

City of Blaine
Request for Council Action
Meeting Date: September 11, 2023

Subject: Plover repair contract amendment

Department: Community Development Services

Prepared By: _____
(Digital Signature)

Agenda Location: Consent Agenda Council Action Unfinished Business

Action Needed:

Requesting Council action to authorize the City Manager to sign a contract amendment with Drayton Harbor Maritime to fund their reimbursement request for repairs to the M.V. Plover that have exceeded the approved contract amount.

Attachments:

1. Draft contract amendment
2. Drayton Harbor Maritime contract for repair services

Background/Summary:

The City's historic passenger ferry, the M.V. Plover, is undergoing repairs as mandated by the U.S. Coast Guard. The repairs are being coordinated by the City's contractor, Drayton Harbor Maritime ("DHM" or "the Contractor"). City Council as part of the approval of the 2023 Budget allocated \$30,000 in the General Government Facilities Capital Facilities Budget ("GG CIP") for the repairs. Currently the City has reimbursed DHM \$25,705.46 for these repair services.

DHM has now exceeded the contract amount of \$30,000 to repair the Plover. Their total combined reimbursement requests now total \$47,830.33. This is \$17,830.33 over the contracted amount. Please note that based on a review of individual DHM invoices, city staff has identified \$1,027.06 of DHM expenditures that are outside the contract scope of "parts, services and materials." This amount will be deducted from the final reimbursement, which adjusts the total current cost to repair the Plover to \$46,803.27. Staff is requesting Council authorize the City Manager to sign a contract to pay for these incurred costs to DHM.

These expenses cover the current repairs to the Plover, but additional funding will be needed to fully complete repairs to the vessel. The current contract with DHM for repair services has now expired. The CDS Department will solicit quotes to complete the remaining work on the Plover. This work will be authorized under a new contract for repair services. This will likely occur later this fall or winter.

Budget Implications: Current Budget New Budget Request Non-Budgetary

The repairs are funded through the General Government Facilities CIP. A budget amendment will be processed at the end of 2023 to reflect Council's decision.

Recommendation:

The CDS Department respectfully requests that the City Council consider the following options:

1. Approve the City Manager to amend the contract with Drayton Harbor Maritime to \$46,803.27, or;
2. Deny the contract amendment request. The Plover would be moved to the Public Works yard until further consideration and Drayton Harbor Maritime's incurred expenses, including 3rd party labor, would not be reimbursed by the City.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

CITY OF BLAINE
AGREEMENT AMENDMENT #2
with Drayton Harbor Maritime for
Purchased Services for the Historic Plover Passenger Ferry

The contract between the City of Blaine and Drayton Harbor Maritime purchased services to repair the M.V. Plover historic passenger ferry dated February 14, 2023, is hereby amended as follows:

Item #1: Section 1, Scope of Work: shall remain unchanged.

Item #2: Section 2, Term: shall remain unchanged.

Item #3: Section 3, Compensation: shall be amended to \$46,803.27.

All work shall comply with City standards and shall be approved by the City prior to payment.

All other items, terms and conditions of the contract remain unchanged.

City of Blaine:

Consultant:

Mike Harmon, City Manager

Captain Richard Sturgill
Director, Drayton Harbor Maritime

Attest:

Samuel Crawford, City Clerk

CITY OF BLAINE
AGREEMENT AMENDMENT #1
with Drayton Harbor Maritime for
Purchased Services for the Historic Plover Passenger Ferry

The contract between the City of Blaine and Drayton Harbor Maritime purchased services to repair the M.V. Plover historic passenger ferry dated February 14, 2023, is hereby amended as follows:

- Item #1:** **Section 1, Scope of Work:** shall remain unchanged.
- Item #2:** **Section 2, Term:** shall be extended until August 31, 2023.
- Item #3:** **Section 3, Compensation:** shall remain unchanged.

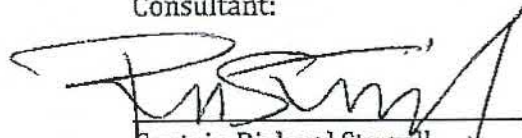
All work shall comply with City standards and shall be approved by the City prior to payment.

All other items, terms and conditions of the contract remain unchanged.

