



## MEMORANDUM

### CITY OF LANGLEY

112 Second St./PO Box 366 Langley, Washington 98260 (360) 221-4246

**To:** Mayor Paul Samuelson and Members of the City Council  
**From:** Challis Stringer, Director of Public Works *CS*  
**Date:** November 29, 2011  
**Re:** Agreement with Whidbey Children's Theater for the Promotion of Tourism

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The City currently has an agreement with Whidbey Children's Theater (WCT) for the services of tourism promotion that expires at the end of this year. From recent Council discussions on the budget, it was determined the City would like to continue supporting the WCT for the promotion of tourism through the Hotel/Motel Tax funds received by the City, in the amount of \$2,500 a year.

Attached you will find a proposed agreement between the City and WCT for tourism promotion services. This agreement has one change from the previous signed agreement which is the time frame of the agreement. The agreement currently in effect is for a term of one year expiring December 31, 2011; whereas this proposed agreement will be in effect until December 31, 2015, a four year term.

WCT has reviewed and supports the proposed agreement.

# TOURISM PROMOTION SERVICES AGREEMENT

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The City of Langley ("City") and Whidbey Children's Theater ("WCT"), referred to collectively as the "Parties," enter into the following Agreement for Tourism Promotion services:

**I. Scope:** The WCT shall provide tourism promotion services for the City. Tourism promotion shall mean activities and expenditures designed to increase tourism to the City. Tourism promotion activities may include, but are not limited to, advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists to the City. The WCT shall provide to the City a work plan attached hereto as Exhibit A setting forth its goals and objectives for successful tourism promotion

**II. Term:** This agreement shall commence on the date of execution of this Agreement and shall continue in full force and effect until December 31, 2015 unless terminated earlier pursuant to Section IX of this Agreement.

**III. Compensation:** In consideration of the services provided pursuant to this Agreement the City shall pay the WCT an amount not to exceed Twenty-five Hundred Dollars (\$2,500) for Tourism Promotion services. However, funding for this Agreement is subject to the actual Hotel/Motel Tax funds received by the City. If Hotel/Motel Tax receipts are lower than budgeted, funding may be decreased.

The WCT shall submit periodic billing statements detailing how activities and services performed by the WCT detailing specifically promoted tourism in the City of Langley including measurable results. Upon receipt of a conforming billing statement, the City shall promptly process payment. If a billing statement does not conform to this Agreement, the City may withhold payment until the statement is brought into compliance. Such withholding does not relieve the WCT of its obligations under this Agreement.

The WCT shall not perform work beyond the Scope of Work, nor shall be compensated for such work, unless the Scope of Work or amount of compensation is modified pursuant to this Agreement.

**IV. Relationship of Parties:** The WCT represents that it is skilled in the matters addressed in the Scope of Work and is performing independent functions and responsibilities within its field of expertise. The WCT and its personnel are independent contractors and not employees of the City. WCT and its personnel have no authority to bind the City or to control the City's employees and other contractors. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the WCT. WCT will be solely and entirely responsible for its acts and for the acts of WCT's agents,

employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work.

As an independent contractor, WCT is responsible for its own management. The City's administration and enforcement of this Agreement shall not be deemed an exercise of managerial control over WCT or its personnel.

As an independent contractor, WCT is responsible for payment of all taxes and licensing fees necessary to perform its obligations under this Agreement. These taxes and fees include but are not limited to State industrial insurance, Business & Occupation, State professional licensing, and City business licensing. If any taxes or fees due the City have been declared delinquent, the City may withhold the delinquent amount, plus any additional charges arising from the delinquency, from any payments due WCT.

**V. Indemnification:** WCT shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this Agreement, except for that portion of the injuries and damages caused by the City's sole negligence.

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

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

**VI. Insurance:** Prior to and during the performance of the work covered by this Agreement, WCT shall provide the Director of Finance for the City with evidence that it has obtained and maintains in full force and effect during the term of this Agreement comprehensive general liability insurance coverage of at least \$500,000.00 per occurrence. In the event WCT organizes, promotes or sponsors an event involving the sale or consumption of food or alcoholic beverages, WCT shall also provide evidence that it has obtained products liability and liquor liability insurance of at least \$500,000.00 per occurrence, for each event. The City shall be named as additional insured and a copy of the appropriate additional insured endorsement shall be provided to the City's Director of Finance. The Director of Finance shall be provided thirty (30) days written notice of any cancellation of said insurance.

## **VII. General Conditions:**

**A. Reports and Information:** When requested by the City, WCT shall furnish periodic reports and documents on matters covered by this Agreement. The reports and documents shall be furnished in the time and form requested. Such reports and documents shall include: list of special events sponsored by WTC with the amount of revenue expended on each festival, special event or tourism-related facility; the estimated number of tourists and/or persons traveling over fifty miles to the destination, and the estimated number of lodging stays generated per festival or tourism-related event.

B. Work Performed at WCT's Risk: WCT shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at WCT's own risk, and WCT 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.

C. Place of Work: The WCT shall perform the work authorized under this Agreement at its offices in Langley, Washington. Any necessary meetings with the City staff shall take place at the City's offices, or at locations mutually agreed upon by the parties.

D. Entire Agreement: This Agreement and its Exhibits constitutes the entire agreement between the Parties, and the Parties acknowledge that there are no other agreements, written or oral, that have not been set forth in the text of this Agreement.

E. Severability: Should any part of this Agreement be found void, the balance of the Agreement shall remain in full force and effect.

F. Modification: This Agreement may only be modified by written instrument signed by both Parties.

G. Written Notices: All communications regarding this Agreement shall be sent to the parties at the addresses listed below by registered or 1st class mail, or by personal service, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

**City Address**

City Clerk  
P.O. Box 366  
Langley, WA 98260

**Whidbey Children's Theater Address**

Shelley Marsanyi, Managing Director  
P.O. Box 1493  
Langley, WA 98260

H. Waiver: Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

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

J. Compliance with Laws: WCT shall comply with all applicable Federal, State, and local laws in performing its obligations under this Agreement.

K. Choice of Law and Venue: This Agreement shall be interpreted according to the laws of the State of Washington. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Island County Superior Court.

L. Attorneys' Fees: In the event of litigation to enforce any of the terms or provisions herein, each party shall pay all its own costs and attorney's fees.

M. Assignment: Any assignment of this agreement by the WCT without the written consent of the City shall be void.

**VIII. Nondiscrimination:** WCT shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status, sexual orientation or disability, except for employment actions based on bona fide occupational qualification.

**IX. Termination:** This Agreement may be terminated by either party for convenience upon thirty (30) days written notice to the other party, or for cause if either party fails substantially to perform through no fault of the other and does not commence correction within five (5) days of written notice and diligently completes the correction thereafter. Upon such termination, City will be entitled to reports showing the status of all services WCT is providing to the City as of the effective date of termination.

**X. Termination of Other Contracts.** This Agreement shall supersede all prior Agreements between the parties relating to the use of Hotel/Motel Tax.

CITY OF LANGLEY

WHIDBEY CHILDREN'S THEATER

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By: \_\_\_\_\_  
its: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
its: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

Attest:

\_\_\_\_\_  
Langley City Attorney

\_\_\_\_\_  
City Clerk