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| 01  | ILA Section 2 | Mayor Nice             | Section 2.1 of the ILA has a Commencement Date, which sets off the Initial Term. This section contemplates an Implementation Date, which may be delayed with a written agreement. There is no provision to claw back any delay in implementation into the Initial Term. This is likely fine, as the agreement automatically renews after ten years. | Staff agree with this interpretation.   |
| 02  | ILA Section 2 | Mayor Nice             | Section 2.3 contemplates a process to terminate the agreement but does not contemplate rescinding such notice, despite the requirement that it be given two years from the end of the Initial Term or Renewal Term. I don't have any recommendations on this; just simply pointing it out.  | That is correct. There is no provision permitting unilateral withdraw of termination notice once given. Once given, mutual agreement will be required to withdraw it.   |
| 03  | ILA Section 2 | Mayor Nice             | Would section 2.6 apply if Bellevue contracted with EFR? If I recall, contiguous cities were allowed to join, and Bellevue's decision to join EFR would trigger this for Mercer Island.   | <p>Section 2.6 simply addresses the process to terminate this ILA should Mercer Island become a voting member of EFR. This section does not address the requirements to become a member.</p> <p>EFR leadership advised Mercer Island City staff that membership or partnership in EFR would likely require a shared border, like Issaquah and Sammamish, for example.</p> <p>Nothing in this ILA prevents the City of Mercer Island or EFR from considering a membership model in the future.</p> |
| 04  | ILA Section 3 | Councilmember Reynolds | Section 3.3.<br>a. The provision allowing EF&R to "temporarily modify" staffing levels at their "sole reasonable discretion" is concerning. Is the term "temporarily" ever defined in this agreement? Can you offer some ideas on why they may feel this provision is necessary?  | The word "temporary" is not defined in the RFP response or ILA agreement. Generally, temporary staffing changes would be the responsibility of the leadership of EFR. The purpose of this section is to address instances when EFR needs to send, for operational reasons, crews for training, staffing for large events, etc. within the EFR service area. This  |

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|     |               |                        | <p>b. Can we add language clarifying that Mercer Island has sole authority to decide to INCREASE staffing levels should we decide we want to do so?</p>  | <p>also address circumstances where staffing needs to be increased. The water emergency is a recent example where fire staffing levels were increased by four personnel each day. This language is not intended to result in decreased staffing levels on Mercer Island, but simply to allow Fire administration operational flexibility to address changing needs.</p> <p>This provision requires EFR's to implement <u>reasonable</u> temporary staff modifications. If the request is unreasonable, in the City's opinion (either given the circumstances or the duration), the recourse is for the City Manager to meet with the Fire Chief and initiate dispute resolution.</p> <p>Should the City desire to modify the staffing levels established in Section 3.3, this ILA may be modified with both parties written and signed consent as established in Section 13.5.</p> <p>It would not be practical to request "sole" authority to increase the staffing levels as there are operational impacts to EFR that would need to be negotiated, including cost, supervision, bargaining, etc. There are also circumstances (as described previously) where staffing levels are increased (due to an emergency) to address a service need.</p> |
| 05  | ILA Section 3 | Councilmember Reynolds | <p>Section 3.4: Reference to "property owners, residents, and businesses" seems to suggest that services will not be provided to visitors. I am confident this is not the intent. Can the language be clarified?</p> | <p>Section 3.4 details "Fire Prevention Services" that EFR will be providing under the ILA. This is different from fire suppression and medical services, which is covered under Sections 3.1 and 3.2 and include all persons.</p>  |

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|     |               |                        |  | Fire prevention services include community education and related fire marshal services. Examples include CPR trainings, educational events at schools, and building inspections. These types of services are generally for residents and business owners versus visitors, although visitors could attend educational events and generally benefit from fire safety on the island as well. |
| 06  | ILA Section 3 | Councilmember Reynolds | Section 3.6: The use of the word “currently” suggests that if EF&R increases its HazMat LOS to the rest of its service area, it will not be obligated to do so for MI. Should we strike that word? | <p>Levels of service is established by the City of Mercer Island.</p> <p>Should EFR increase their HazMat level of service, the City of Mercer Island would have the option to modify this ILA to adopt that higher level of service.</p> <p>Staff interpret “currently” to mean EFR is meeting the City of Mercer Island’s RFP request to maintain current levels of service.</p>        |
| 07  | ILA Section 3 | Councilmember Reynolds | Section 3.7: Does EF&R currently have a contract with Norcom with a defined expiry / renewal date? If so, what is that date? What are MI rights if EF&R terminates their Norcom contract?          | <p>Yes, EFR has an Interlocal with NORCOM as do all entities operating in Zone 1. It is not plausible that EFR would terminate their agreement with NORCOM unless the Zone 1 region were moving to another dispatch model.</p> <p>The City of Mercer Island’s agreement with NORCOM will continue as-is.</p>  |
| 08  | ILA Section 3 | Councilmember Reynolds | Section 3.8 (b): Should we be explicitly assign responsibility here for union negotiations and relations?  | “Personnel management” as referenced in Section 3.8 (b) includes collective bargaining. Section 6.3 also describes the agreed upon impact bargaining and integration of Mercer Island firefighters into the EFR Union (IAFF Local 2878).  |

