SUBJECT: Interlocal Agreement: Fiscal Analysis

DATE: July 15, 2013

FROM: Jori Burnett, Greg Young

PRESENTATION BY: Jori Burnett

RECOMMENDATIONS: With an affirmative vote, provide the mayor with the ability to enter into an interlocal agreement with Whatcom County. This agreement would allow for the County’s reimbursement of City funds necessary to complete a fiscal analysis by a professional private consultant.

BACKGROUND: The City of Ferndale and members of the Ferndale community have requested that an analysis of the potential fiscal impacts of a jail facility in Ferndale be developed for consideration. Whatcom County and the City of Ferndale have agreed in principle to a scope of work (attached as) and maximum cost (less than $10,000).

The City has contracted with BERK Consulting, which expects to complete work on the fiscal analysis within the next month.

ANALYSIS: The scope of work of this study is similar in nature to that of recent previous studies conducted by BERK and other consultants in Washington State. This enables the study to be completed relatively quickly, relying on these previous models with new inputs that are specific to the potential Whatcom County proposal.

The City will direct the work independently from the County, and the study would be adopted as an appendix to the Supplemental Environmental Impact Statement (SEIS) currently underway. Should the study determine that there are significant negative fiscal impacts to the City, the City would likely seek mitigation measures to mitigate these impacts. The Council must also understand that there is the potential that there will be positive fiscal impacts resulting from the jail construction and its ongoing operations.

Impacts to property values of adjacent properties will also be analyzed. However it should be noted that previous studies have concluded that property values depend greatly on a range of factors from the economy to the availability of similar land elsewhere, to the existing land use regulations placed on the land. These variables are in play independent of the jail itself, and cannot be assumed to be static over time. In other words, it may be difficult to associate an increase or decrease in property values only with the construction of a jail facility.
**ALTERNATIVES CONSIDERED**: City funds a fiscal analysis, no fiscal analysis is completed.

Without an interlocal, the City Council or administration may decide to move forward with a fiscal analysis independent of the County, and incur the costs associated with this analysis. Staff does not believe this is an appropriate option, as the proposed interlocal allows the City to direct the analysis based upon a scope defined by the City – but utilizing County funding. We believe that the City has the same freedoms in this proposal as it would by independently contracting with a consultant.

As an alternative, the City could decide not to require a fiscal analysis at all. Staff strongly believes that this analysis should be included, as there has been a significant amount of speculation as to the fiscal impacts (both positive and negative), without objective, professional analysis.

As with the SEIS and the ongoing zoning text amendment review, it is important to identify questions and concerns and properly vet them utilizing the formal legislative process and professional third party analysis, with the expectation that all significant impacts (fiscal and environmental) will be mitigated. No party is benefitted by unsupported boosterism or fear mongering.

**FISCAL REVIEW**: The consultant is aware of the cost limitations (less than $10,000) of the study, and the County has agreed to fund the study within these limitations. No cost to the City, beyond staff time, is anticipated. If negative fiscal impacts are identified the City would work with the County to ensure that they are mitigated. It is too early to identify specific mitigation measures at this time.

**LEGAL REVIEW**: The interlocal agreement will provide the City and County with a framework for cooperation.

**CONCLUSION**: Staff recommends that the City Council authorize the mayor to sign the attached interlocal.
INTEROCAL COOPERATION AGREEMENT
BETWEEN CITY OF FERNDALE AND WHATCOM COUNTY
FOR THE PROVISION OF A WHATCOM COUNTY JAIL AND SHERIFF OFFICES
FISCAL IMPACT ANALYSIS

This “Agreement” is entered into between the COUNTY OF WHATCOM, a county of the State of Washington, (hereinafter referred to as the “County”) and CITY OF FERNDALE, a municipal corporation of the State of Washington, (hereinafter referred to as the “City”) in accordance with the provisions of RCW 39.34. In instances where the City and County will act jointly, they will hereinafter be referred to as the “parties.”

