

# Resolution 2014-1

P.O. Box 575, Eastsound, WA, 98245

**Resolution to Adopt Agreement for Temporary Services Between OIPRD and The Funhouse Commons,  
together with "Exhibit A" Scope of Work.**

## Resolution 2014-1

**February 13, 2014**

**WHEREAS**, OIPRD is a municipal corporation duly established pursuant to the laws of the State of Washington, RCW Chapter 36.69, as a park and recreation district, for the purpose of providing leisure time activities and recreational facilities for its residents, including managing indoor and outdoor recreational and educational programs;

**WHEREAS**, OIPRD has only one staff member and has need for additional temporary services both in its office coverage and for the oversight and operation of some its 2014 programming; and


**WHEREAS**, the Board of Commissioners of OIPRD have advertised, received inquiries from three sources, and received a written bid based on the published contract as to the cost of providing the advertised temporary services; and

**WHEREAS**, the Contractor is experienced with providing educational and recreational programs in the community and is qualified and able to provide services in connection with OIPRD's needs, as set forth in this Agreement, and is willing and agreeable to provide such services upon the terms and conditions contained herein.

**NOW, THEREFORE BE IT RESOLVED** that the OIPRD Board of Commissioners adopt the Agreement for Temporary Services Between OIPRD and The Funhouse Commons together with Exhibit A Scope of Work according to promises and conditions set forth in the Agreement.

DATED Feb 27, 2014

Signed

  
\_\_\_\_\_  
Chair, Commissioner #2

\_\_\_\_\_  
Commissioner #1

  
\_\_\_\_\_  
Commissioner #3

  
\_\_\_\_\_  
Commissioner #4

  
\_\_\_\_\_  
Commissioner #5

**ORCAS ISLAND PARK AND RECREATION DISTRICT  
AND THE FUNHOUSE COMMONS  
AGREEMENT FOR TEMPORARY SERVICES**

THIS AGREEMENT is made and entered into by and between the Orcas Island Park and Recreation District (OIPRD), a municipal corporation of the State of Washington ("OIPRD"), and Children's Discovery Foundation dba The Funhouse Commons ("Contractor"), a 501(c)(3) non-profit corporation duly established by the laws of the State of Washington (collectively, "the Parties"), for a short-term contract for services relating to the administration of OIPRD's recreational programs and facilities.

**BACKGROUND**

WHEREAS, OIPRD is a municipal corporation duly established pursuant to the laws of the State of Washington, RCW Chapter 36.69, as a park and recreation district, for the purpose of providing leisure time activities and recreational facilities for its residents, including managing indoor and outdoor recreational and educational programs;

WHEREAS, OIPRD has only one staff member and has need for additional temporary services both in its office support and for the oversight and operation of some its 2014 programming; and

WHEREAS, the Contractor is experienced with providing educational and recreational programs in the community and is qualified and able to provide services in connection with OIPRD's needs, as set forth in this Agreement, and is willing and agreeable to provide such services upon the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth in this Agreement, the Parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide OIPRD temporary services to assist OIPRD's Director and perform general office duties and program support as set forth in the Scope of Services attached as Exhibit A, from the effective date of this Agreement until December 31, 2014. OIPRD's Commission finds that such temporary services are needed to adequately administer its upcoming programs in light of a budget shortfall for 2014.

2. Term.

The term for this Agreement will be from the date the Agreement is duly executed by both parties ("the effective date") until **December 31, 2014** ("the Term").

3. Scope of Services.

The Contractor agrees to perform in a good and professional manner the tasks described in Exhibit A attached and incorporated herein. (The tasks described on Exhibit A, Scope

of Services, shall be individually referred to as a "task," and collectively referred to as the "services.")

