



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • 360-725-4000
www.commerce.wa.gov

Low Income Home Energy Assistance Program (LIHEAP) Agreement

Between

Confederated Tribes and Bands of the
Yakama Nation

401 Fort Road
P.O. Box 151
Toppenish, WA 98948

(509) 865-5121

Mary_Wahpat@Yakama.com

<https://www.yakama.com/>



And

Washington State Department of Commerce

1011 Plum Street SE
P.O. Box 42525
Olympia, WA 98504

(360) 725-2862

brian.sarensen@commerce.wa.gov

<https://www.commerce.wa.gov/>



1. Purpose

Title XXVI of the Omnibus Budget Reconciliation Act of 1981 states under section 2604(d) (2) of the LIHEAP statute provides that the LIHEAP allocations of reservation-based Native American Tribes applying for direct federal LIHEAP funding are to be based on the ratio of the number of eligible Native American households living within a state on the Tribe's reservation or adjacent trust land, to the total number of eligible households in the state, with the resulting percentage multiplied by the state's gross LIHEAP allocation—or on a larger amount agreed on by the Tribe and the State.

The Washington State Department of Commerce (Commerce) agrees to apply to the United States Department of Health and Human Services (HHS), for LIHEAP funds allocated to the State of Washington.

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) agrees to deliver LIHEAP services in its service area.

2. Length of Agreement

We intend the agreement to be reviewed every three years. If the agreement cannot be reviewed in this time period, the agreement will remain in effect. The agreement can be extended or renegotiated at any time with consent of both parties.

3. Service Territory

Yakama Nation shall provide benefits to all eligible Native American households residing on the:

- Yakama Nation reservation and off-reservation trust land anywhere in Washington State.
- Yakama Nation reservation and any fee lands purchased by Tribal members within the 1855 Yakama Treaty ceded area and usual and accustomed gathering areas.

For the purposes of LIHEAP, a Native American household is one in which a member is Native American. Tribal members may seek services from a non-Tribal LIHEAP servicer when the household has moved outside of the Tribe's geographical service area, if the household is closer to a non-Tribal LIHEAP provider and chooses to be served closer to home, or if the Yakama Nation runs out of LIHEAP funds.

4. Funding Allocation

Yakama Nation will receive \$840,509 from the US Department of Health and Human Services for each fiscal year of this agreement. The total Tribal distribution is based on a percentage of households with income at or below 150% of the Federal Poverty Guidelines.

5. Data sovereignty, data sharing and non-duplication of payments

Yakama Nation and Commerce will take the necessary steps to prevent duplicate payments to eligible households. Yakama Nation and Commerce will identify procedures to prevent duplicate payments to eligible households and will identify procedures to prevent duplicate payments in the separate funding plans serving separate geographic areas. In order for Commerce and Yakama Nation to prevent duplicate payments, the following is agreed to when necessary.

- A. Name and social security number of household members.
- B. Amount of assistance received in the case of persons moving on or off Tribal service territory.

Referral of applicant households will be made by Yakama Nation and Commerce when appropriate.

6. Hold Harmless

Yakama Nation holds Commerce harmless for any violations of federal regulations by the said Tribe. Yakama Nation further holds Commerce harmless for any audit exceptions of Yakama Nation administration of LIHEAP. Yakama Nation further holds Commerce harmless for any liability, loss, or damage that may be suffered directly or indirectly by any third party as the result of any claims, demands, or actions arising from the performance of this agreement by Yakama Nation.

Confederated Tribes and Bands of the Yakama Nation

Christopher J. Wallaher
Signature

8/21/24
Date

Vice Chairman
Position Title

Commerce

DocuSigned by:
Cindy Austin-Anderson
6A85C9B618494EF...
Signature

8/27/2024 | 10:10 AM PDT
Date

Assistant Director, Commerce
Position Title

GRANT AND CONTRACT PROCESSING FORM

24 AUG 20 P 1:00

Backup Documents Attached

General Ledger Report
Forms (Budget/BM)
JE
Schedules
XX Agreement Letter
XX Reviewed by In-House Counsel

YAKIMA NATION
GRANTS
G/C Processing#
Department:
Program:
Award #:
Fund & Cost Center:
Due Date:

24-8297
Human Services
LIHEAP
new .5512
8/22/2024

Purpose:

