

STATE-TRIBAL EDUCATION COMPACT
BETWEEN THE WASHINGTON STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

**STATE OF WASHINGTON AND
THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION
EDUCATION COMPACT**

PARTIES

THIS STATE-TRIBAL EDUCATION COMPACT (“**Compact**”) is made and entered into by and between the WASHINGTON STATE SUPERINTENDENT OF PUBLIC INSTRUCTION (hereinafter “**Superintendent**”), on behalf of the STATE OF WASHINGTON, a sovereign state of the United States, with all rights and powers thereto pertaining; and the CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION on behalf of its YAKAMA NATION TRIBAL SCHOOL (hereinafter “**Yakama Nation**”), federally recognized as an Indian Tribe pursuant to the Treaty with the Yakamas of 1855 (12 Stat. 951), and possessed of all sovereign powers and rights thereto pertaining.

AUTHORITIES

This Compact is entered into by the State of Washington pursuant to chapter 28A.715 RCW, State-Tribal Education Compact Authority, and by the Confederated Tribes and Bands of the Yakama Nation Tribal Council pursuant to the Resolution of February 1944, Resolution T-38-56, and Resolution GC-02-2012.

RECITALS

WHEREAS, American Indian and Alaskan Native students make up 2.5 percent of the total student population in the State of Washington and twenty-five percent or more of the student population in fifty-seven schools across the State;

WHEREAS, American Indian students in the State have the highest annual drop-out rate at 9.5 percent, compared to 4.6 percent of all students in each of grades nine through twelve;

WHEREAS, the parties recognize that the teaching of American Indian language, culture, and history is important to American Indian people and critical to the educational attainment and achievement of American Indian children;

WHEREAS, it is the intention of the parties that the State should support public education programs offered in tribal schools to assist tribal schools in providing comprehensive, culturally competent

teaching and learning that can help close the educational opportunity gap among American Indian students;

WHEREAS, the Washington State Legislature, through chapter 28A.715 RCW, authorized the Superintendent in 2013 to enter into state-tribal education compacts with the governing bodies of Indian tribes located in Washington or of schools in Washington that are currently funded by the federal Bureau of Indian Affairs;

WHEREAS, the purpose of these state-tribal education compacts is to support K-12 schools operated by eligible Indian tribes or tribal schools. Schools that are the subject of a state-tribal education compact are entitled, like Washington school districts, to receive state and federal education funding for enrolled students, including general apportionment, special education, categorical, and other non-basic education moneys;

WHEREAS, a tribal school that opts to become a state-tribal compact school is not thereafter required to seek federal education funding through the state, and may continue to seek and receive federal education funding directly from the Bureau of Indian Education or other federal entity;

WHEREAS, on January 29, 2018, the Yakama Nation Tribal Council adopted Resolution T-47-18, authorizing the Yakama Nation Tribal School to submit a state-tribal education compact application to the Superintendent;

WHEREAS, on February 1, 2018, the Superintendent received the resolution and an application (hereinafter, "**Application**") to establish a state-tribal compact school referred to as the Yakama Nation Tribal School (hereinafter, "**School**");

WHEREAS, this Compact reaffirms the State of Washington's important commitment to government-to-government relationships with Native American tribes, which has been memorialized in a variety of ways including in chapter 43.376 RCW. This Compact is executed by the State of Washington consistent with this government-to-government relationship, and builds upon the Washington Office of Superintendent of Public Instruction's (hereinafter, "**OSPI**") work with Native American tribes, including without limitation the *Since Time Immemorial (STI): Tribal Sovereignty in Washington State Curriculum Project* that imbeds the history surrounding sovereignty and intergovernmental responsibilities into the State's classrooms; OSPI's regular meetings with the superintendents of tribal schools and the federal Bureau of Indian Education representatives at the regional and national level on issues relating to student academic achievement, accessing of funding for tribal schools, and connecting tribal schools to OSPI's K-20 network; and the recent establishment, in statute, of the Office of Native Education within OSPI;

WHEREAS, pursuant to RCW 28A.715.800, a tribal compact school may opt to participate in an OSPI pilot project to implement modifications to state requirements governing school attendance, school year length, and assessments, and to accommodate cultural, fisheries, agricultural events and practices

and to develop culturally relevant assessment strategies that are also aligned with the Washington state learning standards; and

WHEREAS, on December 10, 2018, the Yakama Nation Tribal Council adopted Resolution T-036-19 approving and authorizing the Tribal Council Chairman to execute this Compact, and the approval of this Compact was not referred to the Yakama General Council as a measure of great importance by the General Council Executive Board Officers who were present at the time:

NOW THEREFORE, in consideration of the foregoing and the mutual promises and other consideration recited in this Compact, the Superintendent and the Yakama Nation do enter into this Compact as provided for herein.

I. TITLE

This document shall be cited as "The State of Washington – Yakama Nation Education Compact."

