

# **INTERLOCAL AGREEMENT**

## **For Software Systems for Fire Department Records Management System and Support**

**THIS AGREEMENT** is entered in to by and between **Marysville Fire District**, a municipal corporation of the State of Washington (hereinafter referred to as **MARYSVILLE**) and the **City of Arlington**, a municipal corporation of the State of Washington (hereinafter referred to as **ARLINGTON**), for use of a software system for a Fire Department Records Management System called **FDMWin4 (RMS)**.

### **RECITALS**

WHEREAS, Chapter 39.34 RCW permits local governmental units to make official use of their powers enabling them to cooperate with other localities on the basis of mutual advantage; and,

WHEREAS, **MARYSVILLE** has entered into an agreement with **FDM Software LTD** dated February 23, 2004 that provides for the purchase of, installation and training related to a software system for a Fire Department Records Management System called **FDMWin4 (RMS)**; and,

WHEREAS, the licenses for this system are sold in 5 license increments and **MARYSVILLE** requires more than 5 licenses but not necessarily 10. **ARLINGTON** has need of the same system, but requires less than 5 licenses; and,

WHEREAS, **FDM Software LTD** has agreed to authorize **MARYSVILLE** to enter into interlocal agreements with other municipal corporations within Snohomish County, to use and to share the Software system with other users up to the number of concurrent users authorized to **MARYSVILLE**; and,

WHEREAS, **MARYSVILLE** and **ARLINGTON** agree that for **ARLINGTON** to use and to share in the system **MARYSVILLE**'s software system for a Fire Department Records Management System is beneficial to both fire districts.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, and pursuant to provisions of RCW 39.34, the parties agree as follows.

### **AGREEMENT**

#### **1. PURPOSE.**

It is the purpose of this agreement to provide **ARLINGTON** with access to **MARYSVILLE** system for Fire Department Records Management System called **FDMWin4**

(RMS) pursuant to the terms and conditions of MARYSVILLE contract with FDM Software dated February 23, 2004 and incorporated by reference into this agreement; and pursuant to the terms and conditions set forth in this agreement.

**2. DURATION / TERMINATION / MODIFICATION**

The duration of this agreement is from June 7, 2004 through December 31, 2005 and from January 1 through December 31 of every year renewing automatically for a one year period, unless terminated by either party by June 30<sup>th</sup>/180 days written notice prior to the end of the year or with shorter notice by mutual consent. It is anticipated that the agreement will be in place for at least three (3) years. This agreement may be modified by mutual written agreement of the parties.

**3. OWNERSHIP**

MARYSVILLE has purchased and installed the new servers and associated hardware and contracted with FDM Software and will be the "customer" as defined in the FDM Software Customer. MARYSVILLE is the "owner" of the system and purchaser of the software licenses. ARLINGTON is considered a "concurrent user" of the software licenses authorized to MARYSVILLE system. ARLINGTON has no ownership interest in the software license purchase.

**4. ADMINISTRATION**

No new or separate legal or administrative entity or oversight board is created to administer the provisions of this agreement. MARYSVILLE will act as the "owner" and "administrator" of the system and the contact agency pursuant to the terms of the FDM Software Contract.

**5. PAYMENT, COST AND SYSTEM ARRANGEMENTS**

A. ARLINGTON will pay \$17,964.34 to MARYSVILLE. This amount is based upon a fire station allocation formula. At the time of signing of this agreement, Arlington Fire has two fire stations and Marysville Fire District has four fire stations, resulting in a 1/3 - 2/3 allocation. As such, Arlington agrees to contribute 1/3 of the total software, installation, training, and associated initial costs, as defined below;

Item	Total 10 license fee	Arlington Share
Property, Personnel, Incident Modules	\$18,839.00	\$6,279.67
Training Module	\$12,554.00	\$4,184.67
CAD Interface	\$7,500.00	\$2,500.00
Installation, training, Project Management	\$15,000.00	\$5,000.00
<b>TOTAL</b>		<b>\$17,964.34</b>

B. Software Licenses shall be designated to each user station and costs shall be based upon the number of station allocations for the initial funding formula. If one of the agencies has

needs that trigger a need for increasing the number of Software licenses the formula will be modified to reflect that agency's percentage of the cost associated with the increased need for additional Software licenses. The increase and changes must be approved in writing by the parties prior to authorizing the purchase and installation of additional Software licenses.

C. Should MARYSVILLE decide to terminate the agreement prior to the end of three (3) years, ARLINGTON will receive a return of initial funds (the total software, installation, training, and associated initial costs defined in 5[A] above) based upon a three (3) year amortization schedule of 50% within year one, 35% within year two, and 20% year within year three. Annual maintenance fees paid or due are not refundable. Should ARLINGTON decide to terminate the agreement, all fees paid shall be forfeited and considered non-refundable.

D. NON - EXCLUSIVE AGREEMENT

This agreement is non- exclusive to ARLINGTON. MARYSVILLE at its sole discretion may contract with other agencies to share and use the Software licenses and server system. ARLINGTON will not bear any increase in costs or licensing requirements caused by the additional user, however, if additional users have negligible effect on the license costs and requirements, MARYSVILLE may be able to reduce the cost to both MARYSVILLE and ARLINGTON.

E. ON GOING COSTS -REPAIRS - MAINTENANCE

The parties have continuous shared costs for upgrade of system, repairs and replacement of FDM server and components, and software maintenance fees.

