

RECIPROCAL CHILD SUPPORT ENFORCEMENT AGREEMENT

PREAMBLE

THIS AGREEMENT is entered into between the Nisqually Tribe and the Washington State Department of Social and Health Services, Office of Support Enforcement (the Department) each acting in their representative capacity. The Nisqually Tribe is authorized to enter into this agreement pursuant to Article V of the Nisqually Tribal Constitution. The Interlocal Cooperation Act, RCW 39.34, permits any state agency to enter into a cooperative agreement with an Indian tribe for their mutual advantage and cooperation. The Nisqually Tribe and the Department desire to enter into this agreement pursuant to their respective authorities which include the enforcement of child support obligations, orders and judgments in order to fulfill the purpose set out herein. It is the intention of the parties that this agreement be liberally construed to effectuate its intent and purposes.

I

PURPOSE

The purpose of this agreement is to assist both the Nisqually Tribe and the Department in carrying out their respective authorities and responsibilities. The parties hereto recognize that their ability to enforce child support obligations, orders, and judgments will be enhanced with the establishment of procedures for the reciprocal

recognition and enforcement of child support orders and judgments. The purpose of this agreement is to establish such procedures. The establishment of the reciprocal procedures set out herein is in the best interests of the Indian families and especially Indian children who have a right and need to receive required support. This agreement is consistent with and is intended to further the declared national policy of protecting the best interests of children by providing a more effective and efficient way by which these children may be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry.

THIS IS AN ENFORCEMENT ONLY TYPE OF AGREEMENT AND NOT DESIGNED TO MODIFY THE ORIGINAL ORDER. CHANGES WILL BE MADE PROSPECTIVELY FOR ENFORCEMENT PURPOSES ONLY ON RESERVATION AND WILL NOT MODIFY THE UNDERLYING OBLIGATION.

II

DEFINITION SECTION

1. Nisqually Tribal Court: The court established by the Nisqually Tribal Business Council pursuant to Article V of the Nisqually Tribal Constitution and Title 1, Chapter 1 of the Nisqually Tribal Code.
2. Child: Any person under the age of 18 or over the age of 18 for whom a court order for support exists or a person who is 18 and enrolled full-time in high

school who is not otherwise emancipated, self-supporting, married, or a member of the Armed Forces of the United States.

3. Child Support Order: Any judgment or order of the Nisqually Tribal Court, the Superior Court of the State of Washington, any Tribal Court Order where that Tribe accords the Nisqually Tribal Court reciprocal recognition, any Court Order of another comparable jurisdiction, or an administrative order established by the Office of Support Enforcement (pursuant to RCW 74.20A.055) ordering payment of a set or determinable amount of support moneys. RCW 74.20A.056 and RCW 26.23.110.

4. Judgment: The final determination of the rights of the parties in an action.

5. Judgment Debtor: The party against whom a judgment has been rendered.

6. Register: To file a child support order or judgment in the Washington State Superior Court or the Nisqually Tribal Court.

7. Responsible Parent: A natural parent, adoptive parent, or custodial step-parent of a child who has been found to owe a duty to pay support moneys.

8. Custodian: Any person having the care, physical custody and control of any child or children.

9. Custodial Step-parent: The present spouse of the person who is either the mother, father, or adoptive parent of a child, and such status shall exist and continue until the relationship is terminated by death, dissolution of marriage, or court order pending dissolution. RCW 26.09 and RCW 26.16.205.

10. Support Monies: Any monies paid to satisfy a child support obligation whether denominated as child support, spousal support, alimony, maintenance, or any other such money which is intended to satisfy an obligation for support of any child, or to satisfy in whole or in part arrears or delinquency of such obligation.

11. Department: The Washington State Department of Social and Health Services, Office of Support Enforcement.

12. Secretary: The Secretary of the Department of Social and Health Services, his designee or authorized representative.

13. Tribal Spokesperson: A person who has been admitted to the Nisqually Tribal Court Bar pursuant to Nisqually Tribal Code, Title 1, Chapter 1.08.

14. Statute of Limitations: The statute of limitation shall be determined by the appropriate state laws or tribal code provisions from the jurisdiction which issued the original order, at the time the order was entered.

