

AFTER RECORDING RETURN TO:

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 **Snohomish County Fire Protection District 15 – Tulalip Bay**, a municipal corporation of the State of Washington (hereinafter referred to as **FPD 15**), 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 **FDMWin4 (RMS)**; and,

WHEREAS, **MARYSVILLE** currently holds 10 user licenses for the Incident RMS Module and 5 user licenses for the Training Module, the licenses for this system are sold in 5 license increments and **MARYSVILLE** may require more than 5 licenses but not necessarily 10, and **FPD 15** 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 **FPD 15** agree that for **FPD 15** 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 FPD 15 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. Current Modules available include; Incident Module, Properties Module, Personnel Module, Training Module, CAD Interface.

2. DURATION / TERMINATION / MODIFICATION

The duration of this agreement is from April 1, 2005 through December 31, 2005 and from January 1 through December 31 of every following year, renewing automatically for a one year period, unless terminated by either party by June 30th/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. FPD 15 is considered a "concurrent user" of the software licenses authorized to MARYSVILLE system. FPD 15 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. FPD 15 agrees to reimburse MARYSVILLE for all services rendered and material supplied by MARYSVILLE to FPD 15 for purpose of installation, configuration, testing, maintenance, changes, of, and training on, the RMS.

B. FPD 15 agrees to pay a prorated portion of the first year annual maintenance based upon the number of months RMS is used or useable by FPD 15. Retroactive data entry shall constitute a "used or useable date" consistent with the earliest date of event(s) entered, (a report entered on April 1 for an incident occurring on January 1 shall constitute a used or useable date of January 1).

C. FPD 15 agrees to pay FDMSoftware any and all fees for services rendered and material supplied by FDMSoftware for the purpose of modifying the primary database and associated software and hardware for the integration of FPD 15 data into the database.

D. FPD 15 shall incur ongoing costs currently paid by MARYSVILLE for the use, repair and update of the RMS Software. 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.

E. Should either MARYSVILLE or FPD 15 decide to terminate the agreement, all fees paid to MARYSVILLE shall be forfeited and considered non-refundable.

F. NON - EXCLUSIVE AGREEMENT

This agreement is non- exclusive to FPD 15. MARYSVILLE at its sole discretion may contract with other agencies to share and use the Software licenses and server system. FPD 15 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 other concurrent users.

G. 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 FPD 15 Fire has one fire station and Marysville Fire District has, with other concurrent users, a total of six fire stations connecting to the RMS, resulting in a one-seventh (1/7), six-seventh (6/7) allocation. As such, costs for required upgrades, repairs, server and associated hardware replacement, and software maintenance fees, shall be split between FPD 15 and Marysville Fire District in accordance with the ratio of stations, currently utilizing the following formula; *FPD 15 1/7 of total costs*
2. Each party will be responsible for the costs associated with their user

licenses.

3. The total estimated annual maintenance fees paid by MARYSVILLE is \$5,160.00 for the year 2005 for Incident, Interface and Training Modules. FPD 15's annual share is estimated to be \$737.00 for the Incident, Interface and Training modules.
4. MARYSVILLE reserves the right to add various modules to the RMS that are or become available, without need for authorization from any Concurrent User. If the added module is not required by or for proper RMS operation, Concurrent Users may elect not to participate with the module, and as such, shall not be assessed a share of the FDM Software maintenance fees associated with the module in question.

H. 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.

I. 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.

J. 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 FPD 15 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 FPD 15 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 suit shall be in the Snohomish County Superior Court.

D. LIABILITY / HOLD HARMLESS AND INDEMNIFICATION

1. MARYSVILLE and FPD 15 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

- FPD 15 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 FPD 15 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 FPD 15, this section shall be valid and enforceable only to the extent of the negligence or other wrongful conduct of FPD 15 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 of 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

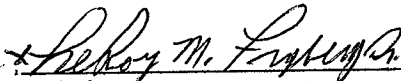
	MARYSVILLE	FPD 15
Name:	Greg Corn, Fire Chief	Brad Luthans, Fire Chief
Address:	1635 Grove Street Marysville, WA 98270	Marysville, WA 98271
Phone:	(360) 659-2777	

M. ENTIRE AGREEMENT

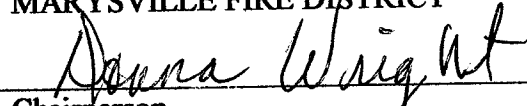
This Agreement represents the entire integrated Agreement between MARYSVILLE and FPD 15 and supercedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement this 28 day of MARCH, 2004.

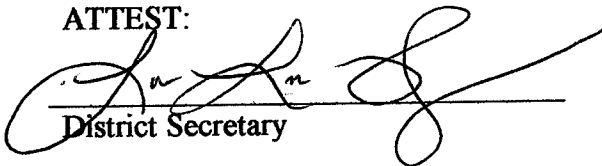
FPD 15


 Chairperson
 Board of Commissioners


MARYSVILLE FIRE DISTRICT


 Chairperson
 Board of Directors

ATTEST:


 District Secretary

ATTEST:


 Greg Corn, District Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Grant K. Weed, City Attorney