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| 09  | ILA Section 3 | Councilmember Weinberg | In ILA section 3.3, the first sentence's use of the preposition "to" could be interpreted as allowing Eastside to assign to Mercer Island fire stations personnel who are physically at a fire station located off Mercer Island. Wouldn't the use of the preposition "on" remove all doubt that there will be no reduction of on-island on-duty personnel as a result of this ILA? | Section 3.3 establishes the staffing levels at <u>Station 91 and 92</u> and staff do not believe the language change is necessary. If the City Council desires, however, to amend this language that may be done via passage of a motion at the City Council meeting. Please be aware that any changes to the ILA require concurrence by EFR. |

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| 10  | ILA Section 3 | Councilmember Weinberg | <p>In ILA section 3.3, doesn't the last sentence allowing the temporary modification of staffing levels border on violating clause 6 of the 2018 Martin Luther King County Interlocal Agreement for Automatic Aid? For reference, clause 6 of that ILA states:</p> <p>"All Participating Agencies shall at a minimum maintain the staffing, resources, and equipment that they had available upon the effective date of this ILA or the date upon which such Fire Department was accepted into the ILA. No Agency shall use this agreement to reduce its staffing, resources, or equipment, which would have a detrimental effect on other Participating Agencies."</p> <p>I recommend that the last sentence of section 3.3 be deleted.</p> | <p>The word "temporary" is not defined in the RFP response or ILA agreement. Generally, temporary staffing changes would be the responsibility of the leadership of EFR. The purpose of this section is to address instances when EFR needs to send, for operational reasons, crews for training, staffing for large events, etc. within the EFR service area. This also address circumstances where staffing needs to be increased. The water emergency is a recent example where fire staffing levels were increased by four personnel each day. This language is not intended to result in decreased staffing levels on Mercer Island, but simply to allow Fire administration operational flexibility to address changing needs.</p> <p>This provision requires EFR's to implement <u>reasonable</u> temporary staff modifications. If the request is unreasonable, in the City's opinion (either given the circumstances or the duration), the recourse is for the City Manager to meet with the Fire Chief and initiate dispute resolution.</p> <p>Should the City desire to modify the staffing levels established in Section 3.3, this ILA may be modified with both parties written and signed consent as established in Section 13.5.</p> <p>Staff do not recommend striking the last sentence.</p> |
| 11  | ILA Section 3 | Councilmember Weinberg | <p>In ILA section 3.9, the second sentence, which is 71 words long, reads:</p> <p>"Further, the parties acknowledge that the Exhibits to this Agreement may be modified by the City Manager without further</p>  | <p>Section 3.9, which was an agreed upon addition to the ILA by both parties and has the intent of allowing judicious minor changes to the Exhibits in the ILA as needed to address minor issues that may</p>   |

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|     |               |               | <p>action by the Mercer Island City Council, provided the City Manager shall report all modifications to the City Council as soon as practicable following the modification, and provided further that no modifications shall be made without City Council pre-approval where the modification results in a cost increase in excess of budget authority.”</p> <p>I have two questions about this sentence:</p> <p>a. Shouldn't the City Manager's proposed modifications to the Agreement be subject to approval by Eastside? While I presume you didn't mean this to grant her the power to modify the Agreement unilaterally, the way it is worded it could be interpreted that way.</p> <p>b. Shouldn't the last clause, reserving Council review if the change increases cost, also reserve Council review if there is any reasonable doubt as to whether the change involves a decrease in the safety of Mercer Island residents?</p> | <p>come up during the transition period and term of the ILA.</p> <p>Modification of the service levels described in the ILA would be subject to approval by both parties. Nothing in Section 3,9 grants authority to the City Manager to unilaterally change the services levels in the ILA.</p>   |
| 12  | ILA Section 3 | Mayor Nice    | <p>Section 3.1 sets the service area by defining whom or what they are protecting and, without regard to political boundaries, assumed to mean city lines. In a jurisdiction surrounded by navigable waters regulated by the US Coast Guard, this definition might need some work to contemplate a vessel fire not at risk of threatening a person or property in Mercer Island but needing fire suppression services rendered by EFR. Said another way, is the lake no man's land?</p>  | <p>The boundaries of the City of Mercer Island include the shoreline and extend into Lake Washington. Public safety response on Lake Washington is coordinated with the City of Mercer Island Marine Patrol Division, which includes vessels and trained professionals to respond to fires, medical emergencies, and other needs. The coordination of responses between Mercer Island Fire and Mercer Island Police will continue under the contract with EFR.</p> |
| 13  | ILA Section 3 | Mayor Nice    | <p>Section 3.6 interplays with a cost recovery service the City of Mercer Island contracts with. Does this section, as written, allow the continuation of the status quo?</p>  | <p>The City of Mercer Island has established a cost recovery program to address expenses related to the clean-up of hazardous materials spills on roadways (see <a href="#">Mercer Island Resolution 1605</a>). The city has a contract with “EF Recovery” for this work and this contract will continue.</p>  |