III

RECIPROCAL RECOGNITION

Whenever a child support obligation has been established and incorporated into a child support order or judgment and the dependent child, responsible parent or custodian works or resides within the exterior boundaries of the Nisqually Indian Reservation, and said custodian or dependent child has received public assistance on behalf of the child (pursuant to RCW 26.23.045) or has applied for enforcement services with the Washington State Office of Support Enforcement, the Nisqually Tribe will give full faith and credit to such orders and will assist the initiating court or agency

in the manner as set forth in this agreement: Provided that the party subject to a child support order or judgment from a Washington court or the Washington State Office of Support Enforcement may raise any defense he or she may have to such order or judgment in the Nisqually Tribal Court that is not precluded by the doctrine of res judicata. Res Judicata shall not bar defenses based on tribal custom. Whenever the Nisqually Tribal Court considers and applies tribal custom (based on a review of documented information pertinent to the issue of support) and issues an order to enforce the State's order, that new determination will be binding upon the State of Washington for the enforcement of support monies to be paid by the Judgment debtor while within the jurisdiction of the Nisqually Tribe. When the judgment debtor is in full compliance with an existing Tribal court order and there is a pre-existing arrearage, or an arrearage that will accrue based on the difference between the original state order and the new Tribal court order, the Department will stay all other normal available collection remedies except for the Federal income tax refund offset. In the event that the Internal Revenue Service (IRS) withholds a tax refund from an individual who is in full compliance with a Tribal court order, the debtor may request a hearing or comparable proceeding through Tribal court to determine whether the offset shall be released. Notice of this hearing or comparable proceeding shall be provided to the Department and any interested parties.

Whenever a child support obligation has been established and incorporated into a child support order or judgment entered by the Nisqually Tribal Court, the Department will give full faith and credit to such child support orders and judgments issued by the Nisqually Tribal Court. Any custodian or dependent child who is entitled

to support under a Nisqually Tribal Court child support order and judgment may apply to the Department to enforce the support obligation against the responsible parent. Upon acceptance of the application, the Department shall take appropriate action without the imposition of any fee or cost; unless required by federal regulation.

Information regarding verification of employment and salary of employees to include employee and employer addresses, employee's social security number and information relating to private medical coverage of the employee, which will be used solely for determining support monies or medical insurance availability, will be made available upon written request from the Department or Tribal authorities.

IV

SERVICE OF PROCESS ON THE RESERVATION

The Department, when initiating a child support enforcement action pursuant to this agreement, may utilize the Tribe's law enforcement office, i.e., Tribal Police, for the service of process on responsible parents residing on the reservation. The normal fee for these services will be charged in accordance with Tribal court rules.

V

REGISTERING JUDGMENT IN TRIBAL COURT

Whenever the criteria of Section III of this agreement have been met, the Department may apply to the Nisqually Tribal Court by written application for an order accepting a child support order as a judgment of the Nisqually Tribal Court.

Upon entry of an order by the Nisqually Tribal Court accepting the child support

order as a tribal court judgment, all provisions of the Nisqually Tribal Code regarding judgments and execution shall be applicable.

VI

GARNISHMENT IN TRIBAL COURT

An action may be commenced by the Department in the Nisqually Tribal Court against the Nisqually Tribe to garnish wages otherwise owed by the Nisqually Tribe to a person subject to a child support order. The immunity of the Nisqually Tribe from suit in the Nisqually Tribal Court, and no other court, is waived for the limited purpose of allowing the enforcement of child support orders through the process of garnishment in those cases where the requirements of this agreement have been met. The Nisqually Tribe shall answer any written garnishment and shall hold the wages of any Tribal employee in accordance with an order issued by the Nisqually Tribal Court.

Upon further order of the Nisqually Tribal Court, the Nisqually Tribe shall pay so much of the employee wages as might be held by the Tribe to the Court as required by a Tribal Court order. Notwithstanding any other part or provision of this agreement, no judgment may be entered against the Nisqually Tribe in such garnishment action which would obligate the Tribe to pay over any monies except for wages otherwise owed the employee and actually held by the Nisqually Tribe for the judgment debtor at the time that the order to pay over is made by the Tribal Court. Provided further, that the Nisqually Tribe shall not under any circumstances be liable for the entire support

award, any penalty, interest, cost or attorneys' fees if the Nisqually Tribe fails to act as required by a court order or statute including failure to answer the writ.

VII

NOTICE PROCEDURES

Any party initiating a child support enforcement action pursuant to this agreement shall comply with the notice requirements and the appropriate procedures of the court or agency receiving the application for judgment registration or enforcement services.

When public assistance monies are being expended on behalf of the child or children, notice of the Tribal court proceeding which would establish an obligation or set a support amount shall be served on the Office of the Attorney General of Washington State.

VIII

CONFLICT RESOLUTION

This agreement shall authorize reciprocal enforcement of the state court and administrative child support orders by the Nisqually Tribe so long as Washington courts and administrative agencies afford like reciprocity to child support orders of the Nisqually Tribal Court and Tribal agencies.

The parties to the agreement realize that there may be instances in which one of the parties believes another party has violated the agreement or that clarification is necessary to interpret provisions of the agreement. In such an instance, the parties will attempt to resolve the matter through agreement.

