



## SERVICES CONTRACT

CONTRACT NO: PS20140570

City of Vancouver (the "City")

AND: The SeaDoc Society  
Wildlife Health Center, University of California, Davis  
(the "Contractor")

having the following address:

453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia, Canada  
V5Y 1V4

Tel Number: 604-257-8622

Email: [huub.langeveld@vancouver.ca](mailto:huub.langeveld@vancouver.ca)

Name of City Project Manager: Huub Langeveld

having the following address:

942 Deer Harbor Road,  
Eastsound, WA  
98245

Tel Number: 360-376-3910

Email: [jkgaydos@ucdavis.edu](mailto:jkgaydos@ucdavis.edu)

Name of Project Manager: Joseph K. Gaydos

This contract for services is comprised of this cover page, the following parts A, B, C, D and E, the attached Services Contract Terms and Conditions, and any other attachments, schedules, appendices or annexes expressly referred to in the aforementioned parts A, B, C, D and E, and the signature blocks following Part F below. By signing below, the City and the Contractor hereby agree to be bound by the terms of this contract.

**PART A - SERVICES:**

A review of the Vancouver Aquarium's current operations pertaining to cetaceans and a comparison of these operations to other comparable Aquariums will be conducted. This report will include the following components:

- Introduction to general profile of aquariums (for profit, non-profit, etc.) and trends across the world and a profile of related public policy.
- An overview of aquariums which are comparable to the Vancouver Aquariums (# visitors, size, number of species, trend analysis of cetaceans kept in captivity); where information is available, this will include information on current practices regarding capture of cetaceans, cetacean breeding, contribution to cetacean research, activities related to wild cetacean rescue, etc.).
- Comparison of the Vancouver Aquarium to other aquariums on standards like
  - Size of facility and tanks
  - Veterinary care
  - US and Canadian regulatory standards
- Comparisons on a species by species basis for cetaceans housed and Vancouver and other aquariums, including whales, dolphins and porpoises.
- Comparisons in actions taken towards the following cetacean-associated actions such as:
  - Marine Mammal Rescue & Conservation
  - Research

**Deliverables:**

1. Electronic delivery of a final report (PDF) to the Vancouver Park Board
2. Formal Presentation to the Park Board and General Public (July 26)

Start date for the Services: June 17, 2014 (the "Start Date")

The Contractor agrees to complete the Services by: July 26, 2014

**PART B - FEES AND EXPENSES:**

Fees: \$13,918

Billing Date(s): See Section 20 of the Services Contract Terms and Conditions

- Expenses: [Tick applicable ONE; tick one.]
- Reimbursable by the City but only in accordance with this Contract (see the Services Contract Terms and Conditions); or
  - Not reimbursable (included in fees)

**Definitions:**

"GST" means the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), as amended or replaced from time to time.

"PST" means the provincial sales tax payable and imposed pursuant to the *Provincial Sales Tax Act* (British Columbia), as amended or replaced from time to time.

Maximum Amount of Fees and Expenses (the "Maximum Amount"):

\$13,918

The fees and expenses are further described in Schedule A.

**PART C: APPROVED SUBCONTRACTORS**

None

#### SCHEDULE D: INSURANCE

Without limiting any of its obligations or liabilities under this Services Contract, the Contractor will obtain and continuously carry and will cause its subcontractors to obtain and continuously carry during the term of the Services Contract at its own expense and cost, the following insurance coverage with minimum limits of not less than those shown in the respective items set out below:

- (a) Commercial general liability insurance with a limit of not less than \$5,000,000 per occurrence, and a deductible of not more than \$5,000, protecting the Contractor and the Contractor's personnel against all claims for personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the Contractor or the actions of the Contractor or the Contractor's personnel. The policy will contain a cross-liability clause in favour of the City and will name the City and the City's officials, officers, employees and agents as additional insureds;
- (b) Professional (errors and omissions) liability insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 in aggregate, and a deductible of not more than \$50,000, protecting the Contractor against all claims for loss or damage arising out of any error or omission of the Contractor or the Contractor's personnel in the performance of the Services;
- (c) All-risks property insurance covering the Contractor's property of every description containing a provision in which the insurer waives all rights which it may acquire by payment of a claim to recover the paid amount from the City or its officials, officers, employees or agents; and
- (d) Automobile insurance covering all vehicles owned, leased or operated by the Contractor in connection with this Services Contract, including third party legal liability insurance in an amount not less than \$5,000,000 per occurrence, or such higher amount as the City may require from time to time.]