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| 14  | ILA Section 3 | Mayor Nice    | Section 3.8b does not explicitly call out EFR supporting Mercer Islands' need to file a cost report for aid car services, possibly seeking reimbursement from aid car patients, and supporting the recovery from insurance or responsible parties for hazardous waste response. | <p>One of the key transition items to be performed by staff between now and the end of 2023 is to confirm how all revenues will be processed and handled under this agreement. There are circumstances where it will be more efficient for EFR to receive the revenues directly and "deduct" it from the annual invoice. In other circumstances, it may be more efficient to have the City of Mercer Island continue to receive the revenues. Final operational decisions related to revenue will be memorialized in an MOU or similar instrument.</p> <p>Specific to GEMT:<br/>The City receives reimbursement from eligible aid car transports through the Medicaid Ground Emergency Medical Transportation (GEMT) program. Last year, the reimbursement amount was \$262,000.</p> <p>Information on eligible transports is collected by Systems Design West, who then provide the information to the Public Consulting Group to submit for reimbursement through the GEMT program. Eastside Fire &amp; Rescue also works with Systems Design West for this data collection.</p> <p>Per the earlier comment, this revenue stream has been identified as a transition item to be resolved by the City and EFR staff between now and the end of the year and final operational decision will be memorialized in an MOU or similar instrument.</p> <p>Specific to Hazardous Waste Clean-Up Cost Recovery, see answer to question #13.</p> |

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| 15  | ILA Section 4 | Councilmember Reynolds | Section 4.2: Is this payment designed to pay for MERCER ISLAND firefighters, e.g., just for 28 people? If so, shouldn't it say that?   | The term "Mercer Island's proportionate share" in Section 4.2 refers to the Mercer Island staff. Staff have also verified EFR's assumptions of the one-time liability cost and confirmed it correctly estimates the relevant cost of the 29 Mercer Island firefighters.   |
| 16  | ILA Section 4 | Councilmember Reynolds | Section 4.3 (a): It is interesting that the inflator is a fixed 3% rather than CPI indexed. My sense is that this will work to our advantage, but, either way, what happens at the end of the term? Is this fee renegotiated? Or would any renewal just mean it keeps climbing at the same rate?   | The ILA is subject to renegotiation by both parties at the end of the initial 10-year term. The 3% inflator is standard in other EFR contracts.   |
| 17  | ILA Section 4 | Councilmember Reynolds | Section 4.3(b)(iii):<br>a. If one or more of our firefighters are out sick or otherwise unavailable, will we be responsible for overtime payments made to firefighters not regularly assigned to MI that fill in? How will such amounts be tracked and allocated? If a Mercer Island firefighter similarly provides overtime services to, say, Sammamish, who pays for this cost? It seems this merits clarification.<br>b. If, for example, actual costs for 2024 are less than the prepaid amounts, we are told that the amount owed to us will be credited to amounts due for the next year. But we won't know this amount until March 31, 2025. Won't our 2025 payment already have been made by then? Will the amount then be credited to 2026 instead? | The City is responsible for the full costs of operating Station 91 and 92 and the City's portion of the Fire Marshal's Office (e.g., one fire marshal) as detailed in Section 3 at the agreed upon staffing levels. EFR will track personnel costs and those applicable to Mercer Island will be the responsibility of the City of Mercer Island.<br><br>Section 4.3 (b)(iii) describes the process for credit or refund of overpayment. The surplus will be credited to the City the following year. |
| 18  | ILA Section 4 | Councilmember Reynolds | Section 4.5: Is there any such municipal property or state property on MI? Is the idea that EF&R will hire someone else to provide fire services to such property, or that they will be paid for providing such services? Either way, who is responsible for / benefits from such contracting?   | Yes, other government entities own property on Mercer Island. One example is the Washington State Department of Transportation, who owns a significant amount of right of way on Mercer Island. Section 4.5 allows for EFR to contract directly with those agencies for services, even though the property is also located within the limits of the City of Mercer Island.  |



