

RESOLUTION 2019-X

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
APPROVING AN OPERATIONAL SERVICE AGREEMENT WITH
PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 17, DBA
SOUTH PIERCE FIRE AND RESCUE**

WHEREAS, on September 1, 2015, the Town and South Pierce Fire and Rescue (hereinafter referred to as “SPFR”) entered into a Operational Service Agreement (“2015 Agreement”) for Fire suppression and prevention, Emergency Medical Services and Administrative Services; and

WHEREAS, both parties desire to update and extend the terms of the 2015 Agreement; and

WHEREAS, the Town and SPFR have met and agreed on an amount of \$2.00/\$1000 of assessed valuation, or the same property tax rate assessed to the taxpayers of SPFR, whichever is less, applicable to all property located within the Town, for each calendar year of the new agreement; and

WHEREAS, the new agreement shall commence on January 1, 2020 and continue until December 31, 2022. Requests to terminate the agreement prior to the end of the Contract period from either party must be submitted twelve months prior to the contract end date; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:**

THAT: The Town Council approves, and the Mayor is authorized to execute on behalf of the Town, the attached Operational Service Agreement with Pierce County Fire Protection District No. 17.

PASSED by the Town Council of Town of Eatonville at a regular meeting this 25th day of November, 2019.

Mike Schaub, Mayor

ATTEST:

Christina Dargan, Deputy Clerk

**TOWN OF EATONVILLE
AND
PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 17
(DBA SOUTH PIERCE FIRE AND RESCUE)
OPERATIONAL SERVICE AGREEMENT**

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**TOWN OF EATONVILLE
AND
PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 17
(DBA SOUTH PIERCE FIRE AND RESCUE)
OPERATIONAL SERVICE AGREEMENT**

THIS INTERLOCAL OPERATIONAL SERVICE AGREEMENT is entered into by and between the TOWN OF EATONVILLE, a Washington State municipal corporation (hereinafter referred to as “the Town”) and PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 17, a Washington State municipal corporation (hereinafter referred to as “SPFR”), and in conformity with Chapter 39.34 RCW, for full consolidation of fire services, who shall hereinafter be referred to in the singular as a “party” or collectively as the “Parties.”

RECITALS:

WHEREAS, the Town currently contracts with SPFR for fire suppression and prevention, emergency medical services, and administrative services pursuant to an Operational Services Agreement commencing September 1, 2015 and terminating August 31, 2020 (the “2015 Agreement”); and

WHEREAS, the Fire District’s jurisdictional boundaries adjoin those of the Town, the jurisdictions being contiguous; and

WHEREAS, the Parties desire to update and extend the terms of the 2015 Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises and covenants contained herein, it is agreed as follows:

I. GENERAL PROVISIONS

A. INCORPORATION OF RECITALS: The foregoing recitals are incorporated herein by this reference.

1. Term

This Agreement shall commence on the 1st day of January 2020, and continue until December 31st, 2022, and shall hereinafter be referred to as the “Contract Period.” In order to terminate the Agreement at the end of the Contract Period, the party seeking termination of the Agreement must provide the other party written notice of their intent to meet twelve (12) months prior to the effective date of the termination of the Agreement to discuss contractual terms.

Requests to terminate the agreement prior to the end of the Contract Period from either party must be submitted twelve (12) months prior to the end of the Contract Period or any successive Contract Period.

If neither party has given written notice of intent to terminate in accordance with the above procedures, this Agreement shall automatically renew for successive one (1)-year terms until either party gives the other twelve (12) months written notice of termination.

2. Contact Person and Administrator

During the term of this Agreement, the Town and SPFR shall each designate a “contact person” whom the other party shall be able to contact regarding the implementation of this Agreement and questions arising as a result hereof. For purposes of this agreement, the “contact person” for SPFR shall be the Fire Chief; the “contact person” for the Town shall be the Mayor or designee.

Promptly after the execution of this Agreement, each party shall notify the other of the name, address, and telephone number of its contact person and thereafter, of any changes in this position.

Pursuant to RCW 39.34.030(4)(a), the Fire Chief of SPFR shall be considered the Administrator of this Agreement. For purposes of the International Fire Code and related Town ordinance, the Fire Chief shall be considered the Fire Chief of the Town of Eatonville during the term of this Agreement. The SPFR Fire Chief shall not be considered an employee of the Town for any purpose. The retention and administration of the Fire Chief’s employment shall remain with SPFR.

