ORIGINAL

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNNYSIDE, WASHINGTON AND MILTON, WASHINGTON, FOR THE HOUSING OF INMATES

THIS INTERLOCAL AGREEMENT is made and entered into on this 1 day of Sept 2015 by and between the City of MILTON, Washington, hereinafter referred to as "MILTON", and the City of Sunnyside, Washington, hereinafter referred to as "Sunnyside", each party having been duly organized and now existing under the laws of the State of Washington.

WITNESSETH:

WHEREAS, Sunnyside and MILTON are authorized by law to have charge and custody of the Sunnyside City Jail and the MILTON prisoners or inmates, respectively; and

WHEREAS, MILTON wishes to designate Sunnyside's correctional facility located at 401 Homer, Sunnyside, Washington ("Sunnyside Jail"), as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody ("MILTON inmates"); and

WHEREAS, Sunnyside is desirous of accepting and keeping in its custody such inmate(s) in the Sunnyside Jail for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any city to contract with any other city/county to perform any governmental service, activity or undertaking which each contracting city/county is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080 and other Washington law, as amended,

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. GOVERNING LAW

The parties hereto agree that, except where expressly otherwise provided, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to an inmate(s) confined pursuant to this Agreement, and the parties shall comply fully with all such laws, rules and regulations in the performance of its obligations hereunder.

2. DURATION

This Agreement shall enter into and be in full force and effect from Sept. 1, 2015 through December 31, 2016, subject to earlier termination as provided by Section 3 herein. This Agreement shall be renewed automatically for like successive periods under such terms and conditions as the parties may determine. Nothing in this Agreement shall be construed to require MILTON to house inmates in Sunnyside continuously, or as preventing MILTON from contracting with other municipalities for the purpose of housing inmates during the term of this Agreement.

3. TERMINATION

(a) By either party. This Agreement may be terminated by written notice from either party to the other party and to the State Office of Financial Management as required by RCW 70.48.090 stating the grounds for said termination and specifying plans for accommodating the affected prisoners. The notice must be delivered by regular mail to the contact person identified herein. Termination shall become effective ninety (90) days after such notice. Within said ninety (90) days, MILTON agrees to remove its inmate(s) from the Sunnyside Jail.

(b) By MILTON due to lack of funding. The obligation of MILTON to pay Sunnyside under the provisions of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting availability of sufficient funds by MILTON. In the event that such funds are not budgeted, appropriated or otherwise made available for the purpose of payment under this Agreement at any time after the current fiscal year, then MILTON shall have the option of terminating the Agreement upon written notice to Sunnyside, except that all services provided to that point shall be compensated at the rates set forth herein. The termination of this Agreement for this reason will not cause any penalty to be charged to MILTON.

(c) Termination for Breach. In the event either party breaches or fails to perform or observe any of the terms or conditions herein, and fails to cure such breach or default within seven (7) days of written notice thereof, or, if not reasonably capable of being cured within such seven (7) days, within such other period of time as may be reasonable in the circumstances, the first party may terminate this Agreement in addition to and not in limitation of any other remedy of the first party at law or in equity, and the failure of the first party to exercise such right at any time shall not waive that party's right to terminate for any future breach or default.

(d) In the event of termination of this Agreement for any reason, MILTON shall compensate Sunnyside for MILTON inmates housed by Sunnyside after notice of such termination until MILTON retakes physical custody of said inmates in the same manner and at the same rates as if this Agreement had not been terminated.

4. MAILING ADDRESSES

All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

To Sunnyside:	City of Sunnyside 818 E. Edison Avenue Sunnyside, WA 98944
Primary Contact Person:	Al Escalera, Police Chief
Secondary Contact:	Andrew Gutierrez, Corrections Sergeant
To MILTON:	City of Milton 1000 Laurel St. Milton, WA 98354
Primary Contact Person:	Tony Hernandez, Police Chief
Secondary Contact:	Nils Luckman, Patrol Sergeant

Notices mailed shall be deemed given on the date mailed. The Parties shall notify each other in writing of any change of address or change of designation of the primary contact person.

5. DEFINITIONS

The Parties hereby agree that the following terms shall have the specified meanings unless indicated otherwise herein:

(a) Day. A twenty-four hour-long unit of time commencing at 00:00:01 a.m., and ending 23:59:59 p.m.

