

NISQUALLY JAIL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into on this 8th day of April, 2014, by and between the Nisqually Indian Reservation, a Federally Recognized Indian Tribe, hereinafter referred to as "Nisqually" and the City of Fife, hereinafter referred to as "Fife." This agreement is for the housing of inmates of Fife 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 by Fife. The term "prisoner" shall include any person arrested, sentenced by the court or held under authority of any law or ordinance; provided, that the Nisqually Police Chief or the Nisqually Corrections Director shall have the right to refuse to accept custody if in his opinion custody would result in overcrowding of the jail, or health, safety or security risks.

2. **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.

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:

Fife: Dave Zabell
City of Fife
54211 23rd Street East
Fife, WA 98424

Nisqually: Eletta Tiam, Chief Executive Officer
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. **PAYMENT.** Fife shall pay to Nisqually the amount of Sixty Seven Dollars and Fifty Cents (\$67.50) for each and every prisoner booked in to the jail, per day per prisoner. 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. Fife shall be charged the booking fee only for prisoners booked on warrants with bail amounts low enough that they are

subsequently released on personal recognizance with a new court date and for prisoners who bail out in anything less than two (2) hours of custody time.

Nisqually will submit a monthly invoice to Fife within Sixty (60) days of the end of each monthly billing period for prisoners housed pursuant to this agreement. Fife 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 Two Dollars and Fifty Cents per day per prisoner each calendar year beginning January 1, 2015. The daily rate per prisoner will therefore be as follows:

2014	Sixty Seven Dollars and Fifty Cents	(\$67.50)
2015	Seventy Dollars	(\$70.00)
2016	Seventy Two Dollars and Fifty Cents	(\$72.50)
2017	Seventy Five Dollars	(\$75.00)
2018	Seventy Seven Dollars and Fifty Cents	(\$77.50)

Without prejudice to any other contract rights available to it, if Fife does not pay the invoice with Sixty (60) days of receipt of invoice, Nisqually acting through its Police Chief, reserves the right to refuse to accept prisoners until the delinquent amount is paid in full; provided, however, that Nisqually has first given notice to Fife of such nonpayment and given Fife the opportunity to cure.

6. **MEDICAL CARE.** Fife shall be solely responsible for the cost of 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 Fife so that such insurance may be utilized. In the event that a prisoner requests non-urgent medical care, Nisqually shall contact Fife for approval. Fife 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 Fife to approve medical care after receiving prior notice of the need for such from Nisqually shall relieve Nisqually of liability to Fife 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 Fife, but may take any action it deems necessary to provide the prisoner with the needed care without obtaining prior approval. If Fife is contacted and does not authorize Nisqually to obtain the medical service, then Fife shall within one hour pick up the prisoner from the Jail.

To the extent permitted by state law, Fife 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 Fife to approve such care after receiving prior notice of the need for such from Nisqually.

7. **TRANSPORTATION.** Fife shall be solely responsible for furnishing transportation for prisoners housed pursuant to this agreement. Fife may request that Nisqually provide necessary transportation and Nisqually shall make best efforts to provide

such transportation, subject to staff availability. Fife shall reimburse Nisqually for costs incurred for transportation. Such costs shall include mileage at the rate of \$1.00 per mile, labor and overhead (.5 x labor). Nisqually shall not transport any prisoner without the express agreement of Fife unless such transportation is required by a court order or because of a medical emergency.

8. **CUSTODY TRANSFER.** Officers of Fife 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 Fife's prisoners shall be the responsibility of Fife Officers.
9. **CITY ACCESS TO PRISONERS.** All police officers and investigators directed by the prosecuting attorney for Fife prisoners 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 for police and investigator interviews of Fife prisoners in equal priority with those of any other department, including the Nisqually law enforcement personnel.
10. **RELEASE OF FIFE PRISONERS FROM NISQUALLY.** No Fife Prisoner confined in the Nisqually Jail shall be removed therefrom except:
 - a. When requested by Fife Police Department in writing;
 - b. By Order of the Fife Municipal Courts in those matters in which they have jurisdiction, or upon Order of the Pierce County District Court ,the Pierce County Superior Court, or other municipal court in those matters in which said courts have jurisdiction;
 - c. For appearance in the court in which a Fife prisoner is charged;
 - d. In Compliance with a writ of habeas corpus
 - e. For interviews by the Prosecuting Attorney or member of the 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.

11. **INDEMNIFICATION.**

Nisqually agrees to indemnify and hold Fife harmless, including attorneys fees and other costs of defense, from any and all claims, of whatsoever kind or nature, arising from acts or omissions of Nisqually, its officers, or employees in operating the Jail, provided said claim does not arise out of or in any way result from any intentional, willful or negligent act or omission on the part of Fife or any officer, agent or employee thereof.

Fife agrees to indemnify and hold Nisqually harmless, including attorneys fees and other costs of defense, from any and all claims, of whatsoever kind or nature, arising from acts or omissions of Fife, its officers, or employees, including, but not limited to claims alleging false imprisonment for any Fife prisoner, unless said claim for

false imprisonment arises for imprisonment after Nisqually has been directed by Fife to release a Fife prisoner and Nisqually fails to do so.

