

Nisqually Indian Tribe
Tribal Council Resolution No. 6 -2017

**A RESOLUTION APPROVING LIMITED WAIVER OF THE NISQUALLY INDIAN
TRIBE'S SOVEREIGN IMMUNITY FOR THE NISQUALLY JAIL SERVICES CONTRACT
WITH THE CITY OF TUMWATER**

WHEREAS, the Nisqually Indian Tribe is the successor descendent entity of the Nisqually Nation signatory to the Treaty of Medicine Creek of 1854 (10 Stat. 1132), and unto this day has retained and maintained its Tribal identity, its governing body, and its sovereign powers;

WHEREAS, the Nisqually Indian Tribe is a federally recognized American Indian Tribe organized under its governing Constitution and Bylaws approved by the U.S. Secretary of the Interior on September 9, 1946 and amended on October 28, 1994, pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. 476;

WHEREAS, the Nisqually Tribal Council is the duly constituted governing body of the Nisqually Tribe, and the Tribal Council is the duly elected representative body of the General Council by the authority of the Tribe's Constitution and Bylaws, as amended; and

WHEREAS, the City of Tumwater and the Nisqually Jail wish to enter into a Jail Services Agreement for use of the Tribe's Detention and Corrections Facility;

WHEREAS, the Jail Services Agreement with the City of Tumwater contains a limited waiver of the Nisqually Tribe's sovereign immunity regarding any disputes that arise from that contract;

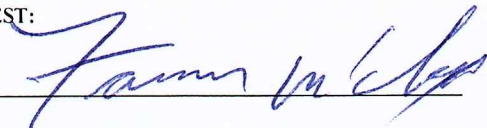
NOW, THEREFORE, BE IT RESOLVED that the Nisqually Tribal Council does acknowledge and approve the limited waiver of its sovereign immunity solely for litigation of matters arising from, and between the parties to, the Jail Services Agreement between the City of Tumwater and the Nisqually Indian Tribe;

BE IT FINALLY RESOLVED that the Nisqually Tribal Council does hereby authorize the Tribal Council Chief Executive Officer to enter into the Jail Services Agreement with the City of Tumwater.

Certification

I certify that the above Resolution was adopted at a regular meeting of the Nisqually Tribal Council held on the 5th day of January 2017 at the Nisqually Administration Building, at which time a quorum was present and voting 6 FOR 0 AGAINST 0 ABSTENTIONS.

ATTEST:



Farron McCloud, Chairman
Nisqually Indian Tribe



Sheila McCloud, Secretary
Nisqually Indian Tribe

NISQUALLY JAIL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into on this 1st day of January, 2017, by and between the Nisqually Indian Tribe, a Federally Recognized Indian Tribe, hereinafter referred to as "Nisqually" and the City of Tumwater, a Washington municipal corporation, hereinafter referred to as "Tumwater." This agreement is for the housing of inmates of Tumwater in the Nisqually Detention and Corrections Center hereinafter referred to as "jail" pursuant to Chapters 39.34 and 70.48 RCW.

THE PARTIES HEREBY AGREE as follows:

1. **SERVICE.** Nisqually shall care for prisoners placed in the custody of officers of the Nisqually Jail. The term "prisoner" shall include any person arrested, sentenced by the court or held under authority of any law or ordinance of Tumwater; provided, that the Nisqually Police Chief or the Nisqually Corrections Director shall have the right to refuse to accept custody if in his opinion that would result in overcrowding of the jail, or health, safety or security risks. If not accepted, Nisqually will provide written notice indicating why booking was declined.
2. **CARE.** "Care" shall mean room and board and basic medical care. Basic medical care shall include in-house routine medical services that can be treated by Nisqually Jail staff according to their current level of training with the supplies available at the Jail. In addition, prisoners housed pursuant to this agreement shall be subject to the same rules and regulations required of other prisoners housed in the Nisqually jail.
3. **DURATION OF CONTRACT.** The term of this agreement shall be for five (5) years. The agreement may be terminated without cause by either party by providing the other party with thirty (30) days written notice. Notice shall be deemed proper when provided to:

Tumwater: City Administrator
 City of Tumwater
 555 Israel Road S.W.
 Tumwater, WA 98501

Nisqually: Chief Executive Officer
 Nisqually Indian Tribe
 4820 She-Nah-Num Dr. S.E.
 Olympia, WA 98513
4. **RELEASE.** Prisoners will only be released when they have served their full time unless release is authorized by any other provision of this agreement or is ordered by a court of competent jurisdiction.
5. **GUARANTEED MINIMUM BED SPACE.** Nisqually guarantees that five (5) beds per day shall be dedicated to Tumwater for its prisoners.

