

# Resolution 2013-1

PD No. 375 Part 1 of 2/13/13

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

## Resolution 2013-1

February 11, 2013

**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;

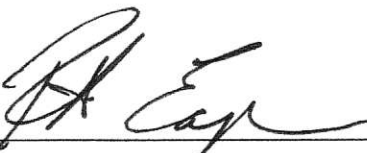
**WHEREAS**, OIPRD has only one staff member and has need for additional temporary services both in its office coverage and for the oversight and operation of some its 2013 programming; and

**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.

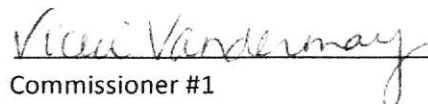
**NOW, THEREFORE BE IT RESOLVED** that the OIPRD Board of Commissioners adopt the Agreement for Temporary Services Between OIPRD and The Funhouse Commons together with Exhibit A Scope of Work according to promises and conditions set forth in the Agreement.

DATED Feb. 11, 2013

Signed



Chair, Commissioner #2



Commissioner #1

Commissioner #3



Commissioner #3

Commissioner #4

**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 coverage and for the oversight and operation of some its 2013 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 as set forth in the Scope of Services attached as Exhibit A, from the effective date of this Agreement until December 31, 2013. OIPRD's Commission finds that such temporary services are needed to adequately administer its upcoming programs in light of a budget shortfall for 2013.
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, 2013** ("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 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 **\$18,024.00** 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, in an amount of **\$1,502.00**, 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 Pete Moe, 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:**

Pete Moe, Exec. Director  
30 Pea Patch Lane  
Eastsound, WA. 98245  
Phone: 360-376-7177  
Email: pete@thefunhouse.org

**To OIPRD:**

Marcia West, Director, OIPRD  
P.O. Box 575  
Eastsound, WA.  
Phone: 360-376-7275  
Email: 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 coverages 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.

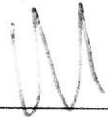
Contractor agrees that OIPRD may conduct a criminal background check on Contractor and any of its officers, employees or agents who will be performing work under this Agreement prior to Contractor performing such services, and at any time during the term of the Agreement in compliance with applicable 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**

  
Eric Youngren  
Chairperson, Children's Discovery Foundation

2/12/2013  
Date

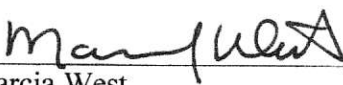
  
Pete Moe  
Executive Director, Children's Discovery Foundation

2/12/2013  
Date

**ORCAS ISLAND PARKS AND RECREATION DISTRICT**

  
Bob Eagan  
Chairman/Commissioner, OIPRD

2/11/13  
Date

  
Marcia West  
Director, OIPRD

2/11/13  
Date

## **Exhibit A**

### **2013 Scope of Services**

The Orcas Island Park and Rec District (hereafter "OIPRD") and the Funhouse Commons (hereafter "FHC") agree that pursuant to the terms of the attached Agreement, FHC will perform the following services for OIPRD, within the time period and for the compensation set forth in the Agreement. Compensation under the Agreement shall be for services rendered as of the effective date of the Agreement.

FHC agrees to assign two persons to the following part-time duties, an Activities Coordinator and an Activities Supervisor, who will assist OIPRD's Director ("the Director") with the following OIPRD functions and duties:

**A. Activities Coordinator.** The Activities Coordinator will:

1. Assist the Director with identifying, training and supervising qualified volunteers for OIPRD programs.
2. Assist the Director with marketing work and flyers/brochures, in electronic and other form.
3. On Fridays from 9:00 am to 5:30 pm, assist the Director with general OIPRD office activities, including answering the phone, responding to email, answering questions from the public, taking messages, filing documents, working with volunteers, and other general office duties as needed by the Director.
4. Each month, provide a monthly written report to OIPRD summarizing the Activities Coordinator's and Activities Supervisor's work for the month, and deliver it to the Director at least 24 hours before each month's regular OIPRD public meeting, for presentation to OIPRD's Commission. This report will detail the previous months' activities including specific tasks, number of volunteers involved; number of hours spent per task and current status or progress toward completion, as well as a simple report of projected goals and timetables for the upcoming month.

**B. Activities Supervisor.** An Activities Supervisor will assist OIPRD on an as-needed basis and as identified by the Director, with specific auxiliary "weekend" programs (approximately 6-8 per week), normally occurring between Friday nights and Sunday afternoons. The Activities Supervisor will supervise activities, monitor attendance, maintain and complete rosters, setup and/or maintain and/or store equipment and provide activity logs to the Director.

