MEMORANDUM OF UNDERSTANDING
Between
WHATCOM COUNTY
And
CITY OF FERNDALE

REGARDING THE DEVELOPMENT OF AN
SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT
FOR THE WHATCOM COUNTY JAIL and SHERIFF’S ADMINISTRATIVE
HEADQUARTERS

I. PARTIES
This Memorandum of Understanding (MOU) is entered into by and between Whatcom County (County), and the City of Ferndale (Ferndale), collectively “Parties”.

II. PURPOSE
The purpose of this MOU is to establish and describe a collaborative effort between the Parties for the development and preparation of a joint environmental document to address the Parties statutory responsibilities set forth in Washington State Environmental Policy Act (SEPA). This MOU is limited to the preparation of the Supplemental Environmental Impact Statement for the Whatcom County Jail and Sheriff’s Administrative Headquarters. Further permit review related to development applications shall be subject to the regulatory processes of the party with review authority that are in effect at the time of complete application, and are therefore not included in this MOU. This MOU establishes the Parties as the co-lead agencies and delineates the duties of each co-lead agency and how decisions will be made; how conflicts may be resolved and other terms as outlined.

III. INTRODUCTION AND BACKGROUND
The County prepared a Draft Environmental Impact Statement for the Whatcom County Jail and Sheriff’s Administrative Headquarters in October 2010. Due to unforeseen circumstances and the purchase by a third party of one of the alternative sites discussed in the Draft Environmental Impact Statement, the County is preparing a Supplemental Environmental Impact Statement (SEIS). One of the new viable sites for the potential location of the Whatcom County Jail and Sheriff’s Administrative Headquarters is within the jurisdiction of Ferndale. The Parties have agreed to be co-lead agencies for the purposes of preparing the Supplemental Environmental Impact Statement.

IV. AUTHORITIES
A. County Authority: The Washington State Environmental Policy Act (RCW 43.21C) and Whatcom County Code Chapter 16.08.

The Parties agree to try to make decisions by consensus throughout the EIS process in regards to scope, content, and timing. The Parties further acknowledge that the County has authority to determine what needs to be included in the SEIS for the no action alternative and any alternative
that is not located within the boundaries of the jurisdiction of Ferndale. Ferndale has authority to determine what needs to be included in the SEIS for the alternative that is located within the boundaries of the jurisdiction of Ferndale. In the event one Party disputes the requirements of the other party, Section VI of this document (Dispute Resolution) shall be implemented.

V. PRINCIPLES OF AGREEMENT

A. The Parties mutually agree to:

1. Work together to ensure consistency and coordination in the development and preparation of the SEIS.

2. Work together to ensure involvement of other state and federal agencies, local governments and agencies, Tribes, non-governmental organizations, and other interested parties in public meetings of benefit to the process of developing and preparing the SEIS.

3. Work together in apprising each other, as far in advance as possible, of any related actions or problems that might affect the environmental analyses and documentation process or that might affect any of the Parties.

4. Work together in determining the need for, and hiring of third party professional consultants as necessary. The Parties shall seek to coordinate comments made during the review of analyses and documentation, but shall not be limited from requiring additional review or revisions. In the event one Party disputes the requirements of the other party, Section VI of this document (Dispute Resolution) shall be implemented.

B. General Duties

1. The Parties will develop and approve an SEIS work plan and schedule describing key dates, issues, milestones, and process steps that is subject to revision upon agreement by the Parties as needed to respond to emerging issues.

2. The Parties shall jointly determine which outside studies, consultants, and analysis shall be necessary and will jointly select or otherwise approve these consultants and/or outside services. All outside studies, consultants, and analysis that are determined to be appropriate will be contracted through a separate agreement.

3. Each Party shall review the environmental analysis and documentation prior to issuance of the draft and final SEIS. As required by SEPA, a responsible official from the County and a responsible official from Ferndale shall each sign the final SEIS prior to issuance. The signature of the SEPA responsible officials shall represent approval of the document, including the adequacy of the environmental analysis it contains.
C. The County agrees to:

1. Act as nominal lead. As nominal lead, the adopted SEPA public notice, public participation plan and hearing procedures of the County shall be used for this EIS.

2. Coordinate with Ferndale to ensure that all Parties are apprised of current events in relation to the alternatives.

3. Coordinate to the maximum extent possible in the development and preparation of the SEPA document, consistent with legal requirements and the County’s responsibility as the SEPA co-lead agency.

4. Provide information and analyses as needed in the preparation of the EIS.

5. As consideration for the services provided by the City of Ferndale and its consultants, the County agrees to reimburse the City for its costs, not to exceed $14,999. Staff costs shall be reimbursed based on actual cost of wages and benefits. Mileage will be reimbursed at the IRS rate. Other expenditures such as printing, postage shall be reimbursed at actual cost. City consultant costs shall be based upon actual invoices charged to the City by its consultants.