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| 19  | ILA Section 4 | Councilmember Weinberg | <p>ILA section 4.2 contains the following 70-word sentence:</p> <p>“As a one-time fee to cover Mercer Island’s proportionate share of Eastside’s Liability Reserve Fund, as set forth in Eastside Board Financial Policy 0002, Section 5.5 (as currently in effect or as subsequently amended), Mercer Island shall be responsible for paying Eastside 100% vacation value and 50% sick leave value calculated as of December 31, 2023, provided payment shall occur in three equivalent annual payments, beginning on January 1, 2024.”</p> <p>I have the following clarification questions:</p> <p>a. In order to ensure there is no confusion about the vacation leave being referenced, shouldn’t we replace “100% vacation value” with “100% of the value of accrued and unspent vacation time for Mercer Island Fire Department personnel transferring to Eastside”?</p> <p>b. Similarly, shouldn’t the “50% sick leave value” be replaced with, “50% of the value of accrued and unspent sick leave for Mercer Island Fire Department personnel transferring to Eastside”?</p> <p>c. Shouldn’t the last clause be changed from “provided payment shall occur in three equivalent annual payments beginning January 1, 2024” to “provided payment shall be divided into three equal annual payments, the first occurring on January 1, 2024”? The way it’s currently worded, it could be interpreted as MI paying the full amount three times.</p> | <p>The proposed language as noted in (a) would provide clarification should the majority of the City Council desire to make this change. This change would also need to be approved by EFR. In the meantime, City staff have conferred with EFR and absent this change, the methodology and intent are clearly understood by both parties.</p> <p>The City’s legal counsel recommended using the word “equivalent” rather than equal to provide more flexibility. This is because the City is unlikely to know the <u>exact amount</u> of leave liability cost until the first week of January. This means the City may not know exactly how to divide this cost by three come the first payment date. So, the City may make an estimated 1/3 payment first, and then adjust the future payments as needed.</p> |
| 20  | ILA Section 4 | Councilmember Weinberg | <p>5. In ILA section 4.3.b.i, the second sentence reads: Actual Personnel Costs shall include the fully burdened rate based on actual wages (including overtime) and benefits paid and accrued during the year.</p> <p>I have two concerns with this clause:</p> <p>a. As “fully burdened rate” is not defined, Eastside could effectively charge Mercer Island whatever amount it wants for each employee work hour and call it a fully burdened rate.</p>  | <p>As described in Section 4.3(b), EFR will charge the city their <u>budgeted</u> estimate for personnel costs for the following year. Like any budget, it is an estimate and subject to actual staffing and overtime needs throughout the year. EFR will reconcile the <u>actual</u> personnel costs with the City the following year. In short, the City will ultimately only pay for actual services rendered in a year and the process for reconciling these expenses is described in the ILA.</p>  |

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|     |               |                        | <p>b. The inclusion of accrued wages/benefits during the year in addition to wages/benefits paid during the year means that for each hour of vacation accrued in year X and then paid in year X+1 Mercer Island would be paying for it twice – once in the year it’s accrued and once in the year it is paid.</p> <p>To address the above concerns, I recommend this sentence be simplified to:</p> <p>Actual Personnel Costs shall be equal to actual wages, overtime, and benefits paid during the year.</p>  | <p>Payment of portion of wages by EFR to firefighters stationed at 91 and 92 that are earned by using accumulated leave (vacation, sick, etc.) are not part of “Actual Personnel Costs.” Likewise, EFR will be solely responsible for funding of leave liabilities on and after January 1, 2024.</p>   |
| 21  | ILA Section 4 | Mayor Nice             | <p>Section 4.4 contemplates the possibility of the Implementation Date being before the Commencement date, although Section 2.1 only contemplates a delay in the Implementation Date. We should correct this if we think we can implement it before 2024. If not, we should remove the reference to an earlier implementation date of November 2023 in Section 4.4.</p>   | <p>The original draft of the ILA proposed by EFR included options for having an implementation date in 2023. Staff determined an implementation date of January 1, 2024, was preferable. Leaving it in “as is” will have no legal impact.</p>  |
| 22  | ILA Section 5 | Councilmember Reynolds | <p>Section 5.1: I note that the “exclusive access and control” provision is not limited to “during the term of this agreement”. Probably a similar concern should apply to other provisions of this agreement. Do we believe this is implied and unnecessary? I certainly don’t want them controlling our stations if we have terminated or non-renewed the agreement.</p>  | <p>If the agreement is terminated or not renewed, Section 5.1, including the exclusive access and control provision, will also end. In other words, this section does not survive expiration or termination of the ILA.</p>  |
| 23  | ILA Section 5 | Councilmember Reynolds | <p>Section 5.2: The “the maintenance and repair” provision seems fairly broad (to our advantage). Should, for example, an earthquake knocks down the station, are they responsible for covering uninsured loss? Who decides that level of maintenance and repair is necessary? What are our options if we believe that they are not doing sufficient maintenance? Would, for example, the recent work we authorized to make the station doors more accessible in a disaster be the sort of cost that they would have to cover? Or is that an improvement rather than maintenance?</p> | <p>The City of Mercer Island is entering into this agreement with EFR without an updated Facilities Conditions Assessment (FCA) for either of the Fire Stations. The purpose of an FCA is to identify and evaluate the building systems and their respective replacement schedules. It is not reasonable for either party to fully negotiate capital replacement responsibilities for the buildings until this work is complete.</p> |

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|     |               |                        |   | <p>The City is currently underway with a FCA for most of the City Buildings and the City Manager will be recommending to the City Council that both Fire Stations be added to this scope of work.</p> <p>Given the other issues the City is currently managing related to facilities (e.g., emergency closure of City Hall), the FCA work on the Fire Stations may not occur until 2024 or 2025, hence the language establishing a three-year approach to management of capital facilities projects while this work is completed.</p> <p>Once the FCA work on the Fire Stations is complete, both parties will agree to a Capital Facilities Replacement Schedule and funding approach. This will likely require an amendment to the ILA. The “Equipment Replacement Fund Schedule” included in Exhibit D is reflective of the end product we can expect once the FCA work is complete on both Fire Stations.</p> <p>In the meantime, the ILA with EFR calls for an annual contribution of \$30,000 to support Capital Facilities Maintenance. These funds will be managed by EFR, in coordination with the City, to address capital issues that arise during the first three years of this agreement.</p> |
| 24  | ILA Section 5 | Councilmember Reynolds | Section 5.5: Reference to “all applicable” manuals, etc., probably needs a qualifier of “currently available” or similar, doesn’t it? | The intent is for the City to provide the information in its possession related to personal property.  |

