

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)*

TRIBAL EMPLOYMENT RIGHTS OFFICE  
CODE

CONFEDERATED TRIBES  
OF THE  
UMATILLA INDIAN RESERVATION

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

**TRIBAL EMPLOYMENT RIGHTS CODE**

**TABLE OF CONTENTS**

CHAPTER 1.	GENERAL PROVISIONS .....	1
SECTION 1.01.	Title .....	1
SECTION 1.02.	Purpose.....	1
SECTION 1.03.	Findings.....	1
SECTION 1.04.	Jurisdiction.....	1
SECTION 1.05.	Definitions.....	2
CHAPTER 2.	TRIBAL EMPLOYMENT RIGHTS OFFICE .....	4
SECTION 2.01.	TERO Program Manager .....	4
SECTION 2.02.	TERO Program Manager Authorities .....	4
SECTION 2.03.	Tribal Minimum or Prevailing Wage.....	5
CHAPTER 3.	TRIBAL EMPLOYMENT RIGHTS OFFICE COMMISSION .....	5
SECTION 3.01.	Establishment, Composition and Bylaws .....	5
SECTION 3.02.	Rules Governing Membership on the TERO Comission.....	6
SECTION 3.03.	Duties, Powers and Limitations .....	9
CHAPTER 4.	TERO WORKFORCE .....	10
SECTION 4.01.	Indian Preference .....	10
SECTION 4.02.	Tribal Hiring Hall .....	10
SECTION 4.03.	Unions .....	11
CHAPTER 5.	CERTIFIED INDIAN OWNED BUSINESSES .....	11
SECTION 5.01.	Scope.....	11
SECTION 5.02.	Certified Indian Owned Business Directory .....	11
SECTION 5.03.	Certification of Indian Owned Businesses.....	11
SECTION 5.04.	Recertification.....	12
SECTION 5.05.	Decertification.....	12
SECTION 5.06.	Solicitation Process .....	12
SECTION 5.07.	Appeals .....	13
CHAPTER 6.	EMPLOYER REQUIREMENTS .....	13
SECTION 6.01.	Scope.....	13
SECTION 6.02.	Compliance Agreement .....	14
SECTION 6.03.	Compliance Taxes.....	15
SECTION 6.04.	Employer as General Contractor.....	15
SECTION 6.05.	Job Qualifications and Personnel Requirements.....	15
SECTION 6.06.	Inspections .....	15
CHAPTER 7.	VIOLATION PROCEDURES.....	15
SECTION 7.01.	Investigation by the Program Manager.....	15
SECTION 7.02.	Issuance of Citation.....	16
SECTION 7.03.	Program Manager Review .....	16
SECTION 7.04.	Emergency Citation and Sanctions .....	17
SECTION 7.05.	Individual Complaint Procedure .....	17
CHAPTER 8.	PENALTIES .....	17
SECTION 8.01.	Penalties for Violation .....	17
SECTION 8.02.	Monetary Fines .....	18
SECTION 8.03.	Enforcement.....	18
CHAPTER 9.	APPEALS AND HEARINGS .....	18
SECTION 9.01.	Appeals and Decisions that can be Appealed .....	18

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION**  
**As Amended through Resolution No. 17-053 (July 17, 2017)**

SECTION 9.02. Content of Appeal .....18  
SECTION 9.03. Scheduling Appeal Hearing .....19  
SECTION 9.04. Request to Reschedule Appeal Hearing.....19  
SECTION 9.05. Appeal Hearing Participants .....19  
SECTION 9.06. Hearing Procedure .....19  
SECTION 9.07. TERO Commission Decision.....19

CHAPTER 10. TRIBAL COURT ENFORCEMENT AND JUDICIAL REVIEW .....19  
SECTION 10.01. Judicial Review of TERO Commission Decisions .....19  
SECTION 10.02. Tribal Court Enforcement of TERO Commission and Program  
Manager Decisions.....20  
SECTION 10.03. Court Rules .....21  
SECTION 10.04. Remedies.....21

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

**TRIBAL EMPLOYMENT RIGHTS OFFICE CODE**

**CHAPTER 1. GENERAL PROVISIONS**

**SECTION 1.01. TITLE**

This Code shall be known as the Tribal Employment Rights Office Code.

