

Minutes

Thursday Sept. 8, 2011

Orcas Island Park and Recreation District Commission
Regular Public Meeting, Thursday Sept. 8, 2011
Orcas Island Fire District Station #1, Eastsound WA
12:00-2:30 P.M.

I. CALL TO ORDER (12:00)

Martha Farish, Chairman

Roll call:

Seat 1: Vicki Vandermay
Seat 2: Bob Eagan
Seat 3: Martha Farish
Seat 4: Jim Bredouw
Seat 5: Ian Lister

II. UNFINISHED BUSINESS

1.) BUCK PARK MAINTENANCE (12:05)

Craig Sanders asked what we wanted from him. Ian and Bob said this is an information gathering session to better understand the current state of the Buck Park sprinkler system and what maintenance he would recommend.

Craig suggested that the single best way to minimize herbicide and pesticides is to water regularly and that OISD historically chooses to water minimally due to expense and that the fields are, consequently, in poor shape. He said that sprinkler heads need to be raised vs. simply filled with sand by adding 1-2 "Marlex street elbows" to the height of each head to prevent the twisted ankle problem. There are 20 critical sprinklers (8 of which need replacing altogether) and 17 not so critical that need raising in his opinion. Cost of materials for raising only should be minimal, though cost of labor could be high. Craig's guesstimate is roughly \$1,700 to raise and repair the 20 critical heads.

Bob said that he heard it may only need a simple extension to fix the problem. It

was confirmed that the biggest problem is park users stepping into the sunken sprinklers and twisting ankles. Martha suggested that we may be able to fix the most dangerous problem of sprinkler heads but that 'softening' the field may be beyond OIPRD's scope this year financially, though acknowledged that it will also create a safer field.

It was suggested that OISD may have some spare sprinklers (which are different than the upper football field sprinkler heads). Vicki asked Bob to see if OISD might be willing to gift OIPRD their spare lower field sprinklers, which he agreed to do.

He suggested that we coordinate with OISD as to the timing of watering, as it may not be possible to adequately power the watering of both upper and lower fields.

Craig said that in our negotiations with EWUA, we need to ask them to raise the current 60/gal/minute current limitation (during the 30 minute cycles of watering), because a minimum of 70-80 gal. are necessary and the only reason for the limitation – to see if the aquifer was negatively impacted – is moot, as there was twice as much water during the aquifer test as was needed.

Ian suggested that we might ask OISD to do the 'plug aerating' process suggested by Matt Stolmeier at our last special meeting (by hiring Justin Taylor for roughly \$100 – see 8/30 minutes) 'in return' for our repairing sprinkler problems on OIPRD's nickel.

(These discussions include only Fields 2 and 3; not 1 - Field 1 is a 'blank' field 'of rocks' with no sprinklers.)

2.) INTERIM COORDINATOR STATUS (12:35)

Jim gave a brief synopsis of his and Martha's weekly meetings with Leslie Schmitz and the current status of her assignments, focusing specifically on the Chart of Accounts, her interactions with the Library's Mary Pugh and questions for other Park and Rec Districts. Leslie added that she is working with us on an organized weekly action list in order to be as efficient, documented and transparent as possible.

She also pointed out that she spoke to Lisa Byers, OPAL, who indicated that the latest 2011 Quickbooks Premiere is aimed at non-profits. She said that Wendy from Vashon P & R responded and is currently segmenting out the questions submitted to more thoroughly answer her list of questions. She added that Mary Pugh of the Library has been extremely helpful with her time and recommends that

the County auditor/treasurer may be enough re: our Chart of Accounts and may not need Clark Nuber (the Bellevue-based accounting firm with whom we've been speaking of late). She also suggested that we adopt the attitude that the County works for OIPRD; not the other way around.