II. TERM OF COMPACT

This Compact will have an initial term to commence on November 19, 2018, or the date of mutual execution, whichever is later, and end on June 30, 2021, unless terminated sooner as provided in section VI (Nonrenewal and Termination). Prior to expiration of the initial term, the Parties will review this Compact and may agree to renew this Compact for an additional three-year term, or to negotiate a new Compact. Upon expiration of any renewal term, the Parties will review the Compact in five-year increments, subject to the nonrenewal and termination provisions of the Compact.

III. SCHOOL'S ROLES AND RESPONSIBILITIES

A. Educational Program

1. Content Standards. The Yakama Nation agrees that the School will conduct an educational program that satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and RCW 28A.230.010 through 28A.230.195, as well as applicable Yakama law, including the Yakama Nation Comprehensive Education Plan adopted by T-032-18 and ratified by GCM-09-2018. Where there are applicable educational program standards under both state and tribal law, the education program prescribed under state law shall provide the minimum standards for the School's educational program. State standards that must be met by the School include, but are not limited to, the following:

(a) Basic education, as defined in RCW 28A.150.200, .210 and .220;

(b) Instruction in the essential academic learning requirements and associated standards;

(c) Participation in, and performance on, statewide student assessments as provided for under federal and state law, including, but not limited to, chapter 28A.655 RCW;

(d) Performance improvement goals, as provided for in chapter 28A.655.100 RCW, and associated requirements;

(e) Accountability measures;

(f) State graduation requirements;

(g) Academic standards applicable to Washington State public schools; and

(h) Other tribal, state, and federal accountability requirements imposed by applicable statute, regulation, rule, policy, or this Compact.

2. Curriculum. The Yakama Nation agrees to the following:

(a) The School will implement the educational program and curriculum consistent with the program and curriculum presented in the Final Approved Application. **“Final Approved Application”** means the application submitted by the Yakama Nation pursuant to WAC 392-800-825 through -835, together with any subsequent modifications to the application requested by the Superintendent and agreed to by the Yakama Nation.

(b) The School may revise and amend the educational program and curriculum presented in the Final Approved Application at its discretion and without requiring approval from the Superintendent or amendment to this Compact; provided, that such revisions or amendments do not (i) materially change to the school’s mission or its student performance standards or targets as contained in the Final Approved Application, or (ii) violate any term of this Compact.

(c) The Yakama Nation will notify the Superintendent of any material changes or amendments to the educational program or curriculum as presented in the Final Approved Application.

3. Graduation Requirements for High Schools. The Yakama Nation agrees that the School’s curriculum will meet or exceed all applicable graduation requirements as established by the State Board of Education. The Yakama Nation further agrees that it will comply with the provisions in chapter 180-51 WAC (High school graduation standards) that apply to school districts. Consistent with RCW 28A.150.220, learning requirements regarding languages other than English may be met by students receiving instruction in one or more Yakama language dialects.

4. Staff Qualifications.

(a) The Yakama Nation agrees that instructional staff employed at the School will be certificated consistent with the standards described in RCW 28A.410.010 and Title 181 WAC; provided, that the Yakama Nation may hire noncertificated instructional staff of unusual competence and in exceptional cases as specified in RCW 28A.150.203. The parties acknowledge that noncertificated Yakama language teachers may be hired by the School pursuant to the “unusual competence” exception. The parties further

acknowledge that, in order to implement a culturally relevant program at the School, noncertificated Tribal members with cultural expertise may provide instruction to students pursuant to the unusual competence exception. Where noncertificated instructors are hired due to their unusual cultural or language competencies, the Yakama Nation acknowledges that a certificated instructor must exercise general supervision pursuant to RCW 28A.150.203.

(b) The Yakama Nation agrees that it will comply with employee record checks requirements in RCW 28A.400.320 when employing School employees. The Yakama Nation further agrees that it will comply with the mandatory termination and notification provisions of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475.

(c) If the Yakama Nation or School administrator(s) has reason to believe that an employee with a certificate or permit authorized under chapter 28A.410 RCW or chapter 28A.405 RCW has engaged in unprofessional conduct (chapter 181-87 WAC) or lacks good moral character (chapter 181-86 WAC), the School agrees to submit a complaint to Education Service District 105 (hereinafter, "ESD") stating the basis for the belief and requesting the ESD to submit the complaint to OSPI's Office of Professional Practices (hereinafter, "OPP"). The School will simultaneously send a copy of the School's complaint to OPP. Certificated and licensed staff employed by the School are subject to Title 28A RCW as well as any applicable tribal, state, or federal laws.

5. Staff Training. The Yakama Nation agrees that the School will provide employees and staff with training required by applicable tribal, state, and/or federal law.

6. Student Assessment. The School will participate in all testing programs required by OSPI and the State Board of Education. The School will comply with all assessment protocols and requirements established by OSPI and the State Board of Education, maintain test security, and administer the tests consistent with all tribal, state, and federal requirements. The School shall follow OSPI's test administration and security requirements.

7. English Language Learners.

(a) The Yakama Nation agrees that the School will at all times comply with all state and any federal law applicable to the education of English language learners including, but not limited to, the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 6301 et seq.) (the "ESEA"), Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974, and associated state laws or rules. The School will provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to participate in the mainstream English language instructional program. The School will employ and train teachers to provide appropriate services to English language learners. The School will work to assure compliance with any and all requirements of state and federal law regarding services to English language learners.