The City shall invoice monthly for staff costs. The City may invoice the County separately for consultant costs. Invoices will include hours work by employee by day together with tasks performed. Requests for reimbursement of expenses must be accompanied by copies of paid invoices or receipts itemizing costs incurred. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the City’s expense.

6. Dedicate sufficient staff and other resources to complete the EIS in an efficient and timely manner.

7. Coordinate with City staff to acquire additional information and analysis from the City’s consultants; reimburse the City for consultant fees resulting from such requests for information. The County reserves the right to challenge reimbursement requests.

D. The City of Ferndale agrees to:

1. Actively participate in the development of the EIS and serve as co-lead agency with the County.

2. Coordinate with the County to ensure that all Parties are apprised of current events in relation to the development of the EIS in relation to the alternative located within the jurisdiction of Ferndale.

3. Coordinate to the maximum extent possible in the development and preparation of the SEPA document, consistent with legal requirements and the City’s responsibility as the SEPA co-lead agency.

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4. Dedicate sufficient staff and other resources to complete the EIS in an efficient and timely manner.

5. Accurately track City staff costs for the preparation of the SEIS and costs incurred by outside consultants paid for through the Development Review Account, and provide an itemized accounting of these costs to the County on a regular basis, or at the request of the County.

VI. DISPUTE RESOLUTION

1. The Parties agree to try to make decisions by consensus throughout the EIS process in regards to scope, content, and timing. The Parties recognize that the EIS must contain sufficient environmental analysis for decision-making of all agencies with jurisdiction. Therefore, areas of environmental concern, potential mitigation, and reasonable alternatives as agreed upon by the Parties shall be included in the document. If agreement between the Parties cannot be reached over a matter that is not site-specific, then the County’s view shall be given weight. If agreement between the Parties cannot be reached over a matter that is site-specific, then the City’s view shall prevail.

2. If the Parties cannot agree on an issue that would prevent their approval of the EIS or otherwise prevent them from sharing lead agency duties, any Party may withdraw from this MOU following notification to the other Parties in writing of the issue under dispute, including a suggested resolution.

3. Prior to the formal withdrawal from the MOU, the Parties do hereby agree to meet and discuss any outstanding issues that would prevent the approval of the FSEIS or otherwise prevent them from sharing lead agency duties for not less than eight (8) hours (unless an agreement can be reached in less time) utilizing the services of a mediator mutually agreed to by the Parties. The cost of the mediator shall be shared between the Parties.

4. If at any time the MOU is dissolved, The County shall acquire full responsibility as lead agency for the proposal and shall continue with completion of the SEPA process.

VII. OTHER PROVISIONS

1. Nothing in this MOU shall be construed as limiting or affecting in any way the authority or legal responsibilities of the Parties.

2. Nothing in this MOU binds the Parties to perform beyond their respective authorities.

3. Nothing in this MOU restricts the Parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

4. Each and every provision in this MOU is subject to the laws of the State of Washington.

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5. Amendments or supplements to this MOU may be proposed by the parties and shall become effective upon written approval of all Parties.

6. In addition to the dispute resolution mechanism in Section VI of this agreement, any of the Parties may terminate its participation in this MOU at any time through written notification to the other Parties at least 30 days prior to termination.

7. This MOU shall become effective upon signature by all Parties. This MOU may be executed in one or more counterparts, each of which will be considered an original document.

8. This MOU shall remain in effect until the completion of the EIS or three years after the effective date of this MOU, terminating on the earliest of the two options.

9. Nothing in this MOU restricts the review of a formal development application for work within the City of Ferndale, including staff-level review and the City of Ferndale Conditional Use process. Any additional conditions or mitigation measures identified during the course of these City reviews will be addressed separately from, and in addition to, mitigation measures identified within the SEIS or FSEIS. Nothing shall restrict the County from requesting relief from these additional conditions during either the City’s Conditional Use process, or the appeals process.

10. If at any time the Parties become aware or concerned that a consultant, sub consultant, or an entity preparing a requested outside service, the Parties agree to discuss and resolve such conflict of interest as the Parties deem appropriate.

VIII. CONTACTS
The primary points of contact for carrying out the provisions of this MOU are:

For the County:
Tyler R. Schroeder - Planning Manager
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, Washington 98225
(360) 676-6907 ext. 50202
Tschoed@co.whatcom.wa.us

For City of Ferndale
Jori Burnett
City of Ferndale Planning
2095 Main St
Ferndale, Washington 98248
(360) 685-2367
joriburnett@cityofferndale.org

[Type text]
IX. **Signature:** The parties hereto have signed this MOU as of the dates shown below. The effective date of this MOU is the date of the signature last affixed to this page.

The County, by and through:

Jack Louws  
County Executive  

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5/7/2013  
(DATE)

The City of Ferndale, by and through:

Gary Jensen  
City of Ferndale Mayor  

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5/7/2013  
(DATE)