



COOPERATIVE AGREEMENT WITH THE SURFRIDER FOUNDATION

Agreement No. CA 13-291

This Agreement is by and between The Surfrider Foundation (Surfrider) and the Washington State Department of Natural Resources, Aquatic Resources Division, (DNR).

DNR enters this agreement in accordance with RCW 79.10.130 (2009).

The Surfrider Foundation is a nonprofit association that engages in activities that, among other things, provides educational and scientific benefits.

The purpose of this Agreement is to accomplish the purposes of enhancing multiple uses of public lands by hosting public engagement events for coastal communities to provide input on marine spatial planning on Washington's coast.

THEREFORE, the Parties agree as follows:

1.01 Statement of Work. Surfrider shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to performing work set forth in the Attachment A.

2.01 Period of Performance. The period of performance of this Agreement shall begin on March 20, 2013, and end on June 15, 2013, unless terminated sooner as provided herein.

3.01 Payment. Payment for work shall not exceed nineteen thousand five hundred dollars, \$19,500.00, unless the Parties agree to a different amount in writing. Pay for services shall be based on the rates and terms described in Attachment B.

4.01 Billing Procedures. Surfrider shall submit invoices monthly. Payment to Surfrider for approved and completed work will be made by warrant or account transfer within 30 days of receiving the invoice. When the contract expires, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

5.01 Records Maintenance. The parties to this Agreement shall each maintain books, records, documents and other evidence, which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, and the Office of the State Auditor. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor and any persons duly authorized by the parties shall have full access to and the right to examine any of these materials during this period.

Records and other documents in any medium furnished by one party to this agreement to the other party will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose this material to any third parties without first notifying the furnishing party and giving it a reasonable opportunity to respond. Each party will use reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

6.01 Rights to Data. Unless otherwise agreed, data originating from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned equally by the DNR and Surfrider. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to use, copyright, patent, register and the ability to transfer these rights.

7.01 Independent Capacity. The employees or agents of each party who are engaged in performing this agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

8.01 Amendments. This Agreement may be amended by mutual agreement of the parties. Amendments shall be in writing and signed by personnel authorized to bind each of the parties.

9.01 Termination. Either party may terminate this Agreement by giving the other party 30 days prior written notice. If this Agreement is terminated, the terminating party shall be liable to pay only for those services provided or costs incurred prior to the termination date according to the terms of this Agreement.

10.01 Termination for Cause. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of the terms and conditions, the aggrieved party will give the other party written notice of the failure or violation. The aggrieved party will give the other party 15 working days to correct the violation or failure. If the failure or violation is not corrected within 15 days, the aggrieved party may immediately terminate this Agreement by notifying the other party in writing.

11.01 Disputes. If a dispute arises, a dispute board shall resolve the dispute like this: Each party to this agreement shall appoint a member to the dispute board. These board members shall jointly appoint an additional member to the dispute board. The dispute board shall evaluate the facts, contract terms, applicable statutes and rules, then determine a resolution. The dispute board's determination shall be final and binding on the parties. As an alternative to the dispute

board, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330. In this case, the Governor's process will control the dispute resolution.

12.01 Governance. This contract is entered into the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Applicable State and federal statutes and rules;
- (2) Statement of Work; and
- (3) Any other provisions of the agreement, including materials incorporated by reference.

13.01 Assignment. The work to be provided under this Agreement and any claim arising from this agreement can not be assigned or delegated in whole or in part by either party, without the express prior written consent of the other party. Neither party shall unreasonably withhold consent.

14.01. Waiver. A party that fails to exercise its rights under this agreement is not precluded from subsequently exercising its rights. A party's rights may only be waived through a written amendment to his agreement.

General Insurance

At all times during the term of this Agreement, the Surfrider shall, at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the agreement at DNR's option.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by DNR. Any exception must be reviewed and approved by the DNR Risk Manager or in the absence of, the DNR Contracts Specialist, before the agreement is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Before starting work, Surfrider shall furnish DNR, with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. Surfrider shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Surfrider's liability or responsibility. Said certificate(s) shall contain the Agreement number CA 13-291, name of DNR Project Manager, a description, and include the State of Washington, DNR, its elected and appointed officials, agents, and employees as additional insured on all general liability,

excess, umbrella and property insurance policies.