(b) The Yakama Nation agrees that the School will provide transitional bilingual instructional in accordance with chapter 392-160 WAC (Special service program—Transitional bilingual) and as presented in its Final Approved Application.

8. Students with Disabilities. The Yakama Nation agrees that the School will provide services and accommodations to students with disabilities as set forth in the Final Approved Application and in accordance with any relevant policies thereafter adopted, as well as with all applicable provisions of the Individuals with Disabilities Education Act (20 U.S.C. § 1401 et seq.), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (the “ADA”), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and all regulations promulgated pursuant to such federal laws. This includes providing services to attending students with disabilities in accordance with the individualized education program (“IEP”) recommended by a student’s IEP team. The School will also comply with all applicable tribal, federal and state laws, rules, policies, procedures and directives regarding the education of students with disabilities including, but not limited to, chapter 28A.155 RCW and chapter 392-172A WAC (Rules for the provision of special education).

9. Supplemental Programs. The Yakama Nation agrees that the School will provide supplemental programs to students as presented in its Final Approved Application. The Yakama Nation agrees that it will comply with all state and any applicable federal legal requirements in providing such programs, including, but not limited to, Title I of the ESEA and chapter 392-162 WAC (Special service program—Learning assistance) and chapter 392-164 WAC (Special service program—Chapter 1 Migrant of the Education Consolidation and Improvement Act of 1981).

10. Highly Capable Students. The Yakama Nation agrees that the school will administer programs for the education of K-12 students who are highly capable in accordance with chapter 392-170 WAC (Special service program—Highly capable students).

11. Student Conduct and Discipline. The Yakama Nation agrees that the School will comply with the School’s discipline policy contained in the Final Approved Application, as well as with all applicable tribal, state, and federal laws relating to student discipline. The Yakama Nation further agrees that it will notify the Superintendent of any material changes or amendments to the Final Approved Application’s discipline plan.

B. School Operations

1. School Status. The parties acknowledge that this Compact is not intended to, and shall not be interpreted to create a public school district under Washington law; rather, this Compact is established under the special legislative authority of chapter 28A.715 RCW. Consistent with RCW 28A.715.020, the parties acknowledge that the School will be exempt from all state statutes and rules applicable to school districts and school district boards of directors except for those state statutes and rules made expressly applicable (a) to state-tribal education compact schools by chapter 28A.715 RCW, or (b) to the School by the terms of this Compact. In implementing this Compact, the Yakama Nation agrees to comply with

applicable federal laws, including the Individuals with Disabilities Education Improvement Act (20 U.S.C. Sec. 1401 et seq.); the Federal Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), the Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.), and the McKinney-Vento Act (42 U.S.C. 11432 et seq.).

2. Student Data and Enrollment Reporting.

(a) The Yakama Nation agrees to report School enrollment to OSPI in the same manner and using the same definitions of enrolled students and annual average full-time equivalent enrollment as is required of Washington public school districts.

(b) The Yakama Nation agrees to meet all CEDARS reporting requirements as outlined in OSPI's annual CEDARS data manual.

3. Evaluation and Effectiveness Review.

(a) The Yakama Nation agrees that, pursuant to WAC 392-800-855, it will annually evaluate the impact of this Compact on the academic success of American Indian and Alaska Native students enrolled in the School.

(b) The Yakama Nation agrees to collect and report to the Superintendent academic growth data and high school graduation data by August 1 of each year during which this Compact is in effect.

4. Nonsectarian Status. The Yakama Nation agrees that the School will not engage in any sectarian practices in its educational program, admissions policies, employment practices, and all other operations. The School will not be to any extent under the control or direction of any religious denomination. Consistent with 42 U.S.C. § 1996, the United States Constitution, and Article IX Section 4 and Article I Section 11 of the Washington State Constitution, and applicable tribal, federal, and state law, the School shall not inhibit Indian staff and students from expressing or exercising their traditional religious or spiritual practices. Further, the parties acknowledge that nothing in this Section shall prohibit the School from conducting, hosting, or participating in Yakama cultural activities or events.

5. Non-discrimination. The Yakama Nation agrees that the School will comply with all federal and state non-discrimination laws, regulations and policies which are otherwise applicable to Washington public schools, including, but not limited to, chapters 28A.640 and 28A.642 RCW. Accordingly, no person shall, on the ground of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the School or its agents. Provided, nothing herein is intended to limit any exemption under federal or state law pertaining to employment practices

under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation. Provided further, nothing herein is intended to limit any exemption under federal or state law pertaining to student enrollment practices under which a preferential treatment is given to any individual because he or she is a tribal member or sibling of an already enrolled student.

6. Recordkeeping and Auditing.

(a) The School will comply with all applicable tribal, federal, state, and OSPI recordkeeping requirements including those pertaining to students, governance, and finance.