**SECTION 1.02. PURPOSE**

The purposes of this Code are:

- A. To prevent employment related discrimination against American Indians;
- B. To ensure compliance with this Code that is intended to give preference in employment, contracting and sub-contracting, and training to American Indians;
- C. To maximize utilization of Indian workers in all employment opportunities on and near TERO jurisdiction lands; and
- D. To ensure the Indian workforce on TERO jurisdiction lands are trained and equipped to enter the workforce and maintain employment of their choosing.

**SECTION 1.03. FINDINGS**

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation find that:

- A. Jobs in the private employment sector on and near TERO jurisdiction lands are an important resource for Indians residing on and near TERO jurisdiction lands.
- B. In order to attract private employers to locate on TERO jurisdiction lands, Indians residing on or near TERO jurisdiction lands need to have the training and skills those employers require.
- C. This Code is consistent and supplemental to existing federal and tribal law prohibiting employment discrimination against Indians and providing employment and contract preference to individual Indians and Indian-owned enterprises.
- D. Indian employment on TERO jurisdiction lands continues to be a concern of sufficient magnitude to warrant the enactment and implementation of this Code which is designed to improve training and employment opportunities for Indians living on and near TERO jurisdiction lands.
- E. Many unemployed Indians on TERO jurisdiction lands may have social barriers to employment such as poor education, substance abuse, the lack of vocational training or the lack of tools and other equipment needed by their preferred vocation that need to be addressed.

**SECTION 1.04. JURISDICTION**

- A. This Code shall apply to all Employers on all TERO jurisdiction lands as set forth in this Code and as permitted by applicable law.
- B. This Code shall not apply to any direct employment by the Tribe, its enterprises or tribally owned corporations, or by federal, state or other governments; however, contractors and subcontractors of these governmental entities shall be subject to the Code.

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

- C. This Code shall not apply to or be enforced against Tribal enterprises including, but not limited to, Wildhorse Resort and Casino, the Tamástslikt Cultural Institute, Arrowhead Travel Plaza and Mission Market, Cayuse Technologies and other enterprises established and owned by the Tribe. This Code is not intended to preempt or interfere with the rights or obligations set forth in the Tribes' Personnel Policies Manual, the Yellowhawk Personnel Manual, the Umatilla Tribal Police Department Manual, or the personnel manuals of Tribal enterprises including Wildhorse Resort and Casino, Tamástslikt Cultural Institute, Cayuse Technologies, Arrowhead Travel Plaza and Mission Market and other Tribal enterprises now or later established. The employees of the Tribe and Tribal enterprises shall be limited to the rights and remedies provided in the duly adopted manuals or procedures enacted by the Tribe for those employees.
- D. Contract disputes between contractors and their subcontractors or their non-Indian employees are outside the scope or jurisdiction of this Code and are not subject to enforcement, compliance or the issuance of a citation under this Code. Contract disputes shall be resolved through specified contract procedures for such disputes or through a court of competent jurisdiction.

**SECTION 1.05. DEFINITIONS**

- A. **BOARD OF TRUSTEES** – shall mean the governing body of the Confederated Tribes of the Umatilla Indian Reservation.
- B. **COMMISSION** – shall mean the Tribal Employment Rights Commission of the Confederated Tribes of the Umatilla Indian Reservation.
- C. **COMMISSIONER** – shall mean a member of the Tribal Employment Rights Commission of the Confederated Tribes of the Umatilla Indian Reservation.
- D. **COMPLIANCE AGREEMENT** – shall mean an agreement between an Employer and the Tribal Employment Rights Office (TERO) setting forth how the Employer will meet Indian preference hiring and subcontracting goals and that they will comply with this Code. The Compliance Agreement must be executed prior to commencement of any portion of a project within TERO jurisdiction lands.
- E. **CORE CREW** – shall mean the essential, permanent employees of an Employer who have been regular employees of the Employer for at least six months prior to the start of the project.
- F. **COVERED ACTIVITIES** – The following activities shall be subject to the provisions of this Code when the project costs equal \$25,000 or more:
  - 1. Construction, repair, installation or maintenance of buildings, structures, improvements, bridges, roads, utility service lines, pipelines, electrical transmission lines, fiber optic and communication systems, railroads, or machinery and equipment that is affixed or erected upon real property and is not readily movable or is attached to other machinery and equipment such as conveyers, pipes or wiring or merely rest in place by virtue of its weight;
  - 2. Vegetation clearing, digging, soil preparing, logging or tree-thinning, reforestation and revegetation activities, environmental and habitat restoration, mitigation activities; or
  - 3. Excavating or mining.
  - 4. Excluded Activities. Farming and ranching activities involving planting, harvesting, weed control and soil preparation are specifically excluded from this provision of the TERO Code.

