

## NISQUALLY JAIL SERVICE AGREEMENT

**THIS AGREEMENT** is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 and cooperate with the City to arrange for video hearings. The term “prisoner” shall include any person arrested, sentenced by the court or held under authority of any law or ordinance of Tumwater;
2. **REFUSAL OF PRISONERS.** The Nisqually Police Chief or the Nisqually Corrections Director shall have the right to refuse to accept custody if in their opinion the prisoner does not meet medical (or other) criteria for booking. The Nisqually Corrections Director may also refuse to accept custody of a prisoner if doing so would result in overcrowding of the Jail, or health, safety or security risks. Nisqually similarly shall have no obligation to receive a Tumwater prisoner into custody absent proper documentation providing a legal basis for confining the prisoner. Tumwater shall immediately transport any prisoner that is refused booking off the Nisqually Reservation. The parties agree that dumping of inmates denied booking on or near the Nisqually Reservation shall be grounds for immediate for-cause termination of this Agreement.
3. **CARE.** "Care" shall mean to provide room and board; to provide for the prisoner's physical needs; to retain the prisoner in custody; and to supervise and maintain proper discipline and control. 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. Such rules and regulations shall comport with Washington state law, and federal law regarding issues of civil rights and due process of prisoners.
4. **DURATION OF CONTRACT.** The term of this Agreement shall be for five (5) years, beginning January 1, 2023. The Agreement may be terminated without cause by either party by providing the other party with sixty (60) days written notice. Notice shall be deemed proper when provided to:

Nisqually:  
Chief Executive Officer  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr. S.E.  
Olympia, WA 98513

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

5. **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.
6. **NO GUARANTEED MINIMUM BED SPACE.** Nisqually does not guarantee bed space. Bed space will be provided on a space-available basis. Nisqually shall have sole and unfettered discretion in determining whether or not space is available.
7. **RATE/PAYMENT.** Tumwater shall pay to Nisqually the amount of \$110.00 per day (Basic Inmate Rate) per inmate for care. 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. Basic Inmate Rate will increase by 5% annually on January 1. Tumwater shall pay invoices within 30 days of receipt. Interest at the rate of 12% per annum shall be charged on all past due accounts. 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.
  - **SPECIALTY RATES.** The following per inmate/per diem Specialty Rates are total rates. They are inclusive of, not in addition to, the Basic Inmate Rate.
  - **\$180 Medical Care** — Payable at this rate only when the inmate is in a designated infirmary bed/unit/cell. Payment at this rate is included for any inmate who is detoxing with a Clinical Opiate Withdrawal Scale (COWS) score of 6 or higher.
  - **\$160 Compliant Mental Health Care** — Payable at this rate only when the inmate is in a designated mental health bed/unit/cell;
  - **\$210 Acute Mental Health** — Payable at this rate only when the inmate is in a designated mental health bed/unit/cell;
  - **\$140 Pharmacy** — Payable at this rate only when inmate utilizes on-site pharmacy services.

8. **MEDICAL CARE.** Each party shall be responsible for the medical care and medical expenses of prisoners housed pursuant to this Agreement as listed in Exhibit A, attached hereto and incorporated herein; 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. Failure of Tumwater to approve medical care shall relieve Nisqually of liability to Tumwater for any injury resulting therefrom. In the event that Nisqually deems a prisoner to be in need of urgent or emergency care, Nisqually shall make the best efforts to contact Tumwater, but may take any action it deems necessary to provide the prisoner with the needed care without obtaining prior approval, and said action(s) shall not affect Tumwater's responsibility for paying for such medical care as required by this Agreement. Tumwater shall reimburse Nisqually promptly for all medical expenses incurred by Nisqually for services that are the responsibility of Tumwater under Exhibit A, "Medical Expenses."
9. **TRANSPORTATION.** Tumwater shall be solely 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, but shall not be obligated to provide such transportation. Tumwater shall reimburse Nisqually for costs incurred for transportation. Such costs shall include mileage at the rate of \$1.00 per mile, plus labor and overhead (0.5 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.
10. **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.
11. **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.
12. 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 on a nondiscriminatory basis, and Nisqually shall be

obligated to manage, maintain and operate its facilities consistent with all federal and applicable state laws and regulations.

13. **RELEASE OF TUMWATER 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 in those matters in which they have jurisdiction, or upon Order of the Thurston County District Court or the Thurston County Superior Court in those matters in which said courts have 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 prosecuting attorney, Tumwater appointed public defender, or member of the Tumwater Police Department;
  - f. If the prisoner has served his sentence or the charge pending against said prisoner has been dismissed or bail or other recognizance has been posted as required by the courts.

14. **INDEMNIFICATION.** Each party agrees to protect, defend, save harmless and indemnify the other party, its officers, officials, agents and employees, from and against all claims, costs, suits and actions arising from intentional or negligent acts or omissions of its own party in performance of this Agreement.

Tumwater's indemnification obligation shall also extend to all claims, costs, suits and actions relating to the medical care of prisoners housed under this Agreement to the extent the claim, cost, suit or action result from the documented failure of Tumwater to approve medical care. Tumwater's indemnification does not extend to injuries and harm resulting from the negligent or intentional acts or omissions of Nisqually or its officers, officials, agents and employees.

15. **NOTICE OF CLAIMS.** In the event that a claim or lawsuit is brought against Tumwater or Nisqually arising from or related to this Agreement, the party shall promptly notify the other party of said claim or lawsuit.

16. **INSURANCE.** Each party shall obtain and maintain occurrence based insurance that provides liability coverage in the minimum liability limits of Ten Million Dollars (\$10,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) 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. The insurance policy(ies) shall provide coverage for any liability occurrence during the policy period, regardless of when any claim or lawsuit is filed.

