RESOLUTION NO. 1533

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING EXECUTION OF AN AGREEMENT WITH CITY OF SUNNYSIDE FOR THE HOUSING OF CITY OF FIFE OFFENDERS IN THE SUNNYSIDE JAIL

WHEREAS, the City of Sunnyside operates a jail under the authority of chapter 70.48 RCW; and

WHEREAS, the City of Fife has a periodic need to house offenders of site in another jail; and

WHEREAS, the Cities of Fife and Sunnyside have the authority to enter into an agreement for jail services under RCW 39.34 and RCW 70.48; and

WHEREAS, staffs for the Cities of Fife and Sunnyside have negotiated the agreement attached hereto as Exhibit A; now, therefore,

BE IT RESOLVED that the Council hereby authorizes the City Manager to execute an agreement with City of Sunnyside to provide periodic housing of City of Fife offenders in the Sunnyside jail on a space available basis, substantially in the form attached hereto as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 8th day of January, 2013.

Robert D. Cerqui, Mayor

Attest:

Carol Etgen, City Clerk

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

THIS INTERLOCAL AGREEMENT is made and entered into on this ____ day of _____ 20___ by and between City of Fife, Washington, hereinafter referred to as "Fife", 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 Fife are authorized by law to have charge and custody of the Sunnyside City Jail and the Fife prisoners or inmates, respectively; and

WHEREAS, Fife 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 his 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.

2. DURATION

This Agreement shall enter into full force and effect from _____, 2012 and end December 31, 2014, 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 Fife 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 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) working days after receipt of such notice. Within said ninety (90) days, Fife agrees to remove its inmate(s) from Sunnyside.

(b) By Fife due to lack of funding. The obligation of Fife 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 Fife. 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 Fife 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 Fife.

(c) Termination for Breach. In the event Fife 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 Fife 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 Fife'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, Fife shall compensate Sunnyside for prisoners housed by Sunnyside after notice of such termination until Fife retakes its 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:	Andrew Gutierrez, Jail Supervisor
Secondary Contact:	Delilah Saenz, City Clerk
To Fife:	_____ _____

_____

Primary Contact Person: _____
Secondary Contact: _____

Notices mailed shall be deemed given on the date mailed. 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.

(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 Fife inmates for compensation per inmate at the rate of $49.10 per day for 2012, $51.55 per day for 2013 and $54.13 per day for 2014 (also see #12 below). 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 Fife inmates, no matter how little time of a twenty-four hour day it constitutes, shall count as one day and shall be billed to Fife as a day of custody in Sunnyside. The date of release from Sunnyside and/or returned to Fife, no matter how much of a twenty-four hour day it constitutes, shall not be billed by Sunnyside against Fife.

(b) Billing and payment. Sunnyside agrees to provide Fife 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. Fife 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

Fife shall have the right to inspect, at all reasonable times, all Sunnyside facilities in which inmates of Fife are confined in order to determine if such jail maintains standards of confinement acceptable to Fife 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 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 Fife 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 Fife for such inmate funds. At either the termination of this Agreement, the inmate's death, and release from incarceration or return to either Fife or indefinite release to the court, the inmate's money shall be transferred to the inmate's account in care of Fife; at such time Fife shall be accountable to the inmate for said funds.

10. INMATE PROPERTY

Fife may transfer to Sunnyside only agreed amounts of personal property of Fife inmates recovered from or surrendered by inmates to Fife 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 Fife inmates above, beyond or in addition to that which is required by applicable law.

12. MEDICAL SERVICES

(a) Inmates deemed Fife inmates shall receive such medical, psychiatric and dental treatment when emergent and necessary to safeguard their health while housed in Sunnyside. 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, Fife 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 Fife inmates. Fife 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 Fife's review at its request, to the extent consistent with confidentiality regulations. Any medical or dental services of major consequence shall be reported to Fife as soon as time permits.

(c) Should medical, psychiatric or dental services require hospitalization, Fife agrees to compensate Sunnyside dollar for dollar any amount expended or cost incurred in providing the same; provided that, except in emergencies, Fife will be notified by contacting the duty supervisor at Fife 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 Fife. 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) Fife 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, Fife 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 Fife legally confined in Sunnyside shall not be removed there from by any person without written authorization from Fife or by order of any court having jurisdiction. Fife hereby designates the Corrections Sergeant as the official authorized to direct Sunnyside to remove Fife 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 Fife 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 Fife inmate escapes from Sunnyside's custody, Sunnyside will use all reasonable means to recapture the inmate. The escape shall be reported immediately to Fife. 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 Fife inmate, the Yakima County Coroner shall be notified. Fife shall receive copies of any records made at or in connection with such notification.

(b) Sunnyside shall immediately notify Fife of the death of an Fife inmate furnish information as requested and follow the instructions of Fife with regard to the disposition of the body. Fife hereby designates the 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 Fife. Written notice shall be provided within three weekdays of receipt by Fife of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by Fife. With Fife's consent, Sunnyside may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by Fife. 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) Fife 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, Fife shall, at its expense, retake any Fife inmate within thirty-six (36) hours after receipt of such request. In the event the confinement of any Fife inmate is terminated for any reason, Fife shall, at its expense, retake such inmate at the Sunnyside Facility.

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.

19.1 SUNNYSIDE – HOLD HARMLESS AND INDEMNIFICATION

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

(b) In the event that the officials, agents, officers, and/or employees of both Fife 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 FIFE – HOLD HARMLESS AND INDEMNIFICATION

Fife 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 Fife, its officials, officers, agents, volunteers or employees, in connection with the services required by this agreement, provided, however, that:

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

(b) In the event that the officials, agents, officers, and/or employees of both Fife 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 inmate from Fife 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 inmate from Fife 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) Fife 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 Fife 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 contract, Sunnyside is an independent contractor and neither it nor its officers, agents or employees are employees of Fife 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 Fife 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 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 Fife 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:_____
Frank A. Sweet Interim City Manager

ATTEST:

_____
Delilah Saenz, City Clerk

APPROVED AS TO FORM:

_____

CITY OF FIFE

By: _____

ATTEST:

_____

APPROVED AS TO FORM:

_____