

Project title: Cost sharing Memorandum of Understanding (MOU) for Regional Fire Authority (RFA) planning committee

Council Bill # *interoffice use*

Agenda dates requested:

Feb. 17th, 2021

Briefing

Proposed action

Consent X

Action

Ordinance

Public hearing

Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Consultant agreement

Department(s) involved:

Fire, Legal

Contact person:

Dave DeMarco

Phone number:

425-257-8801

Email:

DDemarco@everettwa.gov

Initialed by:

Department head

Administration

Council President

Project: Regional Fire Authority planning committee

Partner/Supplier : Snohomish County Fire Districts 4 and 15, Karen Reed Consulting

Location: N/A

Preceding action: N/A

Fund: 032 Fire and 153 EMS

Fiscal summary statement:

This agreement funds consulting services related to exploring the formation of a regional fire authority with Snohomish County Fire Districts 4 and 15. The total cost to the City of Everett cannot exceed \$74,100 over the life of the agreement, which is anticipated to be two years. Year one expenses to the City are expected to be less than \$35,000. Year 2 expenses will only be incurred if the Fire Authority Planning Committee chooses to continue with the project. If not, cost is contained to year one expenses only, and only as they are incurred.

Project summary statement:

Snohomish Fire District 4 agrees to serve as the contracting party with Karen Reed Consulting. The City will be invoiced by District 4 for 78% of the costs, a rate based on relative assessed valuation of each partner agency. Karen Reed will provide consulting services that will inform city leaders of the impacts of forming an RFA.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the Cost Sharing Memorandum of Understanding for a Regional Fire Authority planning committee at a cost to the city not to exceed \$74,100.

COST SHARING
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between Snohomish County Fire Protection District No. 4 “District 4,” Snohomish County Fire Protection District No, 15 “District 15” and the City of Everett “Everett.”

RECITALS

1. District 4, District 15 and Everett are forming a planning committee pursuant to RCW 52.26.030 to explore the possibility of forming a regional fire authority.
2. District 4 will be entering into a Professional Services Agreement with Karen Reed Consulting, LLC to provide consulting services to the planning committee “Consulting Services.”
3. The Parties wish to share in the costs associated with the Consulting Services.

AGREEMENT

To carry out the purposes of this Agreement and in consideration of the benefits to be received by each party, it is agreed as follows:

1. **Approval of Consolidation Services.** District 4 shall be responsible for approving the scope and cost of the Consulting Services prior to incurring any costs. District 4 shall be the contracting party. The not to exceed cost of the Consulting Services contract shall be \$95,000.
2. **Payment Obligations.**
 - 2.1. Everett agrees to reimburse District 4 for 78% of the costs incurred under the Consulting Services contract.
 - 2.2. District 15 agrees to reimburse District 4 for 2% of the costs incurred under the Consulting Services contract.
 - 2.3. District 4 shall be responsible for the remaining 20% of the costs incurred under the Consulting Services contract.
 - 2.4. District 4 shall invoice Everett and District 15 within 30 days of receiving an invoice from the Consultant for each District’s percentage share of such invoice.
3. **Term.** This Agreement shall be effective on the date of mutual execution and shall remain in force until the Consolidation Services are no longer needed or on May 31, 2022 whichever first occurs. A party may withdraw from this Agreement on 30 days advance written notice. A withdrawing party shall be responsible for its share of Consolidation Services provided prior to the date of termination. The remaining agencies after a withdrawal shall allocate the percentage share of the withdrawing party between the remaining agencies in proportion to the percentage allocations in Section 2.

- 4. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.
- 5. **Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

**SNOHOMISH COUNTY FIRE
PROTECTION DISTRICT NO.4**

By: _____

DATE: _____

**SNOHOMISH COUNTY FIRE
PROTECTION DISTRICT NO. 15**

By: _____

DATE: _____

CITY OF EVERETT

By: _____

DATE: _____

**SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 4
CONSULTANT AGREEMENT**

THIS AGREEMENT is made and entered into between SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 4, a municipal corporation (“District”) and Karen Reed Consulting, LLC (“Consultant”).