(b) The Yakama Nation agrees to maintain all books, records, documents, data and other evidence relating to this Compact, including School administrative and student records. The Yakama Nation will retain such records for a period of six (6) years following the expiration, nonrenewal, or termination of the Compact. These records must be subject at all reasonable times to inspection, review or audit by OSPI, personnel duly authorized by the Superintendent, the Office of the State Auditor, and federal and state officials so authorized by statute, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

7. Right of Inspection. The Yakama Nation agrees to provide right of access to the School to the Superintendent or any of its officers at all reasonable times, in order to monitor and evaluate compliance under this Compact on behalf of the Superintendent. All inspections and evaluations will be performed in such a manner that will not unduly interfere with the Yakama Nation's or School's operations.

8. Student Welfare and Safety. The Yakama Nation agrees that the School will comply with all applicable tribal, federal, state, county and city health and safety laws. The Yakama Nation further agrees that (a) it will comply with the safety plan presented in its Final Approved Application, and (b) it will notify the Superintendent of any material changes or amendments to the Final Approved Application's discipline plan.

9. Transportation. The Yakama Nation agrees that the School will be responsible for providing students transportation in accordance with tribal, state, and federal law, including, but not limited to, chapter 392-141 WAC (Transportation—State allocation for operations), chapter 392-142 WAC (Transportation—Replacement and depreciation allocation), chapter 392-143 WAC (Transportation—Specifications for school buses), chapter 392-144 WAC (School bus driver qualifications), and chapter 392-145 WAC (Transportation—Operation rules). The Yakama Nation further agrees that (a) it will comply with the transportation plan presented in its Final Approved Application, and (b) it will notify the Superintendent of any material changes or amendments to the Final Approved Application's transportation plan. OSPI acknowledges that the School's transportation plan in the Final Approved Application satisfies all state requirements.

10. School Calendar.

(a) The parties agree that the School calendar for the 2018-19 school year began on August 29, 2018. The Yakama Nation agrees that, following the commencement of this Compact under Section II, the School will provide an instructional program for the 2018-19 school year that meets the compulsory school attendance requirements of state law, financial guidelines, and state rules, including, but not limited to, RCW 28A.150.220, RCW 28A.225.010, chapter 180-16 WAC (State support of public schools), and chapter 392-410 WAC (Courses of study and equivalencies).

(b) The Yakama Nation agrees that the School will annually adopt a School calendar with an instructional program that meets the compulsory school attendance requirements of state law, financial guidelines, and state rules, including, but not limited to, RCW 28A.150.220, RCW 28A.225.010, chapter 180-16 WAC (State support of public schools), and chapter 392-410 WAC (Courses of study and equivalencies). The Yakama Nation further agrees that it will notify the Superintendent of any changes or amendments to the School's calendar as presented in the Final Approved Application.

11. Admission and Enrollment.

(a) The Yakama Nation will not charge students tuition except to the same extent as school districts may be permitted to do so with respect to out-of-state and adult students pursuant to chapter 28A.225 RCW; provided, that the Yakama Nation may charge students fees for participation in optional extracurricular events and activities if authorized under state law and rules.

(b) The Yakama Nation agrees that it will not limit admission to the School on any basis other than age group, grade level, or capacity and must otherwise enroll all students who apply; provided, that if capacity is insufficient to enroll all students who apply, the School may prioritize the enrollment of tribal members and siblings of already enrolled students.

12. School Facilities.

(a) The Yakama Nation agrees that the School facilities will conform with provisions of the ADA and any other federal, state, or tribal requirements applicable to public school facility access.

(b) The School facilities will meet all applicable health, safety and fire code requirements and will be of sufficient size to safely house the School's anticipated enrollment.

13. Accountability for School Performance. The Memorandum of Understanding between the Office of Superintendent of Public Instruction of the State of Washington and The U.S. Department of the Interior – Bureau of Indian Education shall govern. The Yakama Nation agrees the School will compile and report assessment data as specified in the Memorandum of Understanding, and compliance with accountability measures will be determined by the Bureau of Indian Education.

14. Ethics.

(a) The Yakama Nation agrees that no School administrator, or other School employee/representative authorized to enter contracts on behalf of the School, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(b) The Yakama Nation agrees that no School administrator may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(c) The Yakama Nation agrees that no School administrator may give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the School, for a matter connected with or related to their services as a Board member or School administrator unless otherwise provided for by law.

(d) The Yakama Nation agrees that no School administrator may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(e) The Yakama Nation agrees that no School administrator may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

(f) Terms in this provision will be defined in accordance with the definitions set out in RCW 42.52.010. The Advisory Opinions of the Executive Ethics Board shall provide non-binding guidance for the parties' interpretation of this provision.

(g) This provision does not apply to the following cases:

(i) The letting of any employment contract for the driving of a school bus if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the School;

(ii) The letting of an employment contract as a substitute teacher or substitute educational aide, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the School and the Yakama Nation has found that there is a shortage of substitute teachers in the School.

(iii) The letting of any employment contract to the spouse of an officer of the School, the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the School.