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

- G. EMPLOYER – shall mean any person, company, contractor, subcontractor or entity located or engaged in business activities on TERO jurisdiction lands when conducting work with non-regular employees. This includes, but is not limited to, contractors, and subcontractors of federal, state, county and other local governments and government-owned enterprises, doing work on TERO jurisdiction lands. The term does not include the Tribe, federal, state or local governments or their entities when they are employers. Also excluded are owners of single-family residences when is, or will be post-construction, occupied by the owner as well as owner-operated farm: buildings, structures, storage facilitates and irrigation systems.
- H. ENGAGED IN WORK ON TERO JURISDICTION LANDS – shall mean any portion of a business enterprise or project performed on TERO jurisdiction lands.
- I. INDIAN – shall mean any person enrolled in a federally recognized tribe.
- J. INDIAN OWNED BUSINESS – shall mean a business certified by the TERO Program to be at least 60% owned, operated and controlled by an Indian.
- K. INDIAN PREFERENCE – shall mean a preference for enrolled Indians in all aspects of employment, including but not limited to, hiring, training, promotions, layoffs, contracting and subcontracting for work on TERO jurisdiction lands.
- L. MEMORANDUM OF UNDERSTANDING – shall mean the agreement between the Tribe and other parties outlining the requirements and responsibilities of Employers on TERO jurisdiction lands.
- M. PROGRAM MANAGER – shall mean the Program Manager of the Umatilla Tribal Employment Rights Office.
- N. PROJECT COSTS – shall mean all costs that are incurred, including installation, supplies and materials, labor, repair, installation and maintenance. Tangible personal property is excluded including all chattels and movables, such as: boats, vessels and forklifts; merchandise and stock and trade held for resale; computers and computer equipment; office equipment; sales registers; store fixtures and displays; furniture and personal effects; goods; livestock; vehicles; farming implements; moveable machinery; movable equipment; and movable tools. Engineering, design, freight and permitting costs are also excluded.
- O. TERO – shall mean the Tribal Employment Rights Office of the Confederated Tribes of the Umatilla Indian Reservation.
- P. TERO JURISDICTION LANDS – shall mean:
1. All lands within the Confederated Tribes of the Umatilla Indian Reservation;
  2. All Indian Country as defined by 18 U.S.C. 1151 which the Confederated Tribes of the Umatilla Indian Reservation has an interest in or authority over;
  3. All lands the Confederated Tribes of Umatilla Indian Reservation has an ownership interest in outside the exterior boundaries of the Umatilla Indian Reservation; and
  4. All lands covered by a Memorandum of Understanding (MOU).
- Q. TERO WORKER – shall mean any Indian referred through the TERO Program.
- R. TRIBE or TRIBAL – shall mean the Confederated Tribes of the Umatilla Indian Reservation.

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

- S. TRIBAL COURT – shall mean the Umatilla Tribal Court of the Confederated Tribes of the Umatilla Indian Reservation.

**CHAPTER 2. TRIBAL EMPLOYMENT RIGHTS OFFICE**

**SECTION 2.01. TERO PROGRAM MANAGER**

The Program Manager of the Tribal Employment Rights Office shall be responsible for administering the provisions of this Code and provide direction, leadership and oversight to the TERO Program staff. “TERO Program Manager” shall include his/her designees when used in this Code.