Bob asked if Quickbooks was necessary, given that the County is who actually gets audited by the State and they use Eden. Martha explained that our Quickbooks system would integrate into the County's system, but would also give us far more necessary detail that the County doesn't require. Martha also raised the concern that if we don't hire an accounting firm, then we may not get as thorough an education, which she feels is important and necessary, particularly in Year One.

Leslie suggested that we may still want to consider retaining Clark Nuber to oversee our State audit process, while Jim pointed out that they also said there was no good reason for us to hire them for a full audit, as the state will require their own people anyway, and will charge us for them, so why pay twice. Ian asked if the Library used any accounting firm and Leslie said no and acknowledged that they are a district most comparable to ours and is also audited by the State, raising the question as to the necessity of an outside accounting firm.

Leslie pointed out that she and Mary (who is trained and qualified to view the County's Eden system) looked today into SJC's Eden system and saw that we actually have a current numerical system setup with starting/ending balances, etc.

Jim suggested that we start the accounting system on Oct. 1, as it coordinates with Q4 and it was discussed how and when we begin the process for a part time bookkeeper. Ian requested permission to contact our insurance carrier, Enduris, to alert them that it may be another 3-4 weeks to get paid.

III. PUBLIC COMMENT (1:05)

~ None ~

IV. UNFINISHED BUSINESS (cont.) (1:10)

1.) Minutes

- a. The Board made suggestions to correct various typos and content changes, which will be made and resubmitted for blanket approval at our next meeting.

2.) Treasury Report

- a. Jim explained his thinking regarding the new budget draft. Discussion ensued. As all budgets to date have been in the form of a changing draft, Vicki pointed out that we will be required to submit a formal budget per RCW 36.69.160 beginning for our first formal year (likely 2013 as public funds won't be available until mid-late 2012.)

3.) Legal Representation

- a. Martha asked for approval of the contract with legal counsel, Adina Cunningham that was sent to us Sept. 6.
- b. It was motioned by Jim, seconded by Ian to approve amended contract. Approved unanimously.

4.) Donors/Thank You letters

- a. It was motioned by Martha that we customarily generate a computerized tax receipt and handwritten note to any donors within 1 week of receipt. It was seconded by Jim. Unanimously approved.

5.) Point of Contact letter to SJC

- a. It was motioned by Vicki and seconded by Jim that we send Martha's letter to Kim Cox re: our Point of Contact person through the end of 2011. Unanimously approved.

6.) EWUA report

- a. None at this time

7.) Buck Park Field sharing

- a. Vicki setup a meeting with Cindy Elliot to determine when she will need the fields through this upcoming school year. She is still waiting to meet with Sandi Harris and Barbara Kline. It was suggested that there may be an opening for OISD to accept help with field and gym scheduling once OIPRD is up and running.

8.) Tennis Court Locks

- a. Ian suggested that eventually it may need a more sophisticated system to accommodate multiple users.
- b. Martha brought up that there are going to be many Buck Park issues coming eventually: Public dumping their garbage at the park; What happens when a user loses their key and/or code; Should public tennis courts be locked at all, etc.

9.) Buck maintenance

- a. It was motioned by Jim and seconded by Martha to agree to authorize Bob to immediately get authorization from OISD to effect one-time repairs to Buck Park. Agreed unanimously.
- b. It was motioned by Jim and seconded by Martha to authorize Bob to hire a weed eater immediately for Buck Park at a maximum cost of \$300. Agreed unanimously.

10.) Circular arguments

- a. Vicki pointed out that according to Roberts Rules, that if someone feels that if debates are becoming unproductive, any member can

call for the question, which needs a second (though not discussion)
and a majority of commissioners can end the debate immediately.

V. ADJOURNMENT (3:15pm)

Addenda:

Legal Services Agreement – OIPRD – KC Law – 8-30-10
POC Auditor.doc

Regular Public Meeting minutes for September 8, 2011

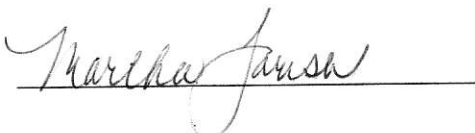
Approved by motion on this 13th day of October, 2011

Signed and attested this 13th day of October, 2011

A handwritten signature in black ink, appearing to read "Ian Lister", written over a horizontal line.