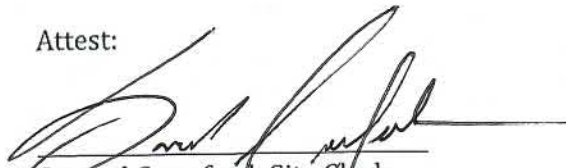
City of Blaine:


Mike Harmon, City Manager

Consultant:


Captain Richard Sturgill
Director, Drayton Harbor Maritime

Attest:


Samuel Crawford, City Clerk

CITY OF BLAINE

AGREEMENT FOR PURCHASED SERVICES
REPAIR OF THE PLOVER HISTORIC PASSANGER FERRY

This AGREEMENT FOR PURCHASED SERVICES ("Agreement") is made and entered into as of the later of the two signature dates below, by and between:

CITY OF BLAINE
Community Development Services
435 Martin Street, Suite 3000
Blaine, WA 98230

("City")

AND

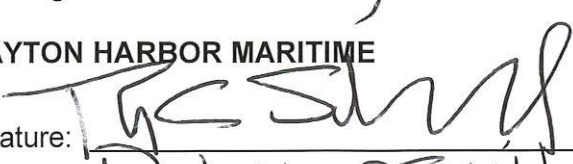
DRAYTON HARBOR MARITIME
Attn: Captain Richard Sturgill, Director
P.O. Box 369
Lynden, WA 98264


("Contractor")

Term of Contract: November 1, 2022 – March 31, 2023

- **SCOPE OF WORK:** See attached *Exhibit A*.
- **COMPENSATION:** The Contractor shall be compensated on the basis of hours worked and expenses incurred pursuant to *Exhibit B*.
- **GENERAL PROVISIONS:** Services covered by this Agreement shall be performed in accordance with the General Provisions (which are attached hereto and form a part of this Agreement) and any attachments or schedules.
- **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this agreement, which shall be binding upon the parties according to its terms.

DRAYTON HARBOR MARITIME
Signature: 
Name/Title: RICHARD C STURGILL
Date: 2/7/23

CITY OF BLAINE
Signature: 
Name/Title: Samuel Crowder / Acting City Manager
Date: 2/14/23

GENERAL PROVISIONS

In consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Scope of Work. The objective of this Agreement is the timely preparation, completion, and/or delivery of the scope of work (the "Services" or "Work") described on **Exhibit A**, attached hereto, and incorporated herein by this reference.

1.1 Services covered by this Agreement shall be performed in accordance with these General Provisions and any attachments or schedules. Except as may be otherwise provided for herein, this Agreement may only be amended by the mutual consent of both parties hereto, in writing and signed by duly authorized representatives of both parties.

2. Term of Agreement. The Contractor shall not begin Work under the Agreement until the City has specifically authorized the Contractor to do so in writing.

3. Compensation and Payment. The Contractor shall be compensated as set forth on **Exhibit B**, attached hereto, and incorporated herein by this reference.

3.1 Contractor shall supply City with a monthly invoice and written documentation, satisfactory to City, for all amounts due under this Agreement, including, but not limited to, project budget status and a narrative progress description of Services rendered that is acceptable in form to the City. All invoices submitted by Contractor to City shall reference any applicable billing codes provided by City to Contractor. Any applicable taxes shall be listed as separate line items on each Contractor invoice. All invoices and documentation may be reviewed and audited by City, and payment may be subject to review or audit. Subject to the preceding, payments shall be net thirty (30) days of receipt of such invoice by City. In no event shall the City be charged interest on payments due under this Agreement. If required by City, Contractor shall provide periodic forecasts of its total fees and costs incurred to date.

3.2 If the Work is to be performed on a fixed fee basis, the Contractor shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the Work regardless of

the Contractor's cost to perform the Work. The City shall have sole authority for determining when all Work has been satisfactorily performed by the Contractor, provided such determination is reasonable. The Contractor's payment for the Work shall not exceed the specific amount unless authorized in writing by the City, as provided herein. If **Exhibit B** establishes a fixed fee for the Work, that fixed fee amount comprises all of the Contractor's payment for the Work, and includes, without limitation, all costs of salaries, overhead, non-salary expenses (including, but not limited to, travel, reproductions, telephone services, supplies, and fees of outside Contractors), as well as the Contractor's profits. The Contractor's payment for the Work shall not exceed the specified amount unless first authorized by the City.

3.3 The Contractor shall obtain the prior written approval of the City for any charges for additional services by the Contractor, the additional services of others retained by Contractor, or the furnishing of additional supplies, materials, or equipment. The Contractor shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4. Payment of Subcontractors. At the time of project completion, the Contractor agrees to certify to the City that all employees (including, without limitation, any union fees and benefit plans) and subcontractors have been paid in full to the extent Contractor received payment from the City for subcontractors' services. Final payment shall be preconditioned upon receipt of such certification by the City; the City may, in its sole discretion, withhold final payment until receipt of such certification. The Contractor shall be solely responsible for the performance and payment of any and all subcontractors. All such subcontractors shall possess all licenses and insurance as required by the laws of the State of Washington.