1. **Scope of Services.** The District retains Consultant to perform the scope of work designated in **EXHIBIT 1** “the Services” together with such other services as requested by the District.
 - 1.1. All services provided shall be performed at the direction of the Fire Chief or designee. Consultant agrees to use competent and experienced personnel to provide the services necessary to complete the Services in accordance with the agreed project schedule and in a competent and professional manner. The District reserves the right to approve the primary personnel designated by Consultant to perform services under this Agreement. This Agreement is not intended to create a relationship in which the District contracts exclusively with Consultant for similar or related services or in which the Consultant serves the District as its sole client. The District reserves the right to use the services of other Consultants for both general and specific projects at District’s sole discretion.
2. **Time of Completion/Termination.** The parties agree that work will begin on the tasks described in Section 1 above immediately upon the effective date of this Agreement, and Contractor shall complete the work on or before December 31, 2021. Either party may terminate this agreement by seven days advance written notice to the other party. The District agrees to pay the Consultant and its consultants a prorated fee based on the percent of work completed by the Consultant and its consultants on the termination date. The Consultant and its consultants agree to turn over all work related to this agreement to the District that has been completed at the termination date. Both parties agree that there shall be no further penalty for the termination of this agreement.
3. **Compensation.**
 - 3.1. **Cost of Services.** The District shall pay Consultant only for completed Services actually rendered as specified in the Scope of Work. Such payment shall be full compensation for the Services including, but not limited to, all labor, materials, supplies, equipment, and incidentals necessary to complete the Services.
 - 3.2. **Billing Procedures.** The Consultant shall submit detailed invoices for services rendered to the District for approval and payment on a monthly basis. Payment shall be made within 30 days of receipt of the invoice following verification and approval of the invoice by the District. Consultant shall submit complete documentation for the invoices in a form acceptable to the District.
 - 3.3. **Consultant Rates.** Consultant shall be paid \$210 per hour, in quarter hour increments. Service Provider will bill at this hourly rate for travel time incurred in excess of one hour per round trip.

- 3.4. Partial Payment. If any Services covered by this Agreement are suspended or abandoned by District, the Consultant shall be paid for services performed prior to the date that written notification of abandonment is provided to Consultant; provided, however, such payment shall only be owing if Consultant performed such services in a professional and non-negligent manner consistent with the terms of this Agreement.
- 3.5. Total Compensation. Total compensation for all Services and expenses shall not exceed a maximum of \$75,000.
4. Ownership of Documents. Ownership of Documents created pursuant to this Agreement shall be determined as follows:
 - 4.1. Unless otherwise expressly agreed in writing, all intellectual property rights in works created pursuant to this Agreement, or for the District, belong to the District. Consultant retains any intellectual property rights in works created by Consultant prior to engagement, or not for its performance of this Agreement. Consultant expressly represents and warrants that the work shall be original and shall not infringe on another's copyright, or rights in trade or service marks.
 - 4.2. Upon its sole risk, the District may make modification to the work product without the prior written authorization of the Consultant. The District agrees to waive any claim against the Consultant arising from the District's reuse or modification of any such work product.
5. Insurance. The Consultant shall obtain Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles used by Consultant in providing the Services with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. The Consultant shall furnish the District with proof of insurance before commencement of the work.
6. Conflicts of Interest. Consultant agrees not to perform similar services for private parties on projects within the District if the performance of such services conflict in any way with the Consultant's performance of the Services for the District.
7. Warranty. Consultant agrees and warrants that the Services shall be performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and same or similar locality. When the findings and recommendations of Consultant are based upon information supplied by District and others, Consultant is entitled to rely on such information.
8. Independent Contractor. The Consultant and the District agree the Consultant is an independent contractor with respect to the Services. Nothing in this Agreement shall be considered to create the relationship of employer or employee between the parties hereto. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded to District employees by virtue of the Services provided under this Agreement. The District shall not be responsible for withholding or otherwise deducting federal income tax or social security, or for contributing to the State Industrial Insurance program, or for otherwise assuming the duties of an employer with respect to the Consultant or any employee of the Consultant.

9. Compliance With Laws. The Consultant shall, in performing the Services, faithfully observe and comply with all federal, state and local laws, ordinances and regulations, applicable to the Services.

10. Assignment of Contract/Subcontractors. Consultant shall not assign this contract or assign or subcontract all or any portion of the work of any Services without prior District approval.

11. Dispute Resolution.

11.1. If the parties are unable to resolve a dispute regarding this Agreement through negotiation, either party may demand mediation through a process to be mutually agreed to in good faith between the parties within 30 days. The parties shall share equally the costs of mediation and each party shall be responsible for their own costs in preparation and participation in the mediation, including expert witness fees and reasonable attorney's fees.

11.2. If a mediation process cannot be agreed upon or if the mediation fails to resolve the dispute then, within 30 calendar days, either party may submit the dispute to arbitration according to the procedures of the Superior Court Rules for Mandatory Arbitration, including the Local Mandatory Arbitration Rules of the Snohomish County Superior Court, Snohomish County, Washington, as amended, unless the parties agree in writing to an alternative dispute resolution process. The arbitration shall be before a disinterested arbitrator selected pursuant to the Mandatory Arbitration Rules with both parties sharing equally in the cost of the arbitrator. The location of the arbitration shall be mutually agreed or established by the assigned Arbitrator, and the laws of Washington will govern its proceedings. The prevailing party in the arbitration, shall be entitled to its reasonable attorney fees and costs including expert witness fees.