(b) Inmate Classifications shall be pursuant to the Sunnyside's Objective Jail Inmate Classification System which is modeled after the National Institute of Corrections Jail Classification System:

(i) "Minimum" classification shall apply to those inmates who present a low risk to staff and the community.

(ii) "Medium" classification shall apply to those inmates who present a moderate risk to staff and the community.

(iii) "Maximum" classification shall apply to those inmates who present a substantial risk to staff and the community.

6. COMPENSATION

(a) Rates. Sunnyside agrees to accept and house MILTON inmates for compensation per inmate at the rate of $60.00 per day for inmates staying less than 7 days **unless** all transportation needs for said inmate are met by MILTON within the 7 day period in which the rate shall be assessed at $42.00 per day. A rate of $42.00 per day shall be assessed per inmate for inmates staying longer than 7 days. This includes minimum and medium classification inmates. The parties agree that Sunnyside will not charge a separate booking fee in addition to such rate. The date of booking into the

Sunnyside Jail of MILTON inmates shall be charged a full daily rate per inmate regardless of the time of booking within a 24 hour period. The date that an inmate is released from Sunnyside's custody and/or returned to MILTON's custody, regardless of the time frame within a 24 hour day, shall not constitute a charge by Sunnyside against MILTON.

(b) Billing and Payment. Sunnyside agrees to provide MILTON with an itemized invoice listing, for each MILTON inmate housed pursuant to this Agreement, the inmate's name, his/her case/citation number, the number of days the inmate has been housed (including the date and time of booking and date and time of release), and the payment amount due. Sunnyside agrees to provide said invoice by the 10th of each month. MILTON agrees to make payment to Sunnyside within 30 days of receipt of such invoice for the amount billed for the previous calendar month.

(c) Transportation of MILTON inmates housed by Sunnyside for a period of 7 consecutive days or more shall be provided by Sunnyside at no additional cost to MILTON. Inmates housed by Sunnyside for a period less than 7 consecutive days must be transported to the Sunnyside Jail by MILTON. MILTON Inmates will be released within the City of Milton by Sunnyside correctional staff or as near to the City of Milton as Greyhound bus lines or similar bussing companies allow for.

(d) The parties mutually waive the arbitration provisions set forth at RCW 39.34.180(3).

7. RIGHT OF INSPECTION

MILTON shall have the right to inspect, at all reasonable times, the Sunnyside Jail and all other Sunnyside facilities in which MILTON inmates are confined in order to determine if such jail maintains standards of confinement acceptable to MILTON and that such inmates therein are treated equally regardless of race, religion, color, creed or national origin; provided, however, that Sunnyside shall be obligated to manage, maintain and operate its facilities consistent with all applicable federal, state and local laws and regulations.

8. FURLOUGHS, PASSES, AND WORK RELEASE

Sunnyside agrees that no early releases or alternatives to incarceration, including furloughs, passes, work crews, electronic home detention or work release shall be granted to any MILTON inmate housed pursuant to this Agreement without written authorization by the committing court.

9. INMATE ACCOUNTS

Sunnyside shall establish and maintain an account for each MILTON inmate and shall credit to such account all money which is received and shall make disbursements, debiting such accounts in accurate amounts for the inmate's personal needs. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. Sunnyside shall be accountable to MILTON for such inmate funds. At either the termination of this Agreement, the inmate's death, or release from incarceration or return to either MILTON or indefinite release to the court, the inmate's

money shall be transferred to the inmate's account in care of MILTON; at such time MILTON shall be accountable to the inmate for said funds.

10. INMATE PROPERTY

MILTON may transfer to Sunnyside only agreed amounts of personal property of MILTON inmates recovered from or surrendered by inmates to MILTON upon booking.

11. RESPONSIBILITY FOR INMATE'S CUSTODY

It shall be the responsibility of Sunnyside to confine Milton inmates accepted into Sunnyside's custody pursuant to this Agreement; to provide such inmates with all necessary treatment, including the furnishing of subsistence and medical and hospital services and supplies; to provide for the inmates' physical needs; to make available to them programs and/or treatment consistent with the individual needs; to retain them in said custody; to supervise them; to maintain proper discipline and control; to make certain that they receive no special privileges and that the sentence and orders of the committing court in the State are faithfully executed; provided that nothing herein contained shall be construed to require the City of Sunnyside, or any of its agents, to provide service, treatment, facilities or programs for any inmates confined pursuant to this Agreement, which it does not provide for similar inmates not confined pursuant to this Agreement. Nothing herein shall be construed as to require Sunnyside to provide services, treatment, facilities or programs to MILTON inmates above, beyond or in addition to that which is required by applicable law.