Ian Lister, Commissioner #5,

Secretary

A handwritten signature in black ink, appearing to read "Martha Farish", written over a horizontal line.

Martha Farish, Commissioner #3,

Chair

DRAFT
8-30-11

AGREEMENT FOR LEGAL SERVICES
ORCAS ISLAND PARKS AND RECREATION DISTRICT

This agreement is made and entered into this day of ____ (DATE) ____ by and between the Orcas Island Parks and Recreation District, by and through its Commission (OIPRD), and Kobayashi Cunningham Law, PLLC, by and through its sole proprietor, Adina Kobayashi Cunningham ("Attorney").

A. BACKGROUND

1. WHEREAS, OIPRD desires to contract with Attorney to, from time to time, provide legal services; and
2. WHEREAS, Attorney represents that she is qualified and possesses sufficient skills and professional expertise, as required, to perform the services and/or tasks set forth in this Agreement.

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

B. SPECIFIC TERMS

1. SCOPE OF SERVICES

Attorney shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary, as are designated as Attorney responsibilities throughout this Agreement and as described in Exhibit A ("Scope of Services"), attached and incorporated herein.

2. TERM

This Agreement shall last for _____ year(s), beginning (DATE) and terminating on (DATE). This Agreement may be terminated at any time, subject to paragraph 11, below.

3. COMPENSATION AND METHOD OF PAYMENT; CONTACTS

- A. Payment for services provided shall be made following the performance of such services as provided in Exhibit B (Fee Schedule). No payment shall be made for any service rendered by Attorney except for services identified and set forth in this

Agreement, including Exhibit A. Attorney shall submit to OIPRD's Chairperson or Administrator a detailed monthly billing statement for the previous month. OIPRD shall submit payment for such services within a reasonable amount of time after OIPRD receives Attorney's bill, not to exceed 30 days.

B. Contacts under this Agreement shall be:

For Attorney:
Adina Kobayashi Cunningham
Attorney
P.O. Box 78
Eastsound, WA. 98245
adinac@kclawpllc.com

For OIPRD:
Martha Farish
Chairperson, OIPRD
ADDRESS
Eastsound, WA. 98245

4. INDEPENDENT AGREEMENT OR RELATIONSHIP

A. The parties intend that an independent contractor relationship will be created by this Agreement. OIPRD is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of Attorney. No agent, employee, servant or representative of the Attorney shall be deemed to be an employee, servant or representative of OIPRD for any purpose, and the employees of Attorney are not entitled to any of the benefits OIPRD provides for its employees except as otherwise expressly provided herein. Attorney will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated, Attorney is an independent contractor with the authority to control and direct the performance of the details of the work, however, the result of the work contemplated must meet the approval of OIPRD and shall be subject to OIPRD's general rights of inspection and review to secure the satisfactory completion thereof.

5. INDEMNIFICATION

OIPRD shall protect, defend, hold harmless and indemnify Attorney against all liability or loss, and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with Attorney's good faith performance of matters within the course and scope of this Agreement or by conditions created thereby, and based upon any and all negligent and tortious conduct or any violation of any law, code or regulation, and the defense of any such claim or actions, if performed in good faith within the course and scope of this Agreement. Attorney shall protect, defend, hold harmless and indemnify OIPRD against any and all claims or actions arising out of any action not performed under this Agreement or performed outside the scope and course of this Agreement.

Attorney shall indemnify OIPRD against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, workman's compensation, social security and income tax laws, for the Attorney and any employees or volunteers of the Attorney.

