

D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

8. Discrimination and Compliance with Laws.

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Consultant shall obtain a City of Fife business license pursuant to the provisions of Chapter 5.01 FMC prior to performing any work under this Agreement.

D. Violation of this Paragraph 8 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

9. Termination of Agreement. This Agreement may be terminated by the City at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

10. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

11. Ownership of Work Product. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 9 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City. City agrees that if it uses products



CITY



CONSULTANT

prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to indemnify and hold Consultant harmless therefore.

12. Indemnification/Hold Harmless. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

13. Insurance. The Consultant shall procure and maintain for the duration of this Agreement, insurance coverage set forth below. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Workers' Compensation coverage if required by the Industrial Insurance laws of the State of Washington.
3. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The Consultant's Automobile Liability insurance policy is to contain, or be endorsed to contain that it shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance

pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

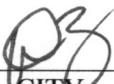
Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

14. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the City's sole discretion.

15. Independent Contractor. Consultant is and shall be at all times during the term of this Agreement an independent contractor. The Contractor is and shall be at all times during the term of this Contract an independent contractor and not an employee of the City. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the City. As an independent contractor, the Contractor shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

16. Notice

A. Any notice or communication required by this Agreement must be in writing, and may be given either personally, electronically with evidence of receipt, by express delivery service, or by registered or certified mail, return receipt requested. If given personally, by express delivery service, or by registered or certified mail, such notice or communication shall be deemed to have been given and received upon actual receipt. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the person to whom it is addressed, and there is electronic confirmation that it was received. Such notices or communications shall be given to the Parties at their addresses set forth below:



CITY



CONSULTANT

David K. Zabell
City Manager
5411 23rd Street East
Fife, WA 98424

Douglas R. Levy
Outcomes by Levy LLC
15619 N.E. 62nd Place
Kenmore, WA 98028

Phone: 253 922-2489
Fax: 253 922-5355

Phone: 425 922-3999
Fax: _____
Email: Levy4@msn.com

Email: dzabell@cityoffife.org

B. Either party may change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of paragraph 16.A.

17. **Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

18. **Attorneys Fees.** In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

19. **Extent of Agreement/Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF FIFE, WASHINGTON

CONSULTANT

By:


David Zabell
City Manager

OUTCOMES BY LEVY LLC

By:


Douglas R. Levy, Member

Date: 1/28/2013

Date: 1/16/13

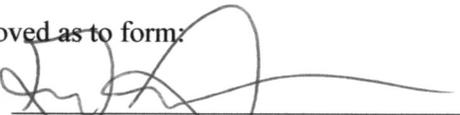
Attest:

By:


for Carol Etgen
City Clerk

Approved as to form:

By:


Gregory F. Amann
Assistant City Attorney


CITY


CONSULTANT

ATTACHMENT A – SCOPE OF SERVICES

CONTRACT ARRANGEMENT

- 4-Month 2013 Session contract – mid-January through mid-May;
- \$3200/month plus routine expenses;
- City may wish to have a “not to exceed” level of \$14,000 to ensure expense reimbursement kept at a reasonable level;
- City may wish to have contract language asking that Session expenses be pro-rated with other clients to the maximum extent practicable;
- Outcomes By Levy, LLC sends monthly invoices at the beginning of each month to bill for prior month’s work;
- January and May billed at \$1600 + expenses; February-April billed at \$3200 + expenses.

FOCUS OF CORE SERVICES

- Work for full funding of State Route 167 in any transportation investment package;
- Protect Streamlined Sales Tax Mitigation funding within the state Operating Budget;
- Work to extend state law regarding the use of lodging taxes – specifically provision that allow lodging taxes to be put toward the operating costs of special events and festivals.

OTHER RELATED SERVICES

- Ongoing phone and e-mail contact with City Manager;
- Weekly report provided to City Hall;
- Pending schedule/availability, milestone updates to City Council;
- Within reason, another issue or issues could be added on City’s behalf.

REPORTING/SUPERVISION/ADMINISTRATIVE ASSISTANCE

- Report to City Manager on day-to-day and routine issues;
- Use team of Mayor, Mayor Pro Tem, and City Manager for any needed policy direction;
- Available to provide milestone updates to City Council, pending schedule availability;
- Utilize City Manager’s Administrative Assistant for processing of monthly invoices, and for distribution of information such as bills, Weekly Reports, etc.

CONSCIENCE CLAUSE

In the event of any issues that may comprise a conflict of interest between the City of Fife and other cities or clients represented by the Consultant, the Consultant will notify the City immediately. The Consultant will be responsible for taking immediate steps to resolve the conflict or remove himself from the conflict.

PUBLIC DISCLOSURE REPORTING DUTIES

- It will be the Consultant's responsibility to track his legislative hours, contacts, etc., in preparation for monthly "L-2" reports with the State Public Disclosure Commission (PDC);
- The Consultant will work with the City Manager on filling out and mailing an "L-1" lobbyist registration form with the PDC which is required by law;
- The City is responsible for quarterly "L-5" reporting to the PDC that may be triggered with lobbying and advocacy efforts.