

RESOLUTION NO. 1642

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH SUBIR MUKERJEE REGARDING THE CITY MANAGER POSITION

WHEREAS, the City Attorney negotiated a proposed employment agreement with Interim City Manager Subir Mukerjee for the City Manager position; and

WHEREAS, at a public meeting held on January 13, 2015 the City Council reviewed the proposed agreement and determined that it would offer to employ Mr. Mukerjee as the City Manager, on the terms and conditions to be set forth the agreement; and

WHEREAS, the Council finds that the best interests of the City will be served by entering into the employment agreement with Subir Mukerjee as the City Manager; now, therefore

BE IT RESOLVED that the Council authorizes the Mayor, on behalf of the City of Fife, to execute the attached Employment Agreement between City of Fife and Subir Mukerjee regarding City Manager Position.

ADOPTED by the City Council at an open public meeting held on the 13th day of January, 2015.



Tim Curtis, Mayor

Attest:



Carol Etgen, City Clerk

**EMPLOYMENT AGREEMENT
BETWEEN
CITY OF FIFE AND SUBIR MUKERJEE
REGARDING CITY MANAGER POSITION**

1. Date and Parties. This document (the "Agreement"), for reference purposes only, is dated the 13th day of January, 2015, and is entered into between the City of Fife, a Washington municipal corporation ("City") and Subir Mukerjee, ("Mr. Mukerjee").

2. Intent and Purpose

2.1 The City is a non-charter code City operating under the Council-Manager form of government (chapter 35A.13 RCW).

2.2 The City has completed a search for qualified candidates to serve as the City Manager. At a public meeting held on January 13, 2015 the City Council determined that it would offer to employ Mr. Mukerjee as the City Manager on terms and conditions to be set forth in an employment agreement.

2.3 The City Council, by the adoption on January 13, 2015 of Resolution _____, authorized the City's Mayor to offer employment to Mr. Mukerjee on the terms and conditions set forth herein. Mr. Mukerjee has agreed to accept employment with the City, subject to the terms and conditions of the Agreement.

2.4 The Agreement purpose is to define the terms and conditions of Mr. Mukerjee's employment with the City as its City Manager.

3. Employment. By executing this Agreement, the City has offered, and Mr. Mukerjee has accepted the promotion to City Manager of the City of Fife, upon the terms and conditions set forth herein. Mr. Mukerjee is hereby appointed to the position of City Manager, effective January 13, 2015.

4. Agreement Term. Mr. Mukerjee is already a City employee, but effective January 13, 2015, his employment with the City shall continue upon the terms and conditions set forth herein so long as he is employed with the City as its City Manager.

5. Duties.

5.1 Mr. Mukerjee shall perform all duties and obligations of the City Manager as required by law, and such other duties as are assigned from time to time by the City Council. The current duties and authority are set forth in Fife Municipal Code section 2.16.020, which, along with any future amendments thereto, are hereby incorporated by reference.

5.2 Mr. Mukerjee recognizes that the City Council is the legislative and policy making body of the City and agrees to respond equally and timely to all members of Council regarding concerns brought to his attention. The City, through the City Council, recognizes that the City Manager is the individual responsible for administration and enforcement of the City's ordinances and resolutions, and of the policies and directives of the City Council, and members of the City Council shall communicate concerns regarding administration to the Manager in accordance with RCW 35A.13.120.

5.3 Mr. Mukerjee shall attend all special and regular meetings of the City Council, unless excused, and such other meetings as required by the City Council. As City

Manager, Mr. Mukerjee's attendance at major City sponsored events, and other significant City sponsored or non-City sponsored civic events is important, accordingly, Mr. Mukerjee shall exercise good judgment to assure adequate representation by the City at such events.

5.4 The City Manager is required by state law to live within the corporate limits of the City, unless the City Council waives the requirement. The City waives the residency requirement so long as by June 30, 2015, Mr. Mukerjee changes his principal place of residence to a home located anywhere in Pierce County that is no more than ten travel miles from the Fife City limits. If Mr. Mukerjee chooses to reside within the Fife City limits, he shall receive a \$5,000.00 bonus payment, to be paid with the next regular City payroll after his residency is changed to a home within the City of Fife.

