

Resolution 2013-5

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

RESOLUTION 2013-5

Resolution To Employ Orcas Island Park and Recreation District Director

WHEREAS, Orcas Island Park and Recreation District (OIPRD) is duly formed under the laws of the State of Washington; and

WHEREAS, After a competitive selection process, OIPRD has selected Marcia West as its first Director and wishes to employ her starting August 27, 2012; and

WHEREAS, OIPRD and Employee desire to define the terms and conditions of employment to protect the interests of OIPRD and Employee, as set forth in the Employment agreement; and


NOW THEREFORE BE IT RESOLVED, that the OIPRD Board of Commissioners adopt the agreement for employment for Director between OIPRD and Marcia West together with Exhibit A, Director Job Description, Exhibit B, Conduct Subject to Discipline, and the Contract Amendment dated August 22, 2012, revising sections 6.A and 6.B.

Adopted by the Board of Commissioners of Orcas Island Park and Recreation District.

DATED this 8th day of August 2013.



Jim Bredouw, Commissioner

Ian Lister, Commissioner

Vicki Vandermay, Commissioner

Bob Eagan, Chair, Commissioner

Martha Farish, Commissioner

**ORCAS ISLAND PARK AND RECREATION DISTRICT EMPLOYMENT
AGREEMENT
(Director)**

THIS EMPLOYMENT AGREEMENT is made by and between the Orcas Island Park and Recreation District ("OIPRD"), through its Board of Commissioners ("the Commission"), and Ms. Marcia West ("Employee"), in her individual capacity, for the position of Director of OIPRD.

- A. OIPRD is a park and recreation district duly formed under the laws of the State of Washington; and
- B. After a competitive selection process, OIPRD has selected Marcia West as its first Director and wishes to employ her starting August 27, 2012; and
- C. OIPRD and Employee desire to define the terms and conditions of employment to protect the interests of OIPRD and Employee, as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual benefits to be derived, OIPRD and Employee agree as follows:

1. TERM. Employee's employment will begin on Monday, **August 27, 2012** ("date of hire") and continue until it is terminated by either party.

2. DUTIES AND STATUS.

A. Functions and Duties. OIPRD hereby employs Employee as its Director. Employee agrees to perform the functions and duties set forth in the job description attached as **Exhibit A**, incorporated herein; to support and assist the Commission with its powers and duties as generally set forth in RCW 36.69.130; and to diligently perform such other duties required of the position and assigned by the Commission.

Employee acknowledges that OIPRD is a newly formed park and recreation district and Employee will be responsible for performing and overseeing functions and duties that are not defined in writing. The job will require organization building and drafting new policies in support of the Commission. Employee's job description may, therefore, be modified at the Commission's discretion, after consulting with Employee.

B. Personnel Policies. Employee acknowledges that OIPRD currently has no written personnel policies. Over time, such policies may be adopted by the Commission. Any future personnel policies will not be part of this Agreement unless expressly incorporated by written amendment of the Agreement duly adopted by the Commission, or as set forth in this Agreement.

C. **At Will.** OIPRD and Employee agree that Employee serves "at will" and at the pleasure of the Commission, subject to the terms of this Agreement and applicable laws. OIPRD reserves the right to terminate the employment relationship with or without cause at any time, as set forth in Section 7, below.

3. **COMPENSATION; EXPENSES.**

A. **Salary.** OIPRD agrees to pay Employee for her services an initial annual salary of \$50,000.00 (fifty thousand dollars), paid in monthly increments of \$4,166.66, starting August 27, 2012, less all tax, benefit, and other deductions normally withdrawn. Paychecks will be issued in accordance with standard San Juan County taxing district employee protocol. Employee's annual pay may be increased pursuant to Section 4, below.

B. **Automobile/Travel.** Employee will be reimbursed for all travel and expenses reasonably incurred in the course and scope of Employee's employment, as approved by the Commission in advance of such travel or expenses. If the Commission duly adopts a travel policy, after the policy is reviewed and recommended by Employee to the Commission, Employee agrees that she will generally follow the travel policy.