11.3. Following the arbitrator's issuance of a ruling/award, either party shall have 30 calendar days from the date of the ruling/award to file and serve a demand for a bench trial de novo in the Snohomish County Superior Court. The court shall determine all questions of law and fact without empanelling a jury for any purpose. If the party demanding the trial de novo does not improve its position from the arbitrator's ruling/award following a final judgment, that party shall pay all costs, expenses and attorney fees to the other party, including all costs, attorney fees and expenses associated with any appeals.

11.4. Unless otherwise agreed in writing, this dispute resolution process shall be the sole, exclusive and final remedy to or for either party for any dispute regarding this Agreement, and its interpretation, application or breach, regardless of whether the dispute is based in contract, tort, any violation of federal law, state statute or local ordinance or for any breach of administrative rule or regulation and regardless of the amount or type of relief demanded.

12. Miscellaneous.

12.1. Entire Agreement. This Agreement, and its attachments, contains the entire understanding between District and Consultant relating to the Services. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly

set forth herein, are of no force or effect. Subsequent modifications or amendments to this Agreement shall be in writing and shall be signed by the parties to this Agreement. Services to be performed by Consultant for District that are outside the scope of Services under this Agreement shall be performed pursuant to separately negotiated written agreements.

- 12.2. Equal Employment Opportunity. Consultant shall not discriminate against any employee, applicant for employment, or subcontractor on the basis of any protected class under Washington State or Federal Law.
- 12.3. Non-Waiver. Waiver or forbearance by the District of any provision of the Agreement or any time limitation provided for in this Agreement shall be limited to the single instance of waiver or forbearance and shall not constitute an agreement by the District to waive or forbear in the future with respect to similar instances, nor shall any such waiver or forbearance constitute a waiver or forbearance with respect to any other provision of this Agreement.
- 12.4. Law/Venue. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Agreement shall be filed and conducted in Snohomish County Superior Court.
- 12.5. Savings Clause. If any provision of this Agreement is declared invalid, illegal or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall continue in full force and effect, and no provisions shall be deemed to depend upon any other provision unless so expressed herein.

Dated: _____

Dated: _____

**SNOHOMISH COUNTY FIRE PROTECTION
DISTRICT NO. 4**

KAREN REED CONSULTING, LLC

By: _____

By: _____

Manager

EXHIBIT 1
SCOPE OF WORK

Exhibit A

DRAFT Scope of Work: Facilitation of RFA Planning Committee Process

The Consultant will facilitate meetings of the Snohomish County Fire District No. 4 (District 4), Snohomish County Fire District No. 15 (District 15), and City of Everett (Everett) Regional Fire Authority (RFA) Planning Committee (Committee) from the date of this agreement through the end of December 2021.

Consultant's tasks shall include developing a work plan for the Committee, developing Committee meeting agendas, providing strategic advice, reviewing and editing materials prepared by staff, developing and presenting materials related to governance issues, facilitating Committee meetings, facilitation staff team meetings in preparation for Committee meetings, finalizing draft meeting summaries prepared by staff designated by the Client (defined as District 4, District 15 and Everett, collectively). Consultant will participate in regular staff team meetings developing agendas and facilitating those meetings as needed.

The scope anticipates, in addition to project start-up work, approximately two (2) planning Committee Meetings, two (2) advance meetings with the Chair and Vice Chair of the Planning Committee and the Fire Chiefs, and two (2) staff team meetings per month, from mid-February 2021 through December 2021. Consultant's work after December 2021, if any, shall be negotiated as an addendum to this agreement.

The project scope assumes all meetings will be conducted via Zoom or similar virtual meeting technology.

The scope further assumes the Client will provide all necessary legal advice and substantive work on operations and finance issues, logistics for all meetings and copying (as needed) of meeting materials. The scope assumes the Client will engage:

- Legal counsel in support of the project
- A communications consultant or staff to guide public outreach during the RFA Plan development, as well as for the public education campaign and messaging should the Client determine to place an RFA measure on the ballot
- A financial consultant to develop the data necessary to create a seven-year financial feasibility forecast for the proposed RFA.

Consultant will not provide legal services or legal advice to the Client.

District 4 will pay Consultant for all services monthly. Consultant will bill in quarter hour increments at a rate of \$215 per hour plus actual out of pocket expenses at cost (none presently anticipated), for a total contract amount not to exceed \$75,000 through December 2021. This estimate is based on the following estimated project hours:

- Start-up work (13 interviews, drafting workplan, charter, etc.) estimate: 30 hours
- Monthly estimated hours with 6 meetings per month, prep and facilitation (2 Committee, 2 Chair/Vice Chair, 2 staff team): 26 hours/month for 11 months—February 2021 through December 2021

K Reed Consulting LLC

V. 1.20.21

Preparing 2 council/commission briefings and preparing for/participating in 2 virtual open houses: Est. 15 hours