6. Salary and Performance Review.

6.1 Mr. Mukerjee's monthly salary, commencing January 16, 2015, shall be \$12,575.00, which shall be paid in accordance with the City's policies in effect from time to time for the payment of other non-represented City employees. The Council recognizes that the City Manager's salary should be set at a differential higher than executive management employees that report directly to the City Manager, giving consideration for the comprehensive responsibilities of managing the entire city operation.

6.2 Mr. Mukerjee's performance shall be evaluated by the Council at least once per year. The Council will use its best efforts to complete the evaluation by March 1 of each year. By March 1, 2015, the City Council shall meet with Mr. Mukerjee to establish a work plan which will be used in evaluating the City Manager for the purposes of this section. The work plan shall define such goals and performance objectives, which the Council determines necessary for the proper operation of the City and to attain the City's policy objectives. The City Council, in consultation with Mr. Mukerjee, will establish a priority amongst the various goals and objectives and said objectives and priorities shall be reduced to writing as the work plan. If the City Council evaluates Mr. Mukerjee in writing, the written evaluation shall be delivered to him and a copy of the evaluation placed in his personnel file. The City Council shall, when requested by the City Manager, meet and discuss the contents of an evaluation with the City Manager within a reasonable time after the City Manager has heard or received the evaluation. Evaluations of the City Manager shall only be discussed in closed session, unless State law requires otherwise. The parties may agree to the use of a facilitator to assist with the evaluation. Failure to evaluate shall have no effect on the rights, duties, and obligations of the parties herein. Mr. Mukerjee's salary and other benefits may be prospectively adjusted as part of the review process.

6.3 Mr. Mukerjee's salary shall be re-evaluated by the City Council in November, 2015 to determine whether or not an increase is appropriate, taking into account Mr. Mukerjee's performance, the prevailing compensation for other City Managers with similar responsibilities in the Puget Sound Region and such other factors as the City Council, in its sole discretion, deems appropriate. If the Council determines a salary adjustment is appropriate, then the adjustment shall be effective commencing January 1, 2016.

6.4 In recognition of accomplishments and excellent performance, a merit wage increase, and/or bonus may be granted to Mr. Mukerjee at any time in such amount as the City Council determines, in its sole discretion, is appropriate.

6.5 Except as provided for in section 6.6, nothing in this section shall require the City to increase the base salary or other benefits of Mr. Mukerjee. Furthermore, the City's

failure to conduct a performance evaluation shall not constitute non-compliance with a material provision of this Agreement.

6.6 Unless the City Council determines otherwise, Mr. Mukerjee shall receive a cost of living adjustment to his annual salary, at the same time and in the same percentage as is given to all other department directors.

7. Benefits.

7.1 Except as provided for herein, Mr. Mukerjee shall receive such benefits as are set forth from time to time in City Council approved policies for non-represented Department Director benefits, unless the Agreement specifies otherwise. In the case of a conflict between the City policies and the Agreement terms, the Agreement terms shall control.

7.2 In recognition of Mr. Mukerjee's level of experience and years of public service the following shall apply:

7.2.1 Mr. Mukerjee, as City Manager, shall accrue vacation at the rate of 15 days per year on a monthly accrual basis, and shall increase annually on the same basis as the non-represented department directors.

7.2.2 Mr. Mukerjee shall commence employment as City Manager with a sick leave bank of 40 hours, if he does not already have that amount in his sick leave bank as a City Employee.

7.2.3 Mr. Mukerjee shall commence employment as City Manager with an administrative leave bank of 80 hours. He shall accrue administrative leave at the level and in the same manner as the non-represented Department Directors, with the initial 80 hours counting as his administrative leave benefit for calendar year 2015, and shall include in that 80 hours any administrative leave that may have already been credited to his administrative leave bank for his employment in 2015 prior to the Agreement effective date, as the Acting City Manager.