All insurance policies required by this Services Contract will be in a form, in amounts and with insurers acceptable to the City. All policies will provide that the insurer will provide the City with sixty (60) days' prior written notice of any material change, lapse or cancellation of the policy. Notice must identify the contract title, number, policy holder, and scope of work.

The Contractor and each of its subcontractors will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.

Neither the providing of insurance by the Contractor in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Contractor from any other provisions of the Services Contract with respect to liability of the Contractor or otherwise.

The insurance coverage will be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City or its officials, officers, employees, or agents will be excess of the Contractor's insurance and will not contribute with it.

Prior to the Start Date, the Contractor will provide the City with evidence of all required insurance in the form of a "Certificate of Insurance" (on the City's form).

The Certificate of Insurance will identify the contract title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. The Contractor will provide proof of insurance, in the form of a Certificate of Insurance or certified copies of all insurance policies to the Manager, Contracts and Administration at any time immediately upon request.

The Contractor will provide in its agreements with its subcontractors clauses in the same form as in this Part D. Upon request, the Contractor will deposit with the City detailed certificates of insurance for the policies it has obtained from its subcontractors and a copy of the applicable insurance clauses from its sub-contract agreements.

The Contractor will ensure that the required insurance is provided only by a company duly registered and authorized to conduct insurance business in the Province of British Columbia.

#### PART E: ADDITIONAL TERMS


None.

The following are integral parts of this Services Contract:

- Schedule A - Detailed Price Schedule;
- Proposal (by reference).

The parties hereto have duly executed this Contract as of the 18 day of July, 2014.

SIGNED AND DELIVERED on behalf of the City by its authorized signatory(ies):

Per:   
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

SIGNED AND DELIVERED on behalf of the Contractor by its authorized signatory(ies):

Per:   
Randi Jenkins, Associate Director, Sponsored Programs Office

Per: N/A  
Authorized Signatory

## SERVICES CONTRACT TERMS AND CONDITIONS

### A. CONTRACTOR'S OBLIGATIONS

1. **Performance of Services.** The Contractor agrees to provide the City with the services described in PART A (and in any schedule referred to therein), including, without limitation, and to the extent not expressly described in PART A (or in any such schedule), all services necessary or incidental to the completion of the services contemplated and described therein (the "Services"), all in accordance with the Services Contract (this "Contract"). The Contractor must provide the Services commencing on the Start Date described in PART A and in accordance with the delivery schedule (if any) specified in PART A (or in any schedule referred to therein), regardless of the date of execution or delivery of this Contract. The Contractor must comply with the City's instructions in performing the Services, but unless otherwise specified herein, the Contractor shall at all times retain control over the manner in which those instructions are carried out.
2. **Provision of Service Inputs.** Unless otherwise specified herein, the Contractor must supply and pay for all labour, materials, permits and approvals (including from any relevant government authority) necessary or advisable to provide the Services.
3. **Standard of Care and Applicable Laws.** The Contractor must perform the Services to the standard of care, skill, and diligence prescribed herein, or where not prescribed herein, to the standard customarily maintained by persons providing, , services similar to the Services, and in accordance with all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Contractor and its personnel and the Services.
4. **Warranty.** Without limitation to any additional warranties provided by the Contractor, whether indicated on the face of this contract or otherwise provided, the Contractor warrants that: (a) all goods, provided by the Contractor in connection with its performance of the Services ("Goods"), shall be of merchantable quality and free from defects in workmanship and materials; (b) all Goods shall strictly conform to applicable samples, specifications and drawings; (c) all Goods and Services shall be fit for the purpose intended by the City; (d) all Goods shall be free and clear of all liens, charges and encumbrances; (e) the Goods and Services shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies; (f) the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and (g) the Goods and Services shall comply with all applicable environmental protection laws and regulations.  

Unless a longer warranty period is specified on the face of this Contract or is otherwise provided, the foregoing warranty shall be valid for one year from the date of acceptance of the Goods and Services by the City. If at any time prior to the expiration of any applicable warranty period, any weakness, deficiency, failure, breakdown or deterioration in workmanship or material should appear or be discovered in the Goods and Services furnished by the Contractor, or if the Goods and Services do not conform to the terms and conditions of this Contract, the City may at its option (a) require the Contractor to promptly replace, redesign or correct the defective and non-conforming Goods and Services at no expense to the City, or (b) the City may replace or correct the defective Goods and Services and charge the Contractor with all expenses incurred by the City.

