

TRIBAL EMPLOYMENT RIGHTS ORDINANCE



OF THE

YUROK TRIBE

YUROK TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance establishing a Tribal Employment Rights Office to provide for the social and economic well-being of Yurok Tribal members:

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GENERAL PROVISIONS

SECTION 4001. Short Title

This ordinance shall be referred to as the “Yurok Tribal Employment Rights Office Ordinance” or “Yurok TERO Ordinance.”

SECTION 4002. Findings

Indians have unique and special employment rights, and are entitled to the protection of laws established by the federal government to combat employment discrimination on or near Indian reservations, including the following:

- (a) Title VII of the Civil Rights Act, including section 703(i), which makes Indian and Tribal member preference in employment possible.
- (b) Executive Order 11246, enforced by the Office of Federal Contract Compliance Programs and exempting from the general requirements contractors extending preference in employment for Indians living on or near an Indian Reservation, and which further prohibits discrimination among Indians as a group on the basis of religion, sex, or tribal affiliation. Executive Order 11246 applies only to employers working under federal contracts.
- (c) The Indian Self-Determination Act, Section 7(b) of Public Law 93-638, which provides for Indian preference in employment, training, and contracting or

subcontracting on all contracts negotiated or let on behalf of an Indian Tribe.

- (d) The Indian Civil Rights Act of 1968, which prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights similar to those individual rights guaranteed under the Bill of Rights of the United States Constitution.

SECTION 4003. Purpose

The Yurok Tribal Council is enacting this ordinance to build the workforce capacity of Yurok Tribal members and Indian people and to help provide for their health and economic well-being.

The Yurok Tribal Council operates under a constitutional mandate to protect the sovereignty of the Yurok Tribe and to provide for the cultural, social, and economic well-being of current and future Yurok tribal members. In fulfillment of its duty to guarantee the unique employment rights of all Yurok Tribal members and other Indians within its jurisdiction, the Yurok Tribal Council hereby reaffirms and reestablishes the TERO and establishes standards and procedural guidelines with the following purposes:

- (a) To prevent employment related discrimination against Indians;
- (b) To ensure compliance with the ordinance that is intended to give preference in employment, contracting and subcontracting, and training to Indians;
- (c) To maximize utilization of Indian workers in all employment opportunities on Yurok lands;
- (d) To ensure the Indians seeking employment on Yurok lands are trained and equipped to enter the workforce and maintain employment of their choosing;
- (e) To ensure due process for all individuals affected by the application of this ordinance's requirements; and
- (f) To provide clarity to Indian workers, covered employers, and contractors regarding TERO requirements and greater efficiency in the TERO process.

SECTION 4004. Scope

This ordinance shall apply to all covered employers and contractors on Yurok lands. Additionally, this ordinance shall apply to all projects on or off the Yurok Reservation involving Tribal funds and initiated or taken over by the Yurok Tribe or a Tribal entity.

SECTION 4005. Sovereign Immunity Preserved

Except as judicial review is authorized in this ordinance, and in accordance with the Yurok Tribe's Supreme Ordinance, nothing in this ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

SECTION 4006. Effective Date

This ordinance shall take effect immediately after its adoption by Council. This ordinance is not intended to apply retroactively to contracts or contractors.

SECTION 4007. Repeal of Conflicting Ordinance Provisions

This Amended Yurok Tribal Employment Rights Ordinance enacted by the Tribal Council is the controlling ordinance- all previous conflicting versions are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance or resolution, the provisions of this ordinance shall control.

SECTION 4008. Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

SECTION 4009. Definitions

- (a) *Contractor* means either a Covered Employer that is a utility company performing work within Yurok Lands, or a Covered Employer who undertakes a contract or subcontract with the Tribe or a Tribal entity for supplies, services, labor, or materials where:
 - (1) The total contract amount exceeds:
 - (A) \$5,000 in the case of a construction contract, or
 - (B) \$2,000 in the case of a non-construction contract; and
 - (2) Either of the following two conditions are satisfied:
 - (A) The majority of the work under the contract or subcontract will occur on Yurok lands, or
 - (B) The work utilizes Tribal funds.
- (b) *Covered Employer* means:
 - (1) The Yurok Tribe and Tribal entities, including but not limited to Yurok Indian Housing Authority, the Yurok Economic Development Corporation, the Redwood Hotel Casino, and Kee-Cha-E-Nar for any project utilizing Tribal funds, regardless of whether the employment or contract activity is on Yurok lands;
 - (2) Any person, partnership, corporation, joint venture, government or governmental entity, or other entity that utilizes Tribal funds for a project or that voluntarily submits to Tribal jurisdiction under this ordinance;
 - (3) The California Department of Transportation for projects within Yurok ancestral territory; and
 - (4)
 - (5) Any person, partnership, corporation, joint venture, utility, government or governmental entity, or other entity that is located or engaged in commerce within the Yurok Reservation and that employs two or more employees.
 - (6) Any federal contractor, who, pursuant to Office of Federal Contract Compliance Program regulation 41 C.F.R. § 60 1.5(7) voluntarily submits to Tribal jurisdiction for projects on or near the reservation.

