

# **ECONOMIC DEVELOPMENT SERVICES AGREEMENT**

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The City of Langley (“City”) and the Orca Network (“ON”), referred to collectively as the “Parties,” enter into the following Agreement for Economic Development services as of the date of mutual execution indicated below:

## **RECITALS**

**WHEREAS, it is in the public interest for cities to engage in economic development programs; and**

**WHEREAS, RCW 35.21.703 authorizes cities to contract with nonprofit corporations in furtherance of acts relating to economic development; and**

**WHEREAS, it is one of the City’s highest priorities for 2014 to improve economic development in the City and attract more people and businesses to the City; and**

**WHEREAS, Orca Network is a 501(c)(3) non-profit organization dedicated to raising awareness of the whales of the Pacific Northwest, and the importance of providing them healthy and safe habitats; and**

**WHEREAS, the Orca Network intends to establish the Langley Whale Interpretive Center (“Whale Center”) in the City; and**

**WHEREAS, attractions in other communities similar to the Whale Center proposed by Orca Network have attracted significant interest from tourists; and**

**WHEREAS, the City expects that the Whale Center will attract many people to the City, who will then spend money in various Langley establishments and generate tax revenue for the City; and**

**WHEREAS, the City finds it to be in the public interest to support the creation of the Whale Center by contributing money to its start-up costs; and**

**WHEREAS, RCW 35A.27.010 authorizes every code city to exercise the powers relating to the acquisition, development, improvement and operation of libraries and museums and the preservation of historical materials to the same extent authorized by general law for cities of any class; and**

**WHEREAS, the City and the Orca Network expect the Whale Center to function like a museum;**

**NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:**

## **TERMS**

**I. Scope:** The ON shall provide economic development services for the City through the establishment and operation of a “Langley Whale Interpretive Center” in the City of Langley, which will attract and welcome visitors and patrons to the City. The ON shall provide to the City a work plan attached hereto as Exhibit A setting forth its goals and objectives for successful operation of the “Langley Whale Interpretive Center”.

**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, 2014, unless terminated earlier pursuant to Section IX of this Agreement.

**III. Compensation:** In consideration of the services provided pursuant to this Agreement City shall pay the ON an amount not to exceed Ten Thousand Dollars (\$10,000).

The ON shall submit periodic billing statements detailing how the city funds have been or will be utilized and explaining the connection between the use of the funds and the promotion of the economy in the City of Langley. 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 ON of its obligations under this Agreement.

The ON shall not use city funds to perform work beyond the Scope of Work described in Section I of this Agreement, 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 ON represents that it is skilled in the matters addressed in the Scope of Work described in Section I of this Agreement and is performing independent functions and responsibilities within its field of expertise. The ON and its personnel are independent contractors and not employees of the City. ON 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 ON. ON will be solely and entirely responsible for its acts and for the acts of ON’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, ON 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 ON or its personnel.

As an independent contractor, ON 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 taxes, State professional

licensing, and City business licensing. If any taxes or fees for which the City can be held liable have been declared delinquent, the City may withhold the delinquent amount, plus any additional charges arising from the delinquency, from any payments due ON.

**V. Indemnification:** ON 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, ON 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 ON organizes, promotes or sponsors an event involving the sale or consumption of food or alcoholic beverages, ISF 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 an 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, ON 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 ON with the amount of revenue expended on design, establishment and operation of the Whale Center facility; and the estimated number of patrons and persons traveling over fifty miles to the facility and its events.

B. Work Performed at ON's Risk: ON 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 ON's own risk, and ON shall be responsible for any loss of or damage to persons, materials, tools, or other articles used or held for use in connection with the work.

C. Place of Work: The ON shall perform the work authorized under this Agreement at its Center 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 constitute 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

**Orca Network Address**  
Fred Lundahl, Orca Network Board Member  
485 LaBella Vista Way  
Freeland, WA 98249

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: ON 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 ON without the written consent of the City shall be void.

**VIII. Nondiscrimination:** ON 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 ON 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.

CITY OF LANGLEY

ORCA NETWORK

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

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

Approved as to form:

Attest:

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

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