4. Additional Services.

- a. From time to time, the Parties agree that Contractor may need to perform additional services with respect to work or projects related to the services under this Agreement. Any such agreement(s) for additional services will be set forth in writing and will be executed by the Parties prior to Contractor's performance of the additional services, except as may be provided in paragraph B, with compensation to be agreed upon at that time. On completion and execution of an addendum (an "Agreement for Additional Services"), such addendum shall be incorporated into this Agreement and shall have the same force and effect as if the terms of the addendum were part of the Agreement. The performance of services pursuant to an addendum shall be subject to the terms and conditions of this Agreement.
- b. On an emergency, occasional or as-needed basis, additional services may need to be performed before an addendum can be executed. The Contractor agrees that it shall perform such services on written request, including by email, of an authorized representative of OIPRD, pending execution of an addendum, at a rate of compensation to be agreed to at the time. The invoice procedure for any additional services will be as described in Section 8.
- c. With respect to approving emergency or occasional services that have not come before OIPRD's Board but require an immediate response, the OIPRD Director may approve additional services and expenditures if and when, in their best judgment, the costs of the additional services do not exceed **\$500.00** (five hundred dollars) in total and require a level of urgency that makes it impractical to wait for a decision by OIPRD's Board.

5. Contractor's Representations.

The Contractor represents and warrants that it and its officers and employees have all necessary licenses and certifications to perform the services provided for herein, and is qualified to perform such services.

6. Contractor's Responsibilities.

Contractor shall perform the following duties and those set forth in Exhibit A in a timely manner so as to not impede the reporting and accountability requirements of OIPRD:

- a. Comply with deadlines for reporting and projecting activities on a month-by-month basis. These reports should include descriptions and time spent of all activity performed on behalf of OIPRD during the previous month, plus descriptions and time estimates for activities projected for the month upcoming;
- b. Handle all financial transactions in a manner required by OIPRD protocols and applicable state law; and
- c. Perform the duties set forth in Exhibit A, Scope of Services, in a professional and timely manner, and as directed by OIPRD's Board of Directors.

7. Independent Contractor. The Contractor shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with OIPRD. The implementation of services lies solely in the discretion of the Contractor, except that OIPRD may assign duties to the persons assigned by the Contractor as the need arises. No agent, employee, servant or representative of the Contractor shall be deemed to be an employee, servant or representative of OIPRD for any purpose, and the employees of the Funhouse Commons are not entitled to any benefits OIPRD provides its employees. The Contractor will be solely and entirely responsible for its actions and omissions, and for the actions and omissions of its officers, agents, employees, subcontractors or representatives during the performance of this Agreement.

The Contractor agrees and understands that due to the nature of the work, some duties set forth in the Scope of Services must be assigned by OIPRD's Director on an as-needed basis. The Contractor and not OIPRD has the duty to supervise, manage, review, discipline or otherwise take personnel action regarding the person(s) assigned by the Contractor to perform such duties. These services are not and shall not be construed as a delegation to Contractor of any of OIPRD's duties or responsibilities.

8. OIPRD's Responsibilities.  
OIPRD shall do the following in a timely manner so as not to delay the services of the Contractor:
- a. Duly designate and authorize the Director to act as OIPRD's representative with respect to Contractor's services. OIPRD's Director shall have complete authority to transmit instructions, receive information, and interpret and define OIPRD's policies and decisions with respect to the services, so long as such interpretation does not conflict with this Agreement.
  - b. Furnish the Contractor with all information, criteria, objectives, schedules and standards for the project and the services provided for herein.
  - c. Arrange for access to the property or facilities as required for the Contractor to perform the services provided for herein.
  - d. Examine and evaluate all studies, reports, memoranda, plans, sketches, and other documents prepared by the Contractor and render decisions regarding such documents in a timely manner to prevent delay of the services.
9. Acceptable Standards.  
Contractor agrees to provide, in connection with the services and any additional services contemplated in this Agreement, work product and services of a quality and professional standard acceptable to OIPRD.
10. Compensation.  
OIPRD agrees to pay Contractor an annual total not to exceed **\$35,000** for the services set forth in Exhibit A, for the Term of this Agreement. On or before the first day of each

month, the Contractor shall submit to OIPRD an invoice or statement of time spent on tasks included in the scope of work provided in Exhibit A, and OIPRD will process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement. OIPRD agrees to remit payment for the contract amount, once per month, based on the contracted hourly rate in an amount not to exceed \$2,900, for the Term of this Agreement. OIPRD will pay for costs that are necessary and related to the agreed upon services, such as postal fees, copying fees, or other necessary fees, upon prior approval by OIPRD. Contractor shall be solely liable and responsible for complying with applicable tax laws and requirements for Contractor's employees or contractors, and applicable state and federal wage and hour laws and requirements.

