



Eastside Fire & Rescue Board of Directors

Regular Meeting Agenda

January 28, 2021, 4:30 p.m.

VIRTUAL MEETING

Pursuant to the Governor's Emergency Proclamation, EF&R is unable to provide an in-person location for the public to listen to the virtual Board of Directors meeting. Meetings are accessible to the public by a phone-in option.

Phone-In Option

Phone-in Number: (509) 931-1382

Conference ID: 798523194#

Written Comment: Written public comment will be accepted until 1:00 p.m. on the day of the meeting. Submit your written comments via email to the Board Secretary at publiccomment@esf-r.org.

Verbal Comment: Up to three (3) minutes of verbal public comment may be provided per person live during the meeting. Please sign-up in advance of the meeting (by 1:00 p.m.) by completing the [Public Comment Sign-Up Form](#). Kindly review the instructions for [Virtual Board and Committee meetings for public attendance and public comment](#) prior to the meeting.

CALL TO ORDER, ROLL CALL

PUBLIC COMMENT

REGULAR BUSINESS:

1. Agenda Bill 2021-04 (Mercer Island Contract for Interim Fire Chief Services) Page 02

EXECUTIVE SESSION

ADJOURN MEETING



**Eastside Fire & Rescue
Board of Directors
AGENDA BILL 2021-04
January 28, 2021**

SUBJECT: Contract to provide Interim Fire Chief Services to the City of Mercer Island Fire Department

SUMMARY STATEMENT: Mercer Island Fire Department's current Fire Chief will be departing from the City at the end of January. The City will need some time to recruit a permanent replacement for the position. The City Manager is in need of interim executive leadership services and operational oversight relating to the Mercer Island Fire Department.

This agreement provides a payment of \$14,000 a month to EF&R for the provision of these services. The Scope of Work specifies services that EF&R will provide as part of this agreement; all services listed are typical Fire Chief duties. The agreement will take effect when signed and will remain in effect until terminated. Either party can cancel with 30 days advanced written notice.

Expenditure Required: N/A

Amount Budgeted: \$0

RECOMMENDED MOTION: Move to authorize the Fire Chief to enter into an agreement for providing Interim Fire Chief Services to the City of Mercer Island substantially in the form presented.

ALTERNATIVE(S):

1. Do not approve.
2. Suggest Revisions.

EXHIBITS:

1. Contract with the City of Mercer Island for Interim Fire Chief services

Originator: JC

Administrative Review: 1/26/21

Action:

Date: 1/28/21

Motion By:

2nd:

Board Secretary:

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
EASTSIDE FIRE & RESCUE FOR
INTERIM FIRE CHIEF SERVICES**

This professional services agreement ("Agreement") is made and entered into by EASTSIDE FIRE & RESCUE, a Washington municipal corporation ("EF&R"), and the CITY OF MERCER ISLAND, a Washington municipal corporation ("Mercer Island" or "City"). EF&R and Mercer Island are referred to collectively in this Agreement as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, Mercer Island's current Fire Chief will be departing from the City at the end of January, and the City will need some time to recruit a permanent replacement for the position; and

WHEREAS, until a permanent Fire Chief can be identified and brought onboard, Mercer Island's Fire Department will require executive leadership services and operational oversight; and

WHEREAS, upon the departure of the City's current Fire Chief, the City Manager will need interim executive leadership services and operational oversight relating to the Mercer Island Fire Department, including attendance at certain City meetings, beginning at the end of January; and

WHEREAS, the Parties desire for EF&R to provide such interim services to Mercer Island on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. **Purpose.** The purpose of this Agreement is to establish a contractual arrangement under which EF&R shall provide Interim Fire Chief Services to the City, as more specifically defined in the Scope of Services, attached hereto as **Exhibit A**.
2. **Effective Date and Term.** This Agreement shall take effect upon execution by both Parties ("Effective Date") and shall remain in effect until terminated in accordance with Section 3, below.
3. **Termination.** This Agreement may be terminated by either party: (1) without cause, upon 30 days' advance written notice from the terminating Party to the other Party; or (2) for a material breach of this Agreement or other good cause, upon 15 days' advance written notice to the breaching party and opportunity to cure. Upon termination of this Agreement, EF&R shall be relieved from any further obligation to provide services hereunder, and Mercer Island shall be liable only for payment attributable to the services satisfactorily rendered by EF&R prior to the effective date of termination.