7.2.4 Mr. Mukerjee may cash out up to a combined total of 80 hours of administrative leave or vacation pay in any calendar year, so long as he has taken at least one leave from work of at least one week's duration in that calendar year.

7.3 Retirement. The City shall pay into the Washington State Department of Retirement Systems (DRS) Public Employees Retirement System (PERS) plan both the employer and employee contributions in accordance with applicable state regulations. The City agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) for Mr. Mukerjee's participation in said ICMA-RC retirement plan and, in addition to the base salary paid by Mr. Mukerjee, the City agrees to pay an amount equal to three percent (3%) of Mr. Mukerjee's base salary into the ICMA-RC or other retirement plan on Mr. Mukerjee's behalf, in equal proportionate amounts each pay period. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Mr. Mukerjee's retirement benefit.

7.4 Deferred Compensation. Mr. Mukerjee may contribute to a 457 Deferred Compensation Account in such amount as he deems appropriate as a payroll deduction, in accordance with applicable state and federal law.

7.5 Membership Dues. The City shall pay membership dues for Mr. Mukerjee's membership in the International City Manager's Association (ICMA) and the Washington City/County Managers Association (WCCMA). The City shall pay for Mr. Mukerjee's attendance at such conferences and for such other memberships, subscriptions, or dues, desirable for Mr. Mukerjee's continued professional growth, advancement for the good of the City, and as shall be contained in the City's adopted annual budget.

7.6 Professional Development. The City agrees to budget for and pay for travel and subsistence expenses of Mr. Mukerjee for professional and office travel, meetings and occasions adequate to continue the professional development of Mr. Mukerjee and to adequately pursue necessary official functions for the City, including, but not limited to the ICMA Annual Conference, the Association of Washington Cities, the Washington City/County Managers Association, and the American Public Works Association. For any other professional development outside of the State of Washington, the Council's prior approval shall be required.

7.7 General Expenses. The City recognizes that certain expenses of a non-personal and job-affiliated nature might be incurred by Mr. Mukerjee. The City agrees to reimburse or to pay said general expenses to the extent authorized by State law, State auditor regulations and published guidelines, and City policy, and subject to such accounting process as is established by the City Finance Director.

7.8 Car Allowance. The City shall pay a monthly allowance of \$500.00 for automobile expenses incurred by Mr. Mukerjee using his personal vehicle for City related business. Said allowance is in lieu of the City otherwise providing Mr. Mukerjee with use of a City vehicle on a regular basis. Commencing January 1, 2016, this allowance shall be adjusted annually in amount equal to the percentage change to the Internal Revenue Service's motor vehicle mileage expense rate using 2015 as the base year. In addition to the foregoing, in the event that Mr. Mukerjee, in the performance of his duties and obligations is required to use his automobile for travel outside of King, Pierce and Thurston counties, he will be entitled to reimbursement for mileage incurred at the City's adopted mileage reimbursement rate, provided documentation in the form required by the City Finance Department is submitted within thirty (30) days of completing travel. Mr. Mukerjee may choose, in his sole discretion, in lieu of the benefits contained in this paragraph, to have the City increase its matching contribution to his Deferred Compensation account referenced in paragraph 7.3 above, by an amount up to the monthly allowance allowed for automobile expenses under this paragraph 7.8, including the annual increases referenced herein, in lieu of receiving the same amount as part of a car allowance. If he chooses an amount less than the total car allowance then he shall receive the remainder as his car allowance.

7.9 Civic Club Membership. The City recognizes the desirability of representation in local civic clubs and other organizations, and Mr. Mukerjee is authorized to become a member of one (1) civic club for which the City shall pay dues and meeting expenses. Mr. Mukerjee shall report to the City on membership he has taken at the City's expense.

