

RESOLUTION 2017 - 30

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AN INTERLOCAL AGREEMENT WITH YAKIMA COUNTY
FOR PROBATION SERVICES**

WHEREAS, the City is a Municipal Corporation organized and existing under the laws of the State of Washington, geographically situated in Yakima County, Washington; and

WHEREAS, Yakima County is a Governmental subdivision of the State of Washington, and

WHEREAS, the City of Sunnyside operates a municipal court as previously created pursuant to city ordinance and state statute; and

WHEREAS, in many cases, the court determines that probation is just and fitting; and

WHEREAS, City and Yakima county are public agencies authorized and empowered to enter into inter-local cooperation agreements pursuant to the Inter-local Cooperation Act, Chapter 39.34 RCW, RCW 35A.11.040, and RCW 35A.35.010.

WHEREAS, Yakima County has the means and desires to provide probation services to the City of Sunnyside; and

WHEREAS, The City of Sunnyside desires to utilize the services of Yakima County to provide probation services to the Municipal Court, and

WHEREAS, the City Council of the City of Sunnyside finds and determines that the acceptance of such agreements is in the best interests 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 Probation Services Agreement, attached hereto as Exhibit A, by and between the City of Sunnyside and Yakima County, is hereby approved; and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and to take all reasonable actions reasonable and necessary to administer performance of such agreement.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 11th day of December, 2017.



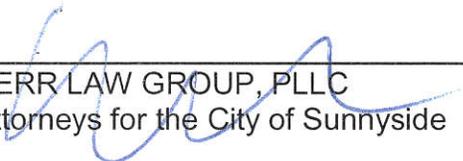
JAMES A. RESTUCCI, MAYOR

ATTEST:



DEBORAH ESTRADA, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, PLLC
Attorneys for the City of Sunnyside

EXHIBIT A

Probation Services Agreement

THIS PROBATION SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Sunnyside (“City”), a Washington State municipal corporation and its Municipal Court (“Municipal Court”) which operates both the Sunnyside Municipal Court and the Toppenish Municipal Court; and the County of Yakima (“County”) a Washington State political subdivision and its District Court (“District Court”) under the authority and in conformance with RCW 39.34, the Interlocal Cooperation Act.

WHEREAS, the City and the County desire to continue the existing arrangement whereby the County provides probation supervision services for cases/individuals referred to Probation Services by the Sunnyside and Toppenish Municipal Courts;

NOW, THEREFORE, in consideration of mutual promises and conditions contained herein, the parties hereto mutually agree as follows:

1. **PURPOSE:** The purpose of this Agreement is to set forth the terms and conditions upon which the parties agree to continue probation services and to enumerate other related provisions that contribute to their mutual benefit.
2. **DURATION:** This Agreement shall be effective from January 1, 2018 and shall remain in effect until midnight on December 31, 2021, unless terminated earlier by either party in accordance with Section 11 of this Agreement.
3. **COMPENSATION:**
 - a. *Cost Per Case:* The City agrees to pay the County a flat fee of \$70.00 per case for which probation supervision has been ordered for the duration of this Agreement subject to paragraph four of this Agreement. For 2018, the cost to the City for supervision services for Sunnyside and Toppenish Municipal Court is \$4,147.50. The calculation of that amount is detailed below and further explained in paragraphs 3(b) and 3(c).

Year	Court	Average Active Caseload	Average BW Caseload	Total Average Caseload	Flat Fee Cost Per Case	Annual Cost at 100%	75% Phase In	Quarterly Cost
2018	Sunnyside	37	20	57	\$70	\$3,990	\$2,992.50	\$748.12
2018	Toppenish	17	5	22	\$70	\$1,540	\$1,155	\$288.75

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b. *Phase – In:* For year one and year two of this Agreement, the County agrees to accept 75% of the total cost that the City would be responsible to pay. For years three, and four the City agrees to pay 100% of the total cost the City is responsible for.

c. *Calculation and Timing:* The County will project the total number of active and bench warrant cases that we expect to supervise for the upcoming year by the first of August of the preceding year for which services will be rendered. The County will provide the City with an accounting that includes the average active caseload and average bench warrant caseload for the upcoming year as well as the calculation of cost based upon the accounting.

For 2018, the County will project the number of cases based on the daily average number of cases supervised (includes active and bench warrant cases) in 2017. For 2019, the County will project the number of cases based on the daily average number of cases supervised (includes active and bench warrant cases) in 2017 and 2018. For 2020, the County will project the number of cases based on the daily average number of cases supervised (includes active and bench warrant cases) in 2017, 2018 and 2019. For 2021, the County will project the number of cases based on the daily average number of cases supervised (includes active and bench warrant cases) in 2017, 2018, 2019 and 2020.

d. *Payment:* The County will invoice the City on a quarterly basis for costs and fees determined as set forth in paragraph 3, above, with the total amount owed for the previous quarter. The first invoice will be for County probation services provided from January 1, 2018 through March 31, 2018. The City will remit payment within 30 days after receipt of the County's invoice.

4. REVIEW: If it is determined that the flat fee of \$70.00 per case is inadequate to cover costs associated with supervision, the parties agree that the cost per case can be reviewed by August 1 of each contract year and adjusted based on those discussions, to become effective on January 1 the following year. At the time of review, the County will provide the City with notice as well as supporting documentation detailing their findings as it relates to case numbers, operational costs and revenue shortfalls.