3. Meetings

The SPFR Chief or his/her designee shall attend Town meetings as needed. The Mayor of Eatonville shall designate a person to attend SPFR Board meetings as needed.

4. Community Identity

Current Town of Eatonville Fire Department (hereinafter referred to as “EFD”) signage on the Town of Eatonville Fire Station 84 at 201 Center St W (hereinafter referred to as “Fire Station 84”) shall remain largely the same but SPFR may add signage with the SPFR logo and station number to the Fire Station 84.

5. Administrative Services Agreement

The existing Operational Services Agreement approved on August 17, 2015 is hereby terminated and superseded by this Agreement.

II. STATION/EQUIPMENT

A. Equipment/Vehicles/Apparatus Terms

1. Ownership of the equipment/vehicles/apparatus noted in Attachment A, will be transferred from the Town to SPFR with the stipulation that such equipment continues to be used for delivery of fire and rescue services in the district, subject to normal wear and tear and the needs of the SPFR.
2. SPFR understands and acknowledges that any equipment or vehicles owned by the Town to be transferred to SPFR pursuant to this Agreement are provided “AS IS, WITH ALL FAULTS.” The Town makes no warranty of merchantability or of fitness for a particular purpose of any vehicle/equipment. SPFR has inspected all vehicles, apparatus and equipment prior to the execution of this Agreement.
3. In the event SPFR determines it no longer requires the use of the equipment/vehicles/apparatus listed in Attachment A, SPFR shall provide timely notice to the Town and, upon the written request of the Town, SPFR shall transfer ownership of the assets back to the Town at a cost that does not exceed SPFR’s out-of-pocket cost to acquire the assets.
4. SPFR shall provide and pay for all new equipment needed for operational purposes. These include, but are not limited to equipment such as radios, cellular phones, regular phones, copiers, computers, printers, servers, fax machines, etc. Separate from this Agreement, SPFR and the Town may mutually agree to a cost sharing arrangement for certain Town-wide equipment.

B. Fire Station 84

The real property at 201 Center St W, WA, known commonly as the “Fire Station 84” is the property of the Town.

SPFR will have use of Fire Station 84 during the term of the Agreement as long as it is being used to deliver fire and medical services to the Town. If SPFR discontinues use of the Fire

Station 84 for delivery of fire and medical services, then the Fire Station 84 shall no longer be available for use by SPFR and the Town may make such use of the Fire Station 84 as it deems appropriate.

The use will be deemed to continue if the station is either staffed by uniformed fire personnel or used to house emergency vehicles.

C. Fire Station 84 Maintenance and Repair

The Town shall be responsible to maintain the roof structure, subfloor, foundation, exterior walls, and capital repairs and replacement to the HVAC, electrical, and plumbing systems installed or attached thereto. A major structural repair does not include major repairs as a result of accidents and damages typically covered by insurance. However, the proceeds of insurance shall be used to repair said asset. In the event of an emergent non-insurable capital or structural repair, the parties will negotiate to determine the responsibility for payment for repair. SPFR shall be responsible for all repairs resulting from normal wear and tear. Furthermore, for major structural repairs exceeding fifty thousand dollars (\$50,000), the Town at its sole discretion may deem that the repair costs are financially not possible or advisable and notify SPFR that the use of the Fire Station 84 is no longer available.

SPFR may make alterations, additions, or improvements, including improvements to the HVAC system, with the prior written consent of the Town, which consent shall not be unreasonably withheld. Any fixtures or equipment purchased and installed by SPFR may be removed at the end of the term of this Agreement; provided, the structure and cosmetics are returned to their original condition, SPFR will give the Town the option to purchase said fixtures or equipment at current fair market value, prior to removal.

III. PERSONNEL

All personnel used in the delivery of services covered by this Agreement are now employees of SPFR. No Town employees, volunteers, agents or officers are involved in the performance of this Agreement other than as specifically set forth herein. By entering into this Agreement, neither party assumes the status of a “joint employer” with the other party.

IV. DISTRICT SERVICES

A. Fire Protection and EMS

SPFR shall provide fire suppression and protection and emergency medical services on the same basis that it provides such services within its own boundaries. All the services SPFR provides now within its boundaries shall be provided to the Town, subject to the availability of all necessary administrative resources of SPFR.

The Town may from time to time measure key services and related outcomes being delivered by SPFR, including but not limited to staffing, response times, and medical transport.