WHEREAS, Whatcom County is considering the acquisition of a vacant ~40 acre site within the City’s manufacturing zone, for the purpose of constructing a new Whatcom County Adult Corrections Facility and Sheriff’s Headquarters. The first phase of this multi-phase project would consist of the construction of the Sheriff’s Headquarters, warehouse space, and up to 660 beds. A future phase might occur after 2030 to increase the total bed count to 800 beds. Additional phases may be considered after 2040; and

WHEREAS, the City seeks to establish the probable fiscal impact that the construction and subsequent operations of a proposed Whatcom County Jail and Sheriff Offices (the facility) would have on the City and the impact on property values of nearby private properties; and

WHEREAS, the City and County are co-leads on a Supplemental Environmental Impact Statement (SEIS), studying the environmental impacts of the facility. While fiscal and economic issues are not SEPA “elements of the environment,” and are not mandatory elements of an SEIS, SEPA rules permit additional considerations that are relevant to the decision making – as per WAC 197-11-450, which has been adopted by reference into the Ferndale Municipal Code (FMC 16.04.130); and

WHEREAS, the fiscal impact analysis is relevant to the decision making on the part of both the City and County. The City is ultimately responsible for recommending approval or denial of the proposed use, as the location to be studied is within the Ferndale City Limits. However, as the fiscal analysis is not a required element, the information provided is not considered in determining the adequacy of the SEIS; and

WHEREAS, the City will contract the services of a private firm to complete a fiscal analysis as described in Attachment “A” to this agreement; and
NOW, THEREFORE, the parties hereby agree as follows:

I. INTENT

Whatcom County will utilize the Executive’s Contingency Fund to reimburse the City up to $10,000 for the costs associated with the completion of a fiscal analysis. Additional costs, if any, for the fiscal analysis will be the responsibility of the City. Upon request, the County will provide data they possess to complete the fiscal analysis. Requested data must be obtainable through the use of reasonable methods of collection, as determined by County.

II. CONTRACTUAL PAYMENT

The City will submit to the Whatcom County Executive an invoice and supporting documentation to prove expenses incurred. Where required, the County shall, upon receipt of appropriate documentation, compensate the City, no more often than monthly, in accordance with the County’s customary procedures, pursuant to the fee schedule set forth in this document.

III. TERM

This Agreement shall be effective July 1, 2013, and shall continue through and including August 31, 2013. Costs incurred by the City prior to or after the term of this contract shall be the responsibility of the City and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties. The term of this Agreement is effective July 1, 2013 regardless of the date of signature.

IV. ADMINISTRATION OF CONTRACT

A. This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington.

B. The County hereby appoints, and the City hereby accepts, the Whatcom County Executive, and his or her designee, as the County’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The County’s Administrative Officer for purposes of this agreement is Tawni Helms, Administrative Services Coordinator.

C. The City hereby appoints, and the County hereby accepts, the City Community Development Director, and his or her designee, as the City’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the City’s right to receive and act on all reports and documents, and any
auditing performed by the City related to this Agreement. The City’s Administrative Officer for purposes of this agreement is Jori Burnett, Community Development Director.

V. NOTICES

A. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by each party to the other party’s respective Administrative Officer under this Agreement. All notices, demands, requests, consents and approvals shall be in writing to:

Tawni Helms, Admin. Coordinator
Whatcom County
311 Grand Avenue,
Suite 108
Bellingham, WA 98225

Jori Burnett, Community Development Director
City of Ferndale
Planning Department
2095 Main Street
Ferndale, WA 98248

VI. ACCOUNTING/AUDIT/PAYMENTS/RECORDING

A. The City shall be responsible for keeping an ongoing accounting of the expenses incurred under this contract.

B. The City shall make records available for inspection, review, or audit during business hours at the City or other mutually acceptable location. The City agrees to provide such information as requested by the County’s designee within a reasonable period of time.

VII. DEFENSE AND INDEMNITY AGREEMENT

A. To the extent permitted by law, each party agrees to defend, indemnify and save harmless the other party, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon that party, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of that party, its subcontractors, its successor or assigns, or its agents, servants, or employees, the party, its appointed or elected officers, employees or their agents in proportion and to the extent the to the negligence of that party, its subcontractors, its successor or assigns, or its agents, servants, or employees causes the loss or damage.

B. It is further provided that no liability shall attach to either party by reason of entering into this contract, except as expressly provided herein.
V111. DISPUTES

A. Differences between the City and the County, arising under and by virtue of the Agreement Documents, shall be brought to the attention of the other party at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken.

B. Detailed Claim: The City shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the City has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

C. Venue and Choice of Law: In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington. In the event of litigation no attorney fees will be paid to the other party.

IX. CONFLICT OF INTEREST

A. If at any time prior to commencement of, or during the term of this Agreement, if either party or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the other party’s interest, then that party shall immediately notify the other party of the same. The notification shall be made with sufficient specificity to enable an informed judgment to be made as to whether or not the other party’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, either party may require the other to take reasonable steps to remove the conflict of interest. Either party may also terminate this contract according to the provisions herein for termination.