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| 25  | ILA Section 5 | Councilmember Reynolds | Section 5.6: Who decides what types and quantity of apparatus are needed? If for example, EF&R decides we need a ladder truck or other type / configuration of apparatus that we do not have, are we forced to get it?  | EFR will advise the City of Mercer Island on apparatus replacement recommendations, particularly as technology and equipment evolves over the life of this agreement. The City of Mercer Island retains decision-making authority related to the acquisition of such equipment.  |
| 26  | ILA Section 5 | Mayor Nice             | Section 5.5 and thereabouts deal with property ownership, replacements, and depreciation. I do not see any procedures prescribed for disposal and the dispensation of proceeds should that occur on jointly owned property. If we sell off an asset fully depreciated or not, do we need to contemplate how the proceeds would be divided when jointly owned?   | <p>Staff agree that the procedures for this are not explicitly spelled out in Section 5.5. But the ILA confirms Mercer Island property shall remain Mercer Island property, thus the City would be entitled to proceeds from the sale of any assets and would follow current policies and procedures for disposition of assets.</p> <p>Staff note the second page of Exhibit B describes the process to surplus vehicles upon replacement, in which “the proceeds [are] remitted to the original purchaser”.</p>                               |
| 27  | ILA Section 6 | Councilmember Reynolds | <p>Section 6.1 and 6.5:</p> <p>a. Were LEOFF 1 costs included in the measurement of current city fire costs when comparing to EF&amp;R costs? If so, what is the historical run rate of such expenses?</p> <p>b. Are any active MI fire staff covered by LEOFF 1?</p> <p>c. What is the current funding level of retirement benefit plans for MI firefighters?</p> <p>d. Does any provision of this agreement require EF&amp;R to fully fund pension plans? At termination / non-renewal, how would over or under funding be handled?</p> | <p>The liability for LEOFF 1 retirees will remain with the City per Section 6.5 of the ILA.</p> <p>All active Mercer Island Fire Personnel are currently enrolled in LEOFF 2, and will continue in LEOFF 2 subsequent to a transfer to EF&amp;R.</p> <p>The LEOFF Plan 2 employer and employee contribution rates are developed by the Washington Office of the State Actuary to fully fund Plan 2. As required by RCW 41.26 Plan 2 employers and employees are required to pay at the level adopted by the LEOFF Plan 2 Retirement Board.</p> |

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| 28  | ILA Section 6 | Councilmember Weinberg | <p>The 67-word last sentence of ILA section 6.2 states:</p> <p>“If the employee filling the position of Fire Marshal as of the Commencement Date of this Agreement transfers to Eastside as the Fire Marshal and later vacates the position for any reason, Mercer Island and Eastside agree to evaluate Mercer Island’s need for a Fire Marshal and the Mercer Island City Manager shall have final approval of changes made, if any, to the position of Fire Marshal.”</p> <p>Doesn’t this sentence effectively give the City Manager the unilateral ability to abrogate the Fire Marshall position? Wouldn’t the abrogation of the position constitute a reduction in staffing? Wouldn’t that, in turn, be a violation of clause 6 of the 2018 Martin Luther King County Interlocal Agreement for Automatic Aid? For reference, that clause states:</p> <p>“All Participating Agencies shall at a minimum maintain the staffing, resources, and equipment that they had available upon the effective date of this ILA or the data upon which such Fire Department was accepted into the ILA. No Agency shall use this agreement to reduce its staffing, resources, or equipment, which would have a detrimental effect on other Participating Agencies.”</p> <p>I recommend the last sentence of section 6.2 of this proposed ILA with Eastside be deleted.</p> | <p>This section of the ILA allows the City Manager to discuss with EFR the alternatives and options to providing fire marshal services on Mercer Island in the event the position is vacated by the current Fire Marshall. EFR currently staffs for Fire Marshall services and they may be well positioned to provide this service for Mercer Island in the future.</p> <p>A change in the manner in which Fire Marshall services is not included in the Automatic Aid agreement and is therefore not a violation of the that Agreement.</p> |
| 29  | ILA Section 8 | Mayor Nice             | <p>Section 8.1 provides that Eastside Fire and Rescue shall negotiate Mercer Island automatic aid and mutual aid agreements and that Mercer Island shall not be a party to such agreements unless required. Should there be limitations on what Eastside Fire and Rescue can obligate Mercer Island to for automatic and mutual aid? Could an automatic or mutual aid agreement obligate Mercer Island to provide a service not currently provided? A ladder truck might be an example.</p>  | <p>It is important to remember that by contracting with EFR for regional fire services, EFR will be negotiating Automatic Aid and Mutual Aid Agreements based on the needs of their <u>entire agency</u>, of which Mercer Island will be included.</p> <p>The language of Section 8.1 is the continuation of current practice, whereas the Fire Chief is the City official responsible for negotiating automatic and</p>   |

