

Nisqually Indian Tribe
Tribal Council Resolution No. 168-2022

**A RESOLUTION TO APPROVE AND AUTHORIZE A JAIL SERVICES AGREEMENT
WITH THE CITY OF OLYMPIA**

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; and

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; and

WHEREAS, the Nisqually General Council is the duly constituted governing body of the Nisqually Indian Tribe, and the Nisqually 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 Olympia desires to contract with Nisqually for the provision of certain services at the Nisqually Jail; and

WHEREAS, the Tribal Council has reviewed, and desires to authorize the execution, delivery and performance of, the attached Jail Services Agreement with the City of Olympia.

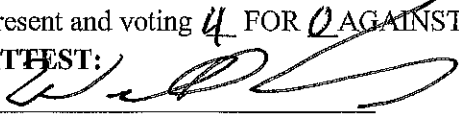
NOW, THEREFORE, BE IT RESOLVED, that the Nisqually Tribal Council hereby approves and authorizes that certain Jail Services Agreement by and between the Nisqually Indian Tribe and the City of Olympia, a copy of which is attached hereto and incorporated herein by reference.

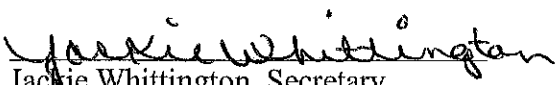
BE IT FURTHER RESOLVED, that the Tribe's Chief Executive Officer is hereby authorized to execute, deliver and cause the performance of said Agreement on behalf of the Tribe, and to take any additional actions necessary or incidental to the performance of the Tribe thereunder.

Certification

It is hereby certified that the above Resolution was adopted at a regular meeting of the Nisqually Tribal Council held on the 20th day of OCT 2022 at the Nisqually Administration Building, at which time a quorum was present and voting 4 FOR 0 AGAINST 0 ABSTENTIONS.

ATTEST:


William Frank III, Chairman
Nisqually Indian Tribe


Jackie Whittington, Secretary
Nisqually Indian Tribe

NISQUALLY JAIL SERVICE INTERLOCAL AGREEMENT
City of Olympia/Nisqually

THIS AGREEMENT is made and entered into as of the date of the last authorizing signature affixed hereto, by and between the Nisqually Indian Tribe, a Federally Recognized Indian Tribe, hereinafter referred to as "Nisqually" and the City of Olympia, hereinafter referred to as "Olympia." This Agreement is for the housing of inmates of Olympia 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 Olympia.
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 at their sole discretion 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 shall have sole and unfettered discretion in determining whether or not space is available Nisqually similarly shall have no obligation to receive an Olympia prisoner into custody absent proper documentation providing a legal basis for confining the prisoner. Olympia 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** and shall automatically extend for two additional five (5) terms to January 1, 2038, unless either party terminates as provided herein. The Agreement may be terminated without cause by either party by providing the other party with one hundred eighty (180) 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

City of Olympia:

Police Chief
P.O. Box 1967
Olympia, WA 98507-1967

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.
7. **RATE/PAYMENT.** Olympia shall pay to Nisqually the amount of \$130.00 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. Olympia 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. Without prejudice to any other contract rights available to it, if Olympia 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.
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 Olympia so that such insurance may be utilized. In the event that a prisoner requests non-urgent medical care, Nisqually shall contact Olympia for approval. Olympia 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 Olympia to approve medical care shall relieve Nisqually of liability to Olympia 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 Olympia, 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 Olympia’s responsibility for paying for such medical care as required by this Agreement. Olympia shall reimburse Nisqually promptly for all medical expenses incurred by Nisqually for services that are the responsibility of Olympia under Exhibit A, “Medical Expenses.”

9. **TRANSPORTATION.** Olympia shall be solely responsible for furnishing transportation for prisoners housed pursuant to this Agreement. Olympia 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. Olympia 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 Olympia unless such transportation is required by a court order or because of a medical emergency.
10. **CUSTODY TRANSFER.** Officers of Olympia 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 Olympia's prisoners shall be the responsibility of Olympia Officers. Olympia 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.
11. **CITY ACCESS TO PRISONERS.** All Olympia police officers and investigators directed by the Olympia City Attorney's office 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 Olympia police officers in equal priority with those of any other department, including the Nisqually law enforcement personnel.
12. **RELEASE OF OLYMPIA PRISONERS FROM NISQUALLY.** No Olympia Prisoner confined in the Nisqually Jail shall be removed therefrom except:
- a. When requested by the Olympia Police Department in writing;
 - b. By Order of the Olympia 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 an Olympia prisoner is charged;
 - d. In compliance with a writ of habeas corpus;
 - e. For interviews by the Olympia prosecuting attorney(s), appointed public defender, or member of the Olympia Police Department;
 - f. If the prisoner has served their 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. **MUTUAL INDEMNIFICATION.** Each party agrees to protect, defend, save harmless and indemnify the other party, its officers, officials, agents and employees, from and against any and all claims, costs, judgments, or damages, including attorney

fees, arising out of or resulting from the intentional or negligent acts or omissions of its own party. It is further specifically and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Olympia's indemnification obligation shall also extend to all claims, costs, judgments or damages relating to the medical care of prisoners housed under this Agreement to the extent the claim, costs, judgments, or damages result from the documented failure of Olympia to approve medical care.

14. **NOTICE OF CLAIMS.** In the event that a claim or lawsuit is brought against Olympia or Nisqually arising from or related to this Agreement, the party shall promptly notify the other party of said claim or lawsuit.
15. **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 (minimum limits of \$1,000,000 combined single limit) 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.

Additional Insured. Nisqually shall name the City of Olympia as an Additional Insured.

15.1 **CERTIFICATES OF INSURANCE.** Participation in a self-insured, government risk pool shall satisfy the conditions set forth in the insurance section. Each party agrees to provide the other with evidence of liability coverage in the amounts required by this Agreement, as well as applicable updated evidence upon each renewal.

16. **CHOICE OF LAW.** This Agreement shall be interpreted under the laws of the State of Washington.
17. **DISPUTE RESOLUTION for BILLING ISSUES.** If either party disputes any portion of an invoice, they will provide the other party written notice within thirty (30) days. The notice shall detail the amount 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 of an arbitrator whose decision shall be final and binding on the parties. Each party shall be responsible for paying one-half of the arbitrator's fees. Each party will bear their own costs and legal

fees. The arbitrator shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and enforced. This dispute resolution procedure shall only be available for disputes over amounts due for services provided under this Agreement.

18. **LIMITED WAIVER OF SOVEREIGN 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 tribe *as relates to the performance of this Agreement*, signed by Nisqually Tribal Councilmembers having authority to grant such waiver, shall be provided to Olympia.

19. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is made for the sole benefit of Nisqually and Olympia, 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.
20. **NO AUTOMATIC WAIVER OF ANY PROVISION.** 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.

21. **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.
22. **INVALID PROVISIONS.** Should any provisions of this Agreement be held invalid, the remainder of the Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last authorizing signature, below.

CITY OF OLYMPIA

NISQUALLY TRIBE:

Steven J. Burney, City Manager

Date: _____

Chief Executive Officer

Date: 11/2/23

Attest:

City Clerk

Approved as to legal form only:


Annaliese Harksen, Deputy City Attorney

**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

CITY OF OLYMPIA 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
- Olympia Fire Response
- Other Specialty Services
- All services provided outside the facility