*RJA*  
~~The Contractor agrees to indemnify and save harmless the City, its officials, officers, employees, assigns, agents, clients and the public from any liability, loss, cost and expense arising either directly or indirectly, from breach of any warranty given by the Contractor hereunder.~~
5. **Contractor Personnel.** The Contractor must ensure that all persons it employs or retains to perform the Services are competent to perform them and are properly trained, instructed, and supervised, and that all such persons comply with the provisions of this Contract.
6. **Reporting.** The Contractor must, upon the City's request, fully report to the City on all work it does or has done in connection with providing the Services.
7. **Deliverables.** As a result of or as part of providing the Services, the Contractor may receive, create, produce, acquire or collect items including, without limitation, products, goods, equipment, supplies, models, prototypes and other materials; information and data; reports, drawings, plans, designs, depictions, specifications and other documentation (collectively, "Deliverables"). Deliverables do not include items that are: not required to be produced by the Contractor or supplied to the City as part of or together with the Services unless the City pays for such items; or specified in this Contract as being excluded from the Deliverables category; or items which pre-existed the effective date of this Agreement that are owned by a third party or that are used by the Contractor as part of the services provided to any of its other customers. All Deliverables will be owned solely by the City unless otherwise expressly provided herein and the City will have the complete right to use and deal with the Deliverables for its own benefit in any way it sees fit without limitation. The Contractor waives, in favour of the City, all moral rights in the Deliverables, transfers to the City, free of all liens and encumbrances, ownership of each Deliverable, and assigns all of its world-wide present and future rights, title and interest in and to each Deliverable, including copyright, effective as of the date of creation or acquisition of such Deliverable. The Contractor will permit the City to inspect and copy all Deliverables.

8. The Contractor acknowledges that, in performing the Services required under this Contract, it may acquire information about matters which are confidential to the City, which information is the exclusive world-wide property of the City or its suppliers or citizens, as the case may be. The Contractor undertakes to treat as confidential all City information received by Contractor and explicitly marked by City as "Confidential."
9. **Insurance.** The Contractor must provide, maintain and pay for, and cause all subcontractors to provide, maintain and pay for, the insurance coverage (if any) described in PART D (including the type and form of policy, the coverage amounts, and the amount of deductible). If no insurance coverage is specified in PART D, the Contractor must provide, maintain and pay for, such insurance as would be obtained by a prudent academic consultant or academic contractor providing services similar to the Services. The Contractor must provide written proof of such insurance coverage upon the written request of the City.  
**WorkSafeBC or equivalent Workers Compensation Insurance.** The Contractor agrees that it will procure and carry and pay for, full Workers Compensation insurance coverage for itself and all workers, employees, servants and agents engaged by Contractor in or upon any work or service which is the subject of this Contract.
10. **Independent Contractor.** This Contract is a contract for services and neither the Contractor nor the Contractor's personnel or permitted subcontractors, are, or deemed to be, partners, appointees, employees or agents of the City. The Contractor will not represent to anyone that the Contractor has any authority to bind the City or that the Contractor is an employee or agent of the City.
11. **No Assignment or Subcontracting.** The Contractor will not assign or subcontract (other than to persons listed in PART C (or a schedule referred to therein)), either directly or indirectly (including, without limitation, by way of any transfer of control of the shares or ownership interests in the Contractor), this Contract or any right or obligation of the Contractor under this Contract, without the prior written consent of the City, which consent may be arbitrarily withheld. No assignment or subcontract, whether consented to or not, relieves the Contractor from any obligations under this Contract. The Contractor must ensure that any assignee or subcontractor fully complies with this Contract in performing the Services and nothing in this Contract creates any contractual relationship between a subcontractor and the City.
12. **Conflict of Interest.** The Contractor must not provide any services to any person in circumstances which, in the City's reasonable opinion, could give rise to a conflict of interest between its duties to that person and its duties to the City under this Contract.
13. **Release and Indemnification**
  - a. **Release**  
The Contractor now releases the City and the City's personnel from all losses including those caused by personal injury, death, property damage or loss, and economic loss, arising out of, suffered or experienced by the Contractor or the Contractor's personnel in connection with their performance of the Services, except for losses caused directly by City's negligent acts or omissions.
  - b. **Acceptance "As Is"**  
In undertaking the Services, the Contractor acknowledges that it has inspected the City's site(s), agrees to accept the site(s) "as-is" and undertakes to take all precautions necessary to ensure the safety of all the Contractor's personnel.
  - c. **Indemnity**  
Despite any insurance which may be placed by the City, the Contractor now agrees to indemnify and save harmless the City and its officials,

officers, employees, agents, successors, assigns and authorized representatives (in each case, an "Indemnified Party") from and against all costs, losses, claims, damages, actions and causes of action ("Claims") that an Indemnified Party may sustain, incur, suffer or be put to at any time either before or after the completion of the Services or sooner cancellation of this Contract, that arise out of any act or failure to act of the Contractor or the Contractor's personnel, permitted assignees or subcontractors in connection with the performance of this Contract, including any Claims that arise out of or are in any way related to unpaid WorkSafeBC assessments or the failure to observe safety rules, regulations and practices of WorkSafeBC, excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of an Indemnified Party.