In the event of simultaneous emergency calls whereby SPFR’s facilities and personnel are taxed beyond their ability to render equal protection, SPFR shall have discretion to determine the operational deployment of resources, subject to availability of SPFR resources, how to

satisfy the greatest demand through the entire district, and does not guarantee a particular level of service, or create a special duty to the Town for emergency medical services or fire suppression to any particular person.

B. Medical Transport

SPFR will provide medical transport at no out-of-pocket expense to the Town of Eatonville residents and to Town of Eatonville employees from Town-owned facilities.

V. PAYMENT BY TOWN

A. In exchange for fire suppression, fire prevention, emergency medical services and other services and costs of any kind or nature incidental to the protection of persons and property provided by SPFR to the Town, the Town will pay SPFR annually \$2.00 per thousand of assessed valuation, or the same property tax rate assessed to the taxpayers of SPFR, whichever is less, applicable to all property located within the Town, for each calendar year of the Agreement.

1. Payments of one-twelfth of the amount due and owing shall be made by the Town to SPFR on a monthly basis, by the 10th of each month.

B. No later than October 15 of each year, the District will provide the Town the estimated property tax rate, valuation, and anticipated annual payment. The true rate and valuation of the Town issued later for each year will be used to determine the final annual payment.

C. SPFR will retain all proceeds from additional revenue sources such as grants and donations.

VI. SUCCESSORS AND ASSIGNS

The Town shall allow the assignment or succession of this Agreement without further approval of the Eatonville Town Council so long as the delivery and management of services is not significantly changed, and the cost of those services does not change from the amounts set forth in this Agreement.

VII. DISPUTES

This Agreement shall allow for either party to reopen specific contract provisions for re-negotiation by giving the other party ninety (90) days written notice. The written notice shall specify the provision to be negotiated and the requested change. If the parties cannot come to resolution through this dispute resolution process, then the parties may proceed to the binding arbitration provision as set out in Section VIII of this Agreement.

VIII. BINDING ARBITRATION

In the event of any dispute arising out of this Agreement, the parties hereto agree to submit such dispute to binding arbitration by one arbitrator in accordance with the rules then pertaining to Superior Court Rules of Mandatory Arbitration (or its equivalent), except that the arbitration shall be conducted under the auspices of the arbitrator rather than the Superior Court and shall not be subject to the monetary limitations or restrictions on issues dealing with equitable, rather than legal considerations. The arbitration shall be commenced by delivery to the party of a written demand for arbitration which shall include a statement of the basis of the dispute. Within five (5) business days of the delivery of such demand each party shall designate

a representative who is not an officer, employee or commissioner of the parties. Those two representatives shall attempt to agree on the arbitrator. If, within ten (10) business days of the designation of the two representatives (or expiration of the time for designation of representatives, whichever occurs first), the two representatives have not reached agreement on the arbitrator, then either party may, on five (5) business days written notice, request the presiding department of Pierce County Superior Court to designate the arbitrator. The arbitrator's fees shall be borne equally by the parties during the course of the arbitration. However, the substantially prevailing party, if any, in the arbitrator's opinion, shall be entitled to reimbursement of such fees paid, as well as reasonable attorney fees incurred, as part of the arbitration award. The award rendered by the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with applicable law in Pierce County Superior Court. The venue for any further action shall be had in Pierce County Superior Court.

IX. ASSET OWNERSHIP UPON TERMINATION

Assets include all real property and improvements thereto, vehicles, apparatus, equipment, computer software and rights to technology applications, and leases that are normally maintained or utilized in the facilities located in each jurisdiction.

All Town assets used throughout the service area shall remain titled in the Town, subject to future asset transfer agreements that may be made between the Town and SPFR. All SPFR assets used throughout the service area shall remain titled in SPFR. Use of equipment and/or property shall not affect ownership.

Except as otherwise provided herein, each party shall be responsible for the costs and maintenance of its own assets.

Upon termination of this Agreement, all Town assets (equipment, apparatus and gear) in possession of or under the control of SPFR pursuant to this Agreement shall be returned to the possession and control of the Town, said assets subject to normal wear and tear.

Upon termination of this Agreement, and upon the written request of the Town, SPFR shall transfer ownership of the equipment/vehicles/apparatus listed in Attachment A back to the Town at a cost that does not exceed SPFR's out-of-pocket cost to acquire the assets.