7. ASSIGNMENT/SUBCONTRACTING

Attorney shall not assign its rights and duties under any portion of this Agreement without the written consent of OIPRD. Consent must be sought in writing by Attorney not less than five days prior to the date of any proposed assignment. For leaves of absence that Attorney may, from time to time, take, OIPRD may at its full discretion use another attorney or law firm of its choice to cover Attorney's absence.

8. MAINTENANCE AND INSPECTION OF RECORDS

A. Attorney shall maintain books, records and documents, which sufficiently and properly reflect all work related to the performance of the Agreement. In addition, Attorney shall maintain all accounting records in a form necessary to assure proper accounting of all funds paid pursuant to this Agreement. All of the above shall be subject at all reasonable times to inspection, review, or audit by OIPRD, its authorized representative, the State Auditor, or other government officials authorized by law to monitor this Agreement.

B. Attorney shall retain all books, records, documents and other material relevant to this Agreement for at least three (3) years after its expiration. Attorney agrees that OIPRD or its designee shall have full access and right to examine any of said materials at all reasonable times during said period. Attorney understands that records and documents that Attorney generates may be subject to the Washington's Public Records Act.

10. PRIVILEGES

OIPRD acknowledges that documents, materials and/or information generated under this Agreement may be subject to legal privileges, such as the attorney-client privilege. Any decision to waive a privilege must be made by OIPRD's Commissioners after carefully considering the effects of the waiver. Any release of information, documents or information that is subject to a legal privilege shall be at the sole discretion of OIPRD's Commissioners. In the event that an officer or employee of OIPRD releases such information, intentionally or inadvertently, and thereby waives any applicable privileges, OIPRD does so at its sole risk. OIPRD agrees to hold the Attorney harmless for any and all such releases and waivers.

11. TERMINATION

OIPRD or Attorney may terminate this Agreement, in whole or in part, at any time, with at least fifteen (15) days written notice to the other party, or as otherwise allowed by law. Attorney shall be paid for work performed and expenses incurred to the date of termination. If Attorney has any property in its possession belonging to OIPRD, Attorney will account for the same, and dispose of it in the manner directed by OIPRD.

12. CONFLICT OF INTEREST REQUIREMENTS

Attorney shall notify OIPRD in writing of any actual conflicts of interest that Attorney may have with matters relating to services performed under this Agreement. OIPRD acknowledges that Attorney has a private law practice with clients other than OIPRD, and that matters may, from time to time, arise that conflict with services under this Agreement. The disclosure of conflicts of interest will be a public document.

C. GENERAL TERMS

13. MEDIATION

The parties shall attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at mediation. Each party will pay its own attorneys' fees and costs.

14. ARBITRATION

A. Any controversy or claim arising out of or relating to this Agreement that is not resolved through mediation, shall be resolved by final and binding arbitration pursuant to RCW 7.04A. Demand for arbitration shall be made in writing to the other party. The arbitration shall be held in San Juan County before a single arbitrator selected by the agreement of the parties. If the parties cannot agree upon an arbitrator within fifteen (15) days after the demand for arbitration is made, the arbitrator shall be selected by a judge in the Superior Court of San Juan County in accordance with the procedures set out in RCW 7.04A.110.

B. Unless the parties agree otherwise in writing, the arbitration hearing shall occur no later than sixty (60) days after the date the arbitrator is appointed.

C. The parties agree that, with the exception of the circumstances set out in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law.

D. Each party shall pay its own costs of arbitration including attorneys' fees. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.

E. This Agreement shall be governed by laws of the state of Washington, both as to interpretation and performance.

15. WAIVER

The waiver by, or the failure to take action with respect to, breach of any term, covenant or condition of the Agreement shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach. All remedies afforded in this Agreement shall be taken as cumulative; that is, in addition to every other remedy provided herein or by law.

16. SEVERABILITY

It is understood and agreed by the parties that if any term or provision of this Agreement is held by any court to be illegal or in conflict with any law of the state of Washington, the validity of the remaining portions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term, part or provision held to be invalid.