- (c) *Council* or *Tribal Council* means the Yurok Tribal Council.
- (d) *Days* means regular business days - Monday through Friday - not including tribally recognized holidays.
- (e) *Employee* means a person working for remuneration on Yurok lands in the service of another, including, but not limited to, independent contractors and regular and temporary employees.
- (f) *Indian* means a person enrolled in a federally recognized Indian tribe.
- (g) *Indian Firm* means an entity that has been certified as an Indian firm by the TERO Officer.
- (h) *Indian Preference Plan* means a negotiated agreement between the TERO Officer and a covered employer detailing Indian preference goals and incorporated into the TERO Permit.
- (i) *Key Employee* means an employee of a covered employer in a managerial or project supervisory position, or who performs an essential job function as identified on a case by case basis by TERO and prior to issuing a TERO Permit.
- (j) *Reservation* or *Yurok Reservation* means all lands within the exterior boundaries of the Yurok Reservation.
- (k) *TERO* means the Tribal Employment Rights Office.
- (l) *TERO Officer* means the TERO Director and any other positions within the TERO office designated by the Yurok Tribal Council Chairperson.
- (m) *TERO Permit* means a permit issued to and signed by a covered employer after negotiation with the TERO Officer of an acceptable Indian Preference Plan.
- (n) *Tier* means the Indian preference priorities for eligible Indians as established by this ordinance.
- (o) *Tribal Court* means the Yurok Tribal court, which was established by the Yurok Tribe Judicial Branch Ordinance.
- (p) *Trust Lands* means all land the fee title to which is owned by the United States of America and held in trust for the benefit of the Tribe or a Tribal member.
- (q) *Tribal Funds* means funds of the Yurok Tribe or a Tribal entity and includes grant funds received by the Tribe or a Tribal entity.
- (r) *Tribal Entity* means the Tribe and any agency, entity, subdivision, instrumentality, or non-profit or for-profit corporation that acts at the direction of Council and includes but is not limited to the Yurok Tribe, the Yurok Indian Housing Authority, the Yurok Economic Development Corporation, the Redwood Hotel Casino, and Kee-Cha-E-Nar.
- (s) *Tribal Member* means a duly enrolled member of the Yurok Tribe listed on the Yurok Tribal Membership Roll.
- (t) *Tribe* means the Yurok Tribe acting at the direction of Council.

- (u) *Yurok Ancestral Territory* means those ancestral lands described in the Yurok Constitution Article I, Section I.
- (v) *Yurok Household* means a family with at least one enrolled tribal member within the household.
- (w) *Yurok Lands* means all lands within the Reservation, trust lands, and lands owned by the Tribe or a Tribal entity.

CHAPTER 1. TRIBAL EMPLOYMENT RIGHTS OFFICE

SECTION 4101. Establishment and Organization of TERO

Tribal Council hereby reaffirms and reestablishes a TERO to enforce Yurok and Indian preference with all enterprises, businesses, and projects operated or undertaken on Yurok lands. TERO shall consist of a TERO Officer and such other staff as may be determined by the Tribe's Executive Office. The Executive Office is vested with full supervisory authority over TERO.

SECTION 4102. Duties of TERO Officer

The TERO Officer shall oversee implementation and enforcement of this ordinance and day-to-day operations of TERO. The TERO Officer shall have the following duties:

- (a) Identify skills training opportunities for Tribal members;
- (b) Maintain a list of certified Indian firms;
- (c) Assist covered employers in hiring qualified Yurok Tribal members and Indians;
- (d) Manage a Tribal Skills Bank of Indians seeking employment, which includes a preliminary screening of contact information and employment history,
- (e) Provide monthly reports to the Council outlining the number of projects, number of Yurok and Indian employees, number of non-Indian employees, and other information required by Council, and
- (f) Provide the Yurok Tribe Fiscal Department with monthly accountings of all TERO Permits then in effect.

SECTION 4103. Powers and Authorities of TERO Officer

The TERO Officer shall have the following powers and authorities:

- (a) Hire TERO staff;
- (b) Develop a TERO budget and expend funds in accordance with a Council-approved budget;
- (c) Issue guidelines and develop forms;
- (d) Conduct audits, investigations, and inspections upon its own initiative or allegation;
- (e) Issue notice of non-compliance, warnings, and citations;
- (f) Conduct hearings;

- (g) Petition the Tribal Court for such orders as are necessary and appropriate to enforce decisions and sanctions imposed under this ordinance;
- (h) Subpoena documents and witnesses;
- (i) Require covered employers to submit reports, including labor force and payroll reports;
- (j) Issue orders;
- (k) Impose fines;
- (l) Suspend or terminate a covered employer's operation;
- (m) Certify eligible Indians and Indian firms;
- (n) Revoke Indian firm certifications and permits;
- (o) Monitor employers for compliance;
- (p) Restrict or prevent hiring of non-Tribal members or non-Indians;
- (q) Develop numerical hiring goals and timetables for a covered employer;
- (r) Conduct or facilitate training programs and job fairs to meet the purposes of this ordinance;
- (s) Require Indians seeking employment and covered employers to participate in TERO training programs;
- (t) Require covered employers to pay back wages to an aggrieved employee;
- (u) Enforce this ordinance; and
- (v) Take any action necessary to achieve the purposes and goals of this ordinance.

SECTION 4104. Inspections

The TERO Officer shall have the authority to make on-site inspections during regular working hours and in accordance with job site safety standards in order to monitor compliance with this ordinance. The TERO Officer or authorized representative shall have the right to inspect and copy all relevant records of a covered employer, to interview or speak to workers, and otherwise conduct investigations on the job site. All information collected shall be kept confidential unless or until disclosure is required during a hearing or appeal under this ordinance or ordered as part of any federal or tribal judicial or administrative proceeding.