6. **PAYMENT.** Tumwater shall pay to Nisqually the amount of Twenty Dollars (\$20.00) for a booking fee and Sixty dollars (\$60.00) per day per prisoner for care. The “booking fee” will include taking fingerprints and photographs of the prisoner, initial screening, inventorying and safekeeping prisoner’s personal property and associated processing fees. A “day” is the twenty-four hour period beginning at 12:00 a.m. and ending at 11:59 p.m. in the Pacific Time Zone. Tumwater shall be charged the booking fee only for anything less than two (2) hours of custody time. A “day” cost for purposes of this agreement will include all costs associated with the maintenance, care, custody of the inmate including but not limited to meals, housing, clothing, insurance, health, administration, and other related costs. A “day” cost does not include inmate medical care costs which are addressed in Section 7 below. Tumwater shall pay the sixty dollar (\$60.00) daily prisoner rate for each of the five beds whether used by Tumwater or not. Nisqually will submit a monthly invoice to Tumwater within sixty (60) days of the end of each monthly billed period for the guaranteed minimum bed spaces as well as additional prisoners housed pursuant to this agreement. Tumwater shall pay such invoices within 30 days of receipt. Interest at the rate of 12% per annum shall be charged on all past due accounts.

The rate shall increase by \$5.00 for the calendar year beginning January 1, 2018. Thereafter, the rate shall increase by 3% for each of the remaining calendar years, as follows:

2017	Sixty Dollars	(\$60.00)
2018	Sixty-Five Dollars	(\$65.00)
2019	Sixty-Six Dollars and Ninety-Five Cents	(\$66.95)
2020	Sixty-Eight Dollars and Ninety-Six Cents	(\$68.96)
2021	Seventy-One Dollars and Three Cents	(\$71.03)

Without prejudice to any other contract rights available to it, if Tumwater does not pay the invoice within Sixty (60) days of receipt of invoice, Nisqually acting through its Police Chief, will not accept prisoners until the delinquent amount is paid in full.

7. **MEDICAL CARE.** Except for basic medical care, Tumwater shall be solely responsible for the medical care and medical expenses of prisoners housed pursuant to this agreement, provided that if the prisoner has his or her own medical coverage, Nisqually will coordinate with Tumwater so that such insurance may be utilized. In the event that a prisoner requests non-urgent medical care, Nisqually shall contact Tumwater for approval. Tumwater shall provide Nisqually with the names and telephone numbers of designated contact people who shall be available on a twenty-four hour basis and authorized to approve medical treatment. Failure of Tumwater to approve medical care shall relieve Nisqually of liability to Tumwater for any injury resulting therefrom. Nothing shall preclude Tumwater from retaking the ill or injured prisoner. In the event that Nisqually deems a prisoner to be in need of urgent or emergency care, Nisqually shall make its best effort to contact Tumwater, but may take any action it deems necessary to provide the prisoner with the needed care without obtaining prior approval. If prisoners are transported to a local hospital, the security of the prisoner shall be the responsibility of Nisqually.

To the extent permitted by state law, Tumwater shall protect, defend, hold harmless and indemnify Nisqually from and against all claims, suits and actions relating to the medical care of prisoners housed under this agreement which result from the failure of Tumwater to approve such care or for any reason other than injuries and harm resulting from the negligent or intentional acts or omissions of Nisqually or its officers. Nisqually shall protect, defend, hold harmless and indemnify Tumwater from and against all claims, suits and actions relating to the medical care of prisoners housed under this agreement which result from the failure of Nisqually to notify Tumwater in writing that a prisoner is in need of medical treatment or for any negligent or intentional acts or omissions of Nisqually or its officers in failing to provide medical care to prisoners after providing notice to Tumwater.