All insurance provided in compliance with this agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DNR. Surfrider waives all rights against the DNR for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Agreement.

DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

- (1). Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the DNR 45 days advance notice of cancellation or non-renewal. If cancellation is due to nonpayment of premium, the DNR shall be given 10 days advance notice of cancellation.
- (2). Insurers subject to Chapter 48.15 RCW (Surplus lines): The DNR shall be given 20 days advance notice of cancellation. If cancellation is due to nonpayment of premium, the DNR shall be given 10 days advance notice of cancellation.

In lieu of the coverages required under this section, DNR at its sole discretion, may accept evidence of self-insurance by the Surfrider, provided the latter provides the following:

Surfrider shall provide a statement by a CPA or actuary, satisfactory to the DNR, which demonstrates Surfrider's financial condition is satisfactory to self-insure any of the required insurance coverages.

DNR may require Surfrider to provide the above from time to time to ensure Surfrider's continuing ability to self-insure. If at any time Surfrider does not satisfy the self insurance requirement, Surfrider shall immediately purchase insurance as set forth under this section.

By requiring insurance herein, DNR does not represent that coverage and limits will be adequate to protect Surfrider, and such coverage and limits shall not limit Surfrider's liability under the indemnities and reimbursements granted to DNR in this Agreement.

The limits of insurance, which may be increased by DNR, as deemed necessary, shall not be less than as follows:

- (1) Commercial General Liability (CGL) Insurance: Agency shall maintain general liability (CGL) insurance, and, if deemed necessary as determined by the DNR, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence and \$2,000,000 for a general aggregate limit. The products-completed operations aggregate limit shall be \$2,000,000.

CGL insurance shall be written on ISO occurrence form CG 00 01 (or substitute

form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) conditions.

- (2) **Employers Liability (Stop Gap) Insurance:** If Surfrider shall use employees to perform this contract, Surfrider shall buy employers liability insurance, and, if deemed necessary as determined by the DNR, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (3) **Business Auto Policy (BAP) Insurance:** Surfrider shall maintain business auto liability and, if deemed necessary as determined by the DNR, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "any Auto." Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

Surfrider waives all rights against DNR for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

- (4) **Workers' Compensation Insurance:** Surfrider shall comply with all State of Washington workers compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Surfrider and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this agreement. Except as prohibited by law, Surfrider waives all rights of subrogation against the DNR for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability or commercial umbrella liability insurance.

Surfrider shall indemnify DNR for all claims arising out of Surfrider's, its subcontractor's, or sub-subcontractor's failure to comply with any State of Washington worker's compensation laws where DNR incurs fines or is required by law to provide benefits to or obtain coverage for such employees. Indemnity shall include all fines, payment of benefits to Surfrider or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to DNR by Surfrider pursuant to the indemnity may be deducted from any payments owed by DNR to Surfrider for performance of this Agreement.

- (5) **Professional Liability Insurance:** Professional liability insurance is required if services delivered pursuant to this agreement, either directly or indirectly, involve

or require providing professional services. Such coverage shall cover injury or loss resulting from Surfrider's rendering or failing to render professional services.

Surfrider shall maintain minimum limits no less than \$1,000,000 per incident, loss, or person, as applicable. If defense costs are paid within the limit of liability, Surfrider shall maintain limits of \$2,000,000 per incident, loss, or person, as applicable. If the policy contains a general aggregate or policy limit, it shall be at least two times the incident, loss or person limit.

16.01 Severability. The provisions of this agreement are severable. If any provision of this Agreement or any provision of any document incorporated by reference should be held invalid, the other provisions of this Agreement without the invalid provision remain valid.