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|     |               |                        |  | <p>mutual aid agreements. From time to time the King County Operations Chiefs will review, update, and provide recommendations to the Fire Chiefs as to changes or revisions that may be needed to these agreements. The EFR Fire Chief will represent the City of Mercer Island in these conversations and negotiations.</p> <p>The City Manager will review the authority granted herein and propose an amendment to limit EFRs authority in the negotiation of Automatic Aid and Mutual Aid agreements if that is desired by the City Council. Any changes to the automatic aid or mutual aid agreements would still be subject to the other terms of the ILA between the City of Mercer Island and EFR, so the additional provision limiting “authority” may not be needed.</p> <p>Review of existing ILAs is one of the items that will be addressed by the transition team between now and the end of 2023. Any necessary amendments to existing ILAs will be brought to the City Council for review and approval.</p> |
| 30  | ILA Section 9 | Councilmember Reynolds | Section 9.1: I would value input from staff on the implications of using a “negligence” rather than “gross negligence” standard for indemnification. | Negligence occurs when there is “a failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation”, while gross negligence occurs when “a person acts with reckless indifference equivalent to wanton or even willful conduct.” Replacing “negligence” with “gross negligence” in the indemnification provision would require a higher standard of “misconduct” to trigger the duty to indemnify the party that is not at fault, and therefore, it is not recommended.  |

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| 31  | ILA Section 10 | Councilmember Reynolds | Section 10.1: No reference is made to deductibles. Who is responsible for these?   | EFR is responsible for providing insurance and managing payments, including any applicable deductibles. The City and EFR will undertake a reconciliation process during the transition period between now and the end of the year to transfer insurance coverage to EFR. There may be a period of overlapping coverage due to the City's requirement to provide notice to WCIA of a change in coverage. |
| 32  | ILA Section 12 | Councilmember Reynolds | Section 12.3: I am used to arbitration provisions with 3 arbitrators, where each party selects one, and the two arbitrators select a third. What is the rationale for using a single arbitrator, and, as we do for mediators, do we need to explicitly state that the arbitrator will be jointly selected?   | The Commercial Arbitration Rules (R-13) set forth a procedure by which an arbitrator is selected. Each party submits a list and the parties strike from that list and the American Arbitrator Association selects from top choices. The panel method is an option, but it increases costs often with little benefit. The single arbitrator method is typically sufficient.                              |
| 33  | ILA Section 12 | Councilmember Weinberg | In ILA section 12, I recommend that the term "City Manager" be expanded to read "Mercer Island City Manager". Thus, should a dispute arise between Mercer Island and Eastside over Eastside's billing to Mercer Island for an incident which occurred when a Mercer Island-based Firefighter was responding to a call in another city (say, Issaquah), there would be no potential for confusion about which city's City Manager would be negotiating with Eastside's Fire Chief in the dispute (i.e. it would be Mercer Island's City Manager, not Issaquah's). | Section 12 only applies to dispute resolution between the City of Mercer Island and EFR. Staff do not believe this change is necessary. If the City Council desires, however, to amend this language that may be done via passage of a motion at the City Council meeting. Please be aware that any changes to the ILA require concurrence by EFR.  |

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| 34  | ILA Section 12 | Mayor Nice             | Section 12.2 should specify that any demand for mediation is in writing. As written, it seems that it simply needs to be demanded.   | <p>You are correct, Section 12 does not require notice of dispute to be presented in writing. This could be amended to clarify, upon mutual agreement of EFR.</p> <p>Section 12.1 requires, prior to any other action, that the City Manager and the Fire Chief meet. This step ensures there are “no surprises.” Practically, should the dispute continue past the step in Section 12.1, communications will likely be in writing.</p>   |
| 35  | ILA Exhibit B  | Councilmember Reynolds | <p>(20 Exhibit B:<br/>                     a. How is “useful life” defined?<br/>                     b. Who is responsible for vehicle maintenance?<br/>                     c. Does “vehicle” include “apparatuses”? If not, what defines one versus the other?</p> | <p>Useful life is the estimated number of years an asset will be operational and useable for its intended purpose. Useful life of an asset is established based on industry standards, best practices, and experience with the asset. Vehicles are cars and trucks seen across the City’s fleet – traditional pickups and sedans used as staff cars, for example.</p> <p>Apparatus refers to large specialized “fire trucks” and aid cars used exclusively in the fire service.</p> <p>EFR will continue to provide maintenance for fire apparatus and aid cars.</p> <p>The City of Mercer Island currently provides maintenance for standard vehicles including the Fire Chief and Deputy Fire Chief vehicles. It is anticipated this practice will continue in the near term.</p> |