8. **TRANSPORTATION.** Tumwater shall be responsible for furnishing transportation for prisoners housed pursuant to this agreement. Tumwater may request that Nisqually provide necessary transportation and Nisqually shall make best efforts to provide such transportation, subject to staff availability. Tumwater shall reimburse Nisqually for costs incurred for transportation. Such costs shall include mileage at the Federal rate as determined by the IRS standard mileage rate (currently \$.575 per mile), labor (fifty dollars (\$50.00) per hour) and overhead (.5 x labor). Nisqually shall not transport any prisoner without the express agreement of Tumwater unless such transportation is required by a court order or because of a medical emergency.
9. **CUSTODY TRANSFER.** Officers of Tumwater placing a prisoner in custody of Nisqually will be required to remain in the immediate presence of the prisoner at all times until relieved of custody by Nisqually Corrections Staff. Booking out and/or release of Tumwater's prisoners shall be the responsibility of Tumwater Officers.
10. **CITY ACCESS TO PRISONERS.** All Tumwater police officers and investigators shall have the right to interview the prisoner inside the confines of the Nisqually Jail subject only to necessary security rules. Interview rooms will be made available to Tumwater police officers in equal priority with those of any other department, including the Nisqually law enforcement personnel.
11. **RIGHT TO INSPECTION.** City of Tumwater shall have the right to inspect, at all reasonable times, all of the Nisqually Jail in which City of Tumwater's inmates are confined in order to determine if such jail maintains standards of confinement acceptable to the City and that such inmates therein are treated equally regardless of race, gender, orientation, religion, color, creed or national origin; provided, however, that Nisqually shall be obligated to manage, maintain and operate its facilities consistent with all applicable federal, state and local laws and regulations.
12. **RELEASE OF PRISONERS FROM NISQUALLY.** No Tumwater Prisoner confined in the Nisqually Jail shall be removed therefrom except:
 - a. When requested by a Tumwater Police Department supervisor in writing;

- b. By Order of the Tumwater Municipal Court, Thurston County District Court or the Thurston County Superior Court in those matters in which it has jurisdiction;
 - c. For appearance in the court in which a Tumwater prisoner is charged;
 - d. In compliance with a writ of habeas corpus;
 - e. For interviews by the Tumwater City Attorney or member of the Tumwater Police Department;
 - f. If the prisoner has served his or her sentence or the charge pending against said prisoner has been dismissed or bail or other recognizance has been posted as required by the courts.
13. **INMATE ACCOUNTS AND VALUABLES.** Nisqually shall maintain inmate accounts and valuables pursuant to its Jail Policy.
14. **DISCIPLINE.** Nisqually shall have physical control over and power to execute disciplinary authority over all City of Tumwater inmates. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by the Laws of the Nisqually Indian Tribe, State of Washington or federal law.
15. **RECORDS AND REPORTS.** Nisqually shall keep all necessary and pertinent records concerning City of Tumwater inmates to the same standards as required by the State of Washington Records Retention Schedule and other Washington state and federal laws relevant to such record retention. Tumwater upon request shall be entitled to receive and be furnished with copies of any report or record associated with said inmate(s) incarceration. Nisqually shall retain all books, records, documents and other material relevant to this agreement for six (6) years after its expiration. Nisqually agrees the City, or its designee, shall have full access and right to examine any of said materials at all reasonable times during retention period.
16. **PREA COMPLIANCE.** Nisqually complies with or exceeds the standards set forth in the Prison Rape Elimination Act and, in accordance with 28 C.F.R Part 115.12, shall allow Tumwater staff to monitor its facility with reasonable notice to ensure compliance thereto.
17. **INDEMNIFICATION.** Tumwater shall protect, indemnify, and save Nisqually harmless from and against any damage, cost, or liability including reasonable attorney fees, for injuries to persons or property arising from acts or omissions of Tumwater, its employees, agents or sub-contractors, howsoever caused. Tumwater will be responsible for any damages caused by its employees to Nisqually equipment and/or fixtures and shall provide all repairs/replacements, as appropriate, at no cost to Nisqually.