C. **Professional Organizations; Development.** OIPRD recognizes that certain job-related expenses will be incurred by Employee while on OIPRD business. OIPRD agrees to reimburse Employee for such expenses that are reasonable and necessary to OIPRD business and as permitted by OIPRD policy and its budget, including: Employee's membership dues and licenses necessary to Employee's employment; Employee's attendance at such conferences, classes, and professional development seminars necessary for Employee's professional development, as approved in advance by the Commission and as may be reasonably necessary; and costs for a cell phone for official OIPRD business. All such costs or expenses will be duly approved by the Commission or its designee prior to Employee incurring such costs.

4. **EVALUATION; PROBATION.**

A. **Probationary Period.** For ninety (90) days following the date of hire, Employee agrees to a probationary period. The Commission will review Employee's performance at the end of the 90-day period. If Employee's performance is satisfactory, Employee will continue employment under this Agreement. The Commission may extend the probationary period at its discretion for up to one additional 90-day term. If Employee's performance is not satisfactory, the Commission may terminate Employee's employment for any reason or no reason at all, effective immediately upon Employee's receipt of such written notice of termination.

B. **Performance Evaluation.** The Commission will conduct an annual written performance evaluation of Employee one year after Employee's date of hire, on or around August 27, 2013, and every year thereafter. The Commission or its designee, as part of the performance evaluation process, will define such goals and performance objectives that it determines necessary for the proper operation of OIPRD and to attain

OIPRD's policy objectives. The Commission or its designee, in consultation with Employee, will establish priorities among the various goals and objectives, which will be reduced to writing.

5. HOURS AND PLACE OF WORK. As a guideline, OIPRD expects Employee to work no less than forty (40) hours per week at OIPRD's office or facilities, and other places of work as necessary to conduct OIPRD business during such hours as are most useful to work with the public, the elected officials of OIPRD, and volunteers and/or staff. Since Employee must also devote time outside normal office hours, OIPRD agrees that Employee may flex her time and will be allowed to take occasional time off during normal work hours, provided such time off is not disruptive to the needs of OIPRD.

6. BENEFITS; LEAVE.

A. Vacation/Holidays/Sick Leave. For purposes of vacation and sick leave accrual and paid holidays, Employee will accrue vacation and sick leave from August 27, 2012, as follows:

Vacation: 15 (fifteen) vacation days per calendar year, and no more, accrued at a rate of 1.25 ~~days per month, which will not rollover from one calendar year to the next.~~ **SEE AMENDMENT** *mw RAE*

Sick: 5 (five) sick days per calendar year, and no more, accrued at a rate of .417 ~~days per month, which will not rollover from one calendar year to the next.~~ **SEE AMENDMENT** *mw RAE*

Holidays: Employee recognizes that due to the nature of OIPRD's work, some OIPRD events may fall on a paid holiday, in which case Employee agrees to work that day and take an alternate day as paid time off. The following holidays shall be paid holidays:
New Year's Day; Martin Luther King Day; President's Day;
Memorial Day; Independence Day; Labor Day; Veteran's Day;
Thanksgiving Day; and Christmas Day.

B. Retirement. OIPRD will contribute a percentage of Employee's pay to the State of Washington's Public Employee's Retirement System and social security in the same percentage and in the same manner as proscribed by law.

C. Medical Benefits. Employee agrees that OIPRD will not provide medical, vision, or dental insurance or other health-related benefits to Employee.

D. Family or Medical Leave. OIPRD will comply with applicable laws regarding Employee's family or medical leave. Employee agrees to submit a written request for such leave to the Commission Chair within a reasonable amount of time before such leave is taken by Employee, when practicable.

7. TERMINATION; SEVERANCE.

A. **By OIPRD.** Employee is an "at will" employee and understands that pursuant to applicable laws, she may be terminated by the Commission at any time for any reason allowed by law. If the Commission terminates Employee's employment, the termination shall be in writing with thirty (30) calendar days notice, provided that this notice provision does not impair the Commission's authority to suspend Employee with or without pay due to a disciplinary action, or terminate employee immediately for "good cause," as set forth in subsections 7(C) and 7(D).