d. Separate from Other Remedies and Rights

Nothing in this Contract (including this indemnity) will affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.

e. Survival of Release/Indemnity

This Section 16 will survive the expiry or sooner termination of this Contract.

B. CHANGES TO SERVICES

17. Changes. The City may, at any time and from time to time and without invalidating this Contract, require a change to the Services and/or to the schedule for the delivery of the Services. Should the Contractor consider that any such request or instruction constitutes a change warranting amendment of the Maximum Amount, another price or the schedule for the Services set forth in the Contract, the Contractor must advise the City in writing prior to acting on any such request or instruction, and in any event within five (5) City of Vancouver business days of such request or instruction. In that case, the Maximum Amount, other price and/or schedule will be adjusted, if/as agreed to by both parties in writing, and failing agreement, if/as the City may determine, acting reasonably. Failing any such adjustment, the Services provided pursuant to the request or instruction will be deemed to be included within the prices specified herein, and to be subject to the schedule prescribed herein.

18. Changes to Key Personnel. The City may from time to time request reasonable changes to the key personnel of the Contractor engaged in performing the Services, and the Contractor shall comply with any such request. The Contractor shall not change any of such key personnel without the prior written approval of the City, which approval will not be unreasonably withheld.

C. PAYMENT

19. Payment of Fees and Expenses. In consideration for the satisfactory performance of the Services, The City will pay to the Contractor the fees specified in PART B (as supplemented by any schedule referred to therein), subject to this Section C. In addition, if the parties have specified in PART B that the Contractor's expenses are reimbursable in accordance with this Contract, the City will reimburse the Contractor for all expenses that: (i) are approved by the City in writing (in accordance with the City's existing policies and procedures for expense reimbursement) prior to their being incurred by the Contractor; (ii) are necessary, in the opinion of the City, to perform the Services; and (iii) are supported by proper receipts or other documentation satisfactory to the City (acting reasonably), provided always that the City reserves the right to make arrangements through its service providers for any flights and/or accommodations required by the Contractor in connection with its performance of the Services. If a "Maximum Amount" is specified in Part B, then the City is not, and shall not be, obliged to pay to the Contractor more than such Maximum Amount on account of aggregate fees (and, if applicable, expenses). Payment terms are "net 30 days" from the date of receipt of a valid invoice.

20. Invoicing. The Contractor will, by the 25<sup>th</sup> day of each month, provide to the City's Project Manager (named on the cover page of this Contract) a draft invoice with an attached detailed account of all charges to be claimed by the Contractor for the preceding month. The City's Project Manager shall review the draft, raise any concerns with the Contractor within ten working days and, after settlement of any issues (in the Project Manager's discretion), approve the draft invoice. The Contractor, if so requested, will meet with the City's Project Manager to expedite and settle the draft invoice. The Contractor will submit its final invoice, as per the approved draft invoice, to the City of Vancouver, Attention: Accounts Payable, by email to [APIInvoice@vancouver.ca](mailto:APIInvoice@vancouver.ca). Each invoice must contain:

- Contractor name, address and telephone;
- City purchase order number;
- Name of the City's Project Manager;
- Invoice number and date; and
- Tax registration number(s).

21. Builders Lien Act. If the Services to be performed under this Contract are subject to the holdback requirements set out in the *Builders Lien Act* (British Columbia) (the "Lien Act"), the City will withhold and discharge the required holdback amounts in accordance with the requirements set out in the Lien Act.

22. Discharge of Liens and Withholding. The Contractor will, if applicable, make payment and take all other steps which may be necessary so that no lien claims, including lien claims made under the Lien Act, are made in connection with the provision of the Services, and that the compensation payable to the Contractor by the City is not subject to attachment for debt, garnishing process or otherwise. In the event that any lien is filed in

connection with the provision of the Services at any court or land title office, the Contractor shall immediately cause such lien to be discharged. The City may withhold from any payment due to the Contractor an amount sufficient to indemnify the City against any lien claim that could arise in connection with the provision of the Services, until such time as the lien has been discharged or other arrangements to satisfy such lien have been made by the Contractor.