X. TERMINATION – Jointly Acquired Property

During the term of this Agreement the Town and SPFR may jointly acquire facilities, equipment and/or apparatus from time to time. Jointly acquired property will be identified as such prior to the purchase of that property, and will be addressed in a future addendum to this Agreement. Upon termination, any and all such jointly acquired property shall be equitably divided between and among such parties according to the proportionate amounts contributed by each such party for such acquisitions. The method, manner and precise nature of such distribution(s) shall be determined by the parties who shall endeavor to make a fair and equitable in-kind division and distribution of such items and taking into account any depreciated value of such items since acquisition, if any.

XI. INSURANCE

During the term of this Agreement the SPFR shall keep and maintain the following policies of insurance in full force and effect at its sole cost:

SPFR shall insure the fire equipment, vehicles, and apparatus set out in Attachment A and the contents of the Fire Station 84. The Town shall insure the Eatonville Fire Station 84 building.

Property Insurance. Full comprehensive replacement value coverage for loss, damage or destruction of personal property that was owned by the Town (separately or jointly owned with SPFR) but that is in the possession or under the control of SPFR, as indicated in the Insurable Value column on Attachment A.

Professional Liability (Errors and Omissions) Insurance on an occurrence basis against any claims which may arise from or in connection with the performance of the work hereunder by SPFR, its employees, agents or subcontractors. The cost of such insurance shall be borne by SPFR. SPFR shall maintain limits on such insurance in the amount of \$1,000,000.00 per claim or occurrence with an aggregate of \$5,000,000.00. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees, agents, representatives or volunteers.

Commercial General Liability Insurance against which any claims may arise from or in connection with the performance of the work hereunder by SPFR, its employees, agents or subcontractors. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The Town shall be named as an additional insured under the SPFR's Commercial General Liability insurance policy with respect to the work performed for the Town. The cost of such insurance shall be borne by SPFR. SPFR shall maintain limits on such insurance in the amount of \$1,000,000.00 per occurrence/accident with an aggregate of \$5,000,000.00. The Town, its officers, officials, employees, agents and representatives are to be covered as insured as respects liability arising out of activities performed by or on behalf of the SPFR or vehicles owned, leased, hired, or borrowed by SPFR. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees, agents, representatives or volunteers.

Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Service Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage if the form is not appropriate for fire and rescue vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident and \$5,000,000 in the aggregate.

Additional Insured. The Town and its employees, agents, representatives, volunteers, and council members shall be named as an additional insured on all such policies of insurance.

Primary Insurance. SPFR's policies of insurance shall be primary, except for policies covering the Fire Station 84 building at 201 Center Street W, Eatonville, WA. The Town does not waive its right to subrogation against SPFR and the policy shall be so endorsed.

Cancellation Notice. SPFR shall provide thirty (30) days prior written notice by certified mail, return receipt requested, to the Town notifying it of cancellation or lapse in coverage.

Acceptability of Insurers: Insurance shall be placed with insurers with a current A.M. Best rating of not less than the insurer shall be authorized to do business in the State of Washington.

No Limitation. SPFR's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of SPFR to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

Proof of Coverage. SPFR shall provide the Town with proof of such insurance coverage, initially with a certificate of insurance from the SPFR's carrier(s) upon the effective date hereof, and with copies of such policies within thirty (30) days of the effective date of this Agreement, and including all renewals or extensions thereof.

Town shall provide SPFR with proof of such insurance coverage, initially with a certificate of insurance from Town's carrier(s) within thirty (30) days of the effective date of this Agreement and including all renewals or extensions thereof.

Insurance for Other Losses. SPFR shall assume full responsibility for all loss or damage from any cause whatsoever to any of the Town's equipment, tools, or motor vehicles owned or leased by SPFR.

XII. HOLD HARMLESS

SPFR agrees to and shall hold harmless, defend and indemnify the Town and its employees, agents, representatives, volunteers and council members, from and against all liability and damages, and claims of such liability and damages, including reasonable attorney's fees, for injuries to persons or property arising out of or in connection with SPFR's performance, or the performance of its employees, agents, or sub-contractors, of services called for herein, and its duties and obligations hereunder.

Town agrees to and shall hold harmless, defend and indemnify SPFR and its employees, agents, representatives, volunteers and commissioners, from and against all liability and damages, and claims of such liability and damages, including reasonable attorney's fees, for injuries to persons or property arising out of or in connection with Town's performance, or the performance of its employees, agents, or sub-contractors, of services called for herein, and its duties and obligations hereunder.