12. MEDICAL SERVICES

(a) MILTON inmates shall receive such medical, psychiatric and dental treatment when **emergent** and/or necessary to safeguard their health while housed by Sunnyside under this Agreement. Sunnyside shall provide or arrange for the providing of such medical, psychiatric and dental services. Except for routine minor medical services provided in the Sunnyside Jail, MILTON shall pay directly or reimburse Sunnyside for any and all costs associated with the delivery of any emergency and/or major medical service provided to MILTON inmates. MILTON shall be responsible for any and all **emergent** medical, dental and psychiatric treatment provided outside of the Sunnyside Jail and shall be billed therefore.

(b) An adequate record of all such services shall be kept by Sunnyside for MILTON's review at its request, to the extent consistent with confidentiality regulations. Any medical or dental services of major consequence shall be reported to MILTON as soon as time permits.

(c) Should medical, psychiatric or dental services require hospitalization, MILTON agrees to compensate Sunnyside dollar for dollar any amount expended or cost incurred in providing the same; provided that, except in emergencies, MILTON will be notified by contacting the duty supervisor at MILTON prior to the inmate's transfer to a hospital, if and when circumstances allow, or as soon afterward as practicable.

(d) Nothing in this agreement shall be construed as limiting any legal right of MILTON and/or Sunnyside to obtain reimbursement from a Milton inmate for the cost of any health care services provided to said inmate.

13. DISCIPLINE

Sunnyside shall have physical control over and power to execute disciplinary authority over all Milton inmates to the extent consistent with applicable legal standards. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by applicable law.

14. RECORDS AND REPORTS

(a) MILTON shall forward to Sunnyside before or at the time of delivery of each MILTON inmate a copy of all inmate records pertaining to the inmate's present incarceration. If additional information is requested regarding a particular inmate, the parties shall mutually cooperate to provide any additional information in a timely manner.

(b) Sunnyside shall keep all necessary and pertinent records concerning such inmates in the manner and for the duration specified by applicable law, except as mutually agreed upon by the parties hereto. During a MILTON's inmate's confinement in Sunnyside, MILTON shall upon request be entitled to receive and be furnished with copies of any report or record associated with said inmate(s) incarceration.

15. REMOVAL FROM THE JAIL

A MILTON inmate legally confined in Sunnyside shall not be removed there from by any person without written authorization from MILTON or by order of any court having jurisdiction. MILTON hereby designates the MILTON Corrections Sergeant as the official authorized to direct Sunnyside to remove MILTON inmates from the Sunnyside Jail. Sunnyside agrees that no early releases or alternatives to incarceration, including furloughs, passes, work release, work crews or electronic home detention shall be granted to any inmate without written authorization from the committing court. This paragraph shall not apply to an emergency necessitating the immediate removal of the inmate for medical, dental, psychiatric treatment or other catastrophic condition presenting an eminent danger to the safety of the inmate or to the inmates or personnel of Sunnyside In the event of any such emergency removal, Sunnyside shall inform MILTON of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of such inmate or inmates.

16. ESCAPES

In the event any MILTON inmate escapes from Sunnyside's custody, Sunnyside will use all reasonable means to recapture the inmate. The escape shall be reported immediately to MILTON. Sunnyside shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own territory. Any cost in connection therewith shall be chargeable to and borne by Sunnyside; however, Sunnyside shall not be required to expend unreasonable amounts to pursue and return inmates from other counties, states or other countries.

17. DEATH OF AN INMATE

(a) In the event of the death of an MILTON inmate, the Yakima County Coroner shall be notified. MILTON shall receive copies of any records made at or in connection with such notification.

(b) Sunnyside shall immediately notify MILTON of the death of an MILTON inmate and furnish information as requested and follow the instructions of MILTON with regard to the disposition of the body. MILTON hereby designates the MILTON Chief of Police as the official authorized to request information from and provide instructions to Sunnyside regarding deceased inmates. The body shall not be released except on written order of said appropriate official(s) of MILTON. Written notice shall be provided within three weekdays of receipt by MILTON of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by MILTON. With MILTON's consent, Sunnyside may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by MILTON. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

(c) MILTON shall receive a certified copy of the death certificate for any of its inmates who have died while in the City of Sunnyside's custody.