1. These shared costs shall be based upon fire station allocation. Currently Arlington Fire has two fire stations and Marysville Fire District has four fire stations, resulting in a one-third (1/3), two-third (2/3) allocation. As such, costs for required upgrades, repairs, server and associated hardware replacement, and software maintenance fees, shall be split between Arlington and Marysville Fire District in accordance with the following formula;

<i>Arlington</i>	<i>1/3 of total costs</i>
<i>Marysville Fire District</i>	<i>2/3 of total costs</i>

2. Each party will be responsible for the costs associated with their user licenses.

F. Each party is responsible for purchase and maintenance of hardware and services required to connect to the server, including desktop units, routers, modems, ISP and connections, etc in compliance with the specifications set forth in the attached FDM Software Contract.

G. Each party's computer systems, LANS, WANS, Networks, CPU's hardware and software, with the exception of the specific software licensed in this agreement, are exclusive to each party. No ownership or responsibilities shall be transferred to the other as a result of this agreement, except as indicated specifically in this agreement.

## H. INDEPENDENT CONTRACTOR

In providing services under this contract, MARYSVILLE is an independent contractor and neither it nor its officers, agents or employees are employees of ARLINGTON for any purpose, including responsibility for any federal or state tax, industrial insurance or Social Security liability.

Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of ARLINGTON under any applicable law, rule or regulation.

## 6. GENERAL PROVISIONS

### A. SEVERABILITY.

In the event any provisions of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provisions shall be enforced and valid to the extent permitted by law. All provisions of this Agreement are severable and the unenforceability or invalidity of a single provision herein shall not affect the remaining provisions.

### B. GOVERNING LAW AND VENUE.

This Agreement shall be governed by the laws of the State of Washington and venue for any lawsuit shall be in the Snohomish County Superior Court.

### C. DISPUTE RESOLUTION

Should a dispute arise between the parties to this agreement, the parties may resolve the dispute by submitting the dispute for resolution by negotiation between the parties or by non-binding mediation/arbitration. The mediator/arbitrator shall be selected by mutual agreement of the parties and the costs shall be shared equally between the parties. Should the parties be unable to negotiate a resolution, or refuse to accept a mediated/arbitrated resolution to a dispute, then the parties agree that the venue for any shall suit shall be in the Snohomish County Superior Court.

### D. LIABILITY / HOLD HARMLESS AND INDEMNIFICATION

1. MARYSVILLE and ARLINGTON shall remain responsible for any and all operations and facilities within and under their respective jurisdictions. No liability shall attach to either Fire District by reason of entering into this agreement except as expressly provided in this agreement.

#### 2. HOLD HARMLESS

ARLINGTON shall protect, save harmless, indemnify and defend, at its own expense, MARYSVILLE, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of or relating to this agreement, including claims of third parties, or employees of either ARLINGTON or MARYSVILLE, including specifically claims for breach of confidentiality or for infringement of any patent, copyright or license.

If a claim is caused by or results from the concurrent negligence of MARYSVILLE and ARLINGTON, this section shall be valid and enforceable only to the

extent of the negligence or other wrongful conduct of ARLINGTON and its agents and employees.

Nothing in this agreement shall require either party to hold harmless or defend the other party, its elected and appointed officials, officers, employees and agents from claims arising from the sole negligence of the other party its elected and appointed officials, officers, employees and agents.

#### E. ATTORNEY'S FEES

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms or this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney's fees and costs. In the event of litigation regarding any terms of this Agreement, the substantially prevailing party shall be entitled, in addition to other relief, to such reasonable attorney's fees and costs as determined by the Court.

#### F. WAIVER OF BREACH

The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate nor be construed as a waiver of any subsequent breach by such other party.

#### G. SAVINGS CLAUSE

Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only the extent necessary to bring it within legal requirements.

#### H. FILING

This Agreement shall be filed with the Snohomish County Auditor's Office pursuant to RCW 39.34.040.

#### I. INTERPRETATION

This Agreement has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any party or its counsel. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter gender.

#### J. ACCESS TO RECORDS CLAUSE

The parties hereby agree that authorized representatives of the parties shall have access to any books, documents, paper and record of the other party which are pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. All such records and all other records pertinent to this Agreement and work undertaken pursuant to this Agreement shall be retained by the parties for a period of three years after the final expiration date of this Agreement or any amendments hereto, unless a longer period is required to resolve audit findings

or litigation. In such cases, the parties may expressly agree by an amendment or separate agreement for such longer period for record retention.

**K. ASSIGNMENT**

The parties shall not assign this Agreement or any interest, obligation, or duty herein without the express written consent of the other party

**L. NOTICE**

All notices and payments shall be made to

	MARYSVILLE	ARLINGTON
Name:	Greg Corn, Fire Chief	Mike Ganz, Fire Chief
Address:	1635 Grove Street Marysville, WA 98270	115 North McLeod Ave Arlington, WA 98223
Phone:	(360) 659-2777	(360) 403-3600

**M. ENTIRE AGREEMENT**

This Agreement represents the entire integrated Agreement between MARYSVILLE and ARLINGTON and supercedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement this 29 day of June, 2004.

CITY OF ARLINGTON

MARYSVILLE FIRE DISTRICT

Margaret Larson  
Margaret Larson, Mayor

Kate Smith  
Kate Smith, Chairperson  
Board of Directors

ATTEST:

Kathy Peterson  
Kathy Peterson, City Clerk

ATTEST:

Greg Corn  
Greg Corn, District Secretary

APPROVED AS TO FORM:

Steven J. Peiffle  
Steven J. Peiffle, City Attorney