## Resolution 2013-2

### Resolution to Adopt an Engagement Agreement with BEERY ELSNER & HAMMOND, LLP

#### Resolution 2013-2

February 11, 2013

**WHEREAS**, the DISTRICT desires to contract with ATTORNEY to provide legal services on an as-needed basis; and

**WHEREAS**, the DISTRICT needs legal services with the particular training, ability, knowledge, and experience possessed by ATTORNEY, which specializes in municipal law; and

**WHEREAS**, the DISTRICT has determined that ATTORNEY is qualified and capable of performing the professional services as the DISTRICT hereinafter requires, under the terms and conditions set forth below.


**NOW THEREFORE**, based on the foregoing and in consideration of the mutual covenants contained herein, the Commission hereby RESOLVES:

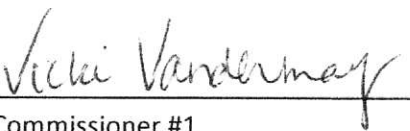
The Commission adopts the Engagement Agreement presented to it at its January 10, 2013 public meeting. The Commission authorizes the District Director, Marcia West to sign the Agreement on behalf of the Commission, and to be the Board's contact for Beery Elsner & Hammond, LLP.

ADOPTED THIS February 11, 2013

DATED 2/11/2013

Signed

  
Chair, Commissioner #2

  
Commissioner #1

Commissioner #3

  
Commissioner #3

Commissioner #4

## ORCAS ISLAND PARK & RECREATION DISTRICT

### BEERY ELSNER & HAMMOND, LLP ENGAGEMENT AGREEMENT (Park & Recreation District Attorney – Of Counsel)

THIS CONTRACT is made and entered into effective this \_\_\_\_ day of February 11, 2013, by and between the San Juan Island Library District, a special taxing district in the State of Washington (“the DISTRICT”), and Beery Elsner & Hammond, LLP (“ATTORNEY”).

WHEREAS, the DISTRICT desires to contract with ATTORNEY to provide legal services on an as-needed basis; and

WHEREAS, the DISTRICT needs legal services with the particular training, ability, knowledge, and experience possessed by ATTORNEY, which specializes in municipal law; and

WHEREAS, the DISTRICT has determined that ATTORNEY is qualified and capable of performing the professional services as the DISTRICT hereinafter requires, under the terms and conditions set forth below.

NOW THEREFORE, based on the foregoing and in consideration of the mutual covenants contained herein, the DISTRICT and ATTORNEY agree as follows:

1. Term  
The term of this Contract shall become effective on the date above and will continue for one (1) year unless terminated pursuant to Section 12 of this Agreement.
2. Scope of Services  
ATTORNEY shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary, as designated in this Agreement as ATTORNEY responsibilities and as described in Exhibit A (“Scope of Services”), attached and incorporated herein.
3. ATTORNEY Identification  
ATTORNEY shall furnish the DISTRICT with its employer identification number, as designated by the Internal Revenue Service.
4. Compensation
  - A. Payment will be made to ATTORNEY for services rendered based on a detailed monthly invoice showing ATTORNEY’s work. Payment will be made within thirty (30) days of the DISTRICT’s receipt of the invoice from ATTORNEY.
  - B. Current hourly rates are:

• Partners and Of Counsel	\$200.00 per hour
• Associates*	\$195.00 per hour
• Paralegals	\$125.00 per hour
• Legal Assistants	\$ 75.00 per hour
• Attend Council meetings	\$105.00 per hour/cap at \$200.00

\* The Lead Attorney, Adina Cunningham, will bill at the Associate rate.

5. Project Managers

A. The DISTRICT's Project Manager will be the DISTRICT Executive Director, Marcia West, and the Lead Attorney for ATTORNEY will be Adina K. Cunningham. Each party shall give the other written notification of any change in project managers.

B. Contacts under this Agreement shall be:

For ATTORNEY

Adina K. Cunningham  
Beery Elsner & Hammond, LLP  
PO Box 78  
Eastsound, WA. 98245  
mailto: adina@gov-law.com;  
pam@gov-law.com

For DISTRICT

Marcia West, Director  
Bob Eagan, Commissioner and  
Chairman  
PO Box 575  
Eastsound, WA 98245

6. Project Information

ATTORNEY agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with matters assigned to ATTORNEY, as authorized or directed by the DISTRICT. No information, news, or press releases shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior written or oral authorization of the DISTRICT's Chairperson or Executive Director.

