

# SQUAXIN ISLAND TRIBE

RESOLUTION NO. 99-38

of the

## SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and,

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of the tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; and,

**WHEREAS**, the Squaxin Island Tribal council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education, and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, Squaxin Island Tribe has been represented by Columbia Legal Services in treaty fishing rights litigation; and

**WHEREAS**, effective March 31<sup>st</sup>, Squaxin Island Tribe is no longer eligible for services from Columbia Legal Services; and

**WHEREAS**, Squaxin Island Tribe is in need of continued representation in treaty fishing rights litigation; and

**WHEREAS**, Phil Katzen, who served us for twenty years while working with Columbia Legal Services, desires to continue to represent tribes through his private practice; and

**WHEREAS**, Phil Katzen presented a proposed contract to the Squaxin Island Tribal Council for approval.

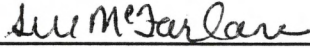
**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council does hereby approve the signed contract entered into with Phil Katzen for the purposes and terms agreed upon.

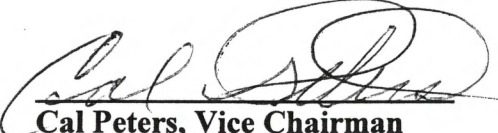
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**CERTIFICATION**

The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 13<sup>th</sup> day of May, 1999, at which time a quorum was present and was passed by a vote of 6 for and 0 against with 0 abstentions.

  
Dave Lopeman, Chairman

Attested by:   
Sue McFarlane, Secretary

  
Cal Peters, Vice Chairman

## ATTORNEY CONTRACT

THIS AGREEMENT is made this 13<sup>th</sup> day of May, 1999, between the Squaxin Island Tribe ("Tribe") and the Law Office of Phillip E. Katzen ("Attorney").

IT IS HEREBY AGREED AS FOLLOWS:

1. Employment. The Tribe hereby agrees to employ and does employ the Attorney to perform the work and professional services as set forth in this agreement and the Attorney in consideration thereof hereby agrees to faithfully execute his duties in a good and professional manner and to conduct himself in such a way as shall serve the best interest of the Tribe.
2. Term. The term of this contract shall be a period of three (3) years commencing on May 1, 1999, and terminating on April 30, 2002, subject, however, to prior termination as provided below. At the expiration date this agreement shall automatically cease and the Tribe is under no duty to notify the Attorney of such cessation and end of employment. No right of renewal is contained herein.
3. Duties. The duties of the Attorney shall be:
  - A. To represent the Tribe in United States v. Washington, Civil No. 9213, United States District Court, Western District of Washington, including specifically (1) with respect to shellfish implementation issues and shellfish issues remanded to the district court by the Ninth Circuit Court of Appeals and (2) development and litigation of any habitat protection ("Phase II") subproceeding in United States v. Washington; provided, however, that the Attorney shall not represent the Tribe with respect to any matters or subproceedings in United States v. Washington where a conflict exists between the Tribe and any other Tribal Government represented by the Attorney; and
  - B. To represent the Tribe in such other matters as the Tribe acting through its designated agents shall from time to time direct; and
  - C. To employ or associate such attorney, expert or legal assistants as may be reasonably necessary, provided that the Attorney shall associate other attorneys only with the approval of the Tribe.
4. Compensation. For all representation as identified in Appendix A the Tribe shall pay to Attorney a flat-fee, nonrefundable retainer of \$4,000.00 per year, due within 30 days of the signing of this contract. For all representation on matters not identified in Appendix A, including all litigation activities, the Tribe shall pay the Attorney an hourly fee not to exceed \$120 per hour, with the actual hourly rate dependent upon the number of tribes represented with respect to that matter, as set out in Appendix B.
5. Expenses. Where the Tribe has approved the association of experts or other attorneys as provided in paragraph 3(C), the fees of such experts or attorneys shall be payable as an expense of this contract, unless such experts or attorneys contract directly with the Tribe.

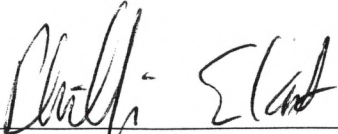


The Attorney shall also be allowed necessary and proper travel expenses incurred in connection with the performance of his duties under this contract. Travel by automobile shall be allowed at the federal income tax deduction rate applicable at the time of travel. When overnight travel is necessary reasonable lodging and meal expenses shall be allowed. In addition, the Attorney shall be allowed the following expenses: copying expenses, witness fees, exhibit preparation expenses, long distance telephone calls, court costs and fees, outside contracted stenographic services, printing expenses and postage expenses.

