

# Minutes

September 19, 2011

Orcas Island Park and Recreation District Commission  
Special Public Meeting, Thursday September 19, 2011

Orcas Enzo's Eastsound  
9:45 am-10:00 am

## I. CALL TO ORDER

Roll call:

Seat 1: Vicki Vandermay – present

Seat 2: Bob Eagan – present

Seat 3: Martha Farish – present

Seat 4: Jim Bredouw – present

Seat 5: Ian Lister – present

## II. NEW BUSINESS

- Resolution to approve Island Irrigation bid and terms dated September 18, 2011 for repair maintenance work on Buck Park.

**MOTION:** Adopt resolution 2011-5 as adapted

Ian moves, 2<sup>nd</sup> Bob

Discussion: Resolution to adopt and submit 2011

Passed unanimously

**MOTION:** (Vicki & Bob) To adopt "Legal Notice of Budget Hearing" to be published two consecutive times in the Island Sounder as required by law. Martha to post legal notice on the public library bulletin board. Notice to remain for three consecutive weeks.

For October 13 meeting adopt Payment of Claims forms and Authorization as directed by the auditors office.

**MOTION:** To adopt resolution 2011-6 as written.

Ian moves, 2<sup>nd</sup> Bob

Discussion

Passed unanimously

## III. ADJOURNMENT (10:00)

**ADDENDA**

*Draft OIPRD Resolution 2011-5  
Notice Of Budget Hearing  
Orcas Rec Email 2011\_0918  
Agreement With Kobayashi Cunningham Law  
with Resolution 2011-6 attached*

Special Public Meeting minutes for September 19, 2011

Approved by motion on this <sup>18<sup>th</sup></sup> day of *Oct*, 201~~1~~<sup>2</sup>

Signed and attested this <sup>18<sup>th</sup></sup> day of *Oct*, 201~~1~~<sup>2</sup>

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

Ian Lister, Commission #5,

Secretary

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

Martha Farish, Commissioner #3,

Chair

**Resolution to hire Island Irrigation LLC, Eastsound, WA to provide repair services to Buck Park Field's 2 and 3.**

**Resolution 2011-5  
September 19, 2011**

**WHEREAS** the playing fields 2 and 3 at Buck Park have irrigation holes and broken irrigation heads commonly believed by coaches and volunteers to be a safety hazard; and

**WHEREAS** the Orcas Island School District, current owner of the property, has insufficient staff and funds to repair the holes or heads; and

**WHEREAS** immediate repairs are required to prevent further injuries by schoolchildren and members of the public using the fields; and

**WHEREAS** Orcas Island School District and OIPRD are in active negotiations for the purposes of legally transferring ownership of Buck Park from the School District to OIPRD; and

**WHEREAS** the Board of Commissioners of the Orcas Island Park and Recreation District (OIPRD) have received a written estimate as to the cost to repair the fields; and

**WHEREAS** Craig Sanders and Island Irrigation LLC have knowledge and experience with the Buck Park irrigation system and are immediately available to provide the needed repair services;

**NOW THEREFORE BE IT RESOLVED** the OIPRD commissioners will hire Island Irrigation LLC of Eastsound, WA to raise 20 irrigation heads on fields 2 and 3, replace 8 malfunctioning rotor heads and re-audit the system once the repairs are complete, for an amount not to exceed \$2000, with the work to commence immediately and be completed no later than September 28, 2011.

# Island Irrigation

Craig A Sanders  
PO Box 1381  
Eastsound, WA 98245  
360 317-5273 cell

September 18, 2011

Bob Eagan  
Eastsound, WA 98245

Dear Bob,

I have attached this letter to the email I am sending today so that you have all the information at hand that you need for Martha and her legal needs. Island Irrigation is a Washington State LLC. We have been installing, refurbishing and maintaining irrigation systems on Orcas for about 11 years. We are fully licensed and bonded Washington State Contractors and Irrigation Technicians. Contractors Lic. #ISLANIL 912N7. We can provide you with additional insured paperwork at your request. All work is done in workman like manner and guaranteed to perform to the specifications of all materials and components installed. If you need references, we have about 80 accounts that we currently maintain annually.

Our rates are materials + 15% + shipping; my time is charged at \$60.00 per hour and my laborers' time at \$30.00 per hour + 20% for employment taxes. There is a 10% surcharge for overhead.