CHAPTER 2. OVERSIGHT BY TRIBAL COUNCIL

SECTION 4201. Powers and Authorities of Council

The Council shall have, but not be limited to, the following powers and authorities:

- (a) Review and approve TERO policies;
- (b) Develop amendments to this ordinance;
- (c) Receive and resolve complaints regarding TERO that are not resolved by the Executive Office;

- (d) Review and approve requests to waive Indian preference as otherwise required under this ordinance;
- (e) Waive TERO fees; and
- (f) Approve a TERO budget and annual work plan.

SECTION 4202. Complaints Against TERO

Any complaint against TERO is to be directed to the Executive Office. If the Executive Office is not able to resolve the complaint, the Executive Office may forward the complaint to Council. The Executive Office and Council retain exclusive jurisdiction and discretion to hear and decide complaints against TERO. Tribal Court is not authorized to hear civil complaints against TERO.

CHAPTER 3. INDIAN PREFERENCE IN EMPLOYMENT

SECTION 4301. Indian Preference in Employment

All covered employers shall give absolute preference to qualified Indians in all phases of employment and training, including recruitment, hiring, upgrade, promotion, transfer, rate of pay, retention, and selection for training or apprenticeship.

Indian preference in employment means that if a qualified Indian is available, that person will be given preference over a qualified non-Indian in any phase of employment. A covered employer may not refuse to employ an Indian on the basis that a non-Indian is more qualified, so long as the Indian satisfies the threshold requirements for that occupational classification.

SECTION 4401. Covered Positions

Indian preference shall apply to all occupational classifications, except for key employees of non-Tribal entities. Occupational classifications may be identified by the U.S. Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification then in effect. The Yurok Tribe and Tribal entities are required to apply Indian preference to the hiring of key employees.

SECTION 4302. Qualified Indians

An Indian shall be deemed qualified for employment in a position if that person meets the minimum requirements for such position. No employer may utilize any employment criterion that is not legitimately related to the performance of the position.

SECTION 4303. Eligible Indians

- (a) Yurok Tribe, Tribal Entities, and Covered Employers. The Yurok Tribe, Tribal entities, and covered employers shall extend a preference to qualified Indians according to the following tier priorities:
 - (1) Yurok Tribal members;
 - (2) Members of Yurok Households; and
 - (3) Other Indians.
- (b) Contractors Working On or Near the Reservation and Using Federal Funds. Contractors working on or near the Yurok Reservation and using federal funds shall extend a preference to qualified Indians according to the following tier priorities:

- (1) Indians living on or near the Yurok Reservation; and
- (2) Other Indians.
- (c) For purposes of subsection (b), the word *near* means all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

SECTION 4304. Proof of Yurok or Indian Eligibility

- (a) Tribal Member. A person claiming that he or she is a Yurok Tribal member shall present an appropriate Yurok Tribal membership identification card.
- (b) Spouse of Tribal Member. A person claiming that he or she is a spouse of a Yurok Tribal member shall present the Yurok Tribe membership identification card of his or her spouse and proof of marriage.
- (c) Indian. A person claiming that he or she is an Indian shall have the burden to prove membership in a federally recognized tribe. To prove membership in a federally recognized tribe, TERO may require a person to submit the following:
 - (1) Certification or verification from a federally recognized tribe or the U.S. Bureau of Indian Affairs indicating that a person is a member of a federally recognized tribe,
 - (2) A tribal membership card, or
 - (3) Other documentation satisfactory to the TERO Officer.

SECTION 4305. Tribal Skills Bank

The TERO Officer shall manage a database of Yurok Tribal members and other Indians seeking employment. This database shall be known as the Tribal Skills Bank. Tribal Skills Bank records for such individuals may include name and contact information, membership in a federally recognized tribe, occupational classifications for which an individual meets minimum qualifications, training or additional qualifications, training or qualification needs, and such other information as necessary or useful to achieve the goals of this ordinance. It shall be the individual's responsibility to ensure that the Tribal Skills Bank contact information for that person is accurate and up-to-date.

SECTION 4306. TERO Card

In order to facilitate Indian employment, a Yurok Tribal member who has met Indian eligibility requirements may apply to TERO for a TERO Card. A TERO Card shall indicate the person's skilled labor occupational classifications. A TERO card constitutes presumptive evidence that a person is a Tribal member with the highest tier priority. A covered employer may hire such Tribal member for an available position without being required to notify TERO prior to hiring as otherwise required by this ordinance. A TERO Card shall expire no later than two years after issuance, but may be renewed by the cardholder prior to its expiration for an additional two-year period.

CHAPTER 4. INDIAN PREFERENCE IN CONTRACTING

SECTION 4402. Indian Preference in Contracting

- (a) Indian Preference Required: Covered employers shall give preference to Indian firms

in the award of contracts or subcontracts to the extent permitted by applicable law.

- (b) Indian Preference Defined: Indian preference in contracting means that if a qualified Indian firm is available, that Indian firm will be given preference over a qualified non-Indian entity in contracting.
- (c) Selection Based on Price. A contractor may not refuse to employ an Indian firm on the basis of price, so long as the Indian firm's price is within 5% of the lowest bid, calculated by multiplying the lowest bid by 105%, and the Indian firm agrees to match the lowest bid.
- (d) Selection Based on Qualification. A contractor may not refuse to employ an Indian firm on the basis that a non-Indian firm is more qualified, so long as the Indian firm satisfies the threshold requirements for technical qualifications. In a dispute regarding threshold technical qualifications, the TERO Officer shall determine the appropriate qualifications and whether they are met.