B. **Severance Pay.** After one (1) year of employment, if Employee's employment is terminated by the Commission when Employee is willing and able to perform the duties assigned, or if OIPRD otherwise intentionally breaches the provisions of this Agreement, OIPRD agrees to pay Employee severance pay, excluding applicable taxes, of one (1) month of Employee's base salary at the time of termination ("severance pay"). Severance pay shall be conditioned on Employee's execution of a written release, in a form approved by OIPRD's Attorney, of all actual and potential claims against OIPRD, its elected or appointed officers, employees, or agents, for any claims arising out of Employee's employment or termination of employment with OIPRD. Without limitation of the foregoing, this release shall specifically include claims arising under the federal Civil Rights Act, the federal Equal Pay Act, the Washington state, local, and federal laws against discrimination, including without limitation RCW Title 49, the Americans with Disabilities Act and the Age Discrimination in Employment Act.

C. **Voluntary Resignation; Good Cause.** If Employee voluntarily resigns or is terminated for good cause, OIPRD is not obligated to pay Employee severance pay. Employee agrees to give OIPRD a minimum of thirty (30) days written notice prior to a voluntary resignation from her position, to allow OIPRD to plan for an orderly transition of OIPRD's business. For the purpose of this section only, "good cause" means: (1) willful and material neglect of duty, including misconduct set forth in Exhibit B; (2) dishonesty in the performance of job duties, including misconduct set forth in Exhibit B; (3) felony or misdemeanor conviction of any crime involving moral turpitude; or (4) any misconduct by a public officer as set forth in RCW chapter 42.20, RCW 42.23.030 or 42.23.070, including misconduct set forth in Exhibit B.

D. **Conduct Subject to Disciplinary Action.** The Commission has not yet adopted personnel guidelines that set forth expectations for Employee's performance. Accordingly, attached as **Exhibit B** is a list of conduct for which Employee could be subject to disciplinary action up to and including termination. This list is not comprehensive and may include other conduct not listed, at the Commission's discretion. This list is an example of conduct that may be subject to disciplinary action, and does not change Employee's "at will" employment status.

E. **Return of Property.** After termination of employment, Employee will leave in place or return immediately upon termination all property of OIPRD, including but not limited to keys, cell phones, electronic devices, credit cards, computer software.

and any and all documents that are provided to or generated by Employee during the course of employment with OIPRD, and any other OIPRD property.

8. IMPACT OF BUDGET. In the event that OIPRD loses a substantial amount of funding or must substantially cut or reduce its expenditures due to a significant budget shortfall, the Board may at its discretion amend this Agreement or terminate it pursuant to paragraph 7.A.

9. COMPLIANCE WITH LAWS; ETHICS CODE. In performing the services contemplated by this Agreement, Employee agrees to faithfully observe and comply with all federal, state and local laws, ordinances and regulations applicable to the services to be rendered under the Agreement, including the Code of Ethics for Municipal Officers, RCW chapter 42.23, which Employee agrees to follow.

10. DISCRIMINATION PROHIBITED. With regard to the work performed under this Agreement, Employee shall not discriminate on the grounds of race, color, national origin, religion, creed, age, sex, marital status, or the presence of any physical, sensory or mental disability in the selection and retention of employees, procurement of materials or supplies, or the letting of contracts.

11. OUTSIDE EMPLOYMENT. Outside of this Agreement, Employee may conduct occasional other employment so long as such employment is expressly approved by the Commission or its designee, at its discretion, and is not in conflict with Employee's position or OIPRD's needs or interests or any applicable laws, or present an appearance of impropriety to the public.

12. INDEMNIFICATION; HOLD HARMLESS.

A. OIPRD will protect, defend and indemnify Employee from any and all civil and legal actions brought against Employee while she is, in good faith, working within the course and scope of her employment with OIPRD (collectively, "covered claim"). OIPRD will provide defense or legal services to Employee for any covered claim.

B. Except as specifically authorized by OIPRD, Employee may not engage in the following acts regarding a covered claim, without the advice of a duly-assigned OIPRD attorney:

1. Individually negotiate or otherwise affect the settlement of a covered claim;
2. Make an admission of liability involving a covered claim;
3. Discuss with persons who are not OIPRD officers or employees incidents which could reasonably lead to actions or proceedings for damages against OIPRD or its officers or employees; or
4. Engage and retain legal counsel at OIPRD's expense without OIPRD's prior express written consent.

13. DISPUTE RESOLUTION

A. Mediation. In the event a conflict or dispute arises regarding any term or condition of this Agreement, the Parties agree to first attempt to resolve the dispute informally. If the dispute cannot be resolved informally, the Parties agree to mediation. OIPRD will pay for a mutually-agreed upon mediator, and each party will pay its own attorneys' fees and costs.