18. RETAKING OF INMATES

Upon request from Sunnyside, MILTON shall, at its expense, retake any MILTON inmate within thirty-six (36) hours after receipt of such request. In the event the confinement of any MILTON inmate is terminated for any reason, MILTON shall, at its expense, retake such inmate at the Sunnyside Jail.

19. HOLD HARMLESS AND INDEMNIFICATION

(a) Nothing contained in this Section or this Agreement shall be construed to create a right of indemnification in any third party.

(b) The terms of Section 19 shall survive the termination or expiration of this Agreement.

(c) The mutual indemnification set forth in this Section 19 is specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This provision was specifically negotiated by the parties.

19.1 SUNNYSIDE – HOLD HARMLESS AND INDEMNIFICATION

Sunnyside agrees to hold harmless, indemnify and defend MILTON, its officers, agents and employees, from and against any and all claims, losses, or liability, including

attorneys' fees, for injuries, sickness or death of persons, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of Sunnyside, its officials, officers, agents, volunteers or employees, in connection with the services required by this Agreement, provided, however, that:

(a) Sunnyside's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of MILTON, its officials, agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, and/or employees of both MILTON and Sunnyside are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

19.2 MILTON – HOLD HARMLESS AND INDEMNIFICATION

MILTON agrees to hold harmless, indemnify and defend Sunnyside, its officers, agents and employees, from and against any and all claims, losses, or liability, including attorneys' fees, for injuries, sickness or death of persons, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of MILTON, its officials, officers, agents, volunteers or employees, in connection with the services required by this Agreement, provided, however, that:

(a) MILTON's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of Sunnyside, its agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, and/or employees of both MILTON and Sunnyside are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

20. RIGHT OF REFUSAL AND TRANSPORTATION

(a) Sunnyside shall have the right to refuse to accept any MILTON inmate when, in the opinion of Sunnyside, its inmate census is at capacity that there is a substantial risk that, through usual operation of the jail, the reasonable operational capacity limits of the jail might be reach or exceeded.

(b) Sunnyside shall further have the right to refuse to accept any MILTON inmate who, in the judgment of Sunnyside, has a current illness or injury which may adversely affect the operations of the Sunnyside Jail, has a history of serious medical problems, presents a substantial risk of escape, or presents a substantial risk of injury to other persons or property, or is classified as a maximum security inmate pursuant to Sunnyside's Objective Jail Classification System.

(c) MILTON inmates in Sunnyside's custody pursuant to this Agreement shall be transported to the Sunnyside Jail by Sunnyside and shall be returned, if necessary, to

MILTON by Sunnyside personnel and at Sunnyside's expense provided that notice of the necessity of transport is received by Sunnyside three (3) days prior to time of expected transport.

21. INDEPENDENT CONTRACTOR

In providing services under this Agreement, Sunnyside is an independent contractor and neither it nor its officers, agents or employees are employees of MILTON for any purpose, including without limitation responsibility for any wages, 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 MILTON under any applicable law, rule or regulation.

22. 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 effect 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 Yakima County Superior Court.

(c) 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.

(d) 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.

(e) 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.

(f) Filing. This Agreement shall be filed with the Yakima County Auditor's Office or, alternatively, listed by subject on each or either party's web site or other electronically retrievable public source pursuant to RCW 39.34.040.

23. 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.

24. ACCESS TO RECORDS CLAUSE

The parties hereby agree that authorized representatives of the parties shall 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 the duration specified by applicable law, but in no event less than 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.

25. ENTIRE AGREEMENT

This Agreement represents the entire integrated Agreement between MILTON and Sunnyside and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in duplicate by the parties hereto and made effective on the day and year first above written:

CITY OF SUNNYSIDE

By: _____
Don Day, City Manager

ATTEST:

_____
Delilah Saenz, City Clerk

APPROVED AS TO FORM:

_____
Kerr Law Group, PLLC,
Attorneys for the City of Sunnyside

CITY OF MILTON

By: _____
Debra Perry, Mayor

ATTEST:

_____
Katie Bolam, City Clerk

APPROVED AS TO FORM:

_____
Kristin Eick, City Attorney
Ogden, Murphy, Wallace, PLLC

CITY CONTRACT NO: 2015-87
RESOLUTION NO: 2014.55
COUNCIL MTG: 2/18