5. Prevailing Wage. Contractor and its subcontractors shall pay prevailing wages as required and shall comply with RCW 39.12, RCW 49.28, Chapter 296-127 WAC, and all other

applicable laws and regulations. Each application for payment submitted by Contractor must state that the prevailing wages have been paid in accordance with State law.

6. Termination. This Agreement may be terminated by either party upon seven (7) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the Contractor, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the City. In the event of termination, the Contractor shall be compensated for satisfactory Services performed to the termination date by reimbursement of the Contractor's actual costs directly related to the project, plus normal overhead and reasonable profit. The City shall have sole authority for determining when all Work has been satisfactorily performed by the Contractor, provided such determination is reasonable. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the City. If the accumulated payment made to the Contractor prior to notice of intent to terminate exceeds the total amount that would be due as set forth herein above, then no final payment shall be due, and the Contractor shall promptly reimburse the City for the excess paid.

6.1 Further, this Agreement may be terminated by the City at any time for any reason whatsoever, at the sole discretion of the City, with seven (7) days' written notice. If the City terminates for convenience, the City will pay according to the payment terms as provided in Paragraph 5, above. If, after termination for failure of the Contractor to fulfill contractual obligations, it is determined that the Contractor has not so failed, the termination shall be deemed to have been for the convenience of the City.

6.2 In addition to the above, the City reserves the right to suspend all or any portion of the Work and Services for Contractor's default or City's convenience. If the Contractor's Work is delayed for more than thirty (30) calendar days due to circumstances for which the Contractor is responsible, the City may find the Contractor in default and terminate this Agreement.

7. Deviations from Scope of Work. The City may at any time issue written directions within the

general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Contractor shall immediately notify the City and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed, or charges incurred unless and until the City approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Contractor.

7.1 The Contractor shall make all revisions and changes in the completed Work under this Agreement as are necessary to correct the Contractor's, and its subcontractors' negligent errors or omissions, without additional compensation from City.

8. Insurance. Contractor, concurrently with the execution of this Agreement, shall provide the City with evidence, as set forth in Paragraph 8.7 herein, that Contractor has obtained and is maintaining the insurance listed as follows:

8.1 Workers' Compensation Insurance as required by law, the Jones Act, or other maritime law coverage.

8.2 Employers' Liability Insurance (bodily injuries) with a limit of One Million Dollars (\$1,000,000.00) per occurrence occurrence/per disease/per employee, including, for all services and work to be performed over water and involving maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage. Such insurance must be provided by a company authorized to write such insurance in Washington State.

8.3 Commercial General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles and vehicles used by or on behalf of Contractor with One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence and an annual aggregate limit of Two Million Dollars (\$2,000,000.00).

8.4 Except with regard to Washington State Workers' Compensation Insurance, each of the policies required herein **shall name the City as**

an additional insured. Furthermore, each policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be canceled with respect to the City except upon thirty (30) days' prior written notice from the insurance company to the City; (iii) contain an express waiver of any right of subrogation by the insurance company against the City and its elected officials, employees, or agent; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Contractor which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Contractor and City.

8.5 Contractor shall furnish the City with two (2) copies of Certificates of Insurance evidencing policies of insurance required herein. **The Certificate of Insurance shall specifically identify the name of the project.** Contractor shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one year thereafter. The City's failure to request such certificates shall not relieve the Contractor of the obligation to provide them.

8.6 The Contractor shall maintain the insurance in effect at all times that it is performing Work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the City to find the Contractor in default and terminate the Agreement accordingly. Alternatively, the City may at its option purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the Contractor.

8.7 City shall be provided thirty (30) days' written notice of any cancellation of said insurance.

9. Contractor Not an Agent or Employee of the City. In performing Work and Services hereunder, the Contractor and Contractor's employees, agents, and representatives shall be acting as independent Contractors and shall not be deemed or construed to be partners, employees, or agents of the City in any manner whatsoever. No employee of the Contractor shall be considered an employee of the City, even while performing Work

required under this Agreement. Furthermore, the Contractor shall not hold itself out as, nor claim to be, an officer or employee of the City by reason hereof, and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the City.

10. Conflict of Interest. Contractor covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or any of its Subcontractors.

11. Compliance with Applicable Law. The Contractor shall comply with all the City's resolutions and all federal, state, and local laws, regulations, and ordinances that are applicable to the Work performed pursuant to this Agreement. The Contractor shall register (and shall require the same of all subcontractors), as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the City.

12. Indemnification. Contractor 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, to the extent arising out of or resulting from the negligent acts, errors, or omissions of Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of Contractor's negligence. **It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.** This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this

Agreement.

City agrees to indemnify Contractor from any claims, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the extent arising from the negligence or willful misconduct of City, or its employees or contractors (other than Contractor) in connection with the project.