B. Arbitration. 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 mutual consent 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. 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. OIPRD will pay for the cost of the arbitrator, and the Parties shall pay for their attorney's fees and costs.

This agreement to arbitrate applies not only to claims arising out of an alleged breach of the Agreement but to all claims, disputes or controversies arising out of or relating to the Employee's employment and/or cessation of employment with OIPRD. All such claims, disputes or controversies shall be resolved exclusively by final and binding arbitration as provided in this Agreement. By way of example only, such claims include claims under federal, state, and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, including the Civil Rights Act of 1991, the Americans with Disabilities Act, the Washington Law Against Discrimination, the law of contract, and the law of tort.

14. GENERAL PROVISIONS

A. Entire Agreement and Modifications. This Agreement contains all the agreements of the Parties with respect to any matter covered in this Agreement; and no prior agreements shall be effective for any purpose. No provisions of this Agreement may be amended or modified, except by written agreement signed by the Parties.

B. Full Force and Effect. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

C. Successors in Interest. This Agreement is for the services of a specific individual chosen for her unique qualifications and is not assignable. Subject to the foregoing and where applicable, payments due to Employee shall inure to the benefit of and be binding upon her successors in interest, heirs and assigns.

D. Attorney Fees. In the event either of the Parties defaults on the performance of any terms of this Agreement, or either Party places the enforcement of this Agreement in the hands of an attorney or files a lawsuit not subject to final binding arbitration, each party agrees to pay for its own attorneys fees and costs, and the prevailing Party will not be entitled to recover from the other Party the prevailing party's attorney's fees or costs.

E. Governing Law; Venue. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. The venue for any dispute related to this Agreement shall be San Juan County, Washington, unless otherwise agreed in writing by both Parties.


F. Equal Opportunity to Draft. The Parties have participated in and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party upon a claim that Party drafted the ambiguous language.

G. Authority. Both Parties represent that they have the full authority to sign and agree to the terms and conditions set forth herein.

H. Facsimile Signatures Authorized. Each Party may sign and fax a copy of the Agreement to the other Party, which faxed signature will be treated as an original signature on receipt by the other Party; and the Agreement will be binding on both Parties when fully executed in such manner, by both Parties.

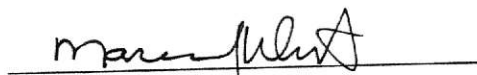
NOW THEREFORE the Parties agree to the above terms and conditions:

FOR OIPRD:



Bob Eagan
Chair, OIPRD Commission

8/22/2012
Date



Marcia West, Employee

Aug 22, 2012
Date

EXHIBIT A
(Director Job Description)

- Active management of all aspects of OIPRD's recreational indoor and outdoor programs. This includes proactive interactions with the general public, participants, volunteers, partner organizations and public officials. Programs will be a combination of some that currently exist without modification; some existing with modifications and the creation and/or integration of brand new programs. It will also entail assessing programs continuously to ensure that they are diverse, effective, adequately attended and serving well the greater community.
- Active management and/or oversight of the maintenance, setup and/or booking of various facilities, grounds, fields and subcontractors.
- Creation of annual budgets and strategic long range plans for Commissioners' consideration.
- The creation of reports, correspondence, press releases, ads, policies, grants and other documents as needed/directed.
- Working with and gaining an in-depth understanding of ActiveNet recreational software, Excel, QuickBooks, Word and some type of graphics design software; also staying current with the newest developments and latest upgrades of same.
- Fielding, training, overseeing and coordinating a part time assistant, some part-time seasonal and bookkeeping help and volunteers.
- Occasional negotiation for the acquisition of additional land, buildings and/or leases of same.
- Working with Commissioners to prepare/present regular reports detailing financial information, identifying & proposing solutions for challenging issues and detailing progress towards stated goals. Also required, when possible, will be attendance at regular monthly meetings, as well as other occasional public and/or committee meetings, when requested.
- Working on a flexible, seasonal schedule with occasional weekend work and keeping a general log of hours.
- Keeping a focus on consistency, attention to detail and follow through doing what you say you will do, when you say you will do it, with a consistent adherence to established office management protocols. The Director will work with the Board to set-up office procedures and protocols to assure accurate financial reporting, timely processing of

claims and consistent collection, storage and updating of required contracts, records and waivers. Once established, adherence to protocols will also be the responsibility of the Director.