11. Ownership and Use of Documents.

All documents, reports, memoranda, diagrams, sketches, plans, surveys, design calculations, working drawings and any other materials created or otherwise prepared by the Contractor as part of his performance of this Agreement (the "Work Products") shall be owned by and become the property of OIPRD, and may be used by OIPRD for any purpose beneficial to OIPRD. Upon termination of this Agreement, Contractor agrees to return or give to OIPRD all documents and records created pursuant to work performed under this Agreement.

12. Public Records Act Compliance; Legal Compliance.

Contractor agrees and acknowledges that OIPRD is a municipal corporation subject to the State of Washington's Public Records Act, RCW Chapter 42.56, and that Contractor's work product may be subject to the Public Records Act, as well as the Open Public Meetings Act and other applicable laws. Contractor agrees to maintain all records, including email, electronic messages, electronic documents, written documents, and other records considered a public record, in compliance with the Public Records Act. Contractor further agrees to be in compliance with all applicable laws, including all tax and employment-related laws, for work created or performed and compensation received pursuant to this Agreement.

13. Records Inspection and Audit.

All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by OIPRD for a period of up to three (3) years from the final payment for work performed under this Agreement.

14. Continuation of Performance.

In the event that any dispute or conflict arises between the Parties while this Agreement is in effect, the Contractor agrees that, notwithstanding such dispute or conflict, the Contractor shall continue to make a good faith effort to cooperate and continue work toward successful completion of its duties and responsibilities.



15. Administration of Agreement.

This Agreement shall be administered by the Director of the Funhouse, on behalf of Contractor, and by the Director of OIPRD, Marcia West, or her designee on behalf of OIPRD. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

**To the Funhouse Commons:**

Krista Bouchey, Interim Exec. Director  
30 Pea Patch Lane  
Eastsound, WA. 98245  
Phone: 360-376-7177  
Email: [pete@thefunhouse.org](mailto:pete@thefunhouse.org)

**To OIPRD:**

Marcia West, Director, OIPRD  
P.O. Box 575  
Eastsound, WA.  
Phone: 360-376-7275  
Email: [marciaw@oiprd.org](mailto:marciaw@oiprd.org)

16. Notices.

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above, or if to a person not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner.

Any party may change his, her or its address by giving notice in writing, stating his, her or its new address, to any other party, all pursuant to the procedure set forth in this section of the Agreement.

17. Insurance.

The Contractor shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverage and in the amounts described below. The Contractor shall furnish evidence, satisfactory to OIPRD, of all such policies. During the term hereof, the Contractor shall take out and maintain in full force and affect the following insurance policies:

- a. Comprehensive liability insurance, including automobile and property damage, insuring OIPRD and the Contractor against loss or liability for damages for personal injury, death or property damage arising out of or in connection with the performance by the Contractor of its obligations hereunder, with minimum liability limits of \$1,000,000.00 combined single limit for personal injury, death or property damage in any one occurrence.
- b. Such worker's compensation and other similar insurance as may be required by law.
- c. Director's and Officer's liability insurance with minimum liability limits of \$1,000,000.

18. Indemnification.

The Contractor shall indemnify and hold harmless OIPRD, and OIPRD shall indemnify and hold harmless Contractor, for the actions or omissions of each of their respective officers, agents, volunteers and employees, from any and all claims, actions, suits,

liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of the negligent act or omission of the Contractor or OIPRD, as the case may be, for their respective officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement. If a final judgment is rendered against OIPRD, its officers, agents, employees and/or any of them, or jointly against OIPRD and the Contractor and their respective officers, agents and employees, or any of them, the Contractor shall satisfy the same to the extent that such judgment was due to the Contractor's negligent acts or omissions.