Nisqually shall protect, indemnify, and save the City harmless from and against any damages, cost, or liability including reasonable attorney fees, for injuries to persons or property arising from acts or omissions of Nisqually, its employees, agents or sub-contractors, howsoever caused. Nisqually will be responsible for any damages caused by its employees to City of Tumwater equipment and/or fixtures and shall provide all repairs/replacements, as appropriate, at no cost to the City of Tumwater.

18. **INDEPENDENT STATUS OF NISQUALLY.** The parties to this contract, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever.
19. **INSURANCE.** Tumwater shall obtain and maintain occurrence based insurance that provides liability coverage in the minimum liability limits of three Million Dollars (\$3,000,000.00) per occurrence and three Million Dollars (\$3,000,000.00) in the aggregate for its conduct in creating liability exposure related to the confinement of inmates, including general liability, errors and omissions, auto liability and police professional liability.

Nisqually shall obtain and maintain occurrence based insurance that provides liability coverage in the minimum liability limits of three Million Dollars (\$3,000,000.00) per occurrence and three Million Dollars (\$3,000,000.00) in the aggregate for its conduct in creating liability exposure related to the confinement of inmates, including general liability, errors and omissions, auto liability and police professional liability.

- 19.1 **CERTIFICATE OF INSURANCE.** Tumwater agrees to provide Nisqually with evidence of insurance coverage in the form of a certificate from a solvent insurance provider confirming coverage from a solvent insurance pool which is sufficient to address the insurance obligations set forth above. A copy of the certificate shall be provided annually and for the duration of this agreement. Nisqually agrees to provide Tumwater acceptable evidence of insurance coverage in the form of a certificate of insurance or other information identifying insurance coverage.
20. **AMENDMENTS.** All provisions of this agreement may be amended in writing at any time by mutual consent of the parties hereto and such amendments shall take effect immediately. In the event of any conflict, inconsistency, or incongruity between the provisions of this agreement and the provisions of the amendment, the provisions of the amendment shall in all respects govern and control.

21. **CONSENT TO JURISDICTION AND TRIBE'S EXPRESS LIMITED WAIVER OF SOVEREIGN IMMUNITY.** The Nisqually Indian Tribe does hereby expressly consent to a limited waiver of sovereign immunity and consents to jurisdiction in the courts of the State of Washington as having exclusive jurisdiction to hear, resolve and enter final judgment on any legal dispute by and between the parties to this agreement and/or their affected officers, officials, and employees, concerning the interpretation of this agreement, enforcement of any of its provisions, and any complaints or counterclaims for monetary damages and/or for equitable relief for any alleged or actual breach of any provision of this agreement and/or for the enforcement of any such final judgment entered by any court of the State of Washington regarding such matters.
22. **APPROVAL BY CITY & TRIBAL COUNCILS AND RECORDING.** Each party to this Agreement warrants that its City Council or Tribal Council has approved and authorized the signatories below to execute this Agreement. Consistent with RCW 39.34.040, this Agreement shall be filed for recording with the Thurston County Auditor upon full execution, or in lieu of recording with the auditor, published electronically on the websites of both parties.
23. **REMEDIES.** No waiver of any right under this agreement shall be effective unless made in writing by the authorized representative of the parties to be bound thereby. Failure to assist upon full performance on any one or several occasions does not constitute consent to or waiver of any later non-performance, nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto.
24. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement between the parties and represents the entire understanding of the parties hereto. It supersedes any oral representations that are inconsistent with or modify its terms and conditions.
25. **INVALID PROVISIONS.** Should any provisions of this agreement be held invalid, the remainder of the agreement shall remain in effect.
26. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on this date, the 18th
day of January, 2016.7

CITY OF TUMWATER

Pete Kmet
Pete Kmet, Mayor

NISQUALLY TRIBE:

Farron McCloud
Name Printed

Farron McCloud
Signature

Approved to as Form:

Allen Kupchuk
City Attorney

Attest:

Melney Valera
City Clerk