12. **INSURANCE.** Each party 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. The insurance policy(ies) shall provide coverage for any liability occurrence during the policy period, regardless of when any claim or law suit is filed. Further, Nisqually will name Fife, its officers and employees as *Additional Insureds*.

12.1 **CERTIFICATE OF INSURANCE.** Each party to this Agreement agrees to provide the other 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.

13. **CHOICE OF LAW.**

This Agreement shall be interpreted under the laws of the state of Washington.

14. **DISPUTE RESOLUTION.** If either party disputes any portion of an invoice or alleges that the other party is in breach of this Agreement, they will provide the other party written notice within thirty 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 Services (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. The arbitrator shall have the power to award legal fees to the prevailing party. 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.

15. **LIMITED WAIVER OF IMMUNITY.** Nisqually expressly and irrevocably waives any sovereign immunity it has from suit for causes of action with respect to the obligations evidenced by this Agreement and consents to be sued in the Washington state courts of general jurisdiction to enforce the terms of the Agreement, or to compel or enforce arbitration as described below. Nisqually agrees that it will not raise sovereign immunity as a defense in any legal action brought to enforce the terms of this Agreement. This waiver shall survive expiration or termination of this Agreement.

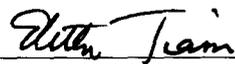
16. **AUTHORITY.** The Fife City Manager is authorized to execute this agreement by City of Fife Resolution No. 1539. Nisqually is authorized to enter into this agreement by action taken by its governing body on the ____ day of _____, 2014.

CITY OF FIFE:



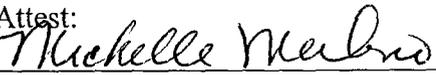
Dave Zabell, City Manager

NISQUALLY TRIBE:



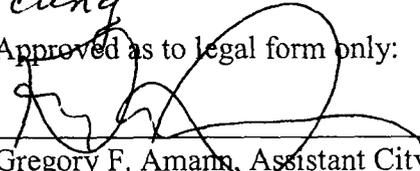
Eletta Tiam, Chief Executive Officer

Attest:

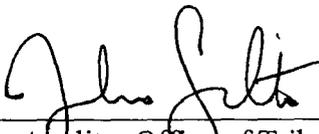


~~Carol Etgen, City Clerk~~
acting

Approved as to legal form only:



Gregory F. Amann, Assistant City Attorney



Fabio Apolito, Office of Tribal Attorney

Nisqually Indian Tribe
Tribal Council Resolution No. 27 -2014

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

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 General 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;

WHEREAS, the City of Fife wished to enter into a Jail Services Agreement with the Nisqually Indian Tribe for use of the Tribe's Detention and Corrections Facility;

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

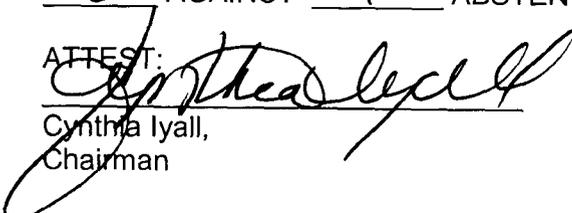
NOW, THEREFORE, BE IT RESOLVED that the Nisqually Tribal Council does acknowledge and approve the limited waiver of its sovereign immunity solely for litigation of matters arising from, and between the parties to, the Jail Services Agreement between the City of Fife and the Nisqually Indian Tribe;

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 Fife.

Certification

I certify that the above Resolution was adopted at a regular meeting of the Nisqually Tribal Council held on the 8 day of April, 2014 on the Nisqually Indian Reservation, Washington, at which time a quorum was present and voting 3 FOR 0 AGAINST 1 ABSTENTIONS.

ATTEST:


Cynthia Iyall,
Chairman


Jean Sanders,
Secretary

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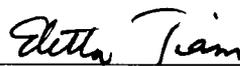
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CITY OF FIFE:



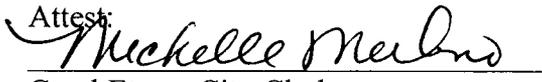
Dave Zabell, City Manager

NISQUALLY TRIBE:



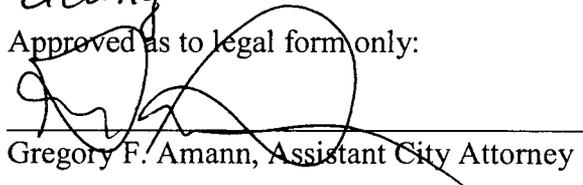
Eletta Tiam, Chief Executive Officer

Attest:

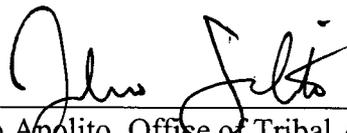


Carol Eigen, City Clerk
Acting

Approved as to legal form only:



Gregory F. Amann, Assistant City Attorney



Fabio Apolito, Office of Tribal Attorney