X. RELATIONS

A. The parties hereto recognize and agree that they are independent governmental entities. Except as expressly provided for herein, nothing in this Agreement shall be construed to limit the discretion of the governing bodies of each party.

B. Neither party shall assume any liability for the direct payment of any salary, wages or other compensation of any type to any of the other party’s personnel performing services hereunder. No agent, employee or other representative of the parties shall be deemed to be an employee of the other party for any reason.
C. This Agreement shall not be construed or interpreted such that either party hereto is held to be an agent of the other party.

XI. NON-DISCRIMINATION IN EMPLOYMENT

A. The County’s policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, sexual orientation, disability, or veteran status. The City shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

B. Furthermore, in those cases in which the City is governed by such laws, the City shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the District shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

XII. MISCELLANEOUS PROVISIONS

A. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, that holding shall not affect or impair, in any manner, the validity, legality or enforceability of the remainder of this Agreement.

B. No failure by any of the parties to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy for a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

C. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all 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 shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

D. Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

E. The performance of all activities contemplated by this agreement to be performed by the City shall be accomplished by the City. No portion of this agreement may be assigned or subcontracted, except as is provided for in this contract, to any other individual, firm or entity without the express and prior written approval of the County.

F. The performance of all or part of this contract by the City employees shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the City or any employee of the City or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

Approved as to form:

________________________________________
Chief Civil Prosecuting Attorney

Executed this ____ day of _____________, 2013 for WHATCOM COUNTY.

________________________________________
Jack Louws, County Executive

STATE OF WASHINGTON )
) ss
COUNTY OF WHATCOM )

On this _____ day of _____________ 2012, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

________________________________________
NOTARY PUBLIC in and for the State of Washington, residing at _________________. My commission expires ________________.
Executed this ____ day of _____________, 2013 for CITY OF FERNDALE.

__________________________
Gary Jensen, Mayor

Attest:

__________________________
City Attorney

Departmental Approval:

__________________________
Jori Burnett, Community Development Director
CONSULTING SERVICES AGREEMENT
BETWEEN

CITY OF FERNADE
2095 Main Street
Ferndale, WA 98248

BERK & ASSOCIATES, INC.
2025 First Avenue, Suite 800
Seattle WA 98121

Project: Whatcom County Jail and Sheriff Offices Fiscal Impact Analysis

This agreement is made between City of Ferndale (CLIENT) and BERK & ASSOCIATES, INC. (BERK). BERK will provide professional consulting services for the CLIENT. The scope of work and specific tasks to be performed in the project are described in Attachment A.

Performance

Services provided under this agreement will be performed by BERK from July 2013 through August 2013, unless modified by a written agreement of the parties.

Compensation and Payment

The CLIENT shall pay BERK on a time and materials basis, not to exceed $10,000.00 in accordance with the Budget set forth in Attachment A. BERK will invoice the CLIENT on a monthly basis at CLIENT’S address set forth above. Invoices shall include a description of services rendered, the hourly rate(s) for services performed, the hours worked, expenses incurred for materials, and the date concluded. The invoice shall be paid within thirty (30) days of receipt of invoice.

Confidentiality

During and after the term of this Agreement, BERK agrees that any information received by BERK in furtherance of performing services for the CLIENT in accordance with this Agreement, which concerns the personal, financial, or other affairs of the CLIENT will be kept in full confidence and will not be revealed to any other persons, firms, or other organizations.
Intellectual Property Rights

BERK acknowledges and agrees that the CLIENT shall own the copyright (including the right of reuse) to all materials and documents prepared by BERK in connection with the Agreement, whether or not the Agreement is completed. BERK hereby grants to the CLIENT all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings development in connection with the performance of the Agreement or any subcontract hereunder.

Relationship of the Parties

The relationship of the parties shall be as independent contractors and shall be limited to the performance of services as set forth in this agreement. Neither party shall assign or delegate this agreement or any rights, duties or obligations hereunder without the prior express written consent of the other. BERK shall indemnify, defend and hold harmless the Client from any claim, suit or action made by any person, to the extent it arises from a negligent act or omission on the part of BERK in the performance of its services under this agreement.

Termination and Disputes

This agreement may be terminated by either party upon thirty (30) days written notice. BERK will then invoice the Client for all services performed through the effective date of the termination, and shall be paid by the Client for such service, performed in a satisfactory manner under the terms of this agreement.