**SECTION 2.02. TERO PROGRAM MANAGER AUTHORITIES**

- A. The Program Manager shall have the authority to maintain daily operations of the TERO Program, to obtain and expend funds from tribal, federal, state or other sources, to carry out the purposes of this Code in accordance with the Fiscal Management Policy, to establish Employer record-keeping requirements, to consult with the TERO Commission on policy issues related to the implementation of this Code and to take such other actions as are necessary for the fair and vigorous enforcement of this Code.
- B. The Program Manager shall have the authority to:
1. Negotiate, monitor and enforce Compliance Agreements with Employers;
  2. Investigate violations and impose penalties on Employers who violate the provisions of the Code;
  3. Develop and promulgate regulations necessary to implement the provisions of this Code;
  4. Ensure compliance with all Equal Employment Opportunity Commission grants, contracts or agreements;
  5. For purposes of Compliance Agreements, develop and impose numerical hiring goals and contracting goals that reflect the available Indian labor pool and Indian Owned Businesses;
  6. Establish and maintain a tribal hiring hall that maintains a record of qualified, employable Indians to be used by employers to fill vacancies;
  7. Prohibit any Employer from imposing employment qualification criteria that serve as barriers to Indian employment unless it can be demonstrated that such criteria are required by business necessity;
  8. Revoke, or refuse to enter into, a Compliance Agreement with an Employer that has operated an unsafe work environment as outlined in Chapter 7;
  9. Negotiate cooperative agreements with federal, state, tribal and local governments and businesses to minimize employment discrimination against Indians on TERO jurisdiction lands, to promote Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Code;
  10. Audit certified payroll reports, from Employers, monitor wage scale and salaries to ensure equitable compensation of Indian workers;
  11. Collect a TERO compliance tax on Employers; and

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

12. Advertise, collect data, investigate, communicate and process applications or re-certifications for entrance onto the Indian Owned Business Directory.

**SECTION 2.03. TRIBAL MINIMUM OR PREVAILING WAGE**

- A. With approval of the Board of Trustees, the Program Manager may promulgate a Tribal Minimum Wage or Prevailing Wage as provided in this Section. Such Tribal Minimum or Prevailing Wage shall only apply to Employers subject to this Code. A Tribal Minimum or Prevailing Wage established under this subsection may be included in a Compliance Agreement pursuant to Section 6.01 of this Code.
- B. Definitions. For purposes of this Section, the terms “Minimum Wage” and “Prevailing Wage” are defined as follows:
  1. Minimum Wage – shall mean the lowest wage that the Employer can pay any employee. The Minimum Wage shall not be less than the federal minimum wage.
  2. Prevailing Wage – shall mean the lowest wage that an Employer can pay any employee by trade or craft. A Prevailing Wage need not limit or put a cap on all employees in a particular craft or trade.
- C. If the Program Manager elects to promulgate a proposed Minimum Wage or Prevailing Wage, the following factors may be taken into consideration:
  1. The prevailing wage for each job classification in the Oregon or Washington wage classifications;
  2. The prevailing wages established by other Northwest Indian tribe;
  3. The number of Indian persons living on or near TERO jurisdiction lands with the particular craft or trade skills;
  4. The unemployment rate of Indians living on or near TERO jurisdiction lands – especially the unemployment rate for the particular craft or trade;
  5. Local labor and market conditions;
  6. The potential impact of the Prevailing Wage to attract businesses or Construction Employers to do business on TERO jurisdiction lands; and
  7. The potential impact of the Prevailing Wage in raising the costs of Tribal projects.
- D. The draft Minimum or Prevailing Wage shall be published in the CUJ with notice of the comment opportunity and comment deadline date and distributed to all Tribal governmental departments, enterprises and to persons or entities that may be impacted by such a proposal for review and comment. The record shall be kept open for at least thirty days to permit comments to be submitted.

**CHAPTER 3. TRIBAL EMPLOYMENT RIGHTS OFFICE COMMISSION**

**SECTION 3.01. ESTABLISHMENT, COMPOSITION AND BYLAWS**

- A. There is hereby created the Tribal Employment Rights Office (TERO) Commission.
- B. Membership. The Commission shall be comprised of five members appointed by the Board of Trustees.



**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

- C. Selection of Commission Officers. The Commission shall elect annually a Chair, Vice Chair and Secretary from its membership.
- D. Duties of the Chairperson. The Chairperson shall preside at all meetings of the Commission and, along with at least one other Commission member, shall be authorized to sign required documents in accordance with the powers of the Commission. The Commission Chair will establish meeting dates and times in coordination with the TERO program staff.
- E. Duties of the Vice-Chairperson. The Vice-Chairperson shall assist the Chairperson when called upon to do so. In the absence of the Chairperson, the Vice-Chairperson shall preside over Commission meetings and when so presiding, shall have all the rights and duties of the Chairperson.
- F. Duties of the Secretary-Treasurer. The Secretary-Treasurer shall be responsible for assuring the timely and proper production, distribution and storage of all written records of the Commission, including administrative and financial documents. The Secretary-Treasurer shall keep informed about the Commission's expenditures and remaining budget. The Secretary-Treasurer shall assure that all Commission minutes, executive summaries and purchase requisitions shall be distributed to appropriate Tribal offices. At each regularly scheduled Commission meeting, the Secretary-Treasurer shall submit the official Commission minutes from the prior Commission meeting for the Commission's review and approval, and shall also provide a brief report on the state of the Commission's budget. With the assistance of TERO staff, the Secretary-Treasurer shall ensure that new Commission members are provided with orientation materials, if any exist.