C. School Finance

1. Legal and Accounting Compliance. The Yakama Nation agrees that the School will comply with all applicable state financial and budget rules, and financial reporting requirements, including, without limitation, the following:

(a) The provisions of chapter 392-101 WAC (Superintendent of public instruction—Administrative practices and procedures), chapter 392-115 WAC (Finance—Audit resolution process), chapter 392-117 WAC (Timely reporting), chapter 392-121 WAC (Finance—General apportionment), chapter 392-122 WAC (Finance—Categorical apportionment), chapter 392-123 WAC (Finance—School district budgeting), chapter 392-127 WAC (Finance—Certificated instructional staff ratio (46:1000) compliance), chapter 392-129 WAC (Finance—Emergency school closure), chapter 392-134 WAC (Finance—Apportionment for part-time public school attendance), chapter 392-138 WAC (Finance—Associated student body moneys), and chapter 392-140 WAC (Finance—Special allocations), that apply to first class school districts;

(i) The Yakama Nation and OSPI have not agreed on whether the provisions of chapter 392-121 WAC pertaining to the S-275 reporting process as defined in WAC 392-121-220 are regulations applicable to this Compact. OSPI and the Yakama Nation shall direct their staff to use best efforts to resolve all issues surrounding the inclusion of the S-275 reporting process in this Compact.

(b) The Accounting Manual for School Districts; and

(c) The Administrative Budgeting and Financial Reporting Handbook.

2. Audits.

(a) The Yakama Nation recognizes that the School will be subject to financial examinations and audits as determined by the Washington State Auditor, including annual audits for legal and fiscal compliance. Within the scope of its responsibilities, the State Auditor's Office may conduct the following types of audits:

(i) Financial statement;

(ii) Legal and fiscal compliance;

(iii) Federal single;

(iv) Special investigation (includes fraud audit); and

(b) The Yakama Nation agrees that it will be financially responsible for all costs associated with the audit(s).

(c) The Yakama Nation agrees to provide the Superintendent with a copy of any audits prepared under this provision.

3. Non-Commingling. The Yakama Nation agrees that assets, funds, liabilities and financial records of the School will be kept separate from assets, funds, liabilities, and financial records of any other person, entity, or organization unless approved in writing by the Superintendent. Additionally, public funds and assets received by the School will be tracked and accounted for separately.

4. Assets.

(a) The Yakama Nation agrees that the School shall maintain a complete and current inventory of all school assets that (i) were purchased with funds received by the School under chapter 28A.715 RCW and this Compact, and (ii) cost more than \$5,000 (including sales tax and ancillary costs), or (iii) are small and attractive assets that cost \$300 or more (including sales tax and ancillary costs). Assets include land, infrastructure, improvements to land, buildings, leasehold improvements, vehicles, furnishings, equipment, collections, and all other tangible and intangible assets that are used in school operations. Small and attractive assets include, but are not limited to Optical Devices, Binoculars, Telescopes, Infrared Viewers, Rangefinders, Cameras and Photographic Projection Equipment, Desktop Computers (PCs), Laptops and Notebook Computers, Tablets and Smart Phones, Television Sets, DVD Players, Blu-ray Players, and Video Cameras (home type).

(b) The School shall update the inventory annually and shall take reasonable precautions to safeguard assets acquired with funds received by the School under chapter 28A.715 RCW and this Compact.

(c) The Yakama Nation agrees that if this Compact expires or is terminated or the School otherwise ceases to operate, School assets will be deemed to be public assets if at least 25 percent of the funds used to purchase the asset were state funds received by the School under chapter 28A.715 RCW and this Compact. Any assets acquired wholly or with more than 75% tribal or other non-state funds must be disposed of consistent with applicable federal, state, and/or tribal law, provided that the School must maintain records demonstrating the percentage of public funds used to acquire assets. If the School's records fail to establish clearly whether an asset was acquired with the use of public funds, the assets will be deemed to be public assets.

5. School funds. The Yakama Nation agrees that any moneys received by the School from OSPI pursuant to this Compact that remain in the School's accounts at the end of any budget year must remain in the School's accounts for use by the School during subsequent budget years.

6. Location and Access. The Yakama Nation agrees that the School will maintain books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended under this Compact. These records will be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Superintendent, the State Auditor, and federal officials so authorized by statute, rule, regulation, or contract. The financial records must be maintained at the School's administrative office.

D. Oversight and Enforcement. The Yakama Nation Tribal Council will review and enforce the School's performance under this Compact. The Tribal Council will also review OSPI's performance under this Compact and hold OSPI accountable to the performance of its obligations under this Compact.

IV. SUPERINTENDENT'S RIGHTS AND RESPONSIBILITIES

A. Funding

1. Apportionment. The Superintendent will apportion funding for the School according to the schedule established under RCW 28A.510.250, including basic education apportionment and special education, categorical, and other non-basic education moneys.

2. Allocations for Certificated Instructional Staff. Allocations for certificated instructional staff will be based on the average staff mix ratio of the school, as calculated by the Superintendent, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the Omnibus Appropriations Act.

3. Allocations for Classified and Administrative Staff. Allocations for classified staff and certificated administrative staff will be based on the salary allocations of the school district in which the School is located, subject to conditions and limitations established by the Omnibus Appropriations Act.