The previous estimates that we have been discussing for a couple of weeks break down as follows:

1. The original estimate to complete the raising of 20 critically sunken heads on both the baseball and softball fields (2 & 3) and replace 8 poorly functioning rotor heads: 10 hours my time (600.00), 10 hours laborer (300.00), \$696.88 for materials, markup, overhead, and employment taxes, \$124.56 sales tax.
2. Estimate to replace 8 poorly functioning heads: 3.5 hours my time (210.00), 3.5 hours laborer (105.00), \$473.38 for materials, markup, overhead, and employment taxes, \$61.49 sales tax.
3. Estimate to raise 20 critically sunken rotor heads to improve safety: 8.5 hours my time (510.00), 8.5 hours laborer (255.00), \$277.50 for materials, markup, overhead, and employment taxes, \$81.32 sales tax.
4. Your recommendation of an additional 4 hours to re-audit the system with you after all repairs will be: 2 hours my time (120.00), 2 hours laborer (60.00), \$54.00 for markup, overhead, and employment taxes, \$18.25 sales tax.

I would like to remind you that Megan and I have already done an audit, but of course without anyone from the board present. I will also remind you that coverage will not be adequate until removal of the restrictor on the well head.

Thank you,

Craig A Sanders

## **Notice of Meeting**

**To be Posted in the Legal Notices of the Islands Sounder  
the weeks of September 28 and October 5 and posted in  
the Lobby of the Orcas Island Library along with a copy of  
the agenda for one week prior to the October 13, 2011  
Regular Meeting of OIPRD**

The Orcas Island Park and Recreation District will hold a Public Hearing on both the 2011 and 2012 budgets together with the Regular Board meeting on October 13, 2011 beginning at noon at the Eastsound Firehall. The public is invited to attend and give comment.

**KOBAYASHI CUNNINGHAM LAW PLLC**

PO Box 78 Eastsound, WA 98245 t 360.375.7048

Adina K. Cunningham  
Attorney  
*licensed in Washington  
and Hawaii*  
adinac@kclawpllc.com  
www.kclawpllc.com

TO: Board of Commissioners  
Orcas Island Park and Recreation District

FR: Adina K. Cunningham, Attorney *AK*

RE: Engagement Agreement

DT: September 19, 2011

---

Enclosed for your review and consideration is a draft Engagement Agreement. Thank you very much for considering me for your legal work. I have enjoyed working with OIPRD, and look forward to working with you in the future.

If you decide to move to adopt this Agreement, you may consider using the following language for your resolution:

I move to adopt the Engagement Agreement with Kobayashi Cunningham Law and Adina Cunningham to provide legal services to the District for the 2011 calendar year, with a fee cap of up to \$3,000.00.

Please do not hesitate to call me at 375-7048, or email me at adinac@kclawpllc.com, if you have any questions, comments, or concerns.

Thank you, again, for your interest and your business.

DULY: *Am* 2011 0919

**ENGAGEMENT AGREEMENT FOR  
LEGAL SERVICES  
(2011)**

Thank you for using Kobayashi Cunningham Law, PLLC ("KC Law"), for your legal services. This Agreement sets forth KC Law's general terms of engagement with you. All of the terms are open to discussion; please feel free to call with any questions before signing this Agreement.

This Agreement is made by and between KC Law, a solo practice limited liability company managed by and through attorney Adina Kobayashi Cunningham ("Adina"), and the Orcas Island Park and Recreation District ("OIPRD") (collectively, "the Parties").

**1. Scope of Issues; Representation**

OIPRD agrees to engage KC Law for Adina to give OIPRD advice regarding various matters, as they may arise.

**2. Fees, Costs, Billing, Payments.**

**a. Cap.** For the 2011 calendar year and until December 31, 2011, KC Law will not bill OIPRD for any amount exceeding \$3,000.00 (three thousand dollars), without an amendment of this Agreement duly passed by OIPRD's Commissioners.

