

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: February 27, 2006

SUBJECT: City of Blaine/City of Ferndale Information Systems Service Interlocal Agreement

SUBMITTING DEPT: City Manager

PREPARED BY: Sheri Sanchez, City Clerk

AGENDA LOCATION: Comments / Communications , Consent ,
Public Meeting (Hearing) , Unfinished Business , Council Action Item ,
Committee Reports

ATTACHMENTS: Draft Interlocal Agreement.

ANALYSIS / SUMMARY:

The City currently contracts with an outside vendor for network support services. The services are billed by the hour, with charges ranging from \$72.95 per hour for hardware and workstation support to \$89.95 per hour for network and remote server support. In addition, the City is billed for travel at \$25 per trip. In 2005, the City of Blaine paid an outside vendor \$32,414 (approximately 385 hours) for network support.

The City of Ferndale also contracts with an outside vendor for network support services. In 2005, the City of Ferndale and the City of Blaine discussed entering into an interlocal agreement to share an IS person. Once Blaine and Ferndale enter into an interlocal agreement, the City of Blaine will hire a full-time Network Systems Administrator and Ferndale will reimburse the City of Blaine for 40% of the costs of the NS Administrator, which will include wages, benefits, training, and incidental travel.

The estimated annual cost for the IS person, including salary and benefits, is \$76,539. For the year 2005, the amount would be prorated based on when the Network Systems Administrator is hired. The funding for this position was approved by the Blaine City Council in the 2006 budget.

RECOMMENDATION: Waive 2nd Reading: (Including conditions of approval if applicable)

FISCAL ANALYSIS:

This interlocal agreement will be funded by Current Expense with reimbursement of 40% by the City of Ferndale.

REVIEWED BY:

City Manager _____ Finance Director _____ City Clerk _____

COUNCIL ACTION: Approved , Denied , Tabled / Deferred ,
Assigned to: _____

DATE OF NEXT COUNCIL ACTION: _____

INFORMATION SYSTEMS SERVICE AGREEMENT

City of Blaine and City of Ferndale

This Agreement is made and entered into by and between the City of Blaine, a municipal corporation of the State of Washington, and the City of Ferndale, a municipal corporation of the State of Washington for INFORMATION SYSTEMS SERVICES as described herein.

RECITALS

WHEREAS, the City of Blaine and the City of Ferndale both have a need for Information Systems Services to help in the management and maintenance of their respective computer, technology and data systems; and

WHEREAS, the City of Blaine and the City of Ferndale agree that providing services between the two parties will provide more efficient, effective, and less costly services for citizens within both cities, thereby better serving the public; and

WHEREAS, the City of Blaine has the technical expertise to provide the services described in this agreement; and

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;

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE MUTUAL CONVENANTS HEREIN, and pursuant to provisions of Chapter 39.34 RCW, the parties agree as follows:

1. SCOPE OF AGREEMENT

This Agreement shall address the provision of information system services by the City of Blaine to the City of Ferndale as more fully described in Exhibit A attached.

1.1 EMPLOYEE SERVICES

The City of Blaine agrees to provide to the City of Ferndale staff services at sixteen (16) hours per week for the purpose of supporting and maintaining Data Services. The City of Ferndale will work with the City of Blaine in establishing procedures to report problems within the normal hours of operation of 8:00am-5:00 p.m. For the purposes of this contract, Blaine shall hire a full time employee who shall report to the City Clerk of Blaine.

1.2 PERFORMANCE OF SERVICES

The City of Blaine shall provide to the City of Ferndale, levels of service that are commensurate with those same services provided for the City of Blaine.

The City of Blaine shall hire, supervise, and retain all employment decisions of those staff providing information system services to the City of Ferndale. In performing its responsibilities hereunder, the City of Blaine will accord the City of Ferndale the same priority under comparable circumstances as it provides itself. Without limiting the generality of the foregoing, in the provision of services under comparable circumstances Blaine will not discriminate against Ferndale solely because Ferndale is the recipient of such services.

2. ASSIGNMENT

The City of Ferndale agrees that the services provided by the City of Blaine are for the exclusive use of the City of Ferndale and it shall not assign any right or interest in this Agreement without the written permission of the City of Blaine.

