

RESOLUTION 2012 - 80



**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON APPROVING
INTERLOCAL JAIL AGREEMENT WITH
CITY OF UNION GAP**

WHEREAS, the City of Sunnyside has previously entered into reciprocal correction/detention agreements with other municipalities regarding incarceration of prisoners within the facilities of each entity; and

WHEREAS, the City of Sunnyside and City of UNION GAP are empowered to enter into such agreements pursuant to the provisions of Chapters 39.34 and 70.48 RCW; and

WHEREAS, the parties have negotiated a reciprocal correction/detention agreement commencing January 1, 2013; and

WHEREAS, the City Council finds and determines that approval and ratification of said agreement is in the best interest of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

SECTION 1. That the Interlocal Jail Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and City of UNION GAP, is hereby approved.

SECTION 2. The Interim City Manager is hereby authorized to execute and administer such agreement for and on behalf of the City of Sunnyside.

SECTION 3. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 10th day of December, 2012.


MIKE FARMER, MAYOR

ATTEST:


DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:


KERR LAW GROUP, LLP
Attorneys for the City of Sunnyside

EXHIBIT "A"

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

THIS INTERLOCAL AGREEMENT is made and entered into the this 26th day of November, 2012 by and between the City of Union Gap, Washington, hereinafter referred to as "Union Gap", 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 Union Gap are authorized by law to have charge and custody of the Sunnyside City Jail and the Union Gap prisoners or inmates, respectively; and

WHEREAS, Union Gap wishes to designate Sunnyside as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; 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.

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2. DURATION

This Agreement shall enter into full force and effect from January 1, 2013 and end December 31, 2013, 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 Union Gap to house inmates in Sunnyside continuously.

3. TERMINATION

(a) By either party. This Agreement may be terminated by written notice from either party to the other party delivered by regular mail to the contact person identified herein, provided that termination shall become effective sixty (60) working days after receipt of such notice. Within said sixty (60) days, Union Gap agrees to remove its inmate(s) from Sunnyside.

(b) By Union Gap due to lack of funding. The obligation of Union Gap to pay Sunnyside under the provision of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting availability of sufficient funds by Union Gap. 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 Union Gap 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 agreed rate. The termination of this Agreement for this reason will not cause any penalty to be charged to Union Gap.

(c) Termination for Breach. In the event Union Gap 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 Sunnyside giving Union Gap 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, Sunnyside may terminate Union Gap's rights under this Agreement in addition to and not in limitation of any other remedy of Sunnyside at law or in equity, and the failure of Sunnyside to exercise such right at any time shall not waive Sunnyside's right to terminate for any future breach or default.

(d) In the event of termination of this agreement for any reason, Union Gap shall compensate Sunnyside for prisoners housed by Sunnyside after notice of such termination until Union Gap retakes its inmates in the same manner and at the same rates as if this agreement had not been terminated.

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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:

Andrew Gutierrez, Corrections Sergeant

Secondary Contact:

Delilah Saenz, City Clerk

To Union Gap:

P.O. BOX 1008
UNION GAP, WA 98903

Primary Contact Person:

Secondary Contact:

Notices mailed shall be deemed given forty-eight (48) hours from the date post marked. The Parties shall notify each other in writing of any change of address.

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.

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(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 Union Gap inmates for compensation per inmate at the rate of \$ 50.00 per day for 2013. 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 Union Gap inmates, no matter how little time of a twenty-four hour day it constitutes, shall count as one day and shall be billed to Union Gap as a day of custody in Sunnyside. The date of release from Sunnyside and/or return to Union Gap, no matter how much of a twenty-four hour day it constitutes, shall not be billed by Sunnyside against Union Gap.

(b) Transportation of Inmates. Sunnyside agrees that it will pick up inmates at Yakima County Jail or any jail the Union Gap Police Department houses inmates in. Sunnyside further agrees that it will transport Union Gap inmates from Sunnyside's Jail facility to Union Gap Municipal Court if an inmate is in-custody and has a court appearance on a Union Gap matter in Union Gap Municipal Court. Sunnyside shall not charge Union Gap extra amounts for such transportation of inmates.

(c) Billing and payment. Sunnyside agrees to provide Union Gap with an itemized bill listing all names of inmates who are housed, the case/citation number, the number of days housed (including the date and time of booking and date and time of release), and the dollar amount due for each. Sunnyside agrees to provide said bill by the 10th of each month. Union Gap agrees to make payment to Sunnyside within 30 days of receipt of such bill for the amount billed for the previous calendar month.

7. RIGHT OF INSPECTION

Union Gap shall have the right to inspect, at all reasonable times, all Sunnyside facilities in which inmates of Union Gap are confined in order to determine if such jail maintains standards of confinement acceptable to Union Gap 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.

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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 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 inmate received from Union Gap 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 Union Gap for such inmate funds. At either the termination of this Agreement, the inmate's death and release from incarceration or return to either Union Gap or indefinite release to the court, the inmate's money shall be transferred to the inmate's account in care of Union Gap, at such time Union Gap shall be accountable to the inmate for said funds.