SECTION 4403. Indian Firm Eligibility Requirements

In order to receive certification as an Indian firm, an entity must meet the following eligibility requirements:

- (a) The entity must be a non-profit or for-profit entity where an Indian or Indians own at least a 51% interest and where such Indian or Indians have managerial and operational control of the business operations.
- (b) The Indian owner(s) must possess the power to direct or cause the direction to the management and policies of the entity and to make day-to-day, as well as long-term decisions on matters of management, policy and operations.
- (c) At least 51% of the profits must flow to the Indian owner(s).
- (d) The entity must not be tied to another firm in such a way as to compromise its independence and control.

SECTION 4404. Certification of an Indian Firm

- (a) Burden of Demonstrating Satisfaction of Eligibility Requirements. An entity claiming that it is an Indian firm and seeking certification shall have the burden to demonstrate to the TERO Officer, by a preponderance of the evidence, that it satisfies Indian firm eligibility requirements. Indian ownership must be real, substantial, and continuing, going beyond pro forma ownership of the entity as reflected in ownership documents.
- (b) Application for Certification. An entity shall submit an Indian Firm Certification Application, in a form acceptable to TERO, and proof of the entity's Indian ownership, which shall include, but not be limited to:
 - (1) Evidence that the entity is at least 51% owned by an Indian or at least 51% owned by a federally recognized tribe,
 - (2) Evidence that at least 51% of all profits will flow to the Indian owner during all portions of the contract or subcontract,
 - (3) Evidence that the Indian owner maintains management control, and

- (4) The entity's name, address, and telephone number.
- (c) Documentation of Indian Ownership. To establish Indian ownership or maintain certification, the TERO Officer may require an entity to submit the following:
 - (1) Current bank and tax records, incorporation documents, joint venture agreements, or partnership agreements documenting the share of Indian ownership,
 - (2) Certification that an Indian owner is a member of a federally recognized tribe, and
 - (3) Documents demonstrating that an Indian owner is an entity of a federally recognized tribe, such as articles of incorporation, a tribal ordinance or resolution establishing the entity, or certification by an appropriate authority of the federally recognized tribe that the entity is tribally owned.
 - (4) Such other documents as may be reasonably necessary to establish that Indian firm eligibility requirements are satisfied.
- (d) Certification. Upon satisfactory evidence that the requirements are met, the TERO Officer shall certify the entity as an Indian firm. The TERO Officer maintains sole authority to certify an entity as an Indian firm.
- (e) Certified Indian Firms. TERO shall maintain a list or database of certified Indian firms that classifies such Indian firms by major group using the North American Industry Classification System standard. TERO shall confirm certification of an Indian firm upon a contractor's request.
- (f) Ongoing Obligations. An Indian firm maintains ongoing obligations to ensure that Indian firm eligibility requirements are satisfied. The TERO Officer maintains discretion to revoke Indian firm certification upon finding that Indian firm eligibility requirements are not being met.
- (g) Expiration of Certification. An Indian firm must re-submit a certification application every two years to remain in good standing.

SECTION 4405. Eligible Indian Firms

- (a) Covered Employers' Preference for Indian Firms. Covered employers shall extend a preference to Indian firms according to the following priorities:
 - (1) Indian firm that is at least 51% owned, operated, and controlled by a Yurok Tribal member or Yurok Tribal entity
 - (2) Indian firm that is less than 51% owned, operated, and controlled by a Yurok Tribal member or Yurok Tribal entity;
 - (3) Indian firm without any ownership share held by a Yurok Tribal member or Yurok Tribal entity.
- (b) Contractors using Federal Funds. Notwithstanding the requirements of subsection (a), contractors using federal funds shall only be required to extend a preference to Indian firms according to the following tier priorities:
 - (1) Indian firm whose Indian owner is living on or near the Yurok Reservation;

and

- (2) Other Indian firms.
- (c) For purposes of subsection (b), the word *near* means all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

SECTION 4406. Specific Indian Preference Obligations of Contractors

In addition to the requirements of all covered employers, contractors shall have the following obligations:

- (a) Indian Preference Plan. Upon being selected for a contract and prior to commencing work, a contractor shall negotiate an Indian Preference Plan with the TERO Officer. The Indian Preference Plan shall include key employees, anticipated project occupational classifications, and Indian preference goals for the general contract and any subcontracts. For subcontracts, the contractor shall indicate proposed subcontractors and, if the subcontractor is not an Indian firm, evidence of steps taken to identify Indian firms.
- (b) Labor Force Reports. Upon commencing work, to submit to TERO weekly Labor Force Reports, in a form acceptable to TERO, indicating the number of Indian and non-Indian employees, pay rates, fringe benefits paid, hires, terminations, layoffs, promotions, pay increases, reprimands, and results in achieving Indian preference goals. TERO maintains discretion to require such reports on a more or less frequent basis and to require additional information.
- (c) Payroll Reports. Upon request by TERO, to submit to TERO weekly Payroll Reporting Forms, in the format then in use by the California Department of Industrial Relations, for all employees. TERO may also require submission of cancelled payroll checks and check stubs.
- (d) Non-responsive Bidder. A contractor who fails to secure a TERO Permit within a reasonable amount of time as determined by the TERO Officer shall be considered a non-responsive bidder for the purpose of awarding the contract.
- (e) Primary Responsibility for TERO Compliance. A contractor shall have initial and primary responsibility for ensuring that it and all of its subcontractors comply with these requirements. A contractor may be held jointly and severally liable for violations of this ordinance by its subcontractors.