4. **Services.** EF&R shall, at the request of the City Manager, provide the Interim Fire Chief Services generally outlined in **Exhibit A** ("Scope of Services") to the City. EF&R's Fire Chief, Jeff Clark, will be the City's primary point of contact for such services, subject to his reasonable discretion in assigning or delegating work to other suitable EF&R leadership personnel as appropriate to meet the needs of the City.

5. **Compensation for Services.** The City shall pay EF&R \$14,000 per month (prorated for any partial months) (the "Fee"), which the Parties agree is the full and true value for Interim Fire Chief Services rendered under this Agreement.

5.1 The EF&R Fire Chief shall perform the duties and responsibilities required of the Mercer Island Fire Chief that are necessary to meet the terms of this Agreement and as generally outlined in **Exhibit A** ("Scope of Services") to Mercer Island.

5.2 EF&R shall issue a monthly invoice for the Fee on the last day of the month; payment shall be due from the City within 30 days of receipt.

5.3 The City Manager and EF&R's Fire Chief shall meet at least monthly to review performance of the contract. Any adjustments shall be mutually agreed upon in a written addendum to this Agreement.

6. **Indemnification.** To the extent permitted by law, each Party shall defend, indemnify, and hold the other Party (including its officers, officials, employees, agents, consultants, and volunteers) harmless from any and all claims, injuries, damages, losses, and expenses, including, but not limited to attorneys' and expert's fees and court costs, arising out of or in connection with the performance of this Agreement, except for injuries or damages resulting from the sole negligence or intentional acts of the other Party. A Party's indemnification duty shall not apply to liability for injuries, losses, damages, or expenses arising from or caused by the intentional acts or negligence of the other Party (including its officers, officials, employees, agents, consultants, and volunteers). If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then a Party's indemnification duty for injuries, losses, damages, or expenses arising from the concurrent negligence of both Parties (including their officers, officials, employees, agents, consultants, and volunteers), shall apply only to the extent of that Party's negligence.

EACH PARTY UNDERSTANDS THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES A SPECIFIC AND EXPRESS WAIVER OF THE IMMUNITY GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE PARTIES' WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION EXTENDS ONLY TO CLAIMS BETWEEN THE PARTIES, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY A PARTY'S EMPLOYEES DIRECTLY AGAINST THAT PARTY.

The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

7. **EF&R Insurance.** EF&R shall procure and maintain without interruption during the term of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder

by EF&R, including its agents, employees, and representatives. EF&R's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of EF&R to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. At a minimum, EF&R shall obtain insurance of the types and coverage described below from insurers having a current A.M. Best rating of not less than A:VII:

7.1 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 substitute form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. Coverage shall be maintained with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

7.2 Commercial General Liability insurance shall at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under EF&R's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26. Coverage shall be maintained with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

7.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

7.4 EF&R's insurance policies shall contain or be endorsed to contain the following provisions, copies of which shall be furnished to the City before commencement of the services to be provided under this Agreement:

- a. EF&R's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the EF&R's insurance and shall not contribute with it.
- b. EF&R's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been given to the City.

7.5 If EF&R maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by EF&R, irrespective of whether such limits maintained by EF&R are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by EF&R.

7.6 Failure on the part of EF&R to maintain insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to EF&R to correct the breach, immediately terminate the Agreement 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 EF&R from the

City under this Agreement.

8. **City Insurance.** The City represents and warrants that it is a member of the Washington Cities Insurance Association (WCIA), which is a self-insured municipal risk pool for cities in the State of Washington, and which has at least \$4,000,000 per occurrence of liability coverage that applies in the event an incident occurs that is attributable to the negligence of a member city, including its officers, employees, and agents. The City warrants that it will maintain its WCIA membership, or procure substantially similar insurance coverage, for the duration of this Agreement. EF&R accepts these representations and warranties as sufficient provision of insurance by the City for liabilities it may incur in the performance of this Agreement.