- While it is understood that this position will require some office time, some field time and occasional off island time, it is understood this is not a 'work from home' position and regular office hours are expected.

LICENSES and/or CERTIFICATIONS: A valid Washington State ID or Driver's license and personal transportation is required. The Director may also be required to sign a drug-free workplace agreement and an agreement not to use tobacco products on the job.

WORKING CONDITIONS/PHYSICAL REQUIREMENTS: Work is primarily performed in an indoor setting, though it will periodically be necessary to perform work outdoors and at off-site facilities. Must be able to carry 25 lbs. and be able to visit sites where programs are occurring. This job also requires the ability to handle the emotional stress of balancing multiple duties and regular contact with the public.

EXHIBIT B
(Conduct Subject to Discipline)

The Commission has not yet adopted personnel guidelines that set forth expectations for Employee's performance. Accordingly, below is a list of conduct for which Employee could be subject to disciplinary action up to and including termination, at the Board's discretion. This list is not comprehensive and may include other conduct:

- Misrepresentation or withholding of pertinent facts in securing employment;
- Unauthorized use or possession of OIPRD facilities and/or property.
- Use of position for personal gain or advantage, or lying or accepting unlawful gratuities or bribes.
- Violation of applicable communications, cell phone or internet use policies or recognized standards of usage.
- Failure to report an occurrence causing damages to OIPRD, a customer, or public property.
- Habitual lateness for work, or absence without proper notification, excessive absenteeism, or insufficient reasons for absenteeism.
- Disorderly conduct, including fighting on the premises.
- Rudeness, discrimination, intimidation, coercion, use of obscene language or gestures or lack of courtesy to the public or fellow employees.
- Intentional falsification of records or paperwork required in the transaction of OIPRD's business.
- Inability, inefficiency, negligence, or insubordination, including a refusal or failure to perform assigned work, including concealing defective work.
- Failure to observe safety practices, rules, regulations, and instructions, or negligence that results in injury to others. Failure to wear required safety clothing and equipment.
- Dishonesty or theft, including deliberate destruction, damage, or removal of the OIPRD's or other's property from the premises or any job site.
- Possession, use, sale, or being under the influence of alcohol or controlled substances while on OIPRD business (including standby duty). The only exception to this rule shall be for an employee using or possessing a controlled substance prescribed by a doctor if such employee has given the Chair of the Commission prior notice of such use and/or possession and such use does not impair safe and/or efficient work performance.
- Violation of sexual harassment or discrimination policies.
- Possession of explosives or weapons on OIPRD premises or at any OIPRD job site.
- Conviction of a gross misdemeanor or felony.
- Inappropriate conduct with a minor or vulnerable adult while in the course and scope of OIPRD business.
- Insubordination.
- Other misconduct deemed inappropriate by a public official.

Contract Amendment
August 22, 2012

6.A.

Vacation:

Modified to read:

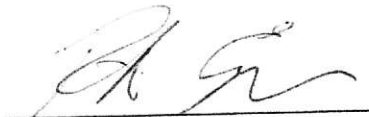
" at a rate of 1.25 days per month for each completed calendar month of service. If at the conclusion of the year the employee's accrued entitlement to paid vacation exceeds 15 days (which may be carried forward) then that entitlement shall be forfeited and no payment be paid."

6.B.

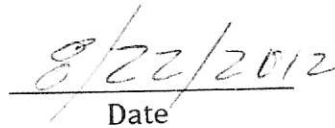
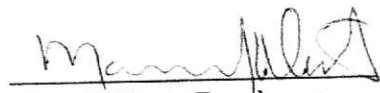
Sick:

Modified to read:

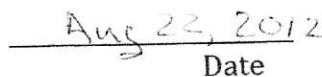
" at a rate of .417 days per month for each completed calendar month of service. If at the conclusion of the year the employee's accrued entitlement to paid sick leave exceeds 5 days (which may be carried forward) then that entitlement shall be forfeited and no payment be paid."



Bob Eagan
Chair, OIPRD Commission


Date

Marcia West, Employee


Date