SECTION 4407. Subcontractors

The Indian preference requirements contained in this ordinance shall be binding on all subcontractors of covered employers, regardless of a subcontractor's size, and shall be deemed a part of all resulting subcontract specifications. A subcontractor may be held liable for violations of this ordinance.

- (a) For large construction projects, subcontractors should meet and negotiate their own Indian Preference Plan with the TERO Officer. The subcontractor is to be treated in the same manner as a contractor under this ordinance. Both the subcontractor and the contractor can be held jointly and severally liable for any violation of the

subcontractor's TERO Permit or Indian Preference Plan and both may be subject to sanctions, including a stop work order or monetary civil penalty. Because the Tribe may not be the contracting entity with the subcontractor, the contractor is encouraged to work cooperatively with TERO to ensure the subcontractor meets compliance obligations.

SECTION 4408. Unions

Covered employers with collective bargaining agreements with a union are responsible for informing such unions of this ordinance, its rules and regulations, and their Indian Preference Plan. Unions will give absolute preference to Indians in job referrals regardless of which referral list they are on. Temporary work permits will be granted to Indians who do not wish to join a union. Nothing herein shall constitute official recognition of any union or tribal endorsement of any union activities on Yurok lands.

SECTION 4409. Tribal Prevailing Wage

The Tribal Prevailing Wage Ordinance provisions shall apply to all contractors and subcontractors and be incorporated in the terms of the TERO Permit.

CHAPTER 5. IMPLEMENTATION OF INDIAN PREFERENCE IN CONTRACTING

SECTION 4501. Indian Preference Plan

No contractor may commence work until the contractor has submitted to TERO an Indian Preference Plan, negotiated with and approved by the TERO Officer, setting forth how the contractor intends to meet the contractor's obligations under this ordinance. The Indian Preference Plan should list by occupational classification all key and non-key employee positions to be used by the contractor.

For multi-year contracts, the Indian Preference Plan shall be reviewed at least annually, or sooner at the request of a contractor or the discretion of the TERO Officer, and shall be revised to reflect changes in the number of Tribal members or Indians available or in the contractor's hiring plans and practices.

SECTION 4502. Indian Preference Goals for Indian Preference Plan

The TERO Officer shall negotiate with a contractor an Indian Preference Plan establishing the minimum number of qualified Tribal members and Indians to be employed by the contractor. The TERO Officer may negotiate with the contractor for trainee or apprentice positions not otherwise required under the contract, but such positions shall be funded by TERO or other Tribal resources.

Goals will be established for all non-key employee occupational classifications on a contract by contract basis to be used by the covered employer. The goals shall be expressed as:

- (a) Project hours of Tribal member employment as a percentage of the total hours of employment by the covered employer for the occupational classification involved; and
- (b) Numerical goals based on surveys of the available Tribal member and Indian labor forces and projections of employment opportunities for each occupational

classification.

SECTION 4503. TERO Permit

No contractor may commence work until the contractor has received a TERO Permit.

The TERO Officer shall issue a TERO Permit to contractors upon approval of a negotiated Indian Preference Plan. The TERO Permit shall incorporate the terms of the Indian Preference Plan and shall constitute a consensual contractual relationship between the Yurok Tribe and the contractor.

SECTION 4504. Ongoing TERO Compliance; Filling Available Positions

Once work has commenced under a valid TERO Permit and if a position becomes available, a contractor shall not hire a non-Indian unless the contractor makes reasonable efforts to hire a qualified Indian for that position.

- (a) TERO Card Hiring. A contractor may hire immediately a Tribal member who presents the contractor with a valid TERO Card. The contractor shall notify TERO that a Tribal member has been hired for the available position within 2 days of hiring and shall submit to TERO a copy of the TERO Card.
- (b) Reasonable Efforts to Hire Qualified Indian. A contractor is presumed to have made reasonable efforts if all of the following conditions are satisfied:
 - (1) The contractor notifies TERO in writing of the available position.
 - (2) The contractor requests a list from TERO of qualified Indians for that classification.
 - (3) The contractor is unable to identify a qualified Indian available for the position and:
 - (A) the contractor submits documents to TERO showing reasonable efforts to identify and contact qualified Indians for that classification, which may include call logs, job fair notices, public notices in local newspapers and tribal offices, online job postings, and evidence that TERO failed to respond to the list request within 5 business days or 2 business days for a construction contract; or
 - (B) TERO certifies in writing that no qualified Indian is available to fill that position.
 - (4) If no qualified Indian is available for the position, the contractor notifies TERO in writing of the non-Indian replacement and deviation from the Indian Preference Plan.
- (c) Ensuring Reasonable Efforts. The TERO Officer maintains discretion to seek additional documentation of reasonable efforts by a contractor, and to order an employee removed if a contractor does not substantially comply with this section.
- (d) Emergency Waiver. The TERO Officer may waive or modify the requirements of subsection (b) for a position if there is clear indication that:
 - (1) the process would impose an unreasonable burden on a contractor for a project, or
 - (2) time is of the essence in completing the work and it is unreasonable to

request full compliance.

SECTION 4505. Final Payment; Compliance

For contracts with the Yurok Tribe, the Yurok Indian Housing Authority, or other Tribal entities, no Tribal entity shall make a final payment under a contract if notified by the TERO Officer that the contractor is subject to an ongoing TERO investigation.