3. LIMITATION OF LIABILITY

Any goods or property provided by the City of Blaine to the City of Ferndale pursuant to this Agreement is provided on an "as is basis" with all faults. The obligations of the City of Blaine and the rights and remedies the City of Ferndale set forth in this clause are exclusive and in substitution for all the warranties, obligations and liabilities of the City of Blaine and rights, claims and remedies of the City of Ferndale against the City of Blaine expressed or implied, arising by law or otherwise, with respect to any data provided hereunder, including but not limited to any implied warranty arising from course of performance, courses of dealing or uses of trade, and, any obligation, liability, right, claim or remedy for tort, or for any actual or alleged infringement of patents, copyrights or similar rights of third parties, or for any other direct, incidental or consequential damages.

Neither party shall be considered to be in default in the performance of this Agreement to the extent that performance is prevented or delayed by any cause, which is beyond the reasonable control of the affected party.

3.1 APPLICABLE LAW

The parties shall comply with all applicable federal, state and local laws, ordinances, rules and regulations.

3.2 INDEMNIFICATION

Each party shall agree that, insofar as it is authorized to do so under the laws of

the State of Washington, it shall indemnify, defend, and hold harmless the other party, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Agreement. The parties further agree that in the case of negligence by both, any damages, costs, or other expenses allowed shall be levied in proportion to the percentage of negligence attributable to each party. Each party specifically assumes potential liability for actions brought by that party's own employees against the other party and, solely for the purpose of this indemnification and defense; the parties specifically waive any immunity under the State Industrial Insurance Law, RCW 51. This Section 3 shall not be construed to limit:

- (i) the right to receive refunds of the amount of any payment in excess of amounts owed under this Agreement;
- (ii) the right to require re-performance of any service to the extent required pursuant to Section 3.4;
- (iii) the right to indemnification as provided herein;
- (iv) the right to injunction, specific performance or other equitable non-monetary relief when available under applicable law;
- (v) the right to terminate this Agreement as set forth in Section 12.

3.3 WAIVER

A waiver or failure by either party to enforce any provision of this Agreement or to declare a breach shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Agreement, nor shall the same waive said party's right to demand strict performance of that or any other provision of this Agreement.

4. SERVICE AGREEMENT PERIOD

This Agreement commences upon execution by signature of both parties and shall continue until terminated or withdrawn by either party. The parties may withdraw from the Agreement only by written notice giving the other party one hundred eighty (180) days notice. This agreement will be reviewed annually in conjunction with each jurisdiction's annual budget process. Compensation to the City of Blaine may be modified annually based upon the change in compensation and benefits of the staff providing the services. Such change in compensation shall be mutually agreed to by both parties.

5. SERVICE PROVISIONING

The City Manager or designee for the City of Blaine shall have primary responsibility for administering this Agreement on behalf of the City of Blaine.

6. SERVICE RATES

6.1 SERVICE AND SUPPORT COSTS

For the services described in Exhibit A, the City of Ferndale shall pay to the City of Blaine, in equal monthly payments, 40% of the costs set forth in Exhibit B, prorated the first year and 12 equal monthly payments thereafter. Compensation for services shall include the labor and benefit costs, training costs, and incidental mileage expenses of the City of Blaine Information Systems employees associated with work performed in establishing, maintaining and providing ongoing support for the City of Ferndale. The City of Ferndale staff costs, materials, supplies, incidental expenses, reimbursable expenses, and equipment expenses shall be the responsibility of the City of Ferndale.

6.2 The City of Blaine shall maintain records and statistics of the operation of said services for administrative and financial purposes.

6.3 The City of Blaine shall be paid monthly, on the basis of invoices submitted. The City of Blaine shall submit an original written invoice, with necessary and appropriate documentation for work completed during the previous month.

6.4. Payment shall be made through the City of Ferndale's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

6.5. The City of Blaine shall provide the City of Ferndale with an update to Exhibit B, based on preliminary budget figures for the next year, by October 31st of each year.

6.6. The City of Blaine shall provide to the City of Ferndale, by January 30th of each year, a year-end adjustment of any additional costs not paid with the monthly payments.

7. DISCLAIMER OF WARRANTIES

Neither the General Fund nor any other funds managed by the City of Blaine, or the City of

Ferndale or its constituent agencies shall bear any liability under this Agreement, other than as specifically set forth herein.