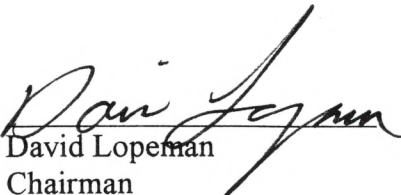
6. Payment of Fees and Expenses. Other than the Retainer fee due as provided in paragraph 4, all fees and expenses shall be paid upon the basis of monthly billings prepared by the Attorney. Each billing shall show the services performed and expenses incurred by the Attorney. Payment shall be made within thirty days of the Tribe's receipt of the monthly bill.
7. Non-Assignability. It is agreed that no assignment of the obligations of this contract in whole or part shall be made without the consent of the Tribe and the Attorney.
8. Termination. This contract may be terminated by either party giving thirty days notice in writing to the other party. This contract may also be terminated for failure to pay for Attorney's services when payment is due. Consistent with the Rules of Professional Conduct and rules applicable to practice before Tribal, State and Federal courts, Attorney may also defer services or withdraw from representation of the Tribe for failure to make payment when due.
9. Attorney's Standing. The Attorney stipulates that he is a fully licensed member in good standing of the Washington State Bar Association and to the best of his knowledge no disciplinary proceedings have ever been instituted against him by any bar association of any jurisdiction in the United States or its territories.
10. Miscellaneous. If any part of provision of this contract or the application thereof shall be adjudged invalid, the validity of the other parts or provision shall not be affected.
11. Amendment by Written Endorsement. It is understood and agreed that this instrument embodies all agreements existing between the Tribe and the Attorney and that no term, provision, or condition of this agreement shall be held to be altered, amended, changed or waived in any respect except by written endorsement attached hereto.

DATED this 13<sup>th</sup> day of May, 1999.

Law Office of Phillip E. Katzen

  
Phillip E. Katzen

Squaxin Island Indian Tribe

  
David Lopeman  
Chairman

## APPENDIX A

### Activities Covered by Retainer Agreement of Paragraph Four

The following activities and matters shall be covered by the non-refundable retainer specified in paragraph four of this contract and shall not be separately billed or charged to the Tribe:

1. Review all United States v. Washington pleadings, other than as part of a subproceeding where the Attorney is representing the Tribe as an active participant in the litigation.
2. Review of and attendance at Paragraph 25 proposals and meetings regarding new subproceedings proposed by Tribes not being represented by Attorney.
3. Review proposed agreements, plans, Memoranda of Understanding and similar documents that are part of United States v. Washington implementation, other than as part of a subproceeding where the Attorney is representing the Tribe as an active participant in the litigation.
4. Review proposed fisheries legislation and regulations of the State of Washington for consistency with United States v. Washington, not including proposed fisheries habitat measures.
5. Advise the Tribe regarding court orders, agreements, and other general fishing rights implementation, other than as part of a subproceeding where the Attorney is representing the Tribe as an active participant in the litigation.
6. Attend tribal council meetings, fish committee meetings, treaty council meetings, and other intertribal meetings regarding United States v. Washington matters in general, so long as those meetings are held in Western Washington.

The following are examples of matters or activities, which are **not** covered by the non-refundable retainer and will be billed separately as provided in Paragraph 4 and Appendix B:

1. Trial and mediation of shellfish issues remanded by the Ninth Circuit Court of Appeals.
2. Active litigation in any United States v. Washington subproceeding or any other case the Tribe has directed the Attorney to participate in on its behalf.
3. Participation in planning or preparation for negotiation or litigation of treaty hunting rights.
4. Development of "Phase II" litigation regarding a treaty right to protection of fisheries habitat.
5. Negotiation or litigation regarding the Washington Department of Natural Resources Habitat Conservation Plan (DNR HCP).

6. Review and advice regarding fisheries habitat matters, especially as they affect treaty rights, such as legislation, regulations, proposed plans, etc. (e.g., Timber-Fish-Wildlife (TFW), landscape plans, forest practices rules, water resources, water flows, watershed planning, etc.)
7. Participation in planning or preparation for negotiation or litigation of protection of treaty rights in addressing Endangered Species Act (ESA) issues, including development of a tribal wild salmonid policy or other documents to address ESA issues.

**APPENDIX B**

Hourly Rates Based On The Number Of Tribes Represented

Total Number of Tribes	Rate Per Tribe Per Hour
1	\$120.00
2	\$62.50
3	\$43.33
4	\$33.75
5	\$28.00
6	\$24.17
7	\$21.43
8	\$19.38
9	\$17.78
10	\$16.50
11	\$15.45
12	\$14.58