SECTION 4506. Training

The TERO Officer may require a contractor to participate, or to assign interested Indians to participate, in training programs to assist Indians to become qualified in various occupation classifications used by the contractor. If such training programs are not included in a bid package, the TERO Officer shall give due consideration to the increase in cost, if any, for performing the program and compensate the contractor for actual costs. Actual costs shall include, but not be limited to, the cost of additional supervision to conduct on-site training.

SECTION 4507. Layoffs or Reductions in Workforce

In all layoffs and reductions in workforce for a contractor, no Yurok Tribal member or Indian shall be terminated if a non-Indian worker in the same occupational classification is still employed. A non-Indian shall be terminated first, and eligible Indians shall be terminated by tier.

SECTION 4508. Promotions

Each contractor shall give Yurok Tribal members and Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For each promotion, supervisory position, or managerial position filled by a non-Indian, the contractor shall file a report with the TERO Officer stating what efforts were made to inform Indian workers about the position, what Indians, if any, applied for the position, and if an Indian was not chosen, the reasons therefore.

SECTION 4509. Employment Procedures

The contractor may use whatever employment process it chooses, provided that it makes reasonable efforts to hire qualified Indians and a non-Indian person will not be hired if there is a qualified Indian available. The employer may obtain qualified Indian referrals from TERO and other sources. In all cases, the contractor is required to notify TERO of all jobs planned for a project. Except for key employees, which nevertheless must be identified in an Indian Preference Plan, all positions existing or planned to exist on the Reservation are subject to Indian preference requirements.

A contractor may not use job qualifications, criteria, or requirements which have a tendency to bar Indians from employment unless the same are required by business necessity. It is the employer's burden to prove business necessity.

SECTION 4510. Prohibition Against Retaliation

If a contractor fires, lays off, penalizes, attempts to intimidate, or otherwise retaliates in any manner toward a person who utilizes the individual complaint procedure or exercises any right provided in this ordinance, the contractor shall be subject to sanctions provided for in this ordinance.

CHAPTER 6. TERO FEE IN CONTRACTING

SECTION 4601. TERO Fee

- (a) TERO Fee Amount. A fee, to raise revenue for the operation of TERO, is imposed on the following activities:
 - (1) Construction Contracts. Contractors with a construction contract exceeding \$5,000 shall pay a fee of 5% of the total contract amount.
 - (2) Non-construction Contracts. Contractors for all non-construction contracts exceeding \$2,000 shall pay a fee of 1% of the total contract amount.
- (b) Changes To Contract Amount. The contractor must notify TERO of any changes to the original contract amount by providing an approved change order or amended contract. The TERO fee assessed shall be increased or reduced in proportion to any increase or reduction of the original contract amount.
- (c) Inapplicable To Certain Agreements. The TERO fee does not apply to financing, loan and similar type agreements.
- (d) For purposes of this section, construction contract activities include, but are not limited to, the following: building, modifying, refurbishing, or outfitting structures; road construction, maintenance, or upgrading; and supplies and materials for a construction or road project. Contracts for the following activities are considered non-construction contracts: timber harvest activities, legal services, and architect and engineering services.

SECTION 4602. TERO Fee Collection

- (a) Payment and Use. Contractors shall pay the TERO fee to the Yurok Tribe or appropriate Tribal entity and such amount shall be credited to the TERO account. TERO fees shall be used to carry out the purposes of this ordinance, such as job training and preparedness.
- (b) Contractor Consent to Automatic Deduction. For all contracts awarded by the Tribe or a Tribal entity, a contractor shall consent to the Tribe or the Tribal entity deducting the TERO fee amount from the total amount due the contractor under the contract and to pay that amount directly to the Yurok Tribe.
- (c) Automatic Deduction of TERO Fee. The Yurok Tribe Fiscal Department, or corresponding department of a Tribal entity, shall automatically deduct the TERO fee from an invoiced amount due a contractor.
- (d) Authority To Invoice for TERO Fee. The Yurok Tribe Fiscal Department shall have the authority to invoice contractors for the TERO fee, if the TERO fee is not automatically deducted.

SECTION 4603. TERO Fee Exemption

The Tribal Council in its sole discretion and by resolution may waive the TERO fee for any contract or activity. In addition, the TERO fee is waived for the following activities:

- (a) Participation on a Tribal committee;
- (b) Yurok Tribe timber harvest contracts;
- (c) Contracts utilizing exclusively TERO funds for training or job preparedness;

- (d) Contracts for cultural education services;
- (e) Contracts for child care;
- (f) Construction contracts for homes for Yurok Tribal members, where the Tribal member is required to repay the home loan;
- (g) Contracts for cultural monitoring; and
- (h) Contracts for Yurok language services.

SECTION 4604. TERO Fee Reconciliation

TERO shall forward copies of all TERO Permits and monthly report all TERO Permits then in effect to the Yurok Tribe Fiscal Department. Tribal entities shall monthly report all TERO fees collected by that Tribal entity for each outstanding TERO Permit to the Yurok Tribe Fiscal Department. The Yurok Tribe Fiscal Department shall maintain an accounting to ensure that the Tribe collects the entire TERO fee due by a covered employer under a TERO Permit.

CHAPTER 7. HEARINGS AND APPEALS

SECTION 4701. Filing Procedure for Alleged Violation

Any person who believes that a covered employer has failed to comply with this ordinance, or who believes that they have been discriminated against by a covered employer because they are Indian, may file a written allegation of that violation with TERO. The filer shall be responsible for providing TERO with sufficient evidence of the alleged violation to allow for an appropriate investigation by TERO.