4. Statewide salary allocation schedule. Nothing in this provision requires the School to use the statewide salary allocation schedule when establishing compensation for individual School employees.

B. Oversight and Enforcement

1. Consultation. Two times each year, the Superintendent or his or her designee and the Yakama Nation or its designee will engage in consultations relating to School operations, performance, and accountability.

2. Oversight and Enforcement. The Superintendent will manage, supervise, and enforce this Compact. OSPI will oversee the School's performance under this Compact and hold the School accountable to the performance of its obligations as required by federal and state law, as well as the terms of this Compact. This may include, but is not limited to, offering technical assistance, taking corrective action, developing corrective action plans, withholding payments of state funds, or imposing other sanctions pursuant to this Compact.

3. Inquiries and Investigations. The Superintendent may conduct or require oversight activities including, but not limited to, inquiries, audits, or investigations consistent with chapter 28A.715 RCW, its implementing rules, and the terms of this Compact.

4. Notification of Perceived Concerns.

(a) The Superintendent agrees to notify the Yakama Nation of any perceived concerns related to unsatisfactory performance or legal compliance under this Compact within reasonable timeframes considering the scope and severity of the concern. The Yakama Nation will respond within a reasonable timeframe which in no event will be longer than 21 days. If the Yakama Nation does not remedy the problem to bring the School into compliance with this Compact, and assuming a violation is found, the Superintendent may take further action under Section V or VI of this Compact.

5. Other Legal Obligations. Nothing in this Compact will be construed to alter or interfere with the Superintendent's obligations imposed under federal or state law, nor legal duties and obligations imposed on the Yakama Nation by federal law.

V. COMPLIANCE

A. Compliance

1. The Yakama Nation agrees that during the effective term of this Compact, it will remain subject to and comply with the terms of this Compact, chapter 28A.715 RCW, and any legislation or rules enacted after the effective date of this Compact that apply to and govern the operation and management of schools that are the subject of a state-tribal education compact.

2. If a disagreement arises between the parties regarding (a) the applicability of a law, rule, or policy under this Compact, or (b) a party's compliance with the terms of this Compact, the parties will first try to resolve such disagreement at the staff level, but will promptly seek resolution by elevating the matter to higher levels within their respective organizations, and engaging in government-to-government meetings as necessary. The parties will exhaust this dispute resolution process before taking any final action under the terms of this Compact, and also before seeking any other relief that may be available to them under the terms of this Compact or at law or equity.

3. Exhaustion of the dispute resolution process under this Section V.A is not required when (a) an applicable state or federal law requires action before the completion of the dispute resolution process; or (b) health, safety, or public welfare require prompt resolution of the disagreement.

B. Breach by the School

1. The parties agree that the violation of any material provision of this Compact may, in the reasonable discretion of the Superintendent, be deemed a breach and be grounds for withholding payment of state funds, or nonrenewal or termination of the Compact under Section VI. In making a materiality determination, the parties will consider the underlying facts and circumstances including, but not limited to, the severity of the violation as well as the frequency of violations.

2. The School's failure to develop, execute, or complete a corrective action plan pursuant to Section IV.B of this Compact within the timeframe specified by the Superintendent will constitute a breach of the Compact.

VI. NONRENEWAL AND TERMINATION

A. Nonrenewal

1. Notice. In the event the Superintendent, in his or her discretion, determines that the Compact shall not be renewed, the Superintendent will notify the Yakama Nation in writing of his or her intent not to renew the Compact. The notification will invite the Yakama Nation to participate in a government-to-government meeting for the purpose of discussing the Superintendent's intent not to renew the Compact.

2. Timing of notice. The Superintendent must provide notice of intent not to renew the Compact no later than April 15 of the year in which the Compact expires.

B. Termination

1. Termination for Convenience. Either party may terminate this Compact effective as of June 30 of any year by providing the other party with written notice of its intent to terminate on or before January 1 of the then-current calendar year. When providing notification of his or her intent to terminate the Compact under this provision, the Superintendent will state with specific reasons why the Superintendent believes the Compact should be terminated.

2. Termination for Cause.

(a) The parties may terminate this Compact for cause if either party materially breaches this Compact and fails to cure such breach of the Compact's terms.

(b) The non-breaching party will notify the breaching party of the non-breaching party's intent to terminate the Compact for cause. The notification will be in writing and will state with specific reasons why the non-breaching party believes the Compact should be terminated, including: (i) The Compact term, condition, or assurance that the non-breaching party believes the breaching party has violated, or other ground for termination; and (ii) The evidence indicating that the Compact term, condition, or assurance has been violated.

(c) The notification will invite the breaching party to participate in a government-to-government meeting to occur within fourteen (14) days, for the purpose of discussing the alleged breach and, if appropriate, engaging in dispute resolution in accordance with this section.

(d) The parties may mutually agree to mediation of a dispute arising from an alleged breach. In the event the dispute is not resolved pursuant to mediation within an agreed-upon time period, the non-breaching party may terminate the Compact for cause.