Any dispute concerning this agreement shall, unless amicably settled, be settled by arbitration. Arbitration proceedings shall be conducted in Seattle, Washington, and in accordance with the rules of the American Arbitration Association. The parties agree to accept the arbitrator’s decision as final. By agreeing to arbitrate, both parties give up their legal right to bring a court action and have a jury trial.

Acceptance
Neither expiration nor termination of this agreement shall relieve either party of its rights or obligations under the agreement. This agreement, including attachments incorporated by reference, represents the entire agreement and understanding between the parties, and any negotiations, proposals, or oral agreements are intended to be integrated herein and to be superseded by this agreement. This agreement is to be governed by, and construed in accordance with, the laws of the State of Washington.

In consideration of the terms, conditions, covenants and performance contained herein, the respective parties accept this agreement for consultant services.

CITY OF FERNDALE

By: __________________________

Title: City Administrator

Date: 7/2/13

BERK & ASSOCIATES, INC.

By: __________________________

Title: __________________________

Date: __________________________
ATTACHMENT A

SCOPE OF WORK & BUDGET

CITY OF FERNDALE

WHATCOM COUNTY JAIL AND SHERIFF OFFICES FISCAL IMPACT ANALYSIS

Objective: The City of Ferndale seeks to establish the probable fiscal impact that the construction and subsequent operations of a proposed Whatcom County Jail and Sheriff Offices (the facility) would have on the City of Ferndale and nearby private properties.

Project Narrative: Whatcom County is considering the acquisition of a vacant ~40 acre site within the City of Ferndale’s Manufacturing zone, for the purpose of constructing a new Whatcom County Adult Corrections Facility and Sheriff’s Headquarters. The first phase of this multi-phase project would consist of the construction of the Sheriff’s Headquarters, warehouse space, and up to 660 beds. A future phase might occur after 2030 to increase the total bed count to 800 beds. Additional phases may be considered after 2040.

Total project and site acquisition costs have not been finalized.

Primary Questions: There are two primary questions to be addressed:

- How could development of the facility affect the tax revenues and public services of the City of Ferndale, including fire services provided by Whatcom County Fire District 7?

- How could development of the facility affect the local property values of surrounding areas?

Scope Description: The City, as the project lead for the fiscal analysis, anticipates that the study will be modeled on a previous study completed by BERK & Associates for the NEC Regional Jail, entitled “Property Value and Host Jurisdiction Impacts” (January 2010). The scope for this study is significantly reduced from the previous study, as it will only analyze one site. In addition, the previous study included a substantial analysis of existing literature. This analysis will have substantial value to the proposed study, which will require that the existing documentation be updated and revised, only if necessary.

The fiscal study will not include an analysis of impacts on other sites outside of the City of Ferndale, including the no-action alternative described in the SEIS, unless Whatcom County elects to expand the scope of the study to include sites outside of the City of Ferndale.
Project Nexus: The City of Ferndale and Whatcom County are co-leads on a Supplemental Environmental Impact Statement (SEIS), studying the environmental impacts of the facility. While fiscal and economic issues are not SEPA “elements of the environment,” and are not mandatory elements of a SEIS, SEPA rules permit additional considerations that are relevant to the decision making – as per WAC 197-11-450, which has been adopted by reference into the Ferndale Municipal Code (FMC 16.04.130).

The fiscal impact analysis is relevant to the decision making on the part of both the City of Ferndale and Whatcom County. The City of Ferndale is ultimately responsible for recommending approval or denial of the proposed use, as the location to be studied is within the Ferndale City Limits. However, as the fiscal analysis is not a required element, information contained in the document is not considered in determining the adequacy of the SEIS (in the event of a challenge).

Project Deliverables:

- One paper and one electronic copy of final analysis
- Up to two presentations before the City Planning Commission and City Council
- Email and telephone correspondence
- Draft review of documents by City of Ferndale and Whatcom County

Resources: In addition to existing literature and previous studies, the fiscal analysis consultants will have access to Whatcom County and City of Ferndale staff. If necessary, the Draft Environmental Impact Statement issued October 18, 2010, analyzing other locations for the jail, as well as the SEIS currently being developed for the project site may be utilized.

Timeline: Draft document: July 26, 2013
Final document: August 16, 2013

Budget: $10,000 or less

Staff Contact: Jori Burnette, City of Ferndale Community Development Director. The City of Ferndale will act as project lead for the fiscal analysis and will be solely responsible for authorizing any changes to the scope or contents of the analysis.