SECTION 4702. Investigation by TERO Officer

Upon the TERO Officer's own allegation or upon written allegation of a violation, including violation of an Indian Preference Plan, the TERO Officer shall ensure a prompt and thorough investigation of the alleged violation. The TERO Officer shall seek to achieve an informal settlement of the alleged violation. The TERO Officer shall monthly report all alleged violations and their settlement, if any, to the Executive Office.

SECTION 4703. Issuance of Citation

- (a) Notice of Non-Compliance. If the TERO Officer determines that a violation of the ordinance exists and an informal settlement cannot be achieved, the TERO Officer shall issue a notice of non-compliance to the covered employer. This notice shall specify the nature of the violation and direct that the violation be corrected within 3 days or sooner where warranted.
- (b) Citation. If the violation is not corrected within the time specified, the TERO Officer shall issue a written citation to the covered employer that includes the following:
 - (1) The name of the violator;
 - (2) The signature of the TERO Officer or an authorized representative;
 - (3) The name and section number of the ordinance provision violated;
 - (4) A brief summary of the facts constituting the violation; and

- (5) A time and place the covered employer must appear to answer to the violation at a TERO Officer hearing.
- (c) Imposition of Immediate Sanctions. Once the time specified in the notice of non-compliance to correct a violation has expired and prior to a hearing, the TERO Officer may impose any sanction permitted under this ordinance.
- (d) Right To a Hearing. A covered employer that receives a citation shall be entitled to a hearing before the TERO Officer. A covered employer must request such hearing within 10 business days of the date of the TERO Officer's citation. The TERO Officer shall conduct a hearing no later than 10 business days after receipt of a citation, unless the covered employer and TERO Officer agree to a later date.

SECTION 4704. TERO Officer Hearing Procedures

Hearing procedures shall comply with the requirements of due process, but not necessarily formal rules of evidence. A covered employer shall be entitled to present evidence and call and question witnesses to demonstrate that it has complied with the requirements of this ordinance or that it has made best efforts to do so and therefore should not be subject to sanctions. On the basis of evidence presented at the hearing, and the information collected by TERO, the TERO Officer shall determine whether or not the covered employer complied with this ordinance.

Within 5 business days of concluding the hearing, the TERO Officer shall issue a written order. The written order shall:

- (a) Contain a brief summary of the investigation and hearing proceedings;
- (b) Include findings of fact;
- (c) Provide the TERO Officer's determination of whether the covered employer has complied with the ordinance;
- (d) Identify any defenses such as best efforts that may excuse the covered employer's non-compliance; and
- (e) Direct the covered employer to take corrective action as necessary to remedy any harm caused by the non-compliance.

If the TERO Officer determines that the covered employer is out of compliance and such non-compliance is not excused, the TERO Officer by written order shall impose one or more of the sanctions provided for in this ordinance. The TERO Officer shall forward a copy of any order to the Executive Office.

SECTION 4705. Emergency Relief

When the TERO Officer determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the TERO Officer may issue a citation and impose emergency sanctions without meeting notice requirements. The covered employer maintains a right to a hearing before the TERO Officer in accordance with section 4704.

SECTION 4706. Administrative Appeals

Any person adversely affected by a decision of the TERO Officer shall have the right to appeal the decision to the Executive Office. Any such appeal must be made within 10 business days of the date

of the TERO Officer's written order. The Executive Office may decide the appeal based on the evidence in the record, including the TERO Officer's written order, or conduct a hearing de novo in accordance with TERO Officer hearing procedures. Within 5 business days of concluding an appeal hearing, or within 15 business days from filing of an appeal, whichever is later, the Executive Office shall issue a written order.

SECTION 4707. Final Administrative Action

A TERO Officer's citation for which a covered employer does not request a hearing shall become a final action 10 business days after the date of the citation. A written order of the TERO Officer after a hearing that is not appealed to the Executive Office shall become a final action 10 business days after the written order is issued. A written order of the Executive Office shall become a final action upon issuance.

CHAPTER 8. ENFORCEMENT AND SANCTIONS

SECTION 4801. Sanctions

A covered employer who violates this ordinance shall be subject to sanctions including, but not limited to:

- (a) Denial of the right to commence or continue business or contracts on Yurok lands, with a Tribal entity, or involving Tribal funds;
- (b) Suspension of operations on Yurok lands, with a Tribal entity, or involving Tribal funds;
- (c) Debarment or prohibition from engaging in commerce or contracts on Yurok lands, with a Tribal entity, or involving Tribal funds;
- (d) Payment of back pay and damages to compensate an injured party;
- (e) Imposition of monetary civil penalties;
- (f) An order to stop work until the provisions of this ordinance are satisfied;
- (g) An order to remove any employee hired in violation of this ordinance;
- (h) An order requiring the employment, promotion, or training of Indians injured by the violation;
- (i) An order mandating changes in procedure or policies necessary to eliminate or correct the violation; and
- (j) An order mandating any other provision deemed necessary by the Tribal Council or Tribal Court to alleviate, eliminate, or compensate for the violation.

SECTION 4802. TERO Applicant Responsibilities

In order for TERO to conduct its services efficiently and to meet its goal of obtaining jobs for eligible Indians, TERO applicants are required to follow the work guidelines and procedures set forth by their respective employers. Failure to follow an employer's work requirements may be cause for disciplinary actions by the employer, up to and including termination. Failed drug screenings, poor employee performance reviews, disciplinary action, or termination by a covered employer may result in the TERO applicant forfeiting future client services, training and education

opportunities, and TERO assistance for employment. These actions will be noted in the TERO applicant's file.