8. BILLING GUIDELINES

The City of Blaine shall be eligible for payment upon full execution of this Agreement. The City of Blaine shall submit an original written monthly invoice, with necessary and appropriate documentation to the City of Ferndale.

Payment shall be made through the City of Ferndale's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

9. MODIFICATION

This Agreement may be modified or extended in duration by mutual agreement of the parties.

10. DISPUTES BETWEEN THE PARTIES

10.1 Should a dispute arise between Blaine and Ferndale, the parties may resolve the same by submitting the dispute for resolution by negotiation between the parties or non-binding mediation. The mediator shall be selected by mutual agreement of the parties and the cost of mediation shall be shared equally between the parties. Should the parties be unable to negotiate a resolution or refuse to accept a mediated resolution to a dispute, then the parties agree that the venue for any legal action shall be the Whatcom County Superior Court.

10.2. In the event a dispute over the terms of this Agreement necessitates the procurement of legal services, the prevailing party shall be entitled to reasonable attorney's fees and costs.

11. GENERAL TERMS

11.1 This Agreement contains the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. This Agreement constitutes the complete and final agreement of the parties and replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter and may be modified only by a writing signed by both parties.

11.2 NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY.

11.2.1 In the performance of this Agreement, the parties and their employees and agents shall at all times comply with any and all federal, state or local laws, ordinances, rules or regulations with respect to nondiscrimination and equal employment opportunity, which may at any time be applicable.

11.2.2 Without limiting the generality of the foregoing, the parties shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, handicap or marital status, and as requires by law the parties shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, national origin, handicap or marital status.

11.2.3 Further, the parties and their employees and agents shall not at any time discriminate against any other persons or entity because of race, color, religion, age, sex, national origin, handicap or marital status, nor shall the parties engage in or knowingly permit their agents and employees to engage in sexual harassment.

11.3 WAGE AND HOUR LAWS

The parties shall at all times comply with all applicable provisions of the Fair Labor Standards Act (FSLA) and any other federal or state legislation affecting its employees, and the rules and regulations issued there under, insofar as applicable to its employees.

12. TERMINATION OF AGREEMENT.

Either party may terminate this Agreement at any time, with or without cause, by giving one hundred and eighty (180) days' notice to the other party in writing. In the event of termination, all finished and unfinished work prepared by the City of Blaine pursuant to this Agreement shall be provided to the City of Ferndale. The City of Blaine shall be entitled to receive just and equitable compensation for satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. On any termination of this Agreement, the City of Blaine will cooperate with the City of Ferndale as reasonably necessary to avoid disruption of the ordinary course of the City of Ferndale's business.

13. RIGHTS IN DATA AND PUBLICATIONS.

13.1 Data which is developed for the City of Ferndale pursuant to this Agreement shall be "works for hire" as defined by the U. S. Copyright Act of 1976, as amended, and shall be owned by the City of Ferndale. Pursuant to U.S.C. § 201, the City of Ferndale will be deemed the author of the data and will own all copyrights in the data. "Data" shall mean all work product to be provided by the City of Blaine under this Agreement and shall include, but not be limited to, draft and final

reports, documents, pamphlets, advertisements, books, magazines, surveys studies, computer programs, films, tapes and/or sound reproductions. The City of Blaine shall obtain the City of Ferndale's written approval prior to the publication of any results of studies and/or services performed or to be performed for any purpose other than for the City of Ferndale use. This provision shall not apply to any data that is developed independent of this Agreement.

- 13.2** Methodology and logic systems developed under this Agreement are the property of the City of Blaine and the City of Ferndale and may be used as either sees fit, including the right to revise or publish the same without limitation.

14. CONTRACT ADMINISTRATION AND MANAGEMENT

- 14.1** The City Administrator or designee for the City Ferndale, and the City Manger or designee for the City of Blaine, shall have primary responsibility for administering this agreement for their respective parties,

- 14.2** Any and all notices affecting, or relative to, this Agreement shall be effective if in writing and delivered or mailed, postage prepaid, to the respective party being notified at the address listed with the signature of this Agreement.

- 14.3** The City of Blaine, at such times and in such form as the City of Ferndale may require, shall furnish the City of Ferndale with periodic reports pertaining to the work and services undertaken pursuant to this Agreement. The City of Blaine will make available to the City of Ferndale all work-related accounts, records, and documents for inspection, auditing, or evaluation during normal business hours in order to assess performance, compliance, and/or quality assurance under this Agreement.