**b. Rates.** Adina's rates are as follows:

- \$195.00 per hour for advice and counsel, transactional work, litigation, and other legal work.
- In the event of litigation, a \$1,500.00 advance cost fee is requested prior to representation, which fee will be applied toward the attorney's hourly fees and costs.
- For costs such as postage, court filing fees, copies, expert witness fees, and other costs that may be necessarily incurred during the course of OIPRD's representation, KC Law will bill OIPRD for the actual cost.
- Travel costs outside of San Juan County, if such travel is needed for KC Law to represent OIPRD. Travel costs will be discussed with OIPRD prior to such costs being incurred. Adina does not bill for travel costs between the San Juan Islands, unless such travel becomes extraordinary or outside her normal course of work.

**b. Billing Practices.** KC Law will email or mail OIPRD an invoice each month that shows the fees and costs charged to OIPRD for work performed during that month. Invoices are sent at the end of each month or at the conclusion of a project. Adina bills in increments of .3 hours (every 15 minutes), for matters including but not limited to legal research, advice and counsel given over the phone or in person, litigation, representation in and out of court, meetings, and other matters. Adina will represent OIPRD per OIPRD's request, and will keep OIPRD informed of the status of her representation as OIPRD's matter progresses.

KC Law cannot guarantee a particular result or outcome, but will do its best to zealously represent OIPRD's legal interests.

c. **Payment.** KC Law values OIPRD's business, and requests that OIPRD pay invoice(s) by check, cash, or money order within 30 calendar days of issuance of the invoice from KC Law. Checks are payable to Kobayashi Cunningham Law PLLC. In the event OIPRD does not submit payment within 30 days, KC Law may withdraw legal services and terminate this Agreement, and OIPRD may be charged 2% per month for up to an additional 30 calendar days that payment is not received. KC Law values OIPRD's business, so please inquire about installment payments if OIPRD is suffering a budget shortfall.

3. **The Client.** With a municipal entity, who is "the client" may sometimes be confusing. With this Agreement, OIPRD's Commissioners recognize that they are contracting with KC Law to represent and advise OIPRD as an entity. Adina does not, therefore, advise or represent individual officers or employees of OIPRD, except to the extent they represent OIPRD's interests as an entity. If a conflict arises between officers or employees of OIPRD, please consult with Adina as soon as possible.

#### 4. Confidentiality and the Attorney-Client Privilege

Subject to some exceptions, OIPRD's communications with KC Law, through Adina, are subject to the State of Washington's attorney-client privilege. KC Law keeps information, files, and advice and counsel that are part of OIPRD's representation confidential, to the greatest extent practicable.

The attorney-client privilege is held by officers and employees of OIPRD, and can be waived by OIPRD. If officers or employees of OIPRD email, talk about, communicate with, or otherwise distribute privileged information to someone who is not represented by KC Law in OIPRD's matter, then OIPRD may waive the attorney-client privilege. We therefore recommend that OIPRD exercise care with whom OIPRD emails, and discretion with whom OIPRD discusses matters, when officers or employees of OIPRD have discussed those matters with Adina and want to maintain the attorney-client privilege.

#### 5. Conflicts of Interest

Conflicts of interest arise under Washington law when OIPRD has an interest that is directly adverse to another client of KC Law, which interest could affect Adina's representation of OIPRD or the other client. Adina represents other people and organizations in San Juan County, including the **Town of Friday Harbor, the Orcas Island Library, and other special taxing districts.** She is also a Trustee on the Board of Trustees for the **Orcas Island Community Foundation.** If OIPRD's interests are or could be directly adverse to such persons or organizations, Adina may not be able to represent OIPRD, and will notify OIPRD of the need to either terminate representation or seek consent forms from OIPRD and the other client. Adina will not accept a new client with interests adverse to OIPRD's, if the conflict of interest cannot be cured through the notification and consent process.

#### 6. File Ownership

Under Washington's rules of law governing attorney conduct, the files generated or accumulated by KC Law during the course of representing OIPRD belong to KC Law, and

OIPRD may be charged for copies sent to OIPRD. OIPRD will, of course, maintain ownership and control over files maintained and generated by OIPRD. The Parties understand that the OIPRD is a public entity subject to the State of Washington's Public Records Act, and that the Parties are required to comply with such Act, when applicable.

## **7. Communication and Office Hours**

KC Law maintains an office on Orcas Island in Eastsound, Washington, at 441 North Beach Road, Suite A, and in Friday Harbor. In Eastsound, KC Law shares common office space with the Law Office of Katherine Blaine and with the Law Office of Joan Pedrick. KC Law is not law partners with or officially affiliated with those law offices. The law firms share common space and some overhead costs, but do not share confidential information with one another, or practice law in common areas of law.