13. Warranty. Contractor's Work and Services shall conform to the standard for similar services undertaken by those performing similar work and services within Washington State to include, without limitation, friendly customer service, timely sailings, and a reliable reschedule.

14. Remedies. In the event of a default hereunder, or in the event that Contractor fails to perform the Services in conformance with the standard of care set forth in Section 13 - Warranty, and Contractor does not commence correction within five (5) days of written notice and diligently complete the correction thereafter, then City may, in addition to exercising all of those rights and remedies available to it in law and equity: (i) terminate the Contract after giving five (5) days' prior written notice to Contractor; (ii) cure any defect arising from Contractor's negligence, recklessness, or willful misconduct and charge the cost of such repair back to Contractor; and/or (iii) seek specific remedial performance under the Contract at no additional cost to City. The remedies provided for herein are cumulative.

15. Non-Discrimination. In connection with the performance of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran, or a member of any other protected class. The Contractor shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran, or a member of any other protected class.

16. Subletting or Assigning of Agreement. The Contractor shall not sublet or assign any of

the Work covered by this Agreement without the express written consent of the City.

17. Notices. All notices and payments hereunder may be delivered or mailed to the addresses listed above. If delivered by messenger, courier (including overnight air courier), or facsimile transmittal, they shall be deemed delivered when received at the street address or facsimile numbers listed above. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second (2nd) business day following the date of mailing, if properly mailed to the mailing addresses provided above, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section. The address for delivery of notices and payments are as set forth in the introductory paragraph of this Agreement.

18. Jurisdiction. This Agreement is made and delivered in the State of Washington, and shall be construed and enforced in accordance with the laws thereof. Except as provided herein, jurisdiction and venue of any dispute hereunder shall be solely in the Superior Court of the State of Washington in and for Whatcom County. Unless otherwise prohibited by law the City and Contractor waive their right to a trial by jury in any litigation resulting from this Agreement.

19. Attorneys' Fees. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

20. Mediation. In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, City and Contractor agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

City and Contractor further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and so on at all sublevels, thereby providing for mediation as the primary method for

dispute resolution between the parties to those agreements.

21. Force Majeure. Contractor shall not be responsible for delays or failures to perform caused by circumstances beyond its reasonable control, including but not limited to: (i) strikes, lockouts, work slowdowns or stoppages, or accidents; (ii) acts of God; (iii) failure of the City to furnish timely information or to approve or disapprove Contractor's instruments of service promptly; and (iv) faulty performance or nonperformance by City, City's independent contractors, or governmental agencies. Contractor shall not be liable for damages arising out of any such delay or failures to perform, nor shall the Contractor be deemed to be in breach of this Agreement as a result thereof.

22. Entire Agreement. This is the entire agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The Contractor specifically understands that no City employees

other than the project manager or his/her supervisor are authorized to direct the work of the Contractor.

23. Public Disclosure. Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.56 *et. seq.*). Contractor agrees that in the event that such a request is filed, Contractor will promptly notify City. Contractor further agrees that it will not disclose any such requested material until at least ten (10) business days after providing notification to City. This clause shall survive the termination or expiration of this Agreement.

24. Signing Authority. Anyone signing this Agreement by said signature certifies that he/she has the authority to execute said document on behalf of the Contractor and that his/her signature is binding upon the firm or corporation.

EXHIBIT A
Scope of Work

1. Contractor shall provide the following Scope of Work (“Services” or “Work”):

1.1 All repair work necessary to repair the deficiencies identified on the U.S. Coast Guard semi-annual dry dock inspection of the Historic Plover Ferry (the “Ferry”) in September 2022, including, but not limited to, repair of the following conditions: oil weeping along the starboard seam between the garboard plank and the keel; and replace rot damaged wood on the Ferry’s bow area, starboard side, and port side of the stern.

1.2 Pull six fasteners from each side of the Ferry’s hull and document conditions.

1.3 Replace the Ferry’s diesel engine’s front and rear oil seal and related gaskets.

1.4 Replace the Ferry’s Cutless bearing.

EXHIBIT B
Compensation for Work

Contractor shall be compensated at an hourly rate as follows, plus reimbursement for parts, services and materials necessary to complete the Work.

Wages are hourly as follows:

- i. Shipwright \$60
- ii. Shipwright Assistant: \$40
- iii. Second Assistant: \$20
- iv. Laborer: \$20
- v. Project Manager: \$35
- vi. Mechanic \$40

Contractor shall be compensated for costs incurred to complete payroll and accounting for the project, including \$30 per day for storage and utilities for documented days when work is performed on the vessel.

Invoices will be provided to the City monthly as described in this Agreement.

This contract shall not exceed a total of \$30,000.00.

A contract amendment is possible per the City's contracting policy.