16.1 **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.

17. **CHOICE OF LAW.** This Agreement shall be interpreted under the laws of the State of Washington.
18. **DISPUTE RESOLUTION.** If a dispute arises, the party making the claim will provide the other party written notice within thirty (30) days. The notice shall detail the matter in question and the grounds for withholding all or a portion of the amount billed or any other basis for the dispute. Authorized representatives of each party shall attempt to resolve the dispute by negotiation within thirty days of notification. If such negotiation is unsuccessful the parties shall apply to Judicial Arbitration and Mediation Service (JAMS) or such other alternate dispute resolution services as the parties may agree, for the appointment a mediator. Each party shall be responsible for paying one-half of the mediator's fees. Each party will bear their own costs and legal fees.
19. **LIMITED WAIVER OF IMMUNITY.** The Nisqually Indian Tribe is a Sovereign Nation with all immunities attendant thereto WITH THE FOLLOWING EXCEPTION THAT THE PARTIES TO THIS AGREEMENT HAVE SPECIFICALLY NEGOTIATED:

The Nisqually Indian Tribe of Washington does hereby expressly consent to jurisdiction of 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 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.

For this limited purpose only, the Nisqually Indian Tribe of Washington does hereby expressly waive its right to sovereign immunity and its right to assert sovereign immunity status or defense in the courts of the State of Washington for any such legal claim or complaint for the interpretation and/or enforcement of this Agreement, and/or for any complaints or counterclaims for monetary damages or equitable relief for any

breach 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.

A resolution outlining the limited waiver of Sovereign Immunity by the Nisqually Indian Tribe as relates to the performance of this Agreement, signed by Nisqually Tribal Councilmembers having authority to grant such waiver, shall be provided to Tumwater.

20. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is made for the sole benefit of Nisqually and Tumwater, and no other person or entity shall have any right, benefit, or interest under or because of this Agreement. No other parties are intended to be, or shall be determined to be, direct or incidental beneficiaries of this Agreement.
21. **NO WAIVER.** The failure to enforce any of the provisions of this Agreement shall not be construed as a waiver of such provisions. Further, any express waiver by any party with respect to any breach of any provision hereunder by any other party shall not constitute a waiver of such party's right to thereafter fully enforce each and every provision of this Agreement.
22. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the Parties and may be changed only by an agreement in writing signed by the Parties.
23. **INVALID PROVISIONS.** Should any provisions of this Agreement be held invalid, the remainder of the Agreement shall remain in effect.
24. **RECORDS AND REPORTS.** Tumwater may need access to certain records that relate to services under this Agreement or for public records purposes. When such need arises, Tumwater will make a request for such records through the Nisqually Corrections Director. Nisqually agrees to provide to Tumwater records relating to services provided under this Agreement as specifically enumerated below:

- Inmate Identification
- Inmate Photo (Mug Shot)
- Arrest and Booking Report
- Alerts
- Arrests
- Charges
- Court Hearings
- Holds
- Contacts
- Classification Reviews
- Notifications
- Keep Aways
- Assessment Listing

Booking Reports  
Booking Details  
Photo / Dorm Card  
Booking Form  
Tasks  
Property Forms  
Classification  
Housing Locations  
Release  
Recreation  
Special Diets  
Meals  
Medical Intakes  
Medical Records

This Agreement shall not apply to any records in the possession of the Nisqually Indian Tribe other than those specifically enumerated above. Nisqually records relating to internal Jail security are specifically excluded, including: 1) Internal Incident and After-Action Reports; 2) Video Monitoring Footage; and 3) Records (or portions thereof) containing the name, address, phone number or other personally identifiable information of Nisqually Corrections personnel. Tribal records relating to Jail security may be reviewed by authorized Tumwater personnel at the Nisqually Jail upon request. Nisqually agrees to release the records enumerated above within ten (10) days of Tumwater's request. If such records concern a decision regarding inmate medical care, records shall be released immediately to allow Tumwater to make an informed decision.

25. INDEPENDENT STATUS. The parties to this Agreement, in the performance of the services contemplated herein, will be acting in their individual capacities and not as agents, employees, partners, joint ventures 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.

[THIS SPACE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on this date, the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF TUMWATER:

NISQUALLY TRIBE:

\_\_\_\_\_  
Debbie Sullivan, Mayor

\_\_\_\_\_  
Chief Executive Officer

Approved as to legal form only:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

Attest:

\_\_\_\_\_  
Melody Valiant, City Clerk



**EXHIBIT A  
MEDICAL EXPENSES**

NISQUALLY TRIBE SHALL BE RESPONSIBLE FOR:

- Initial Screening
- Intake Screening
- Nurse Sick Call
- Physician Sick Call
- Physical if housed longer than 14 days
- Routine lab work that can be completed in the facility
- Routine medications, other than biologicals / non-formulary medications
- Mental health assessments and basic services that can be provided in-facility
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CITY OF TUMWATER SHALL BE RESPONSIBLE FOR:

- Pre-booking medical
- Urgent Care Facility Visits
- Emergency Room Visits
- Hospitalizations, including the cost of security provided by Nisqually Personnel. Agency will reimburse Nisqually for each attending officer at the time-and-one-half overtime rate of \$48.50 per hour.
- Non-Formulary / Biological Medications
- Ultra Sounds
- Ambulance Services
- Body Cavity Collection of Evidence / Searches
- OBGYN Care / Prenatal Care
- Vision
- Mental Health
- Long Term Care
- Auxiliary lab work and X-Rays
- Dental
- Lacey Fire Response Fees
- Other Specialty Services
- All services provided outside the facility