10. INMATE PROPERTY

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

11. RESPONSIBILITY FOR OFFENDER'S CUSTODY

It shall be the responsibility of Sunnyside to confine the inmate or inmates; to provide treatment, including the furnishing of subsistence and all necessary 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 Union Gap inmates above, beyond or in addition to that which is required by applicable law.

12. MEDICAL SERVICES

(a) Inmates deemed Union Gap inmates shall receive such medical, psychiatric and dental treatment when emergent and necessary to safeguard their health while housed in Sunnyside.

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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, Union Gap 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 Union Gap inmates. Union Gap 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 Union Gap's review at its request, to the extent consistent with confidentiality regulations. Any medical or dental services of major consequence shall be reported to Union Gap as soon as time permits.

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

13. DISCIPLINE

Sunnyside shall have physical control over and power to execute disciplinary authority over all inmates of Union Gap. 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) Union Gap shall forward to Sunnyside before or at the time of delivery of each 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 mutually agreed upon by the parties hereto. During an inmate's confinement in Sunnyside, Union Gap 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

An inmate of Union Gap legally confined in Sunnyside shall not be removed therefrom by any person without written authorization from Union Gap or by order of any court having jurisdiction. Union Gap hereby designates the Corrections Lieutenant as the official authorized to direct Sunnyside to remove Union Gap inmates from the Sunnyside Jail. Sunnyside agrees that no early releases or alternatives to incarceration, including furloughs, passes, work release,

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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 Union Gap of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safekeeping and custody of such inmate or inmates.

16. ESCAPES

In the event any Union Gap inmate escapes from Sunnyside's custody, Sunnyside will use all reasonable means to recapture the inmate. The escape shall be reported immediately to Union Gap. 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 a Union Gap inmate, the City of Sunnyside's Coroner shall be notified. Union Gap shall receive copies of any records made at or in connection with such notification.

(b) Sunnyside shall immediately notify Union Gap of the death of a Union Gap inmate furnish information as requested and follow the instructions of Union Gap with regard to the disposition of the body. Union Gap hereby designates the Correction Lieutenant and the Undersheriff as the officials 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 Union Gap. Written notice shall be provided within three weekdays of receipt by Union Gap of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by Union Gap. With Union Gap's consent, Sunnyside may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by Union Gap. 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) Union Gap 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.

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18. RETAKING OF INMATES

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

19. HOLD HARMLESS AND INDEMNIFICATION

Sunnyside agrees to hold harmless, indemnify and defend Union Gap, its officers, agents and employees, from and against any and all claims, losses, or liability, 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 officers, agents, 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 Union Gap, its agents, officers, employees or sub-consultants; and

(b) Sunnyside's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of Sunnyside and Union Gap or of Sunnyside and a third party other than an officer, agent or employee of Sunnyside, shall apply only to the extent of the negligence or willful misconduct of Sunnyside.

(c) The terms of this section "HOLD HARMLESS AND INDEMNIFICATION" shall survive the termination or expiration of this Agreement.

20. RIGHT OF REFUSAL AND TRANSPORTATION

(a) Sunnyside shall have the right to refuse to accept any inmate from Union Gap 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 reached or exceeded.

(b) Sunnyside shall further have the right to refuse to accept any inmate from Union Gap 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.

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(c) Union Gap prisoners incarcerated in Sunnyside pursuant to this Agreement shall be transported to Sunnyside by and at the expense of Sunnyside and shall be returned, if necessary, to Union Gap by Sunnyside personnel and at the 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 contract, Sunnyside is an independent contractor and neither it nor its officers, agents, or employees are employees of Union Gap for any purpose, including responsibility for any federal or state tax, industrial insurance or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of Granger 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 affect the remaining provisions.

(b) Disputes. In the event of a dispute arising between the parties regarding the enforcement, breach, or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve the dispute. Any remaining dispute shall be resolved by binding arbitration pursuant to RCW 7.04A, and the Mandatory Rules of Arbitration, with venue placed in Yakima County, Washington, and the arbitrator shall award to the substantially prevailing party, judgment for its attorney fees and costs against the other. In the event of de nova review, both parties waive their rights to a jury trial.

(c) Interlocal Agreement Provisions. This Agreement is entered into pursuant to RCW 39.34 as an interlocal agreement between the parties. It is not intended that a separate legal entity shall be established to conduct the cooperative undertaking nor is the acquiring or holding or disposing of real personal property anticipated. Sunnyside's City Manager is designated as the administrator of this Agreement. This Interlocal Agreement shall be filed or placed on agency websites as provided by RCW 39.34.040.

(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.

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(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.

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 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 Union Gap 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

ATTEST:

Frank Sweet, Interim City Manager

Sunnyside City Clerk

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CITY OF UNION GAP



Mayor Jim Lemon

ATTEST:



Union Gap, Acting City Clerk



Greg Cobb, Acting Chief of Police

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