INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNNYSIDE, WASHINGTON AND THE CITY OF TOPPENISH, WASHINGTON, FOR MUNICIPAL COURT SERVICES

THIS INTERLOCAL AGREEMENT is made and entered into on this 26 day of June, 2017 by and between City of Toppenish, Washington, hereinafter referred to as "Toppenish", 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 is a municipal corporation of the State of Washington, with City Hall located at 818 East Edison Avenue, Sunnyside, Washington 98944; and

WHEREAS, Toppenish is a municipal corporation of the State of Washington, with City Hall located at 21 West First Avenue, Toppenish, Washington 98948; 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, RCW 39.34.180, specifically authorizes any city to contract with another to carry out its municipal court functions; 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 39.34.180 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. DURATION

This Agreement shall enter into full force and effect from **October 1, 2017** and end **December 31, 2018**, subject to earlier termination as provided by Section 2 herein. Pursuant to RCW 3.50.805 and 39.34.180, or their successors, this agreement shall be reviewed and renewed automatically for successive one year periods beginning January 1 of each year under such terms and conditions as the parties may determine.

2. TERMINATION

(a) By either party. This Agreement may be terminated by written notice in accordance with RCW 39.34.180. The notice must be delivered by regular mail to the contact person identified herein. Termination shall become effective one hundred and eighty (180) calendar days after receipt of such notice.

(b) By Toppenish. The obligation of Toppenish to pay Sunnyside under the provision of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting and availability of sufficient funds by Toppenish. 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 Toppenish 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 Toppenish.

(c) Termination for Breach. In the event Toppenish breaches or fails to perform or observe any of the terms or conditions herein, and fails to cure such breach or default within thirty (30) days of Sunnyside giving Toppenish written notice thereof, or, if not reasonably capable of being cured within such thirty (30) days, within such other period of time as may be reasonable in the circumstances, Sunnyside may terminate Toppenish'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, Toppenish shall compensate Sunnyside for court services provided by Sunnyside after notice of such termination and until Toppenish resumes all court services on its own behalf. Such compensation shall be made in the same manner and at the same rates as if this agreement had not been terminated.

3. 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 East Edison Avenue Sunnyside, WA 98944
Primary Contact Person:	Don Day, City Manager (or successor)
Secondary Contact:	Deborah Estrada, City Clerk (or successor)
To Toppenish:	City of Toppenish 21 West First Avenue Toppenish, WA 98948
Primary Contact Person:	Lance Hoyt, City Manager (or successor)
Secondary Contact:	Debbie Zabell, Finance Director/City Clerk (or successor)

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

4. MUNICIPAL COURT SERVICES

Sunnyside shall provide prosecution, adjudication and sentencing services through the Sunnyside Municipal Court, and attendant public defender and court interpreter services for Toppenish misdemeanor, gross misdemeanor and infraction cases filed by and on behalf of

Toppenish in the Sunnyside Municipal Court and subject to the jurisdiction of the Sunnyside Municipal Court, subject to the following:

(1) Incarceration. Toppenish shall be solely responsible to provide for incarceration for convicted persons sentenced to jail time for Toppenish cases, and to pay the costs of such incarceration in accordance with the terms of a separate Interlocal Agreement for jail services.

(2) Public Defender. The obligation of Sunnyside to provide public defender services does not extend to appeals arising out of any Toppenish case adjudicated by the Sunnyside Municipal Court, and Toppenish shall be solely responsible to pay any such costs associated with any appeal. Further, Toppenish shall assist Sunnyside as necessary to comply with indigent defense services in accordance with the Standards for Indigent Defense (SID) and Certification and Compliance as approved by the Court by its Order of September 7, 2012 found at CrRLJ 3.1, and as may thereafter be amended. Toppenish's contribution to indigent defense services shall be limited to Toppenish cases.

B. Court Revenues. All fines and costs associated with Toppenish cases shall be collected and accounted for by the Sunnyside Municipal Court personnel in accordance with statutes and procedures governing such duties. Said revenues shall be paid to Toppenish along with an accounting thereof monthly, commencing November 1, 2017. Any uncollectible fines and costs shall be forwarded to collection as directed by Toppenish. Toppenish shall be responsible for the payment of all state fees and collections costs associated with Toppenish cases.

C. Cost for Service. Toppenish shall pay a minimum monthly fee equivalent to five percent (5%) of the operational costs of the court, including all court staff, the judge, the prosecutor, and utilities. Toppenish shall also pay a pro rata percentage of said costs equal to the percentage of Toppenish cases heard by the Sunnyside Municipal Court in that particular month. For example: if the Sunnyside Municipal Court hears 100 cases in a month and 10 of those are Toppenish cases, Toppenish will pay to Sunnyside fifteen Percent (15%) of the total operating cost for the Sunnyside Municipal Court for that month. Sunnyside will invoice Toppenish monthly. The invoice will be an itemized statement of cases and total costs. It will also list the actual cost of all public defender services provided.

D. Court Procedures. All court proceedings undertaken and adjudicated pursuant to this Agreement shall be in accordance with the statutes and rules applicable to courts of limited jurisdiction, and rules of the Sunnyside Municipal Court. Scheduling of Toppenish cases shall be in accordance with schedules and procedures established by the Sunnyside Municipal Court. The Sunnyside Municipal Court shall provide Toppenish law enforcement personnel with telephone numbers of prosecutors and judges to facilitate appropriate non-business hour contact for probable cause determinations, issuance of telephonic no-contact orders, applications for telephonic search warrants and other necessary court related communications.

5. 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 this section shall survive the termination or expiration of this Agreement.

C. SUNNYSIDE – HOLD HARMLESS AND INDEMNIFICATION

Sunnyside agrees to hold harmless, indemnify and defend Toppenish, 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 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 Toppenish, its officials, agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, volunteers and/or employees of both Toppenish 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).

D. TOPPENISH– HOLD HARMLESS AND INDEMNIFICATION

Toppenish agrees to hold harmless, indemnify and defend Sunnyside, 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 Toppenish, its officials, officers, agents, volunteers or employees, in connection with the services required by this agreement, provided, however, that:

(a) Toppenish'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 officials, agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, volunteers and/or employees of both Toppenish 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).

6. INDEPENDENT CONTRACTOR

In providing services under this contract, the relationship of the parties is that of an independent contractor. Neither party, nor its officers, agents, or employees, are employees of the other party 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 by the employee of one party against another under any applicable law, rule or regulation.

7. 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) 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 of litigation regarding any terms of this Agreement, the substantially prevailing party shall be entitled, in addition to any other relief that may be awarded, 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 to 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.

8. 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.

9. ACCESS TO RECORDS CLAUSE

The parties hereby agree that authorized representatives of the parties shall have 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 six (6) 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.

10. ENTIRE AGREEMENT

This Agreement represents the entire integrated Agreement between Toppenish 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:

_____
Deborah Estrada, City Clerk

APPROVED AS TO FORM:

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

CITY OF TOPPENISH

By: _____
Lance Hoyt, City Manager

ATTEST:

_____
Debbie Zabell,
Finance Director/City Clerk

APPROVED AS TO FORM:

_____
Gary M. Cuillier, City Attorney

CITY CONTRACT NO: A-2017-41
RESOLUTION NO: 2017-12
COUNCIL MTG: 6-26-2017