SECTION 4803. Willful Violation of TERO Ordinance

Covered employers have an affirmative duty to inform the TERO Officer of all contracts that are not exempt from the TERO fee, and that are not exempt from TERO Indian preference requirements. A person commits the offense of Willful Violation of TERO Ordinance if the person:

- (a) Holds an executive position or is a governing board member with a covered employer, and
- (b) Knows, should know, or fails to appropriately investigate whether a contract is subject to this ordinance, and
- (c) Knowingly, willfully, or intentionally fails to inform the TERO Officer that the covered employer has entered into a contract subject to this ordinance or to collect TERO fees as directed by this ordinance.

Each contract for which the person fails to inform the TERO Officer shall constitute a separate offense. A person who violates this section shall be subject to a minimum fine of \$100 for each offense and shall be held jointly and severally liable for any TERO fees due to the Tribe that are not collected from the contractor.

SECTION 4804. Debarment

- (a) Council may debar a covered employer at its own initiative or upon the written recommendation of the TERO Officer or Executive Office. Debarment prohibits a covered employer from engaging in commerce, bidding on contracts, or having a bid considered for a contract on Yurok lands, with Tribal entities, or involving Tribal funds.
- (a) A covered employer may be debarred for the following reasons:
 - (1) If a covered employer is found to have intentionally misrepresented its or a subcontractor's status as an Indian firm to TERO, the covered employer may be debarred for up to 5 years after the finding of such misrepresentation.
 - (2) If a covered employer is found to have violated this ordinance twice within a 5 year period, the covered employer may be debarred for up to 5 years.
- (b) Notwithstanding any other provisions in this section, Council maintains discretion to debar a contractor indefinitely.

SECTION 4805. Monetary Civil Penalties

The maximum monetary civil penalty that may be imposed for a violation of this ordinance is the maximum permitted under the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302, as amended. TERO may establish a fee schedule setting the standard monetary civil penalty amount for violations of this ordinance. Each day during which a violation exists shall constitute a separate occurrence.

SECTION 4806. Late Payment of Fees; Interest

A covered employer that fails to timely pay the TERO fee may be subject to a monetary civil penalty or other sanctions and an interest rate of 15% per annum, compounded daily on all amounts owed, may be applied.

SECTION 4807. Enforcement; Costs

The TERO Officer shall be entitled to pursue the enforcement of any order of the TERO Officer, the Executive Office, or Tribal Court when necessary to enforce sanctions or to ensure compliance with the terms and conditions of any such order.

Any cost associated with the enforcement of an order issued pursuant to this ordinance may be assessed by the TERO Officer against the covered employer that is out of compliance. This may include but is not limited to document reproduction costs, administrative fees, filing fees, and attorney fees and costs.

CHAPTER 9. TRIBAL COURT REVIEW AND ENFORCEMENT

SECTION 4901. Tribal Court Review of Decisions

Any party to an appeal to the Executive Office who is dissatisfied with the Executive Office's decision may appeal that decision to the Yurok Tribal Court. Such appeal must be filed in accordance with Tribal Court rules and procedures and within 10 business days of the earlier of the following:

- (a) Five days after the date the Executive Office mails its decision to the party, or
- (b) The date the party receives an electronic copy of the Executive Office's decision.

SECTION 4902. Standard of Judicial Review

The Yurok Tribal Court shall review an appeal of the Executive Office's determination of factual findings for clear and convincing evidence of an error. Clear and convincing evidence means that the Tribal Court has a definite and firm conviction that the Executive Office's decision contained an unquestionable mistake. The Tribal Court shall review legal findings de novo, without any deference to the Executive Office's determination.

SECTION 4903. Tribal Court Enforcement of Decisions

The Tribal Court shall have the authority to issue any order or take any action necessary to enforce any final action of the TERO Officer or Executive Office. To request such Tribal Court order, the TERO Officer shall file a petition with the Tribal Court that includes:

- (a) A copy of the decision to be enforced;
- (b) A brief summary of the proceedings leading to the decision;
- (c) A statement as to the finality of the decision and lapse of the appeal deadline;
- (d) Identification of the person or entity subject to the decision;
- (e) Identification of any specific assets for the collection of monetary civil penalties; and
- (f) Sufficient facts showing the person or entity is not complying with the decision.

SECTION 4904. Remedies

Ruling on matters arising under this ordinance, the Tribal Court shall have the authority to assess and collect civil penalties, to enjoin or mandate actions to enforce the provisions of this ordinance, and to provide any other relief the Tribal Court deems lawful and equitable. Nothing in this provision or ordinance shall be construed as a waiver of the Tribe's sovereign immunity or as authority for a claim for money damages against the Tribe.

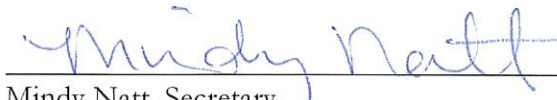
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THE FOREGOING ORDINANCE, ENTITLED THE AMENDED YUOK TERO ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON May 9, 2019, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF 5 FOR, 2 OPPOSED AND 0 ABSENTIONS IN ACCORANDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUOK TRIBE.

DATED THIS 10TH DAY OF MAY 2019


Joseph James, Chairperson
Yurok Tribal Council

ATTEST:


Mindy Natt, Secretary
Yurok Tribal Council