The Tribal Chairman of the Nisqually Tribe, with the advice and consent of the Business Committee, is authorized on behalf of the Nisqually Tribe to enter into agreements with the State of Washington to effectively implement this agreement. The Department's representative and the Washington State Attorney General's legal representative shall represent the State of Washington in the development of such agreements and in any review or conflict resolution of this agreement.

IX

REVIEW OF AGREEMENT

The term of this agreement shall be perpetual unless terminated under this paragraph. This agreement shall be reviewed at the request of any of the parties to the agreement as needed by the parties. The parties will periodically discuss any concerns they may have with the operation of the program.

This agreement may be terminated by any party upon thirty (30) days written notice of the intent to terminate to the other party.

X

FUNDING

Each party shall provide funding for its participation in this agreement and shall pay its own expenses that may be incurred in implementing this agreement.

INTERLOCAL COOPERATION ACT

Pursuant to the Interlocal Cooperation Act, RCW 39.34, this agreement does not authorize the representatives identified under paragraph VIII to purchase real or personal property without a modification of this agreement by the parties.


ON this 15 th day of May, 1992, in Olympia, Washington, the following, in their representative capacities, hereby approve this agreement.




DORIAN SANCHEZ
Nisqually Business Council Chairman



RICHARD J. THOMPSON
DSHS Secretary



DAVID HOGAN
DSHS Revenue Director



KENNETH O. EIKENBERRY
Attorney General

DRAFT
**Procedures for Implementation of Reciprocal Child Support Enforcement
Agreement Between the Nisqually Tribe and the State of Washington**
6/19/97

Chapter 1.00 General Provisions

1.01 Purpose

These procedures implement the Reciprocal Child Support Enforcement Agreement entered into by the Nisqually Indian Tribe (Tribe) and the Washington State Department of Social and Health Services, Office of Support Enforcement (Department) on May 15, 1992. The Tribe entered into this agreement for the purposes of determining support obligations based on Tribal culture and tradition, and allowing for the garnishment of wages of Tribal employees who are not in compliance with support obligations. These procedures are in the best interests of Indian families and Indian children who have a right and a need to receive required support.

1.02 Jurisdiction

The Nisqually Tribal Court shall have jurisdiction over cases arising under these procedures. The jurisdiction of the Tribal Court over persons and territory is limited only by federal law and the Constitution of the Nisqually Indian Tribe. The Tribal Court shall have the power to decide questions of jurisdiction which may be raised under these procedures.

1.03 Severability

If any part of these procedures or their application to any person or circumstance is held to be invalid, the remainder of these procedures or their application to other persons or circumstances shall not be affected.

Chapter 2.00 General Court Procedures

2.01 Form of Pleadings

All pleadings used in these procedures shall be in the form of the appendices attached hereto.

2.02 Hearings

(1) The provisions of the Nisqually Law and Order Code governing civil proceedings shall apply in all hearings held in accordance with these procedures. Any inconsistencies between the provisions of the Law and Order Code and these procedures shall be governed by these procedures.

2.03 Marital Communications Not Privileged

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under these procedures.

Chapter 3.00 Child Support Enforcement

3.01 Initiating an Enforcement Action

- (1) The Department may initiate a child support enforcement action in the Tribal Court when: (a) the dependent child, responsible parent or custodian works or resides within the exterior boundaries of the Nisqually Reservation; and (b) the custodian or dependent child has received public assistance on behalf of the child or has applied for support enforcement services with the Department.
- (2) To initiate a child support enforcement action in Tribal Court the Department shall file with the Court:
 - (a) Three copies of an Application for Order Accepting Child Support Order as a Judgment of the Nisqually Tribal Court. The Application shall include supporting documents (the original order, debt calculations, child support schedule worksheets, etc.).
 - (b) Three copies of a Motion for Order to Show Cause.
 - (c) A \$30.00 filing fee.
- (3) Upon receipt of the Application and Motion for Order to Show Cause, the Court Clerk shall docket the case for the next available Court date and cause the Court to review the application to determine whether it sets forth facts from which it may be determined that the Responsible Parent owes a duty of support.
- (4) If the Court finds there are facts from which it may be determined that the Responsible Parent owes a duty of support, the Court will schedule a hearing to be held within sixty (60) days of the filing date and issue an Order to Show Cause to the Responsible Parent.

3.02 Service of Order to Show Cause

- (1) No later than twenty (20) days prior to the date set for hearing, the Department shall serve the responsible parent and all other necessary parties with copies of the following:
 - (a) The Application for Order Accepting Child Support Order as a Judgment of the Nisqually Tribal Court with support documents;
 - (b) The Motion for Order the Show Cause; and
 - (c) The Order to Show Cause.

- (2) Service shall be made as follows:
 - (a) In person, by utilization of Tribal law enforcement; or
 - (b) By sending a copy by certified mail, return receipt requested, and by regular mail.