23. Withholding for Non-Residents. If the Contractor is a non-resident of Canada, the City may withhold from any payment due to the Contractor such amounts as may be required to be withheld pursuant to the applicable provisions of the Canada *Income Tax Act* (the "ITA"). Any amount so withheld shall be remitted to the Receiver General for Canada or otherwise dealt with by the City strictly in accordance with the provisions of the ITA.

24. Record Keeping. The Contractor must maintain, and shall cause any subcontractors to maintain, time records and books of account, invoices, receipts, and vouchers of all expenses incurred, in form and content satisfactory to the City. The City or any of its authorized representatives will, for the purposes of audit and examination, have access and be permitted, upon reasonable notice to the Contractor, to inspect such records for review, copy and audit at any time and from time to time while this Contract is in effect and for a period of three years after the expiry or termination of this Contract for any reason.

25. Currency. Unless otherwise specified in this Contract, all references to money are to Canadian dollars.

D. GENERAL

26. Time for Performance. Time is of the essence in this Contract.

27. Amendments. No modification of this Contract is effective unless it is in writing and signed by all the parties.

28. Entire Agreement. This Contract constitutes the entire agreement between the parties as to performance of the Services, and replaces and supersedes any other agreements, correspondence or other discussions between the parties, whether or not any of the foregoing have been reduced to writing.

29. Conflict. If there is a conflict between a provision of a schedule to this Contract and the terms and conditions of this Services Contract, the provision in the relevant schedule is inoperative to the extent of the conflict unless it states that it operates despite a conflicting provision of this Contract.

30. Severability. If any provision of this Contract is determined to be void or unenforceable, in whole or in part, it shall not be deemed to affect or impair the enforceability or validity of any other provision of this Contract, and any such void or unenforceable provision may be severed from this Contract without affecting the remainder of the Contract.

31. Termination. The City may terminate this Contract:

- a. Upon failure of the Contractor to comply with this Contract, immediately on giving written notice of termination to the Contractor, or
- b. For any other reason, on giving at least 10 days' written notice of termination to the Contractor.

If the City terminates this Contract under paragraph b. above, the City must pay the Contract that portion of the fees and expenses described in PART B which equals the portion of the Services that was competed to the City's satisfaction before termination. That payment discharges the City from all liability to the Contractor under this Contract. If the Contractor fails to comply with this Contract, the City may terminate it and pursue other remedies as well.

32. Binding Effect. This Contract shall be binding on the Contractor's successors and permitted assigns and shall enure to the benefit of any successors and assigns of the City.

33. Voluntary Agreement. The Contractor acknowledges and declares that it has carefully considered and understood the terms of this Contract, that it has either consulted legal counsel or waived such right, and that it is executing this Contract voluntarily.

35. **Further Assurances.** The Contractor agrees that upon any reasonable request of the City, the Contractor will make, do, execute or cause to be made, done or executed all such other acts as may be required to more fully give effect to the terms and conditions hereof.
36. **Headings.** The headings used in the Parts and sections of this Contract are for convenience of reference only, and shall not operate to expand, modify or interpret the language therein.
37. **Counterparts.** This Contract may be executed in one or more counterparts, including by facsimile or other electronic transmission, and each of such counterparts shall be deemed to be taken together to constitute one and the same original document.
38. **Additional Terms:** The additional terms set out in Part E (or in any schedule referred to therein) apply to this Contract. **END OF TERMS AND CONDITIONS OF SERVICES CONTRACT**

**Schedule A – Detailed Price Schedule**

Hours estimated (not to exceed):	120		
Hourly rate	\$75		
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<b>Salary and Benefits Sub-total:</b>	<b>\$9,000</b>		
Travel: 2 trips to Vancouver, BC (Aquarium site visit & Parks Board Presentation)			
Washington State Ferry	\$49	1	\$49
Mileage	216	0.56	\$121
Hotel (2 nights / trip)	\$275	2	\$550
Per Deim (3 days / trip)	\$71	3	\$213
Parking	\$45	2	\$90
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Per / trip total			\$1,023
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<b>Travel Sub-total</b>	<b>\$2,046</b>		
Pre-overhead Total	\$11,046		
UC Davis off campus overhead (26%)	\$2,872		
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<b>Total budget not to exceed</b>	<b>\$13,918</b>		