5. PROBATION SERVICES: The parties agree that the most effective way to continue consolidated probation services to reduce costs and provide better services is for District Court Probation Department to continue providing probation services to any and all individuals subject to probation supervision by order of the Municipal Court ("City Probationers").

a. The City shall continue to refer applicable probationers to the Probation Department.

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- b. The County shall provide all necessary personnel, equipment and facilities to perform the foregoing services in the manner required by law and court rule. The County shall provide the City with notice of any changes that may impact the staffing and service levels applicable to City Probationers.
6. NO THIRD PARTY RIGHTS. This Agreement is entered into for the sole benefit of the District Court and the Municipal Court. It shall confer no benefits or rights, direct or indirect, on any third persons or entities. No person or entity other than the parties themselves may rely upon or enforce any provision of this Agreement. The decision to assert or waive any provision of this Agreement is solely that of each party.
7. IMPLEMENTATION. The Presiding Judge of the Municipal Court and the Presiding Judge of the District Court shall be jointly responsible for implementation and proper administration of this Agreement.
8. INDEPENDENT CONTRACTOR. The District Court and the County understand and expressly agree that the County, the District Court and its employees, officials, and agents are not City or Municipal Court employees and shall make no claim of City or Municipal Court employment nor shall claim against the City or the Municipal Court any employment benefits, social security, and/or retirement benefits.
9. COMPLIANCE WITH LAW. All parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement, including Administrative Rule for Courts of Limited Jurisdiction (ARLJ) 11 regarding Misdemeanant Probation Departments.
10. LIABILITY.
 - a. The City agrees to hold harmless, indemnify, and defend the County, its officers, elected officials, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including costs and reasonable attorney's fees) which result from or arise out of any intentional or negligent act or omission of the City, its officers, elected officials, employees, and agents in connection with or incidental to the performance of this Agreement.
 - b. The County agrees to hold harmless, indemnify, and defend the City, its officers, elected officials, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including costs and reasonable attorney's fees) which result from or arise out of any intentional or negligent act and/or omission of the County, its officers, elected officials, employees, and agents in connection with or incidental to the performance of this Agreement.

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- c. In the event that both the County and the City are negligent in a matter arising out of the activities of the parties pursuant to this Agreement, each part shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses including costs and reasonable attorney's fees.
 - d. Nothing contained in this section of this Agreement shall be construed to create a liability or a right of indemnification in any third party.
 - e. Notwithstanding any provision to the contract, the terms of this section shall survive any expiration or termination of this Agreement.
11. **TERMINATION.** Termination of this Agreement by either party may be accomplished upon one year's written notice of the intent to terminate to the other party. At the termination of the agreement, all pending probation cases, together with all relevant and necessary case files and records associated therewith, shall be transferred to the City.
12. **INSURANCE.** Yakima County is insured by the Washington Counties Risk Pool. City of Sunnyside is insured by the Washington Cities Insurance Authority.
- a. At all times during provision of the Probation Services for Sunnyside Municipal Court probationers, Yakima County shall secure and maintain in effect insurance to protect the City from and against all claims, damages, losses, and expenses arising out of or resulting from the negligent performance or non-performance of this Contract by Yakima County officials or employees. Yakima County shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public.
 - b. **Commercial General Liability Insurance.** Before this Contract is fully executed by the parties, Yakima County shall provide the City with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate (per project). The policy shall include employer's liability (Washington Stop Gap). The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract.
 - c. **Professional Liability Coverage.** Before this Contract is fully executed by the parties, Yakima County shall provide the City with a certificate of insurance as proof of

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professional liability coverage with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per claim combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide. If the policy is written on a claims made basis the coverage will continue in force for an additional two years after the completion of this contract.

13. INTEGRATION, SUPERSESION AND MODIFICATION. This Agreement sets forth all of the terms, conditions and agreements of the parties relative to the subject matter hereof and supersedes any and all prior negotiations, discussions, agreements and understandings between the parties as to the subject matter hereof. There are no terms, conditions, or agreements with respect thereto, except as herein provided and no amendment or modification of this Agreement shall be effective unless reduce to writing and executed by the parties.

14. SEPARATE LEGAL OR ADMINISTRATIVE AGENCY. No separate legal or administrative agency is created by this Agreement.

15. SEVERABILITY.

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

16. NON-WAIVER. The waiver by the County or the City of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provision.

17. NOTICES. Unless stated otherwise herein, all notices and demands shall be in writing and sent to the parties to their addresses as follows:

TO CITY/MUNICIPAL COURT:	Don D. Day, City Manager City of Sunnyside 818 E. Edison Ave Sunnyside, Wa. 98944
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EXHIBIT A

TO COUNTY/DISTRICT COURT: Donald Engel, Presiding Judge
Yakima County District Court
128 N. 2nd Street Room 225
Yakima, Wa. 98901

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses specified above.

17. SURVIVAL. Any provision of this Agreement that imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. BINDING AUTHORITY. As signatories of the heretofore mentioned courts, the parties signing hereto have the power and authority to execute this agreement for consolidation of probation services and to bind the City of Sunnyside Municipal Court and the Yakima County District Court in performance thereof.

CITY OF SUNNYSIDE

YAKIMA COUNTY

BY: _____
Don Day, City Manager

By: _____
Donald W. Engel, Presiding Judge

Date: _____

Date: _____

Approved as to Form:

Deputy Prosecuting Attorney,

WSBA # _____

Date: _____