17.01 Complete Agreement in Writing. This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

18.01 Contract Management. The Project Coordinator for each of the parties shall be the contact person for this agreement. All communications and billings will be sent to the project coordinator.

19.01 Project Coordinators.

- (1) The Project Coordinator for Surfrider is Casey Dennehy. Telephone Number (360) 556-6509.
- (2) The Project Manager for the DNR is Katrina Lassiter. Telephone Number (360) 902-1013.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Dated: 3/11, 2013

Form Date 12/09

By: _____

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THE SURFRIDER FOUNDATION

Agreement No. 13-291

Michelle Kremer

Title: Chief Operating Officer

Address: PO Box 6010
San Clemente, CA 92674

Phone: (949) 492-8170

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: March 15, 2013

By: 
Kristin Swenddal

Title: Division Manager
Aquatic Resources

Address: 1111 Washington St SE
Olympia, WA 98504-7027

Attachment A

STATEMENT OF WORK

Marine Resource Committees Coordinated Marine Spatial Planning Public Workshops

Applicant:

The Surfrider Foundation is an international 501(c)(3) non-profit grassroots environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches. Since 2007, Surfrider Foundation has been working closely with Washington Pacific Coast communities to improve coordinated management of coastal resources and enable greater opportunities for community engagement.

Description:

This project will strengthen the goals and objectives setting phase of coastal marine spatial planning by enabling MRCs to solicit additional public input from their respective communities. Each MRC will conduct enhance outreach to interested citizens in their counties with a workshop that will foster greater community engagement in this key early phase of MSP.

Enhance outreach through a localized MSP workshop would be conducted prior the already scheduled April 26th Goals and Objectives workshop hosted by Washington Sea Grant for the Washington Coastal Marine Advisory Council, along with federal/state/county governments and tribes. MRC and WCMAC members will utilize the community feedback from their workshops to inform the goals and objectives setting process at the April 26th workshop.

Tasks and Responsibilities:

Each MRC is responsible for conducting outreach activities in their communities. MRCs will communicate with Washington Sea Grant and state agencies in developing these outreach activities. The Nature Conservancy and the Surfrider Foundation will provide support with design, logistics and planning as needed. Surfrider Foundation will contract an outside facilitator to support MRCs on outreach activities, including workshop planning and implementation. MRCs will be responsible for working with the facilitator to ensure outreach activities are successful and that community feedback is captured in written format, and then presented to the WCMAC.

Outreach activities by MRC:

The North Pacific Coast MRC will host a workshop in April at the UW Olympic Natural Resources Center, and continue to conduct general education around MSP tailored to reach the rural communities on the north coast.

Grays Harbor MRC has elected to host a workshop in April and has formed a subcommittee to coordinate the event.

Pacific County MRC has elected to do two workshops, one in Long Beach, and one in South Bend, in order to maximize public attendance and participation. A subcommittee has been formed to coordinate the event.

Wahkiakum MRC has elected to do a workshop at their meeting on March 25th. They are in the early planning stages for the workshop.

Deliverables:

For each workshop, the facilitator will produce a document that captures input from the public that can inform the MSP goals and objectives setting process, and will be available as a public record. These documents will be available to MRC and WCMAC members for the April 26th goals and objective setting workshop, and a full formal report will be submitted to DNR by June 15th.

Timeline:

Community feedback will be collected prior to the MSP workshop on April 26th. Monthly progress updates will be sent to DNR the first week of each month, except for June. The project will officially conclude by June 15th, including the submission of final documentation to DNR.

Attachment B

BUDGET

Invoice Identification and Information

Each invoice voucher submitted to the DNR by Surfrider will clearly reference "*Cooperative Agreement Number CA 13-291*".

Item	Cost	Frequency	Total
Facilitators	\$3,000	For each of 5 events	\$15,000
Local advertising	\$300	For each of 4 counties	\$1,200
Venue/food	\$250	For each of 5 events	\$1,250
Materials	\$200	For each of 4 counties	\$800
Fiscal sponsor			\$1,250
TOTAL			\$19,500