0, any unexpended and uncommitted funds shall be distributed proportionately to those parties to this Agreement at the time of termination based on each party's percentage share of the total balance at the time of termination.

12.0 Filing

This Agreement shall be filed with the King County Department of Records and Elections.

13.0 Legal Relations

13.1 The parties shall comply with all applicable state and federal laws and regulations.

13.2 This Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of any other party.

13.3 Each party shall defend, indemnify and hold harmless the other party and all of its officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind whatsoever which arise out of, are connected with, or are incident to any negligent acts of the first party, its contractor, and/or employees, agents, and representatives in performing the first party's obligations under this Agreement. The parties agree that their obligations under this paragraph extend to claims made against one party by the other party's own employees. For this purpose, the parties, by mutual negotiation, hereby waive any immunity that, as respects the other party only, would otherwise be available against such claims under the industrial insurance provisions of RCW Title 51. In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section, against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

13.4 The provisions of this Section shall survive and remain applicable to each of the parties notwithstanding any termination or expiration of this Agreement and notwithstanding a party's withdrawal from this Agreement.

14.0 Entirety and Modifications

14.1 This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the subject matter hereof and constitutes the entire agreement between the parties.

14.2 This Agreement may be modified or extended only by written instrument signed by all the parties hereto.

15.0 Counterparts

The signature pages of this Agreement may be executed in any number of counterparts, each of which shall be an original. For purposes of this Agreement, a duly authorized electronic signature constitutes an original signature.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the date set forth below its signature.

City of Algona By: _____ Date: _____	City of Auburn By: _____ Date: _____	City of Black Diamond By: _____ Date: _____
City of Burien By: _____ Date: _____	City of Covington By: _____ Date: _____	City of Des Moines By: _____ Date: _____
City of Federal Way By: _____ Date: _____	City of Kent By: _____ Date: _____	City of Maple Valley By: _____ Date: _____
City of Normandy Park By: _____ Date: _____	City of Pacific By: _____ Date: _____	City of Renton By: _____ Date: _____
City of SeaTac By: _____ Date: _____	City of Tukwila By: _____ Date: _____	Muckleshoot Indian Tribe By: _____ Date: _____
King County By: _____ Date: _____	City of Enumclaw By: _____ Date: _____	City of Milton By: _____ Date: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Discussion of 2022 City Council
Legislative Priorities

ATTACHMENTS:

1. 2022 City Council Legislative
Priorities

FOR AGENDA OF: December 2, 2021

DEPT. OF ORIGIN: Administration

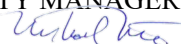
DATE SUBMITTED: November 23, 2021

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal /s/ MH
- ☐ Finance _____
- ☐ Courts _____
- ☐ Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is for the City Council to review the 2022 City Council Legislative Priorities for the 2022 Legislative Session

Motion 1: “I move to approve the 2022 City Council Legislative Priorities as presented.”

Background

The State Legislative Session will convene for a “short” session on January 10, 2022. It is scheduled to run for 60 days until March 10th, 2022.

This is the second year of a biennial budget, so there will be much less budget work than occurred during the 2021 session, which was the long (105 day) budget-writing session. There will be an unusually active budget session though due to a potential new Transportation Budget revenue package that could combine new Federal funds with additional State gas and other taxes to fund these new projects.

The overall economy has also performed much better than was forecasted when this biennial budget was written.

Washington State bases its budget on economic forecasts developed by the Washington Economic & Revenue Forecast Council (ERFC). The ERFC published its most recent outlook in mid-November, estimating an overall increase in projected revenue of \$3.6 billion for the current biennium and \$4.1 billion for the next biennium. The next forecast will be published in February.

Such a relatively robust economic outlook could mean larger-than-usual supplemental budgets this year.