8. Agreement Term and Termination Benefits.

8.1 RCW 35A.13.130 provides that the City Manager is appointed for an "indefinite term" and may be removed at any time by a majority vote of the City Council. Mr. Mukerjee acknowledges that the City can terminate his employment at any time, without any reason whatsoever, subject only to the payment of termination benefits as set forth in this section 8. However, it is the desire of the parties that Mr. Mukerjee's employment with the City will continue for a long period of time, and thus it is agreed that his employment shall commence on January 1, 2015, and shall continue until such time as it is terminated in accordance with the provisions of this section.

8.2. In the event the City elects to terminate Mr. Mukerjee for any reason other than "cause", Mr. Mukerjee shall receive thirty (30) days' notice of the termination. If terminated without cause Mr. Mukerjee shall receive a cash payment equal to five (5) months of Mr. Mukerjee's base salary rate, plus a sum equal to the premiums the City has paid for Mr.

Mukerjee and his dependents, if any, for the medical, dental and vision insurance, for the five (5) months prior to the termination date ("Termination Pay"). If the City has not paid in advance the VEBA\HSA contribution amount for the five month period after the Termination Date, then the City shall also pay to Mr. Mukerjee said prorated amount for that five month period, and that amount shall be included in the definition of Termination Pay. Mr. Mukerjee shall also receive payment for all accumulated vacation leave and administrative leave, and that portion of accrued sick leave that is eligible for cash out on retirement by the City policy in effect on the Termination Date ("Termination Benefits"). The notice period shall commence by adopting the Resolution for removal in accordance with RCW 35A.13.130. Mr. Mukerjee shall continue to perform all of his job duties as City Manager during the thirty (30) day notice period. Provided, however, the Council may choose to relieve Mr. Mukerjee of his duties during the thirty (30) day notice period, subject to payment in the regular payroll cycle of his normal salary and benefits for that thirty (30) day period. All sums paid pursuant to this paragraph shall be subject to applicable payroll withholding taxes. If Mr. Mukerjee requests a hearing under RCW 35A.13.140, then he shall not be entitled to any Termination Pay.

8.3 In consideration for payment of the Termination Pay, Mr. Mukerjee agrees to execute on a form acceptable to the City, a full release of all claims against the City, its elected or appointed officers, employees or agents, for any claims arising out of Mr. Mukerjee's employment or Mr. Mukerjee's termination of employment with the City. Provided, if Mr. Mukerjee is terminated for "cause", then Mr. Mukerjee shall not be entitled to any Termination Pay, but will remain entitled to his Termination Benefits. For purposes of this Agreement, the term "cause" shall mean misfeasance, malfeasance, or nonfeasance in office.

8.4 In the event the City at any time during the term of this Agreement reduces the salary or other financial benefits of Mr. Mukerjee in a greater percentage than applicable to across-the-board reductions for all City department heads, or in the event City refuses, following fifteen (15) days' written notice, to comply with any other provision benefiting Mr. Mukerjee, Mr. Mukerjee may, at his option, be deemed to be terminated without cause as of the date of such reduction or such refusal to comply and shall be entitled to Termination Pay pursuant to paragraph 8.2(b) of this Agreement, with any sums paid for premiums or salary since the Termination Date being credited toward the Termination Pay.

8.5 In the event, at any time during the term of this Agreement, the position of City Manager is eliminated due to the change in form of government by the City, or by the State eliminating the City Manager/City Council form of government as authorized by chapter 35.13 RCW, then Mr. Mukerjee's employment shall be deemed terminated without cause on the date the position of City Manager ceases to exist.

8.6 In the event Mr. Mukerjee elects to terminate employment with the City for any reason, Mr. Mukerjee agrees to provide the City with not less than sixty (60) days' notice prior to the effective date of said termination of employment. Notwithstanding the foregoing notice requirement, nothing shall prevent the City Council upon receiving Mr. Mukerjee's notice of intent to terminate his employment from compensating Mr. Mukerjee at the rate of Mr. Mukerjee's base salary for the unexpired portion of the sixty (60) days notice and releasing Mr. Mukerjee prior to the expiration of said notice. Mr. Mukerjee shall not be entitled to Termination Pay, but shall receive Termination Benefits.