Should a court of competent jurisdiction determine this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of SPFR and Town, their officers, officials, employees, and agents, each party's liability shall be only to the extent of the party's negligence. It is further expressly understood that the indemnification provided herein constitutes SPFR's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration of termination of this Agreement.

XIII. INDEPENDENT STATUS

The parties to this Agreement, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever. It is expressly understood by the parties that each agency serves in its own capacity as a separate municipal corporation with its own budget, assets and liabilities, and neither party shall assume the assets and liabilities of the other.

XIV. SEVERABILITY CLAUSE

If any section, sentence, clause, or phrase of this agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this agreement.

XV. GOVERNING BODY APPROVAL

This Agreement has been approved by the Eatonville Town Council at a regularly scheduled Council meeting and by the Commissioners of SPFR at a regularly scheduled Commissioners' meeting.

XVI. NOTICES

All notices provided for in this agreement shall be in writing, signed by an authorized official, and sent either by registered or certified mail, return receipt requested.

A. Notice to SPFR shall be sent as follows:

South Pierce Fire and Rescue
5403 340th Street East
Eatonville, WA 98328
Attn: Fire Chief

B. Notice to the Town shall be sent as follows:

Town of Eatonville
P.O. Box 309
201 Center Street West
Eatonville, WA 98328
Attn: Mayor

XVII. MODIFICATIONS

This Agreement constitutes the entire agreement of the parties and may not be modified or contradicted unless evidenced in writing, properly agreed to, and signed by both parties. During the term of this Agreement, either party may request in writing to renegotiate specific provisions of the Agreement or to settle other differences of the parties. In the event such a request is made, the parties agree to negotiate such provisions in good faith.

In this regard, the parties acknowledge that there may be actions by others that could impact the delivery of the services enumerated herein. Such actions may be annexations, incorporations, tax reform, and new government(s) being formed. It is therefore in the best interest of both parties to fully examine these types of actions and jointly take steps to mitigate or eliminate any negative effects of such actions. To that end it shall be a requirement of the parties to meet and discuss potential actions that could adversely affect either party and if such action(s) are taken by a third party, it shall be mandatory for the parties to meet and, if there is consensus, take steps to mitigate or eliminate the impacts for the benefit of both agencies. A request made under the provisions of this paragraph shall not be considered a notice of intent to terminate the agreement.

XVIII. CAPITAL IMPROVEMENTS

Decisions regarding capital improvements shall remain under the authority of each jurisdiction. Where a capital improvement is anticipated that will affect the other party to the Agreement, the Town or SPFR will provide adequate notice to the other to allow the continued effective operation of fire and emergency services within the service area.

XIX. EQUAL OPPORTUNITY TO DRAFT

Each party has had opportunity to consult with counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

XX. MISCELLANEOUS

This Agreement shall be governed by the laws of the State of Washington. There are no third-party beneficiaries to this Agreement, and this Agreement creates rights only between the signatory parties. The failure of either party to insist upon strict performance of any term of this Agreement shall not impact that party's right to insist upon strict performance at a later time.

TOWN OF EATONVILLE

PIERCE COUNTY FIRE
PROTECTION DISTRICT
NO. 17 (SPFR)

Mike Schaub, Mayor

Chairman Kathy Kadow

Commissioner Kevin Kneeshaw

Approved as to form

Commissioner Olivia Werner

Town Attorney

Commissioner John Christian

Attest:

Commissioner Jody Westing

Town Clerk

District Attorney Joe Quinn

Attest:

SPFR District Secretary

Rescue _____

ATTACHMENT A

Town of Eatonville
And
Pierce County Fire Protection District No. 17
Operational Service Agreement

INSURABLE ITEMS GREATER THAN \$5,000

| Asset | Location | Class | Dept | Status | Cost | Make | Model | VIN # | Unit # |
|--------------|----------|-------|------|--------|------------|------|----------------|-------------------|--------|
| Fire Vehicle | FIRE | Auto | FIRE | Active | \$ 70,000 | 1997 | Spartan Pumper | 4S7DT9K01TC021760 | E97-1 |
| Fire Vehicle | FIRE | Truck | FIRE | Active | \$ 150,000 | 2005 | SpartanPumper | 487HT2B9960054209 | E06-1 |
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