The State Legislators that represent areas of Des Moines are: Senator Karen Keiser (D-33rd), Senator Claire Wilson (D-30th), Representative Tina Orwall (D-33rd), Representative Mia Gregerson (D-33rd), Representative Jamila Taylor (D-30th), and Representative Jesse Johnson (D-30th). Congressman Adam Smith (D-W A 9th Congressional District) represents all of Des Moines in the US Congress along with US Senators Patty Murray and Maria Cantwell in the US Senate. Those exact boundaries will shift with redistricting, but in the most recent map from the Redistricting Commission (now before the State Supreme Court), Des Moines would continue to be shared by the 33rd, & 30th Legislative and fully within the 9th Congressional. We should know the final maps by April 30th, 2022 at the latest.

Most of Des Moines is currently in the 33rd District while the Redondo neighborhood is in the 30th. The City is fortunate to have representatives in top Legislative leadership positions. For instance, Senator Keiser is the Senate's President Pro Tempore. The President Pro Tempore serves as the Senate's presiding officer in absence of the Lieutenant Governor. Representative Tina Orwall holds the equivalent position in the House - Speaker Pro Tempore - and she presides over the House in absence of the Speaker. All the Legislators in the 33rd have deep Legislative experience in Olympia. Representative Mia Gregerson notably is Vice-Chair of the House Appropriations Committee.

Members of the 30th District were especially helpful in securing funding for the Redondo Fishing Pier reconstruction project.

In working with all our Legislators above, 2021 has been an extremely good year for Des Moines. Highlights included securing an additional \$2 million for bulkhead construction (Phase II, making \$4 million total for the project) and \$900,000 for reconstructing the Redondo Fishing Pier. Regional funds for airport-related environmental issues were also secured and a wide variety of important policy bills passed. Notably, a new Tax Increment Financing program that could prove helpful to Des Moines in the future.

As the City has done in past sessions, we will coordinate our efforts with partner agencies, including the Association of Washington Cities (AWC), Suburban Cities Association (SCA) and South County Area Transportation Board (SCATbd).

Following is a proposed 2022 Legislative Agenda that has two budget requests – one each in the Capital and Transportation budgets – along with several policy bills and issues.

2022 City of Des Moines Proposed City Council Legislative Priorities

Funding Requests:

Barnes Creek Trail South Segment. This segment will help connect Highline College and surrounding communities with the new Sound Transit station as well as connecting with a wider trail system. City already has a grant from Sound Transit but will require more to fund the project. Transportation Budget request **\$3.5 million**.

223rd Urban Creek Bioswale Project. Seek planning funds to scope and design this project which is an important part of the waterfront redevelopment program. Capital Budget request: **\$300,000**.

Public Safety

Combatting Catalytic Converter Theft. Catalytic converter theft is a growing problem in Des Moines, South King County and many other areas in the State. Des Moines will help lead in getting new Legislative tools to make it much more difficult for this illegal market to continue.

Allowing Traffic Cameras in High Problem Areas. Redondo and other areas in Des Moines have experienced street racing, speeding and other traffic and safety issues. Traffic cameras today are basically only allowed in school zones and certain intersections. State law needs to be changed to allow for wider use. Note, this will be a challenging bill to pass but important to move this debate forward and try to pass.

Work closely with Police Chief on ongoing public safety reforms.

Environmental & Airport Mitigation

Indoor Air Quality. Continue working with other airport communities, citizens and Legislators supporting studying and improving indoor air quality related to airport-related activities. Support expanding air quality mitigation efforts beyond schools to residential properties to further protect the health of City residents. Orwall initiative likely forthcoming.

Other General Policy Bills - Monitoring and Action. There will be a variety of non-Des Moines-specific policy bills where Des Moines should take an active role. These will be flagged during the session. Issues will include those policies and legislation that protect or enhance the local authorities of cities. Land use, airport and/or marina related legislation will be monitored particularly closely. Additional public safety bills like 988 enhancement and quality of life issues like car noise (muffler) legislation are likely and would be supported. There will also be regional issues identified by AWC, SCA and SKTBD. The City Manager along with the City's Legislative Advocate will continually identify and respond on other issues as appropriate and as they develop.

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