

NISQUALLY JAIL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of _____, 2022, by and between the Nisqually Indian Tribe, a Federally Recognized Indian Tribe, hereinafter referred to as "Nisqually" and the City of Shelton, hereinafter referred to as "Shelton." This agreement is for the housing of inmates of Shelton 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 Shelton;
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 Shelton prisoner into custody absent proper documentation providing a legal basis for confining the prisoner. Shelton 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 _____ 2022. 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

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. Shelton shall immediately transport any prisoner denied booking off the Nisqually Reservation. Dumping of inmates on or near the Nisqually Reservation shall be grounds for immediate termination of this Agreement.
7. **RATE/PAYMENT.** Shelton 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. Shelton 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 Shelton 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 Shelton so that such insurance may be utilized. In the event that a prisoner requests non-urgent medical care, Nisqually shall contact Shelton for approval. Shelton 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 Shelton to approve medical care shall relieve Nisqually of liability to Shelton 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 Shelton, 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 Shelton's responsibility for paying for such medical care as required by this Agreement. Shelton shall reimburse Nisqually promptly for all medical expenses incurred by

Nisqually for services that are the responsibility of Shelton under Exhibit A, "Medical Expenses."

9. **TRANSPORTATION.** Shelton shall be solely responsible for furnishing transportation for prisoners housed pursuant to this Agreement. Shelton 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. Shelton 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 Shelton unless such transportation is required by a court order or because of a medical emergency.
10. **CUSTODY TRANSFER.** Officers of Shelton 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 Shelton's prisoners shall be the responsibility of Shelton's Officers. Shelton Officers 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 Shelton police officers and investigators directed by the Shelton City Prosecutor or Mason County Prosecutor 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 Shelton police officers in equal priority with those of any other department, including the Nisqually law enforcement personnel.
12. **RELEASE OF SHELTON PRISONERS FROM NISQUALLY.** No Shelton Prisoner confined in the Nisqually Jail shall be removed therefrom except:
 - a. When requested by Shelton Police Department in writing;
 - b. By Order of the Shelton Municipal Court in those matters in which they have jurisdiction, or upon Order of the Mason County District Court or the Mason County Superior Court in those matters in which said courts have jurisdiction;
 - c. For appearance in the court in which a Shelton prisoner is charged;
 - d. In compliance with a writ of habeas corpus;
 - e. For interviews by the City or County prosecuting attorney, court appointed public defender, or member of the Shelton 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.

13. **INDEMNIFICATION.** Shelton shall protect, defend, save harmless and indemnify Nisqually, its officers, agents and employees, from and against all claims, suits and actions arising from intentional or negligent acts or omissions of Shelton in performance of this Agreement. Shelton's indemnification obligation shall also extend to all claims, suits and actions relating to the medical care of prisoners housed under this Agreement which result from the failure of Shelton 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.
14. Nisqually shall protect, defend, save harmless and indemnify Olympia, its officers, agents and employees, from and against all claims, suits and actions arising from intentional or negligent acts or omissions of Nisqually, its officers, agents and employees in performance of this Agreement.
- 14.1 **CERTIFICATE OF INSURANCE.** Each party agrees to provide the other with evidence of liability coverage in the amounts required by this agreement.
15. **NOTICE OF CLAIMS.** In the event that a claim or lawsuit is brought against Shelton 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 three Million Dollars (\$10,000,000.00) per occurrence and three 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. Nisqually's liability insurance will list Shelton as an *Additional Insured*. Shelton's participation in a self-insured municipal risk pool shall satisfy the conditions set forth in the insurance section.
17. **CHOICE OF LAW.** This Agreement shall be interpreted under the laws of the state of Washington.
18. **DISPUTE RESOLUTION.** 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.

19. **CONSENT TO JURISDICTION AND TRIBE'S EXPRESS 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 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 does hereby expressly waive its sovereign immunity from suit or defenses in the courts of the State of Washington for any such legal claim or complaint as relates to the performance of this agreement, 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 such waiver and approving this agreement that is signed by Nisqually Tribal Councilmembers having authority to grant such waiver shall be provided to Shelton as evidence of the limited waiver of sovereign immunity.

20. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is made for the sole benefit of Nisqually and Shelton, 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.

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this date, the _____ day of _____, 2022.

CITY OF _____:

NISQUALLY TRIBE:

Chief Executive Officer

Attest:

Approved as to legal form only:

City Clerk

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