FY 2024- Low Income Home Energy Assistance Program

Agreement Letter (Washington State Department of Commerce)

Amount: \$840,509.00

Timeframe: 10-01-24/09-30-25

The above documents have been verified by:

Mary Wahpat 8-19-2024
Mary Wahpat, Program Manager DATE
CFDP/LIHEAP/LIHWAP/Food Voucher Programs

For Salm Mills 8/20/24
Merida Kipp, Deputy Director DATE
Human Services Division

The above documents have been verified by Grants & Contracts:

Grant/Contract Staff 8/20/24
Date

Grant & Contract Manager 8/20/24
Date

The above documents have been verified, signed and approved for processing by the Executive Committee.

Executive Board Member

8/21/24
Date

Original Document mailed to funding agency by: BY:

Regular mail FAX UPS Federal Express Other

Signed copy sent to Program's Committee, Deputy Director

and Grants & Contracts on: BY

Received
ORIGINAL RETURNED
AUG 22 2024
TO PROGRAM

8/19/2024 5:00 PM

Executive Secretary
Yakima Tribal Council



Yakama Nation Tribal Council
4. Health, Employment, Welfare Recreation, Youth
Activities Committee
FY 2024
OFFICIAL ACTION

DATE: August 21, 2024

TOPIC: FY 2024-Low Income Home Energy Assistance Program Agreement

ACTION REQUESTED: To Review and recommend approval of the Yakama Nation Low Income Home Energy Assistance Program Agreement between the Confederated Tribes and Bands of the Yakama Nation and Washington State Department of Commerce to receive \$840,509. For each fiscal year assisting Native American households At 150% of the Federal Poverty Guidelines and to renegotiated after three years, if agreement cannot be reviewed in this time period, the agreement will remain in effect. The agreement can be extended or renegotiated at any time with consent of both parties.

FORMAL ACTION TAKEN: The HEW Committee Approves the action requested.

MEMBERS		COMMITTEE ACTIVITY			
		Roll Call	Motion	Second	Vote
Caseymac Wallahee	Chairman	<i>Present</i>			
Charlene Tillequots	Secretary	<i>Present</i>			<i>For</i>
Deland Olney	Member	<i>Present</i>		<i>DAO</i>	<i>For</i>
Brian Saluskin	Member	<i>Present</i>	<i>BS</i>		<i>For</i>
	Ex Officio				

DECISION:



APPROVED



DISAPPROVED



TABLED

VOTE:

TOTAL 4 FOR 3 AGAINST 0 ABSTAINED 0

OTHERS PRESENT: _____

CERTIFICATION:

[Signature]

CHAIRMAN

8.21.24

DATE

COMMITTEE ACTION NUMBER:

263-2024-4

Distribution Copies:

Original Committee File _____
 Transcriber (if resolution required) _____
 Department/Program _____



YAKAMA NATION
OFFICE OF LEGAL COUNSEL

P.O. BOX 151/401 FORT RD.
TOPPENISH, WA 98948
(509) 563-7265

MEMORANDUM

To: Yakama Nation Tribal Council Health,
Employment, Welfare, Rec., Youth
Activities Committee
c/o: Mary Wahpat
From: Nicholas Kahmann, Staff Attorney
Date: August 15, 2024
No. R24.271
Re: WA Department of Commerce LIHEAP
Agreement

*** CONFIDENTIAL AND PRIVILEGED ATTORNEY WORK PRODUCT ***

This memorandum provides the Office of Legal Counsel's ("OLC") legal analysis of R24.271, WA Department of Commerce LIHEAP Agreement (the "Agreement") between the Yakama Nation and the Washington Department of Commerce ("Commerce"). The Agreement is to facilitate the Yakama Nation's distribution of LIHEAP funds obtained by WA to qualified households on certain Yakama Nation lands. OLC finds the Agreement *legally sufficient* as stated and qualified in the analysis below.

ANALYSIS

Finding of Minimum Legal Sufficiency:

OLC finds the attached Agreement legally sufficient as to form because it does not waive the Yakama Nation's sovereign immunity under current federal law.