## **7. General Terms**

**a. Termination.** This Agreement will terminate on the completion of the above scope of work, unless OIPRD request that further work be done. OIPRD may terminate this Agreement for any reason at any time, subject to terms of payment for any work under the Agreement that has already been completed. KC Law may terminate the Agreement in accordance with Washington's Rules of Professional Conduct and any other applicable law, including for breach of the terms of the Agreement.

**b. Entire Agreement; No Oral Modification.** This Agreement represents the entire agreement and understanding between the parties. This Agreement may only be amended in writing, by agreement signed by both parties.

**c. Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Washington. Venue for any dispute shall be in San Juan County.

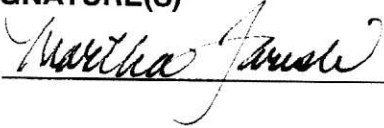

**d. Counterparts; Authority.** This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned. OIPRD represent that OIPRD are of sound mind and have the authority to sign and enter into this Agreement on OIPRD's behalf or on behalf of a legal entity that OIPRD represent.

//

//

cont. from page 3

NOW THEREFORE, the Parties agree to the terms and conditions set forth above, and execute this Agreement on the respective dates set forth below:

CLIENT	ATTORNEY
<b>Name(s)</b> Martha Farish, Commissioner, Chair	<b>Name</b> Adina Kobayashi Cunningham Kobayashi Cunningham Law, PLLC
<b>Mailing Address</b>	<b>Mailing Address</b> P.O. Box 78 Eastsound, WA. 98245
<b>Phone(s)</b> Home: Mobile 1: Mobile 2: Work: Fax:	<b>Phone(s)</b> Mobile: 360.298.2367 Work: 360.375.7048 Fax: 877.375.2958 (toll free)
<b>Email/Website</b>	<b>Email/Website</b> adinac@kclawpllc.com www.kclawpllc.com
<b>SIGNATURE(S)</b> 1.  2.	<b>SIGNATURE</b> 
<b>DATE</b> Sept 19, 2011	<b>DATE</b> Sept 19, 2011

Thank you for your business.

RESOLUTION NO. 2011-6

ORCAS ISLAND PARK AND RECREATION DISTRICT

A RESOLUTION adopting an Engagement Agreement with Kobayashi Cunningham Law PLLC.

WHEREAS, the Orcas Island Park and Recreation District requires legal counsel regarding various matters; and

WHEREAS, Adina Cunningham with Kobayashi Cunningham Law PLLC ("Contractor"), is a local attorney specializing in and experienced with local municipal law; and

WHEREAS, the Commissioners for OIPRD desire to enter into an engagement agreement with Contractor; and

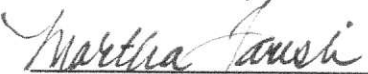
WHEREAS, on September 19, 2011, the Board duly voted to adopt such Agreement.

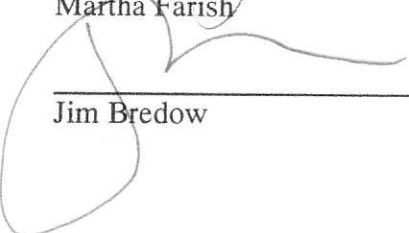
NOW THEREFORE the Commission hereby RESOLVES:

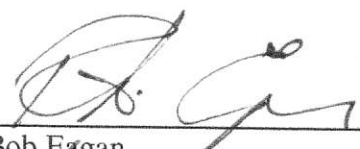
The Commission adopts the Engagement Agreement presented to it at its September 19, 2011 special meeting with Kobayashi Cunningham Law PLLC. The Commission authorizes Board Chair Martha Farish to sign the Agreement on behalf of the Commission, and to be the Board's contact for Adina K. Cunningham.

ADOPTED THIS September 19, 2011:

\_\_\_\_\_  
Vicki Vandermay

  
\_\_\_\_\_  
Martha Farish

  
\_\_\_\_\_  
Jim Bredow

  
\_\_\_\_\_  
Bob Egan

  
\_\_\_\_\_  
Ian Lister

DULY 2011 0912