- 14.4** The City of Blaine shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.

- 14.5** The City of Blaine shall not assign, subcontract, delegate, or transfer any obligation, interest, or claim under this Agreement or for any of the compensation due hereunder, without the prior written consent of the City of Ferndale.

15. INDEPENDENT CONTRACTOR STATUS.

- 15.1** The City of Blaine is and shall be, at all times during the term of this Agreement, an independent contractor. This Agreement shall not be construed to create a joint venture between The City of Blaine and the City of Ferndale. All employees and representatives of Blaine providing Services to the City of Ferndale will be

deemed for purposes of all compensation and employee benefits to be employees or representatives of the City of Blaine (or its subcontractors) and not employees or representatives of the City of Ferndale. In performing such services, such employees and representatives will be under the direction, control and supervision of the City of Blaine (or its subcontractors) and not of the City of Ferndale. The City Blaine (or its subcontractors) will have the sole right to exercise all authority with respect to the employment (including termination of employment), assignment and compensation of such employees and representatives. However, the City of Blaine shall notify and seek the City of Ferndale's input on all important decisions related the hiring and firing of staff and any significant changes to the program. It is the expressed intent of both parties to operate the Informational Systems program in mutual cooperation.

- 15.2** All employees and representatives of the City of Ferndale providing Services to the City of Ferndale will be deemed for purposes of all compensation and employee benefits to be employees or representatives of the City of Ferndale and not employees or representatives of the City of Blaine. In performing such services, such employees and representatives will be under the direction, control and supervision of the City of Blaine. However, the City of Ferndale will have the sole right to exercise all authority with respect to the employment (including termination of employment), assignments and compensation of such employees and representatives.
- 15.3** The City of Blaine acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, and Blaine agrees to comply with all applicable laws regarding the reporting of income, maintenance of insurance and records, and all other requirements and obligations imposed as a result of the City of Blaine's status as an independent contractor. If the City of Ferndale is assessed, liable, or responsible in any manner for those charges or taxes, the City of Blaine agrees to hold the City of Ferndale harmless from those costs, including attorney's fees.
- 15.4** This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

16. CONFIDENTIALITY.

- 16.1** The City of Blaine Information. The City of Ferndale agrees to hold, and to use reasonable efforts to cause its employees and representatives to hold, in confidence in a manner consistent with the City of Ferndale's treatment of its own confidential information, all information concerning Blaine reasonably understood to be confidential:

(i) contained in any of the Schedules to this Agreement or otherwise received by the City of Ferndale from the City of Blaine after the Effective Date relating to the determination of the fees and charges payable hereunder,

(ii) obtained from the City of Blaine by the use of any access to the City of Blaine data afforded in connection with the provision of Services hereunder, or

(iii) furnished to or obtained by the City of Ferndale after the effective date in the course of its receipt of Services hereunder. Except as may otherwise be provided in another agreement between the parties, the City of Ferndale shall not use such information for any purpose other than as contemplated under this Agreement or verifying compliance with this Agreement, without Blaine's prior written consent.

16.2 The City of Ferndale Information. The City of Blaine agrees to hold, and to use its reasonable efforts to cause its employees and representatives to hold, in confidence in a manner consistent with the City of Blaine's treatment of its own confidential information all information reasonably understood to be confidential concerning Ferndale, furnished to or obtained by the City of Blaine after the effective date in the course of providing services under this Agreement. Except as may otherwise be provided in another agreement between the parties, the City of Blaine shall not use such information for any purpose other than as contemplated under this Agreement or verifying compliance with this Agreement, without the City of Ferndale's prior written consent.

16.3 Security. Each Party shall be responsible for preventing unauthorized remote access by such Party's own agents and employees to data transferred or otherwise made available to the other Party under this Agreement.

16.4 General. The obligations of confidentiality and non-disclosure imposed under this Section 16 shall not apply to data and information that the recipient can demonstrate:

(i) is published or is otherwise becomes available to the general public as part of the public domain without breach of this Agreement;

(ii) has been furnished or made known to the recipient without any obligation to keep it confidential by a third party under circumstances which are not known to the recipient to involve a breach of the third party's obligations to a Party hereto; or

(iii) was developed independently of information furnished to the recipient under this Agreement.