Qualifications & Disclaimers:

OLC's finding of sufficiency is dependent upon the Program and Tribal Leadership's acceptance of the following unfavorable legal terms in the Agreement:

Hold Harmless: Under the Agreement the Yakama Nation agrees to hold Commerce harmless for nay audit exceptions that arise in the Yakama Nation's

*** CONFIDENTIAL AND PRIVILEGED ATTORNEY WORK PRODUCT ***

administration of LIHEAP, liability from third-party claims, and for any violations of federal law committed by the Yakama Nation.¹

Limitations on OLC's Review:

OLC takes no position on the below items, and respectfully defers to the Program and Tribal Leadership to determine whether or not entering into this Agreement is in the best policy interests of the Yakama Nation:

- The business terms of the Agreement;
- The truth or accuracy of any factual representations or warranties made by the Yakama Nation in the Agreement;
- The sufficiency of the vendor selection process, or Vendor's compliance with potentially applicable Yakama law, including but not limited to business licensing laws.

Please contact the reviewing attorney at nick@yakamanation-olc.org with any questions or concerns regarding this legal analysis.

¹ Agreement, § 6.



YN OLC ELECTRONIC REQUEST FOR LEGAL SERVICES

Submit your filled-out RLS form and your documents to: rls@yakamanation-olc.org

*** CONFIDENTIAL AND PRIVILEGED ATTORNEY CLIENT WORK PRODUCT ***
PLEASE ALLOW AT LEAST FIFTEEN (15) BUSINESS DAYS FOR YOUR REQUEST TO BE REVIEWED BY OLC

Request for Legal Services (RLS): (Please select the legal service(s) you are requesting OLC to provide.)

- ☒ Review the attached Contract or Agreement between Yakama Nation & WA. ST. Dept. of Commerce
The purpose of this Contract or Agreement is: Give Energy Assistance to members in residence
The total monetary value of this Contract or Agreement (if applicable) is: \$ 2,521,527.00
- ☐ Research and provide a legal analysis regarding: _____
- ☐ Other: _____

Governing Agreements, if any (e.g. funding agreements, land use licenses, permits): _____

Program Name: LIHEAP

Oversight Committee: HEW

Project Contact(s) (Questions about this RLS will be directed to these contacts):

Name Mary Wahpat Phone Ext. 4536 Email Mary-Wahpat@yakama.com
Name _____ Phone _____ Email _____

Authorization of Legal Services: Per Executive Committee Action = 190-2021, OLC is authorized to assist Yakama Nation governmental programs with any routine requests for legal services (RLS's), including legal document reviews, discrete legal research questions, and minor emergent legal matters. No other authorization will generally be required prior to OLC review, provided, that: OLC may require an authorizing committee action for any RLS that it finds to be non-routine or otherwise meriting committee review; and **Programs must courtesy copy their program manager, deputy director, and oversight committee chair on each email RLS submission.** If any of these individuals object to the RLS, a committee action will be required prior to OLC review.

SPACE BELOW FOR OFFICE OF LEGAL COUNSEL USE ONLY

LEGAL DISPOSITION

- | | | |
|---|--|---|
| <input type="checkbox"/> Legally sufficient as to form:
<input type="checkbox"/> Developed using an OLC template contract
<input type="checkbox"/> Expressly preserves sovereign immunity
<input type="checkbox"/> Contains Yakama choice of law and venue provisions
<input type="checkbox"/> Contains other favorable legal & risk management provisions. | <input checked="" type="checkbox"/> Legally sufficient as to form, provided that the Program and Tribal Leadership understand and agree to certain unfavorable terms in the agreement.
See notes below or memo attached | <input type="checkbox"/> Legally Insufficient – waives sovereign immunity. DO NOT SIGN without authorizing Tribal Council Resolution. |
|---|--|---|

Limitations on OLC's Review: OLC takes no position on:

- ☒ The business or policy terms of the agreement. OLC defers to Leadership to determine if the agreement is in the Yakama Nation's best interests.
☒ The legal sufficiency of the procurement process used to identify and select the vendor, consultant, or contractor.
☒ The vendor, consultant, or contractor's compliance with potentially applicable Yakama law, including the TERO or business licensing laws.
☒ The truth or accuracy of any factual representations or warranties made by the Yakama Nation.
☒ Whether the Agreement properly incorporates required 'flow down terms' from any governing agreements (e.g. funding agreements, permits).

Notes:

Agreement is legally sufficient to form, please see attached disposition memo.

RLS Number: R24.271 Reviewing Atty: Nicholas Kahmann Signature: Nicholas Kahmann Date: 4.19.2024