

TOWN OF WOODWAY
COUNCIL SPECIAL MEETING AGENDA
23920 113th Place W. | Woodway, WA 98020
THURSDAY, NOVEMBER 14, 2019
6:30 P.M.

- | | | |
|-----------|----|--|
| 6:30 P.M. | | Call to Order, Flag Salute, Roll Call |
| 6:30 P.M. | I | Consideration of a Contract to Hire a Lobbyist |
| 7:10 P.M. | II | General Council Discussion-Choice of Subjects |
| 7:30 P.M. | | Adjournment |

** Audience comments only during the time specified. Council Deliberations will not be interrupted for audience comment. Citizens desiring comment time in excess of five minutes should contact the mayor to schedule presentation time. Council agendas are subject to change before or during the council meetings upon motion. Anyone with a disability requiring special accommodations should contact the Town Clerk's Office at Town Hall or call (206)542-4443 before 1:00 p.m. the Thursday preceding the Council Meeting. For TDD relay service, call (206)587-5500, or outside the Seattle area #1-800-833-6388.*

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
TOWN OF WOODWAY, WASHINGTON AND
OUTCOMES BY LEVY, LLC FOR CONSULTANT SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into by and between the Town of Woodway, ("Town"), and Outcomes by Levy, LLC, a Washington Limited Liability Corporation ("Consultant").

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, the parties hereto agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the Town with consultant services regarding State legislative lobbying services as described in Article II. The general terms and conditions of the relationship between the Town and the Consultant are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as Exhibit "A" and incorporated herein by this reference ("Scope of Services"). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant's profession.

ARTICLE III. OBLIGATIONS OF THE CONSULTANT

1. **MINOR CHANGES IN SCOPE.** The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the Town when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The Town may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the Town. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

2. **WORK PRODUCT AND DOCUMENTS.** The work product and all documents produced under this Agreement shall be furnished by the Consultant to the Town, and upon completion of the work shall become the property of the Town, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the work, even though the work has been accepted by the Town.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the Town. Upon request, the Consultant shall tender the work product and summary to the Town.

Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the Town.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

3. **TERM.** The term of this Agreement shall commence on December 1, 2019 and shall terminate at midnight, March 31, 2020. The parties may extend the term of this Agreement by written mutual agreement.
4. **NON-ASSIGNABLE.** The services to be provided by the Consultant shall not be assigned or sub-contracted without the express written consent of the Town.
5. **INDEMNITY.**
 - a. **Indemnification / Hold Harmless.** Consultant shall defend, indemnify and hold the Town, 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 Town.
 - b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.1 15, 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 Town, 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.
 - c. 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.
 - d. **Public Records Requests.** In addition to Paragraph IV.3.b, when the Town provides the Consultant with notice of a public records request per Paragraph IV.3.b, Consultant agrees to save, hold harmless, indemnify and defend the Town its officers, agents, employees and elected officials from and against all claims, lawsuits, fees, penalties and costs resulting from the consultant's violation of the Public Records Act RCW 42.56, or consultant's failure to produce public records as required under the Public Records Act.
 - e. The provisions of this section III.5 shall survive the expiration or termination of this Agreement.
6. **INSURANCE.**
 - a. **Insurance Term.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

- b. No Limitation. Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.
 - c. 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.
 - (2) General Liability insurance shall be written at least as broad on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors and personal injury and advertising injury.
 - d. Consultant shall maintain the following minimum insurance limits:
 - (1) Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; \$2,000,000 general aggregate.
 - (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - e. Notice of Cancellation. In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the Town.
 - f. Verification of Coverage. In signing this Agreement, the Consultant is acknowledging and representing that required insurance is active and current. Consultant shall furnish the Town 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. Further, throughout the term of this Agreement, the Consultant shall provide the Town with proof of insurance upon request by the Town.
7. **DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION.** The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the Town, and further that the Consultant will be barred from performing any services for the Town now or in the future, unless a showing is made satisfactory to the Town that discriminatory practices have been terminated and that recurrence of such action is unlikely.

8. UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.
9. LEGAL RELATIONS. The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any Town project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified-and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Snohomish County Superior Court.
10. INDEPENDENT CONTRACTOR.
 - a. The Consultant and the Town understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 5 1.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of Town employment nor shall claim any related employment benefits, social security, and/or retirement benefits.
 - b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the Town is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.
11. CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the Town of any potential conflicts of interest in Consultant's client base and shall obtain written permission from the Town prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the Town determines in its sole discretion that a conflict is irreconcilable, the Town reserves the right to terminate this Agreement.
12. TOWN CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the Town in each instance, the confidences of the Town or any information regarding the Town or services provided to the Town.

ARTICLE IV. OBLIGATIONS OF THE TOWN

1. PAYMENTS.
 - a. The Consultant shall be paid by the Town for services rendered under this Agreement as described in the Scope of Services and as provided in this section and shall be \$4,000 per month. In no event shall the compensation paid to Consultant under this Agreement exceed \$16,000 without the written agreement of the Consultant and the Town. Such payment shall

be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the Town elects to expand the scope of services from that set forth in Exhibit A, the Town shall pay Consultant a mutually agreed amount.

- b. The Consultant shall submit a monthly invoice to the Town for services performed in the previous calendar month in a format acceptable to the Town. The Consultant shall maintain time and expense records and provide them to the Town upon request.
 - c. The Town will pay timely submitted and approved invoices received before the 20th of each month or within thirty (30) days of receipt.
2. TOWN APPROVAL. Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the Town, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and Town requirements.
3. MAINTENANCE/INSPECTION OF RECORDS.
- a. The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the Town and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the Town and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the Town with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.
 - b. Public Records. The parties agree that this Agreement and records related to the performance of the Agreement are with limited exception, public records subject to disclosure under the Public Records Act RCW 42.56. Further, in the event of a Public Records Request to the Town, the Town may provide the Consultant with a copy of the Records Request and the Consultant shall provide copies of any Town records in Consultant's possession, necessary to fulfill that Public Records Request. If the Public Records Request is large the Consultant will provide the Town with an estimate of reasonable time needed to fulfill the records request.

ARTICLE V. GENERAL

1. NOTICES. Notices to the Town and Consultant shall be sent to the following addresses:

To the Town:

Town of Woodway
Attn: Town Administrator
23920 113th Place West

To the Consultant:

Outcomes By Levy, LLC
Attn: Doug Levy
15619 NE 62nd Place

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

2. **TERMINATION.** The right is reserved by the Town to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Consultant. If this Agreement is terminated in its entirety by the Town for its convenience, the Town shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section IV.1.
3. **DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed upon alternative dispute resolution of arbitration or mediation.
4. **EXTENT OF AGREEMENT/MODIFICATION.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties 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.
5. **SEVERABILITY.**
 - a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
 - b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.
6. **NONWAIVER.** A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.
7. **FAIR MEANING.** The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.
8. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
9. **VENUE.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

10. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.
11. AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this ____ day of November 2019.

TOWN OF WOODWAY

OUTCOMES BY LEVY, LLC

Carla A. Nichols, Mayor

Doug Levy, Consultant

EXHIBIT A
SCOPE OF SERVICES

Outcomes By Levy will work on the following for the Town of Woodway:

Point Wells Annexation

- Work with the Town and neighboring jurisdictions on statutory changes during the 2020 Session of Legislature that would enable the Point Wells annexation area to be incorporated into Woodway.
- Prepare testimony for Woodway Mayor, Council Members, and staff, as necessary.
- Help organize meetings for the Mayor and Council Members in Olympia in 2020, as needed.
- Prepare regular updates during the Legislative Session and a post-Session memorandum.
- Provide a post-Session update to the Woodway Town Council, if desired.