Each Party acknowledges that the other party would not have an adequate remedy at law for the breach by the other party of any one or more of the covenants contained in this Section 16 and agrees that, in the event of such breach, the other party may, in addition to the other remedies which may be available to it, apply to a court for an injunction to prevent breaches of this Section 16 and to enforce specifically the terms and provisions of this Section.

The provisions of this Section 16 shall not preclude disclosures required by law; provided, however, that each Party will use reasonable efforts to notify the other, prior to making any such disclosure, and permit the other to take such steps as it deems appropriate, including obtaining a protective order, consistent with applicable law, to minimize any loss of confidentiality.

17. SEVERABILITY

Should any portion, clause, term, article or other provision of this Agreement be declared invalid, illegal, void or otherwise unenforceable by a court of competent jurisdiction, the validity of the remaining sections shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular clause or provision held to be invalid.

18. AID AND ASSIST

Each party agrees to aid and assist the other in accomplishing the objectives of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this _____ day of _____, 2006

City of Blaine

City of Ferndale

Gary Tomsic, City Manager

Jerry Landcastle, Mayor

Approved as to legal Form Only:

Jon Sitkin, City Attorney

Richard Langabeer, City Attorney

DRAFT

Exhibit "A"

Services provided by this Agreement shall be provided to all Departments within the City of Ferndale.

Essential Duties and Responsibilities

- Install, configure and/or maintain the City of Ferndale's wide area network. Optimize system for memory and performance.
- Maintain, update, and safeguard software applications (including firewalls) throughout the City of Ferndale. Maintain compliance with applicable software laws.
- Plan and administer LAN/WAN operations.
- Provide preventative maintenance and operational support on all PC's, servers and related peripherals within the system.
- Troubleshoot and repair PCs, network and server equipment.
- Generate customized computer applications for various Ferndale departments.
- Help develop specifications and coordinate Ferndale purchases of new hardware and software. In cooperation with Ferndale departments, participate in conducting needs assessments and developing budgetary information.
- Provide support in purchasing computer related equipment in accordance with applicable procurement procedures, develop bid specifications, and prepare RFP's and purchase orders at the sole cost of the City of Ferndale.
- Maintain logs and track inventory and maintenance of computer equipment.
- Provide guidance and maintenance of Ferndale Web-site(s).
- Centralize Ferndale's network.
- Help provide standards for Ferndale in both hardware and software.
- Help create security and redundancy guidelines for voice and data services.
- Help create computer use policies.
- Create backups and a managed backup plan for disaster recovery.

- Help establish training methods for current applications.
- Help design wiring infrastructure for facilities.
- Help design and maintain fiber connectivity between facilities.
- Help design and maintain wireless systems, including wireless fidelity.
- Maintain proper security, spam control and virus protection to the network.
- Help create a cost replacement and maintenance plan.
- Provide support in developing bid specifications, preparing RFP's and making recommendations for consultants for the City of Ferndale, at the sole cost of the City of Ferndale.

DRAFT

EXHIBIT B

NETWORK SYSTEMS ADMINISTRATOR
PERSONNEL RELATED ESTIMATES "TO BE PRORATED FOR 2006"

EMPL. NO.	TITLE	NAME	STEP DATE	TBL	RNG	STEP	MO IN STEP	STEP SALARY	TOTAL/STEP	PROG %	TOTAL/ YEAR
0	SYSTEMS ADMIN		1/06	A	35	D	12	4,430	53,158		
			DEFERRED COMP				5%		2,658	100%	55,816
TOTAL SALARIES FOR PROGRAM											55,816
FICA = TOTAL SALARIES			0.0765								4,270
ESD = TOTAL SALARIES			0.006								335
MED AID = TOTAL HOURS (2,080)			0.1700								354
RETIREMENT =											
PERS 2 = TOTAL SALARIES			0.0244								1,362
NWAD VISION			12.485						12.49	150	
AWC MEDICAL/DENTAL/LIFE			1.105						1,187.75	14,253	
TOTAL PERSONNEL BENEFITS FOR PROGRAM											20,723
TOTAL PROGRAM BUDGET FOR PERSONNEL											76,539

** ACTUAL COSTS, INCLUDING BUT NOT LIMITED TO TRAINING, TRAVEL, WILL BE INCLUDED IN A SEPARATE YEAR-END ADJUSTMENT INVOICE