9. **Compliance with Laws.** The Parties, in performance of this Agreement, shall comply with all applicable local, state, and federal laws and ordinances, including standards for licensing, certification, and operation of facilities, programs, and accreditation, and licensing of individuals and any other standards or criteria as described in this Agreement to assure quality of services.

10. **Confidentiality of Information.** All confidential information shared by the City with EF&R in connection with the services performed under this Agreement shall be maintained in confidence and will be safeguarded by EF&R to at least the same extent as EF&R safeguards like information relating to its own business. If such information is publicly available or is already in EF&R's possession or known to it or is rightfully obtained by EF&R from third parties, then EF&R shall bear no responsibility for its disclosure, inadvertent or otherwise.

11. **Non-Discrimination in Employment and Services.** The Parties are equal opportunity employers, and shall not discriminate against any employee or applicant on the grounds of race, color, religion, sex, sexual orientation, national origin, creed, marital status, age, veteran status, or the presence of any disability; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the particular worker involved from performing the occupational requirements of the job. The Parties shall not, on the grounds of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, veteran status, or the presence of any disability deny any individual any services or other benefits provided under this Agreement.

12. **Not Employees of Other Party.** Nothing in this Agreement shall be interpreted as Mercer Island's becoming the employer of EF&R's Fire Chief or other personnel. Neither Party shall assume any liability for the direct payment of any salary, wages, or other compensation of any type to any of the other Party's personnel performing services hereunder. No agent, employee, or other representative of either Party is intended to be, nor shall be deemed to be, an employee of the other Party for any reason.

13. **Assignment.** The Parties shall not assign this Agreement or any interest, obligation, or duty therein without the express written consent of the other Party.

14. **Dispute Resolution, Jurisdiction, Venue, and Choice of Law.** If any judicial action is brought to resolve a dispute arising under or related to this Agreement, the exclusive venue shall be in King County Superior Court, which the Parties agree has exclusive personal and subject-matter jurisdiction for such action. In any such action, each Party shall bear its own costs and expenses, including attorney fees. The interpretation, construction, and enforcement of this Agreement shall be governed by the laws of the State of Washington, without reference to its choice-of-law rules. The Parties expressly waive their right to a jury. Neither Party may

initiate any judicial action relating to this Agreement before having first sought to resolve the dispute informally by written demand and a 10-day period for discussions between the City Manager and the EF&R Fire Chief. Nothing in this Agreement shall be construed as preventing or delaying either Party from seeking temporary or preliminary injunctive relief or other emergency judicial orders as necessary to avoid irreparable harm.

15. **Notices.** All notices, requests, demands, or other communications pursuant to this Agreement shall be in writing and shall be deemed effective if personally delivered or mailed, registered, or certified mail, return receipt requested, postage pre-paid, upon deposit in the United States mail, to the Parties at the following addresses:

Mercer Island City of Mercer Island
 Attn: City Manager
 9611 SE 36th Street
 Mercer Island, WA 98040

EF&R Eastside Fire & Rescue
 Attn: Chair, Board of Directors
 175 Newport Way NW
 Issaquah, WA 98027

The Parties agree that the addresses of all Parties to which notice shall be given may be changed at any time by written notice to the other Party.

16. **Independent Municipal Governments.** The Parties hereto are independent municipal corporations. Except for the specific terms herein, nothing herein shall be construed to limit the discretion of the governing bodies of either Party. Nothing in this Agreement shall be construed to create a joint entity between the Parties. Any property to be held in connection with this Agreement shall be held as the separate property of the Party in whose name the property is or was acquired. No provision of this Agreement shall relieve either Party of its public agency obligations and/or responsibilities imposed by law. Neither Party intends, by virtue of this Agreement, to effect or authorize any delegation of its authority to establish or amend policies, enter into agreements, or take any other actions that are within its authority and discretion under law.

17. **No Benefit to Third Parties.** This Agreement is entered into for the benefit of the Parties and shall confer no benefits, direct or implied, on any third persons. Nothing herein shall be construed as creating an exception to the Public Duty Doctrine.

18. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated directly between the Parties and represents the combined work product of the Parties hereto. No presumption or other rules of construction or interpretation which favor one Party over the Party shall apply to the construction or interpretation of any of the provisions of this Agreement.

19. **Non-waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, all of which shall be and remain in full force and effect.