3.03 Show Cause Hearing Disposition

After due consideration of all relevant evidence presented at the show cause hearing, the Court shall proceed as follows:

- (1) If the Court determines that the Application correctly states the amount of support owing and all procedural requirements have been met in Tribal Court and the underlying action, the Court shall issue an Order Accepting Child Support Order as Judgment of the Nisqually Tribal Court.
- (2) If the Court determines that the Application incorrectly states the amount of support-owing or that procedural requirements have not been met, the Court shall deny the application.
- (3) If the Court determines that the Order is in need of prospective modification because of a defense based on Tribal custom, change of circumstances, or any other defense not barred by the doctrine of res judicata, the Court shall proceed as follows. Res Judicata shall not bar defenses based on tribal custom:
 - (a) If the original child support order is an order of the Tribal Court, or the parties consent to a modification of the child support order by the Tribal Court, the Court shall schedule a modification hearing to be held not later than thirty (30) days after the date of the show cause hearing. The Court shall notify the parties of the date, time and place set for hearing. For a consent to a modification to be valid, all necessary parties (including the State if the State has an interest in the case) must consent in writing.
 - (b) If the original child support order is not an order of the Tribal Court and the parties do not consent to a modification of the child support order, it shall deny the Application.
 - (c) The Court's power to modify the order is limited to the modification of the child support obligation. The Court may not revisit custody or visitation issues decided by the state court.
- (4) If the Court determines that there is a defense based on Tribal custom, and the parties do not consent to a modification of the child support order, the Court may, in the alternative to section 301(b), issue an order to enforce the State's order, applying Tribal custom. This order will not modify the state child support order but will apply for the purposes of collecting child support from the judgment debtor while he or she is within the

jurisdiction of the Tribal court. The determination of the Court will be binding on the State for the enforcement of support monies to be paid by the judgment debtor. When the judgment debtor is in full compliance with an existing Tribal court order and there is a pre-existing arrearage, or an arrearage that will accrue based on the difference between the original state order and the new Tribal court order, the Department will stay all other normal available collection remedies except for the Federal Income tax refund offset. The Department will also notify the credit bureau that a settlement has been reached and release any liens filed against the debtor's property. In the event that the Internal Revenue Service withholds a tax refund from an individual who is in full compliance with a Tribal court order, the debtor may request a hearing in Tribal court to determine whether the offset shall be released. Notice of this hearing shall be provided to the Department and all interested parties.

(5) The Court may order immediate wage withholding if the Court determines that there is a strong likelihood that the obligation will not otherwise be paid.

3.04 Modification of Order

After due consideration of all relevant evidence presented at the modification hearing, the Court shall proceed as follows:

- (1) When determining the support obligation, the Tribal Court shall consider the resources of both parents and the needs of the child(ren). The Tribal Court may establish a child support schedule to be used in calculating child support.
- (2) The Court shall also consider Tribal custom in determining the support obligation. Tribal custom considerations include, but are not limited to, the amount of non-monetary support (food, clothing, etc.) provided by the responsible parent, the amount of support, monetary and otherwise, provided by other members of the responsible parent's family, and the seasonal nature of the responsible parent's employment.
- (3) When specific information regarding the responsible parent's financial situation is not available, the Tribal Court shall impute the responsible parent's support obligation using demographic data specific to the Nisqually Indian Tribe.

3.05 Enforcement of Tribal Court Order

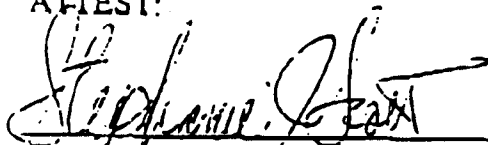
All child support obligations affirmed or established by the Tribal Court in accordance with these procedures shall be paid to the Washington State Support Registry. If the responsible parent is more than fifteen (15) days delinquent in paying the obligation and is employed by the Nisqually Tribe or a Nisqually Tribal enterprise, the Department may issue a Notice of Payroll Deduction without further notice to the responsible parent.

Income withholding for child support obligations has priority over any wage assignment, garnishment, attachment, or other legal process.

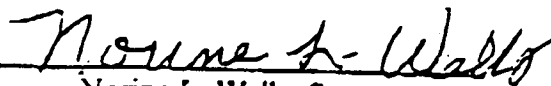
Certification

I certify that the above child support enforcement procedures were adopted at a regular meeting of the Nisqually Tribal Council held on the 9 day of July, 1997 on the Nisqually Indian Reservation, Washington, at which time a quorum was present and voting 5 FOR 2 AGAINST 0 ABSTENTIONS.

ATTEST:



Stephanie J. Scott, Chairman
Nisqually Indian Tribe



Norine L. Wells, Secretary
Nisqually Indian Tribe