

RECEIVED

MAR 24 2022

Yakama Tribal Council  
Vice Chairman

RECEIVED

2022 MAR 23 AM 7:58 PROCESSING GRANT AND CONTRACT DOCUMENTS

YAKAMA NATION  
GRANTS & CONTRACTS

Backup Documents Attached

269A  
270  
272

G/C Processing#  
Department:

22-7052

Natural Resources

Forms (Budget/BM)  
JE's  
Schedules  
XX Other

Program:  
Contract #  
Fund & Cost Center:  
Due Date:

Fisheries FRM  
BPA-22-C-56662-000  
ASAP

R22.135 Reviewed by In-House Counsel  
Committee Action

Tana H x-6318

Purpose: Request Chairman signature on the US DOE BPA Amendment of Solicitation / Modification of Contract / Order

AMOUNT No \$ amount

The above documents have been verified by:

*Dallen Molen*  
Program Manager

3/18/22  
Date

*[Signature]*  
Deputy Director

3-22-22  
Date

The above documents have been verified by Grants & Contracts:

*[Signature]* 3/23/22  
Grant/Contract Date

*Darwin D. Batin* 3-23-22  
Grant/Contract Date

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

*Virgil Lewis*  
Executive Board Member

3/24/2022  
Date

Original Document mailed to funding agency by:

Regular mail \_\_\_\_\_ FAX \_\_\_\_\_ UPS \_\_\_\_\_ Federal Express \_\_\_\_\_

Other *Rec'd April 3/28/22*

Signed copy sent to Program's Committee, Deputy Director and Grants and Contracts on:

*March 29, 2022*  
Date

by RECEIVED

*[Signature]*  
Date

MAR 25 2022

Original

MAR 24 2022

Fisheries Resource Mgmt. Program

Returned

3-21-22  
Carol Sue





# YN OLC ELECTRONIC REQUEST FOR LEGAL SERVICES

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

FY2022 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 & US DOE Bonneville Power Administration  
 The purpose of this Contract or Agreement is: Amendment of Solicitation/Modification of Contract/Order  
 The total monetary value of this Contract or Agreement (if applicable) is: \$ 0.00
- Research and provide a legal analysis regarding: \_\_\_\_\_
- Other: Kate Marchworth

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

Program Name: Fisheries FRM Oversight Committee: Fish & Wildlife

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

Name Donella Miller Phone Ext 6363 Email mild@yakamafish-nsn.gov  
 Name Debbie Azure Phone Ext 6334 Email azud@yakamafish-nsn.gov

**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"/> <b>Legally sufficient as to form:</b><br>___ Developed using an OLC template contract<br>___ Expressly preserves sovereign immunity<br>___ Contains Yakama choice of law and venue provisions<br>___ Contains other favorable legal & risk management provisions. | <input checked="" type="checkbox"/> <b>Legally sufficient as to form,</b><br>provided that the Program and Tribal Leadership understand and agree to certain unfavorable terms in the agreement.<br><i>See notes below or memo attached</i> | <input type="checkbox"/> <b>Legally Insufficient – waives sovereign immunity. DO NOT SIGN</b><br>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:

See memo attached.

RLS Number: R22.135 Reviewing Atty: Kate Marckworth Signature: [Signature] Date: 3/17/22





YAKAMA NATION  
OFFICE OF LEGAL COUNSEL

P.O. BOX 151/401 FORT RD.  
TOPPENISH, WA 98948  
(509) 865-7268

## MEMORANDUM

To: Fish & Wildlife Committee  
c/o: Donella Miller, Yakama Nation Fisheries  
From: Kate Marckworth, Senior Attorney  
Date: March 17, 2022  
RLS: R22.135  
Re: Bonneville Power Administration IGMA  
56662 Mod 4

---

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

---

## OVERVIEW

This memorandum provides the Office of Legal Counsel's ("OLC") legal analysis of the Bonneville Power Administration's ("BPA") Intergovernmental Master Agreement ("IG-MA") No. 56662 Modification No. 4 (the "Mod 4"), which was submitted for legal review by the Yakama Nation Fisheries Program (the "Program"). OLC finds the Mod 4 legally sufficient, as stated and qualified below.

## ANALYSIS

This Mod 4 amends the terms of the BPA IG-MA 56662, as previously modified by Mods 1 through 3, which was reviewed by OLC, found legally sufficient, and executed by Tribal Leadership.<sup>1</sup> Specifically, Mod 4 would amend and extend the current effective term of the IG-MA through August 31, 2022. It does not change any of the legal terms and conditions of the IG-MA.

OLC finds this proposed Mod 4 legally sufficient, provided that Tribal Leadership accepts that the Agreement will continue to be governed by federal and Oregon law, and will obligate the Yakama Nation and its contractors to follow the terms of the IG-MA.

Additionally, while there is no express waiver of the Yakama Nation's sovereign immunity in the Mod 4, BPA may enforce the terms of the Mod 4 and any associated liabilities against the Yakama Nation, because the Yakama Nation's sovereign immunity does not protect against suits brought by the federal government.<sup>2</sup>

OLC qualifies its legal review and analysis of the Mod 4 as follows: OLC's review was limited to the specific terms of the Mod 4 – OLC did not analyze all of the federal and state laws and policies which the Agreement requires or could require compliance with.<sup>3</sup> OLC takes no position on, and makes no representations regarding the business or policy-related terms in this Mod 4, and respectfully defers to the Program and Tribal Leadership to determine whether executing this Mod 4 is in the best interests of the Yakama Nation.