17. ENTIRE AGREEMENT

This instrument contains the entire Agreement between the parties and statements, promises, or inducements made by any party or agent of that party that are not contained in this Agreement shall not be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by all parties.

18. NOTICE

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the first page of this Agreement.

Dated this _____ day of _____, 200_.

Kobayashi Cunningham Law, PLLC
Adina Kobayashi Cunningham
Attorney

**Orcas Island Parks and Recreation
District**
Martha Farish
Chairperson

Date

Date

EXHIBIT A
SCOPE OF WORK

1. **Qualifications.** Attorney shall be licensed to practice law in the State of Washington. In performing services under this Agreement, Attorney shall comply with state and federal law and applicable court rules, including the Professional Rules of Conduct for attorneys in Washington, and applicable provisions of the State Ethics Code.
2. **Representing Officers and Employees.** Attorney shall advise and represent OIPRD's officers and employees, including elected officials, administrators and volunteers (in their official capacities and not as individuals), working within the course and scope of their employment or volunteerism with OIPRD in any matters requested by OIPRD.
3. **Representing OIPRD as an Entity.** Attorney's client shall be OIPRD as an entity. It is Attorney's responsibility to support the decisions of OIPRD as a whole, not each individual official's position.
4. **Scope of Representation.** As needed and requested by OIPRD, Attorney may provide written and oral legal advice; attend Commission and staff meetings; handle litigation and proceedings before administrative bodies; prepare or review law, ordinances, resolutions, contracts and agreements; assist or handle claims against OIPRD; work with outside counsel and contractors; and such other duties as may be prescribed by OIPRD.

EXHIBIT B
FEE SCHEDULE

Attorney shall bill OIPRD for legal services as follows:

- **Annual Fee Cap.** For fiscal year 2011, OIPRD shall cap payment under this Agreement at \$_____, which may be modified only by duly adopted resolution or consent of the OIPRD's Commission.
- **Legal services** - \$195.00 per hour for legal services outside of regularly scheduled public meetings or public hearings.
- **Regularly scheduled public meetings** - \$115.00 per hour to attend and give advice to OIPRD at regular or special public meetings.
- **Public hearings** - \$115.00 per hearing.
- **Travel costs** - No travel costs within San Juan County, absent unusual or extraordinary circumstances, and actual travel costs for pre-approved travel outside of San Juan County;
- **Court and other fees and costs** – Necessary court fees and other costs that are incurred in representing OIPRD will be charged at their actual cost;
- **Billing** – Attorney shall submit to the Commission Chairperson or Administrator a detailed monthly billing statement for the previous month. OIPRD shall submit payment for such services within 30 days.

The cost for legal services may be changed only on the express written consent of both parties.

DRAFT
Orcas Island Park and Recreation District
PO Box 575
Eastsound, WA 98245

September 8, 2011

Kim Cox
Accounts Manager: Junior District Payroll
Auditors Office
350 Court Street, PO Box 638
Friday Harbor, WA 98250

Dear Kim,

Orcas Park and Recreation District (OIPRD) would like to request that the Auditor's office consider Leslie Rae Schmitz as our Point of Contact (POC) as it pertains to setting up the BARS Chart of Accounts for OIPRD. Leslie is operating as an independent contractor for OIPRD for the purposes of setting up administrative functions for OIPRD between now and January 1, 2012. OIPRD will take responsibility for notifying you of any change in our POC, but in any event will name a new contact upon the expiration of Leslie's contract in January.

OIPRD has a couple of bills for OIPRD recently brought to your attention by Leslie. We are fairly confident we will have the OIPRD Chart of Accounts finalized and functioning within the next two weeks. OIPRD would like to simply hold off on these payments until the Chart of Accounts is finalized.

If you have any questions, please feel free to contact Leslie at 376-3931 or at lesliereaschmitz@gmail.com or you may contact me at 376-6199 or mfarishster@gmail.com.

Sincerely,

Martha Farish
OIPRD Board Chair