C. Effect of Nonrenewal or Termination

1. Winding Up. Upon termination of this Compact for any reason, upon expiration of the Compact, or if the School ceases operations or otherwise dissolves, the Superintendent may supervise the winding up of the Compact-related business and other Compact-related affairs of the School; provided, however, that in doing so the Superintendent will not be responsible for and will not assume any liability incurred by the School under this Compact. The Yakama Nation and School personnel will cooperate fully with the winding up of the affairs of the School. The School's obligations for following a termination protocol and winding up of the affairs of the school shall survive the term of this Compact.

2. Disposition of Assets. All assets, including tangible, intangible, and real property in use by the School but originally owned by the State, or assets purchased using at least 25 percent of public funds allocated by OSPI, are the property of the State and shall be returned to the State upon nonrenewal or termination, in accordance with relevant law.

VII. GENERAL

1. Merger. This Compact, the Final Approved Application, and all attachments, exhibits and amendments thereto, contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Compact shall be deemed to exist or to bind any of the parties hereto.

2. Amendments. No amendment to this Contract will be valid unless ratified in writing by the Superintendent and the Yakama Nation and executed by authorized representatives of the parties, except as may be required by RCW 28A.715.020(3)(f) and state legislation or rules enacted after the effective date of this Compact.

3. Governing Law and Enforceability.

(a) This Compact shall be construed and interpreted in accordance with the laws of the state of Washington. The parties agree that the venue for any proceeding related to or arising out of this Compact shall be in the state superior courts located within the state of Washington, or an associated appellate court. The parties reserve the right to assert in any such proceeding, to the fullest extent permitted by applicable law, whether or not the proceeding is brought in an inconvenient forum.

(b) The Yakama Nation hereby grants to OSPI and the State of Washington a limited waiver of sovereign immunity to permit OSPI or the State of Washington to initiate suit to enforce or interpret this Compact. Provided, however, that this limited waiver is conditioned upon all of the following conditions being met:

(i) The claim is made by OSPI or the State of Washington, and not by any other party, whether an individual or entity of any kind. The right to sue shall not be transferrable.

(ii) The claim alleges a breach by the Yakama Nation of one or more specific duties owed to OSPI or the State of Washington and expressly assumed by the Yakama Nation under the terms of this Compact. No suit shall be permitted for any other reason.

(iii) The claim seeks either (a) specific performance by the Yakama Nation to bring the Yakama Nation into compliance with the obligations or duties expressly assumed by it, or (b) payment of a monetary judgment arising from a breach of an explicit duty owed by Yakama Nation under this Compact.

(iv) The claim does not seek any consequential, special, or punitive damages, or attorney's fees or court costs. The parties understand and agree that in no case shall the Yakama Nation be responsible to OSPI or the State of Washington for any such costs.

(c) The above limitations on the Yakama Nation's waiver of sovereign immunity shall not be construed as creating liability for OSPI or as limiting any defense to liability that OSPI may raise.

4. Severability. If any provision of this Compact or any application of this Compact to the School is found contrary to law or invalid, such provision or application will have effect only to the extent permitted by law and the invalidity shall not affect the validity of the other terms or conditions of the Compact.

5. Waiver. The parties agree that no assent, express or implied, to any breach by either party of any one or more of the provisions of this Compact shall constitute a waiver of any other breach. No term or condition of this Compact shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

6. No Employee or Agency Relationship. Neither the Yakama Nation, nor its employees, agents, or contractors are employees or agents of the Superintendent. The Superintendent and his or her employees, agents, or contractors are not employees or agents of the Yakama Nation or the School. None of the provisions of this Compact will be construed to create a relationship of agency, representation, joint venture, ownership, or control of employment between the parties other than that of independent parties compacting solely for the purpose of effectuating this Compact.

7. Limitation of Liability.

(a) In no event will either party, or their agencies, officers, employees, or agents, be responsible or liable for the debts, acts, or omissions of the other party arising from this Compact.

(b) Neither the Yakama Nation nor the Superintendent are creating, or intend to create, any rights in third parties which would result in any claims of any nature whatsoever against the Yakama Nation or the State as a result of this Compact. Neither the Yakama Nation nor the State has waived immunity from third party suits or claims of any kind against them, and nothing contained in this Compact shall be construed to effect a waiver, in whole or in part, of said immunity.

8. Non-Assignment. Neither party to this Compact shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Compact unless the other party agrees in writing to any such assignment.

9. FERPA. In implementing this Compact, the parties shall comply with the Family Educational Rights and Privacy Act and its implementing regulations (20 U.S.C. § 1232g; 34 C.F.R. Part 99) ("FERPA"), and they shall safeguard such information in accordance with the requirements of FERPA.

10. Order of Precedence. The items listed below are incorporated by reference herein. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable Federal and Washington State laws, regulations, and guidelines;
- (b) Terms and Conditions of the Compact;
- (c) The Final Approved Application (hereby incorporated into the Compact as **Appendix A**);
- (d) Any other provisions incorporated by reference or otherwise into the Compact.

11. Government-to-Government Meetings. Government-to-government meetings contemplated by this Compact will be held at a mutually agreeable location in Toppenish, WA, Yakima, WA, or by mutual agreement of the parties by video or telephonic conferencing. For policy level decisions, final government-to-government discussions must include the Chairman of the Tribal Council or his or her authorized designee(s) and one or more State representative that has authority to make decisions.