20. **Counterparts.** This Agreement may be executed in any number of counterparts,

each of shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

21. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to purposes and services set forth in this Agreement. This Agreement supersedes all of their previous understandings and agreements, written and oral, with respect thereto. This Agreement may be amended only by written instrument executed by the Parties subsequent to the date hereof.

22. **Severability.** If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Agreement, so long as the ultimate purposes of this Agreement are not frustrated by such decision.

ACKNOWLEDGED AND AGREED TO by each Party on the dates set forth below:

EASTSIDE FIRE & RESCUE

CITY OF MERCER ISLAND

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

Approved as to form:

Approved as to form:

City Attorney

EXHIBIT A

SCOPE OF SERVICES

The EF&R Fire Chief shall provide Interim Fire Chief Services to the City of Mercer Island as generally outlined below.

Both Parties understand the hours performed under this Agreement will vary, ranging from 20 hours per week to 40 hours per week or more depending on the City's operational and service needs and to support the delivery of specific work plan items. EF&R agrees to provide a minimum of 20 hours per week of direct service to the City, with a minimum of 10 hours of service per week provided by EF&R Fire Chief Jeff Clark.

The services provided under this Agreement will be performed from EF&R's administrative offices, in person at City offices, and/or from a remote location due to the ongoing COVID-19 pandemic.

The EF&R Fire Chief shall make regular visits to the City's offices, as appropriate, to carry out the intent of this Agreement, including attendance at City meetings when requested by the City Manager.

The City Manager and the EF&R Fire Chief shall meet at least monthly to review performance of the contract and, as needed, to re-evaluate the fee structure and hours of work.

EF&R and Mercer Island will continue to maintain separate policies and adhere to their own adopted level of service (LOS) standards.

The EF&R Fire Chief shall administer the entities separately and consistent with the following understandings:

1. The Mercer Island Deputy Fire Chief will continue to oversee response operations and provide Mercer Island-specific knowledge and support at the direction of EF&R's Fire Chief.
2. Mercer Island will continue to provide administrative support resources to conduct Mercer Island business, including, but not limited to, finance, human resources, facilities support, and legal.

The EF&R Fire Chief shall provide executive leadership and operational oversight services as described below:

- A. Planning, organizing, and directing the operations of the Mercer Island Fire Department.
- B. Serving as the liaison between the City Manager and Mercer Island Fire Department employees.
- C. Working collaboratively with the union and guiding and directing a staff of professional, technical, and administrative support personnel to deliver fire services to the Mercer Island community.

- D. Maintaining a working environment conducive to positive morale, appropriate discipline and productivity, quality, initiative, and teamwork.
- E. Meeting with City Council members as directed by the City Manager, attending City Council meetings and other public meetings, and preparing presentations to the City Council. When the EF&R Fire Chief is unavailable, a designee may be assigned.
- F. Working on special projects, to include the following work items identified in the 2021-2022 adopted Biennial Budget:
 - i. Assisting with the development and implementation of the fire impact fee.
 - ii. Providing guidance and support to the City Manager in planning for and filling the existing Fire Chief vacancy.
 - iii. Assisting the City Manager and the Administrative Services Department with the collective bargaining process.
 - iv. Providing recommendations to the City Manager on operational and/or service delivery efficiencies as the City continues to work to address long-term fiscal challenges.
 - v. Implementing the Mobile Integrated Health Program.
 - vi. Assisting with implementation of the transport fees programs and policies:
 - 1. Updating the ambulance transport fee rates.
 - 2. Working with the Public Consulting Group and the City's Finance Department to facilitate implementation of the Medicaid reimbursement program for the ground emergency medical transport program.
 - 3. Working with the City's Finance Department to review and update the Transport Fee Collection policy.
 - vii. Evaluating options for Mercer Island to participate in COVID-19 vaccination distribution efforts currently under development by EF&R and their partners.
- G. Representing Mercer Island (in addition to EF&R) at regional meetings, such as King County Fire Chiefs, Zone 1 Fire Chiefs, NORCOM Governing Board, etc.
- H. Other duties as may be assigned by the City Manager and agreed by the EF&R Fire Chief.

Mercer Island practices and procedures govern when the EF&R Fire Chief is performing duties for the City.