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| 36  | ILA Exhibit B | Councilmember Weinberg | In the last sentence of ILA Exhibit B, I recommend that we clarify that it only applies to “personal property <b>of the Mercer Island Fire Department</b> acquired by Mercer Island prior to the Commencement Date.” As it’s currently worded, it would apply to all property acquired by MI, whether or not it relates to the Fire Department.  | Staff have reviewed and do not believe any changes are necessary to convey this intent. If the City Council desires, however, to amend this language that may be done via passage of a motion at the City Council meeting. Please be aware that any changes to the ILA require concurrence by EFR. |
| 37  | ILA Exhibit C | Councilmember Weinberg | In the clause of the first sentence of ILA Exhibit C, I recommend that we clarify that it relates to “The ownership of all personal property <b>of the Mercer Island Fire Department</b> not expressly identified in Exhibit B....” As it is currently worded, it would apply to all personal property everywhere.   | Staff have reviewed and do not believe any changes are necessary to convey this intent. If the City Council desires, however, to amend this language that may be done via passage of a motion at the City Council meeting. Please be aware that any changes to the ILA require concurrence by EFR. |
| 38  | ILA Exhibit C | Councilmember Weinberg | The same fix should be applied to the last clause of the first sentence of ILA Exhibit C – that is, it should “... include all personal property <b>of the Mercer Island Fire Department</b> acquired by Mercer Island....”  | Staff have reviewed and do not believe any changes are necessary to convey this intent. If the City Council desires, however, to amend this language that may be done via passage of a motion at the City Council meeting. Please be aware that any changes to the ILA require concurrence by EFR. |
| 39  | ILA Exhibit C | Councilmember Weinberg | The second sentence of ILA Exhibit C states:<br><br>“Replacement and maintenance of these items will be purchased out of the Eastside General Fund or the jointly funded Equipment Replacement Fund.”<br><br>How will we determine which fund will pay for what? Isn’t in EFR’s financial interest to pay for as much of this from the joint fund as possible, and, conversely, in MI’s financial interest to pay for as much of this as possible from EFR’s general fund? | Exhibit C is included to identify the equipment that will be owned by EFR, and this list of assets will be reconciled during the transition period. EFR will be responsible for replacing this equipment per the terms of the ILA.   |

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| 40  | ILA Exhibit D | Councilmember Weinberg | <p>In Exhibit D, I notice that the cost estimates for replacing the Mobile Data Computers (MDC) are still not shown. This raises the following questions:</p> <p>a. How much did it cost to replace Mercer Island Fire's MDC's in 2022?</p> <p>b. If the MDC replacements are added to Exhibit D, does that materially increase Mercer Island's estimated annual contribution to the Equipment Replacement Fund?</p>  | <p>The table in Appendix D is provided as an example. The table identifies projects and equipment at <u>current</u> EFR fire stations and facilities, illustrative of how Mercer Island owned facilities and equipment will be added to the replacement schedule.</p> <p>The City's replacement of IT equipment follows a rate schedule. The document will be provided separately.</p>   |
| 41  | ILA Exhibit F | Councilmember Weinberg | <p>In Exhibit F, section 1.a, why does the definition of Routine Maintenance only focus on facility or equipment failure? Shouldn't routine maintenance also be done to prevent negative impacts to operations and the safety of Mercer Island residents?</p>   | <p>Yes, that is correct, however staff do not believe additional revisions are needed to this section. If the City Council desires, however, to amend this language that may be done via passage of a motion at the City Council meeting. Please be aware that any changes to the ILA require concurrence by EFR.</p>  |
| 42  | ILA Exhibit F | Councilmember Weinberg | <p>In Exhibit F, the way section 1.b is currently worded, it is ambiguous whether the object being "constructed or implemented by Eastside" is the "Real Property and Facilities" or the "changes, modifications, additions, or upgrades." I recommend you re-word this to make it clear what set of objects fall within this definition.</p>   | <p>The legal team has reviewed and is satisfied that as written, it means changes, modifications, additions, or upgrades to Real Property and Facilities, except for routine maintenance, which is defined in Section 1(a) of Exhibit F.</p>   |
| 43  | ILA Exhibit F | Councilmember Weinberg | <p>In the last sentence of Exhibit F section 2 we call out that Mercer Island shall cover all real property capital improvements for the first 3 years.</p> <p>a. Why 3 years? Are there current in-flight real property capital improvements that we want to MI to pay for the completion thereof?</p> <p>b. Are there significant real property capital improvements anticipated in the next 3 years that it's only fair for Mercer Island to own paying for?</p> | <p>The City of Mercer Island is entering into this agreement with EFR without an updated Facilities Conditions Assessment (FCA) for either of the Fire Stations. The purpose of an FCA is to identify and evaluate the building systems and their respective replacement schedules. It is not reasonable for either party to fully negotiate capital replacement responsibilities for the buildings until this work is complete.</p> |

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|     |               |                        | <p>c. What happens from year 4 onwards? Does Eastside pay for all real property capital improvements? Do MI &amp; EFR split it 50/50?</p>                           | <p>The City is currently underway with a FCA for most of the City Buildings and the City Manager will be recommending to the City Council that both Fire Stations be added to this scope of work.</p> <p>Given the other issues the City is currently managing related to facilities (e.g., emergency closure of City Hall), the FCA work on the Fire Stations may not occur until 2024 or 2025, hence the language establishing a three-year approach to management of capital facilities projects while this work is completed.</p> <p>Once the FCA work on the Fire Stations is complete, both parties will agree to a Capital Facilities Replacement Schedule and funding approach. This will likely require an amendment to the ILA. The “Equipment Replacement Fund Schedule” included in Exhibit D is reflective of the end product we can expect once the FCA work is complete on both Fire Stations.</p> <p>In the meantime, the ILA with EFR calls for an annual contribution of \$30,000 to support Capital Facilities Maintenance. These funds will be managed by EFR, in coordination with the City, to address capital issues that arise during the first three years of this agreement.</p> |
| 44  | ILA Exhibit F | Councilmember Weinberg | <p>Exhibit F section 4 references resolution 1605, but there is no text of resolution 1605 provided. Would you please provide the full text of this resolution?</p> | <p><a href="#">Mercer Island Resolution 1605</a> adopted by the MI City Council on November 16, 2021, authorized a cost recovery program for motor vehicle incidents, hazardous material spills and other incident response.</p>   |