8.7 In appreciation of the investment in time and public funds the City of Fife has expended in the recruitment, selection and retention of Mr. Mukerjee as City Manager, and in consideration for the economic package set forth herein and the City offering employment to Mr. Mukerjee as the City Manager, Mr. Mukerjee agrees that he shall not seek or accept



employment as a chief administrative or executive officer, or an assistant thereto with another municipal corporation within forty-five (45) miles of the City of Fife corporate boundaries prior to January 1, 2018. The parties acknowledge that this provision is a material and substantial consideration for the City entering into this agreement, and monetary damages do not adequately compensate the City for a breach of this provision. Accordingly, if Mr. Mukerjee should accept employment within forty-five (45) miles of the City of Fife prior to January 12, 2018, the City shall be entitled to an injunction against Mr. Mukerjee from continuing with said employment. This paragraph does not apply should Mr. Mukerjee's employment be terminated by the City Council for any reason. Nothing in this paragraph shall prevent the parties from agreeing to modify this provision so long as the modification is in writing signed by the City and Mr. Mukerjee.

9. Indemnification. Mr. Mukerjee shall be entitled to the benefits and subject to the responsibilities, set forth in Fife Municipal Code Chapter 2.66. If the City requests or subpoena's Mr. Mukerjee to give testimony either at a deposition or at trial after the end of his employment, the City shall compensate him for his reasonable travel expenses, as well as reimburse him for his lost wages should he be required to take time off work without pay for such testimony. If Mr. Mukerjee is required by his employer to use accrued leave benefits then he shall receive compensation from the City equal to the cash equivalent of the leave benefits received.

10. Bonding. The City shall bear the full cost of any fidelity or other bonds required of Mr. Mukerjee under any law or ordinance associated with performing the City Manager duties.

11. Consulting Activities. The employment provided through this agreement shall be Mr. Mukerjee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, Mr. Mukerjee may elect to accept limited teaching, consulting or other similar opportunities, provided that such arrangements shall not interfere with, nor result in a conflict of interest with, his responsibilities under this Agreement. Mr. Mukerjee shall alert the City Council to such activities prior to their occurrence.

12. Integration and No Presumption of Draftsmanship. This Agreement constitutes the entire agreement between the parties, and both parties acknowledge that there are no other agreements, oral or otherwise, that have not been fully set forth in the text of this Agreement. Any prior discussions or representations by or between the parties that are intended to have any force or effect have been merged into this Agreement. In addition, the parties acknowledge that they have negotiated the Agreement terms and thus there shall be no presumption of draftsmanship in any dispute regarding the meaning or intent of any provision.

13. Advice of Legal Counsel.
Subir Mukerjee represents and acknowledges that he has read this Agreement in its entirety and has had an opportunity to review the Agreement with his personal attorney, or has chosen to not use an attorney to advise him regarding this Agreement. Mr. Mukerjee further acknowledges that the City Attorney and the VSI Law Group, PLLC employees are solely representing the City of Fife regarding the negotiation and drafting of this Agreement and are


City Mukerjee

prohibited by the Washington State Supreme Court Rules of Professional Conduct from giving Mr. Mukerjee any advice regarding the meaning of any of the Agreement terms, or as to whether or not signing this Agreement is in his best interest. Mr. Mukerjee acknowledges that he has received no advice from the City Attorney, or any employees of VSI Law Group, PLLC, other than that he should have the agreement reviewed by his own attorney as the City Attorney and the employees of VSI Law Group PLLC cannot and are not representing him on this matter.

14. Modification. This Agreement can be amended or modified only by written document approved by the City Council, and signed by the Mayor and Mr. Mukerjee.

CITY OF FIFE

SUBIR MUKERJEE

By: _____
Tim Curtis, Mayor

Subir Mukerjee

Approved as to form:

By: _____
Loren D. Combs, City Attorney