19. Dispute Resolution.

- a. The parties will attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at mediation, unless the parties agree that it would be futile to do so. Each party will pay its own attorney's fees and costs, and half of the mediator's costs.
- b. 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 on Orcas Island, unless otherwise mutually agreed to by the parties, before a single arbitrator selected by 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.
- c. 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. The parties agree that, with the exception of the circumstances set forth in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law. 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.

20. Assignment.

Neither party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

21. Amendment, Modification or Waiver.

No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default.

22. Termination and Suspension.

- a. Either party may terminate this Agreement upon written notice to the other party if the other party fails substantially to perform in accordance with the terms of this Agreement through no fault of the party terminating the Agreement.
- b. OIPRD may terminate this Agreement upon not less than seven (7) calendar days written notice to the Contractor if the services provided for herein are no longer needed from the Contractor, and/or if the legislative body of OIPRD does not appropriate funds in OIPRD Budget to pay for such services.
- c. If this Agreement is terminated through no fault of the Contractor, the Contractor shall be compensated for services performed prior to termination in accordance with the rate of compensation provided in this Agreement and any applicable addenda.

23. Parties in Interest.

This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the Parties and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

24. Costs to Prevailing Party.

In the event of such litigation or other legal action, to enforce any rights, responsibilities or obligations under this Agreement, the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees

25. Applicable Law.

This Agreement and the rights of the parties hereunder shall be governed by the interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be in San Juan County, Washington; provided, however, that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Contractor of the services.

26. Severable Provisions.

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

27. Entire Agreement.

This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

28. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be one



and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

29. Authority.

The Parties executing this Agreement represent that they have the authority from their Board or Commission to bind their Board or Commission to any and all terms and conditions of this Agreement.

30. Criminal Background Check.

Contractor agrees that OIPRD may conduct a criminal background check on Contractor and any of its officers, employees or agents who will be performing work under this Agreement prior to Contractor performing such services, and at any time during the term of the Agreement in compliance with applicable laws, including but not limited to RCWs 43.43.832 and 43.43.837. If Contractor's background check(s) does not, in OIPRD's discretion, comply with all applicable laws regarding Contractor's services, then OIPRD may immediately terminate this Agreement upon written notice to Contractor. If in the normal course of Contractor's business, Contractor has performed criminal background checks that comply with applicable laws for such checks, Contractor agrees to submit the results of such background checks to OIPRD within ten (10) calendar days of receiving such results or within ten (10) calendar days of the execution of this Agreement, as applicable.

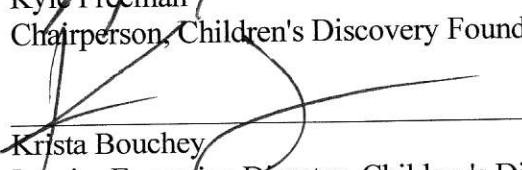
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

**THE FUNHOUSE COMMONS**

  
\_\_\_\_\_  
Kyle Freeman  
Chairperson, Children's Discovery Foundation

Date

3/3/14

  
\_\_\_\_\_  
Krista Bouchey  
Interim Executive Director, Children's Discovery Foundation

Date

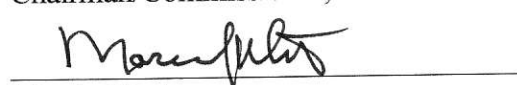
3/3/14

**ORCAS ISLAND PARKS AND RECREATION DISTRICT**

  
\_\_\_\_\_  
Bob Eagan  
Chairman/Commissioner, OIPRD

Date

3/3/14

  
\_\_\_\_\_  
Marcia West  
Director, OIPRD

Date

3/3/14

STATE OF WASHINGTON     )  
  ) :ss  
COUNTY OF SAN JUAN     )

ON THIS day of \_\_\_\_\_, 2014, before me, personally appeared **Krista Bouchey**, known to be the individual who executed the within and foregoing instrument, and acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at:

My Appointment Expires \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) :ss  
COUNTY OF SAN JUAN     )

ON THIS day of \_\_\_\_\_, 2014, before me, personally appeared **MARCIA WEST**, known to be the individual who executed the within and foregoing instrument, and acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at:

My Appointment Expires \_\_\_\_\_