

RESOLUTION NO. 1682

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH OUTCOMES BY LEVY, LLC FOR STATE LOBBYING AND GOVERNMENT AFFAIRS SERVICES

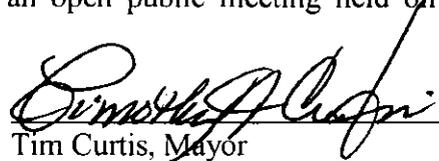
WHEREAS, Outcomes by Levy, LLC has provided state lobbying and government affairs services for the City of Fife since January 2013; and

WHEREAS, during that time Outcomes by Levy, LLC has effectively represented the City and furthered the City's legislative goals; and

WHEREAS, the current agreement expires September 30, 2013, and the Council wishes to continue to utilize Outcomes by Levy, LLC for state lobbying and government affairs services; now, therefore,

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute the Professional Services Agreement between the City of Fife and Outcomes by Levy, LLC for state lobbying and government affairs services in the form attached hereto as Exhibit A. The City Manager is authorized to make non-material changes to the Agreement prior to signing.

ADOPTED by the City Council at an open public meeting held on the 22nd day of September, 2015.

  
\_\_\_\_\_  
Tim Curtis, Mayor

Attest:

  
\_\_\_\_\_  
Carol Etgen, City Clerk

## CITY OF FIFE PROFESSIONAL SERVICES AGREEMENT

**1. Parties and Date.** THIS Agreement is made effective as of the \_\_\_\_\_ day of September, 2015, by and between CITY OF FIFE, WASHINGTON (“City”) and Outcomes by Levy LLC (“Consultant”).

**2. General Purpose and Intent.**

Provide state lobbying and government affairs services.

**3. Services by Consultant.**

A. Consultant shall perform the services described in the Scope of Work attached hereto as Attachment "A" (the “Scope of Work”). The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

**4. Term.** The term of the Agreement shall commence October 1, 2015 and end September 30, 2018, subject to the termination provisions set forth in Section 9. The term of this Agreement may be extended upon written agreement of the parties.

**5. Compensation.** Compensation for the services described in the Scope of Work shall be \$3,300 per month from October 1, 2015, regardless whether the legislature is in session, including an annual escalator based on the Seattle CPI. Along with the monthly retainer, this agreement also includes reimbursement for routine legislative session related expenses for mileage, meals, parking, Olympia office space, and overnight accommodations. Legislative expenses shall be prorated with other clients of Consultant to the maximum extent practicable.

**6. Coordination of Contract Documents.** This Agreement consists of this professional services agreement form and Attachment “A.” If there is any inconsistency between this professional services agreement form and Attachment “A” the professional services agreement form shall take precedence.

**7. Payment.**

A. Consultant shall provide quarterly invoices in the format acceptable to the City for each quarterly installment including an itemization of reimbursable expenses for the quarter.

B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

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. Documents pertaining to work done by the Consultant for the City may be considered public records under the Public Records Act (RCW 42.56) and shall be tendered to the City upon the City's request. Failure to tender all requested documents is considered a material breach of this Agreement. 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 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.

H. Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

**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:

Subir Mukerjee  
City Manager  
5411 23<sup>rd</sup> Street East  
Fife, WA 98424

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

Phone: 253 896-8603  
Fax: 253 922-5355  
Email: smukerjee@cityoffife.org

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

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  
OUTCOMES BY LEVY LLC

By: \_\_\_\_\_  
Subir Mukerjee  
City Manager

By \_\_\_\_\_  
Douglas R. Levy, Member

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Carol Etgen  
City Clerk

Approved as to form:

By:

\_\_\_\_\_  
Gregory F. Amann  
Assistant City Attorney

ATTACHMENT A  
SCOPE OF SERVICES

**FOCUS OF CORE SERVICES**

- Represent the City of Fife's interests on transportation needs, focusing on SR 167 completion, Port of Tacoma Road interchange improvements, local funding and distribution, etc.;
- Work on state-shared revenue needs, including Streamlined Sales Tax mitigation vis-à-vis the Marketplace Fairness Act; liquor revenues; assisting with long-term and stable sources; etc.;
- Help the City identify potential capital budget projects to present to the members of the 25th District Legislative Delegation, particularly leading up to the 2017-19 Budget cycle;
- Assist the City with development of legislative agendas for 2016, 2017, and 2018, focusing on key priorities and other "support/oppose" items of significance; and
- Be available to help Fife on other funding, legislative policy, and regulatory matters as needed during and after session and as issues arise.

**OTHER RELATED SERVICES**

- Ongoing phone and email contact with City Manager;
- Weekly report provided to City Hall during legislative sessions;
- Weekly calendar provided to City Hall during non-legislative interim periods;
- Pending schedule/availability, milestone updates to City Council; and
- 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 needed policy direction;
- Available to provide milestone updates to City Council, pending schedule availability;
- Utilize City Manger'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; and
- The City is responsible for quarterly "L-5" reporting to the PDC that may be triggered with lobbying and advocacy efforts.