7. Independent Contractor.

In the performance of services under this Agreement, 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 the DISTRICT and shall be subject to the DISTRICT's general rights of inspection and review to secure the satisfactory completion of such work. No agent, employee, servant or representative of ATTORNEY shall be deemed to be an employee, servant or representative of the DISTRICT for any purpose. 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.

8. Indemnity and Insurance

A. Mutual Indemnity: ATTORNEY acknowledges responsibility for any and all liability arising out of its performance under the terms of this Agreement within the limited scope of representation set forth in Exhibit A, and shall hold the DISTRICT harmless from, defend and indemnify the DISTRICT against any and all liability, settlements, loss, costs and expenses in connection with any action, suit or claim resulting from ATTORNEY's acts, omissions, activities or services in the course of performing this Agreement, to the extent required by law. The DISTRICT shall similarly hold the ATTORNEY harmless from, defend and indemnify the ATTORNEY against any and all liability, settlements, loss, costs and expenses in connection with any actions, suit or claim resulting from the DISTRICT's acts, omissions, activities or services that fall within the scope of this Agreement, to the extent required by law.

B. Liability Insurance: ATTORNEY shall maintain professional liability insurance



insuring ATTORNEY against errors or omissions in the amount and on the conditions required by the Professional Liability Fund of the Oregon State Bar. As of the date of the execution of this contract, ATTORNEY maintains coverage in excess of the Oregon State Bar's requirement and maintains professional liability insurance coverage in the amount of \$300,000.00 per attorney, and \$2.7 million in excess coverage. ATTORNEY will submit a copy of its certificate of insurance to the DISTRICT upon request. ATTORNEY will notify DISTRICT of any change in the amount of its professional liability insurance coverage.

9. Laws of Washington

This Agreement shall be governed by the laws of the State of Washington. Venue for any dispute arising out the Agreement shall be in the San Juan County Washington Superior Court.

10. Successors and Assigns

- A. ATTORNEY shall not assign any of its obligations under this Agreement without the prior consent of the DISTRICT.
- B. In the event the DISTRICT consents to an assignment and ATTORNEY assigns, transfers or subcontracts any of the work contemplated or necessitated by the terms of this Agreement to a third party, ATTORNEY shall ensure that said third party is subject to the terms and conditions of this Agreement.

11. Records

- A. ATTORNEY shall retain all books, documents, papers, and records that are directly pertinent to this Agreement and any work done under its term for at least three (3) years.
- B. ATTORNEY shall allow the DISTRICT, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to this Agreement.
- C. The DISTRICT shall be the owner of and shall be entitled to possession of any physical work product resulting from ATTORNEY's work, including computations, plans, correspondence or pertinent data and information gathered by or computed by ATTORNEY prior to the termination of the Agreement. The metadata imbedded in any document provided by ATTORNEY is, however, and will remain the exclusive property of ATTORNEY, to the extent allowed by law.

12. Termination for Convenience

- A. The DISTRICT may terminate all or part of this Agreement at any time for its own convenience by written notice to ATTORNEY. Upon termination under this paragraph, ATTORNEY shall be entitled to compensation for all services rendered prior to ATTORNEY's receipt of the notice of termination, plus ATTORNEY's reasonable costs actually incurred in closing out the Agreement.
- B. ATTORNEY may terminate this Agreement with or without cause, and shall give the DISTRICT not less than sixty (60) days written notice of its intent to do so. Any such termination shall be in compliance with Washington's Rules of Professional Conduct.

13. Payment of Claims by the DISTRICT

If ATTORNEY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to ATTORNEY or a subcontractor by any person in connection with this contract as the claim becomes due, the DISTRICT may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to ATTORNEY pursuant to this contract. The DISTRICT's payment of a claim under this Paragraph shall not relieve ATTORNEY or ATTORNEY's surety, if any, from responsibility for those claims.

14. Modification

Any modification of the provisions of this Agreement shall be reduced to writing and signed by authorized representatives of each party.

15. No Waiver of Legal Rights


A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

16. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes any other written or oral agreement regarding the ATTORNEY's engagement by the DISTRICT for legal services.

ORCAS ISLAND PARK  
& RECREATION DISTRICT

BEERY ELSNER & HAMMOND, LLP

By:

  
\_\_\_\_\_  
Marcia West

By:

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Pamela J. Beery

Title: Director

Title: Partner

Date:

2/11/2013 \_\_\_\_\_

Date:

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