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| 45  | ILA Exhibit F | Councilmember Weinberg | In Exhibit F section 5, I recommend that we re-word the first sentence to refer to “all existing and future Fire-specific revenues”.  | Any future revenues related to the provisions of services described in this ILA will be addressed as they arise.  |
| 46  | ILA Exhibit F | Councilmember Weinberg | In Exhibit F section 6, I recommend that we replace the word “will” in the first sentence with the word “shall”. The use of the word “will” implies something that needs to start happening at some undetermined point in the future, whereas “shall” implies that it must start happening as of the date of the agreement. | Staff have reviewed and do not believe any changes are necessary to convey this intent. If the City Council desires, however, to amend this language that may be done via passage of a motion at the City Council meeting. Please be aware that any changes to the ILA require concurrence by EFR.  |
| 47  | ILA Exhibit F | Councilmember Weinberg | In Exhibit F section 7, there is an extraneous letter s following the word Mercer on the 3rd line.  | This will be corrected in the final copy.   |
| 48  | ILA Exhibit G | Councilmember Weinberg | Exhibit G section 4 is worded such Eastside owns anything it buys pursuant to this agreement. So, if it buys the materials it needs to construct a new wing on a fire station, does that mean EFR now owns that wing of the building – but not the rest of the building?  | <p>Section 4 of Exhibit G relates to purchases made by EFR using a City procurement agreement in lieu of going through their procurement process (piggy backing), or vice versa (City purchasing a fire apparatus under EFR’s procurement agreement). Purchases made by EFR this way do not necessarily have to be for Station 91 and 92, or even for Mercer Island operations. It could be for their operations anywhere unrelated to Mercer Island. Likewise, the City could purchase breathing equipment for the Police Department from EFR’s purchasing agreement.</p> <p>Meanwhile the provisions of Section 5 and Section 5.1 of the ILA address real property ownership. “Stations 91 and 92, and the real property upon which they are situated...shall remain the real property of Mercer Island.”</p> |

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| 49  | ILA Exhibit G | Councilmember Weinberg | Exhibit G section 5 lists “federal, state, or local laws.” Given the prevalence of wildland fires in Canada this year, we are likely to see a situation in the future (if we aren’t already) where Eastside personnel are deployed internationally. Should this clause therefore be expanded to include laws of the country in which personnel are deployed?   | <p>Section 5 of Exhibit G relates to compliance with laws related specifically to cooperative purchasing (piggybacking). It does not relate to deployment or fire operations.</p> <p>Any matters related to international deployments would be governed by the EFR board and not subject to the terms of this ILA.</p>  |
| 50  | General       | Councilmember Weinberg | I could not find in the ILA a section describing which IT systems between Mercer Island and Eastside will need to be integrated and what share each party will pay for developing and maintaining that data integration. The closest it comes is in Exhibit A, where it says Eastside will take ownership of all computers, computer systems, and mobile data computers. As such, I would recommend adding the following section: “5.12. As part of taking ownership of all computer systems, Eastside shall fund, implement, and maintain all necessary information technology data system integrations resulting from this ILA.” | <p>All computers, computer equipment, and mobile data computers will remain the property of the City of Mercer Island. Per Exhibit A, the computer equipment will be replaced, as needed, by the EFR equipment replacement fund, which is part of the annual payment made by the City to EFR.</p> <p>The City and EFR will undertake a review of IT systems and equipment during the transition period and resolve any matters related to technology transitions. EFR will be responsible for integrating technology equipment.</p> |
| 51  | General       | Mayor Nice             | [Mayor Nice noted a minor typo in Resolution 1645]   | Staff will address the typo ahead of final signatures.  |
| 52  | General       | Mayor Nice             | Have we considered adding language that protects Mercer Island Real Property from becoming community property through contributions in maintenance or capital improvements? I’m considering protecting Mercer Island from the scenario we have with the library in that the build, now having been improved by KCLS, now has some portion of “owed” community property for which Mercer Island would be liable to KCLS.  | <p>Major capital investments into Mercer Island Real Property would be funded by either City funds or through our contributions to the Eastside Capital Facilities Maintenance charge, which by extension are also City funds.</p> <p>Mercer Island and EFR both acknowledge this would maintain 100% City of Mercer Island ownership over Mercer Island Real Property, see Section 5.1.</p>  |

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| 53  | General | Mayor Nice    | I would be more comfortable if every page of the ILA was numbered (i.e., 1 of 10, 2 of 10...) and every addendum marked so as not to cause any future doubt of a complete agreement. Might we want initials on every page? | Pagination will be added when the ILA is finalized for signature. A final copy of the executed ILA in its entirety will be posted online by Mercer Island as required by law. |