12. Collective Bargaining. Nothing in this Compact is intended to apply Washington state collective bargaining laws, rules, or requirements to the School or the Yakama Nation.

13. Reservation of Rights. Nothing in this Compact is intended to limit the Yakama Nation's or School's ability to take any action in the operation of the School, provided such actions do not violate the terms of this Compact.

14. Execution. If the parties sign this Compact in several counterparts, each will be deemed an original, but all counterparts together will constitute one instrument. The parties may sign and deliver this Compact (and any ancillary or associated documents) to each other electronically, and the receiving party may rely on the electronic document as if it was a hard-copy original.

VIII. NOTICE

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by certified mail or other expedited services which require a signature for receipt at the following address:

Office of Superintendent of Public Instruction
Old Capitol Building
600 Washington St SE
Olympia, WA 98504

Yakama Nation Tribal Council Chairman
401 Fort Road / P.O. Box 151
Toppenish, WA. 98948

with courtesy copies to:

Yakama Nation Tribal School
601 Linden St.
Toppenish, WA. 98948

Yakama Office of Legal Counsel
P.O. Box 151
Toppenish, WA 98948

IX. TRIBAL COMPACT SCHOOLS PILOT

A. Participation in the Pilot Project

1. Pilot Project Application. The Yakama Nation hereby applies to the Superintendent to participate in the tribal compact school pilot program established under RCW 28A.715.800 (the "pilot project").

2. Pilot Components. The Yakama Nation requests the following components of the pilot project:

(a) Waiver to the requirement for a one hundred eighty-day school year established in RCW.28A.150.220.

(b) Authorization to accommodate student participation in cultural, fisheries, and/or agricultural programs as instructional days for the purposes of RCW 28A.150.220(5).

(c) Development of curriculum that links student learning with engagement in cultural, fisheries, and/or agricultural programs aligned with Washington state learning standards.

3. Technical Assistance. The Office of Native Education within OSPI shall collaborate with the School regarding the implementation of the pilot project at the School, including (a) providing technical support and assistance, (b) reviewing any terms of this Compact that relate to the school's implementation of the pilot project, and (c) working with the School to replace, to the maximum extent permitted by state

and federal law, statewide student assessments with locally developed assessments that are culturally relevant, based on community standards, and aligned with the Washington state learning standards.

4. Reporting Requirements. Consistent with the requirements of RCW 28A.715.800, the School shall submit a pilot project report every two years to OSPI and the appropriate committees of the Washington State House of Representatives and Senate as identified by OSPI, with the first report submitted no later than August 1, 2021.

5. Superintendent Approval. The Superintendent hereby includes the School in the pilot project. Notwithstanding anything in this Compact to the contrary, consistent with RCW 28A.715.800(3)(a) and RCW 28A.300.109, the Superintendent hereby grants the School a waiver from the requirements for a one hundred eighty-day school year under RCW 28A.150.220 and authorizes the school to consider student participation in cultural, fisheries, or agricultural programs as instructional days for the purposes of RCW 28A.150.220(5).

B. Apportionment in the 2018-19 School Year under the Pilot Project

In order for OSPI to allocate state and federal funding to the School, the School must provide monthly reports of the number of full-time equivalent (FTE) students enrolled in the School during the term of this Compact. The Yakama Nation acknowledges that, pursuant to, without limitation, chapter 392-117 WAC, chapter 392-121 WAC, chapter 392-122 WAC, chapter 392-123 WAC, chapter 392-127 WAC, and chapter 392-140 WAC, OSPI will average these monthly enrollment counts over a 10-month period to obtain the School's annual average FTE (AAFTE) enrollment. The Yakama Nation further acknowledges that OSPI inputs the AAFTE into the school funding formula set forth in RCW 28A.150.260 to determine the number of allocated certificated instructional, certificated administrative and classified staff units for the School. For the 2018-19 school year, the Yakama Nation will report student FTE on the first school day following the execution of this Compact and on the first school day of each month thereafter through June 2019. The Yakama Nation acknowledges that the funding allocation the School receives for the 2018-19 school year will not include student enrollment counts prior to execution date of this Compact. Pursuant to RCW 28A.715.800(7), the School's participation in the pilot program and its components identified in this Compact shall not operate or be construed to limit the amount of funding allocated to the School under this Compact.

[Signature page(s) follow.]

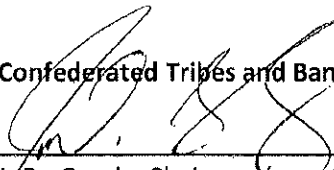
IN WITNESS WHEREOF, the Washington State Superintendent of Public Instruction and the Yakama Nation have executed this Compact:

Washington State Office of Superintendent of Public Instruction:

Chris Reykdal, Superintendent

Date

Confederated Tribes and Bands of the Yakama Nation



JoDe Goudy, Chairman (or authorized designee)
Yakama Nation Tribal Council

3/6/19

Date