If you have any questions or concerns regarding this analysis, please contact OLC at [rls@yakamanation-olc.org](mailto:rls@yakamanation-olc.org) or (509) 865-7268.

1

DOCUMENT	REVIEWED BY OLC	DETERMINATION	DATE YN SIGNED
BPA IG-MA 56662 Terms & Conditions	April 8, 2012 (Joe Sexton)	Legally Sufficient (Term of the agreement is 4/1/12 to 3/31/17.)	April 26, 2012
Modification 001 to BPA IG-MA 56662	October 29, 2014 (Ethan Jones – R14.264)	Legally Sufficient	November 19, 2014
Modification 002 to BPA IG-MA 56662	No legal review.	(Mod 002's exclusive function is to extend the term of the IG-MA through 3/31/22.)	March 8, 2016
Modification 003 to BPA IGMA 56662	OLC provided legal support to YFRM, F&W Committee, and Executive Committee on emergent basis Nov. 18-29, 2021.	Executed Mod 3 under protest; provided letter to BPA 11/29/21 indicating YN's legal position that YN is exempt from requirements of the E.O. 14042 implemented by Mod 3. Subsequently, BPA suspended the implementation of Mod 3 due to applicable court order.	Nov. 29, 2021

<sup>2</sup> *U.S. v. Yakima Tribal Court*, 806 F.2d 853 (9th Cir. 1986) (“the United States may sue Indian tribes and override tribal sovereign immunity”); *U.S. v. White Mountain Apache Tribe*, 784 F.2d 917 (9th Cir. 1986) (“the Tribe’s own sovereignty does not extend to preventing the federal government from exercising its superior sovereign powers”).

<sup>3</sup> A full analysis of applicable federal and state law is beyond the scope of the current request for legal services. If such analysis is required, please submit a supplemental request to OLC.

**U.S. DEPARTMENT OF ENERGY  
BONNEVILLE POWER ADMINISTRATION  
AMENDMENT OF SOLICITATION/MODIFICATION OF  
CONTRACT/ORDER**

OMB

**PAPERWORK REDUCTION ACT BURDEN DISCLOSURE STATEMENT**

This data is used to amend a solicitation or modify a contract or order. This form will assist in ensuring all changes are applied appropriately. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching for existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of the Chief Information Officer, Enterprise Policy Development & Implementation Office, IM-22, Paperwork Reduction Program (OMB) US Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585-1290; and to the Office of Management & Budget (OMB), OIRA, Paperwork Reduction Project (OMB), Washington, DC 20503.

1. Solicitation/Contract/Order Number: BPA - 22 - C - 56662-000		2. Amendment/Modification Number: M - 004	
3. Effective Date: 04/01/2022		4. Requisition/Purchase Req Number (used for COOP event only):	5. Contract Specialist (Name, Phone, Email): Karen Wolfe, 503-230-3448, ktwolfe@bpa.gov

**AMENDMENTS OF SOLICITATIONS**

6. The above numbered solicitation is amended as set forth in Item 12. The hour and date specified for receipt of Offers,  is extended to  is not extended.

Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation. If a signature is requested in Item 11, acknowledge this amendment by completing Items 13 and 14 and returning the amendment with your proposal. Failure of your acknowledgment to be received at the place designated for the receipt of proposal prior to the hour and date specified may result in rejection of your proposal. If by virtue of this amendment you desire to change a proposal already submitted, such a change must be received prior to the due date and hour specified in the solicitation.

**MODIFICATIONS OF CONTRACTS/ORDERS (Modifies the contract/order as described in item 12.)**

CHECK ONE	7. This unilateral modification is issued pursuant to: (specify authority below). The changes set forth in item 12 are made in the Contract/Order in Item 1.
<input type="checkbox"/>	
<input type="checkbox"/>	8. The above numbered Contract/Order is modified to reflect the administrative changes (such as changes in paying office, spelling correction, etc.) set forth in item 12 pursuant to the authority of BPI Part 14.10.3(b)(1).
<input checked="" type="checkbox"/>	9. Bilateral/Other (specify authority): MASTER AGREEMENT PERFORMANCE PERIOD AND OPTIONS (7-7)

10. Accounting and Appropriation Data (used for COOP event only):

**IMPORTANT** 11. Contractor  is not,  is required to sign this document and return via email to the Contract Specialist.

12. Description of Amendment/Modification (Attach additional documentation if needed and state SEE CONTINUATION SHEET.)

The purpose of this modification is to authorize the following changes:

1. Extend the IGC Master Agreement Period of Performance ending on 03/31/2022 to 08/31/2022.
2. All other terms and conditions remains unchanged.
3. This modification constitutes the total equitable adjustment for the changes described herein.

Except as provided herein, all terms and conditions of the document referenced in Item 1 or 2 remain unchanged.

13. Company Name:  
Confederated Tribes and Bands of the Yakama Nation

14a. Name, Phone and Title of Signer: f. <b>Delano Safuskin</b> <b>Chairman, Yakama Tribal Council</b>		15a. Name of Contracting Officer: William Cochenour-Supervisory Contracting Officer	
14b. Contractor/Offeror By: <u>Delano Safuskin</u> (Signature of person authorized to sign)	14c. Date Signed: 3/24/2022	15b. Signature of Contracting Officer By: <u>William Cochenour</u> (Signature of Contracting Officer)	15c. Date Signed: 03/03/2022

Digitally signed by WILLIAM COCHENOUR  
DN: c=US, ou=U.S. Government,  
ou=Department of Energy, cn=WILLIAM  
COCHENOUR,  
0.9.2342.1.9200300.100.1.1=8900100826918  
Date: 2022.03.03 09:45:41 -0500