**SECTION 3.02. RULES GOVERNING MEMBERSHIP ON THE TERO COMMISSION**

- A. Members of the TERO Commission shall possess and demonstrate as minimum qualifications:
  - 1. Enrolled member of the Confederated Tribes of the Umatilla Indian Reservation;
  - 2. Eighteen years of age or older;
  - 3. Having no Gross Conflicts of Interest, as defined below;
  - 4. Willingness and ability to comply with the Ethical Duties of Commission Members, as defined below;
  - 5. Willingness and ability to perform the Commission's duties in compliance with the Confederated Tribes' Treaty, Constitution and statutes; and
  - 6. Knowledge and familiarity of the TERO Code.
- B. Terms. Appointments to the Commission shall be for a period of two years. There is no limitation on the number of terms a Commissioner may serve.
- C. Gross Conflicts of Interest.
  - 1. No person may be appointed to the TERO Commission who:
    - a. Is employed in the TERO program of the Confederated Tribes;
    - b. Is engaged in litigation against the Confederated Tribes in a matter related to the subject matter of the Commission; or

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

- c. Has a similar interest that would necessarily grossly conflict with the impartial performance of a Commissioner's duties.
  2. The Board of Trustees' determination whether an applicant is barred from appointment by a gross conflict of interest (or must be removed from the Commission due to a gross conflict of interest) is final.
- D. Oath of Office. Each appointee to the TERO Commission shall take an oath of office prior to assuming the duties of Commission membership. The oath shall be administered by an officer of the Umatilla Tribal Court.
- E. Ethical Duties of Commissioners. TERO Commissioners are expected to comply with the following ethical requirements. Violations of these ethical duties may be considered neglect of duty or gross misconduct, requiring the removal of a Commissioner, depending on the severity and/or frequency of the violation.
  1. Commissioners shall comply with their oath of office and shall generally avoid the appearance of impropriety.
  2. Commissioners shall not attempt to exceed the authority granted to Commissioners by this Code.
  3. Commissioners shall recognize that the authority delegated by this Code is to the Commission as a whole, not to individual Commissioners. As a result, the powers of the Commission may only be exercised by the Commission, acting through the procedures established by this Code.
  4. Commission members shall not involve the Commission in any controversy outside the Commission's duties.
  5. Commissioners shall hold all information revealed during the course of Commission business in strict confidence, including information about the Tribe, the Tribe's partners, appealing parties, records from appeals, employees, community members and Commission deliberations. Commissioners may only discuss or disclose such information to persons who are entitled to the information, and only for the purpose of conducting official Commission business.
  6. Commission members are expected to behave in a professional manner and treat each other with courtesy.
  7. Conflict of Interest.
    - a. When a matter before the Commission directly and specifically affects a Commissioner's own interests, or the interests of his or her immediate family, that member has a "conflict of interest." Immediate family includes parents, children, spouse or domestic partner, siblings, grandparents, grandchildren, stepparent, stepsibling, stepchildren or any other person residing in the Commissioner's household. Except as described below, a Commissioner shall not act in an official capacity when he or she has a conflict of interest.
    - b. A Commissioner must inform the Commission of any conflict of interest immediately upon becoming aware of the conflict.
    - c. In all other cases, immediately after disclosing the conflict, a Commission member shall recuse himself or herself from discussion of, and voting on, any matter concerning the conflict. Commissioners shall not discuss or

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

- vote on the matter in the presence of a Commissioner who has a conflict of interest.
- d. It is not a violation of this provision for a Commissioner to disclose a conflict about an issue, suggest that the Commission take action on the issue, and then recuse himself or herself from the Commission discussion and voting on the issue.
  - e. If an apparent conflict of interest exists, but the Commissioner with the conflict refuses to comply with these procedures, then the Commission shall table the matter until such time as the Commissioner leaves or the dispute is otherwise resolved. A Commissioner's refusal to comply with these procedures shall constitute neglect of duty and/or gross misconduct, justifying removal from the Commission.
- F. **Revocation of Appointment.** TERO Commission members serve at the pleasure of the Board of Trustees. Appointment to the TERO Commission confers no liberty or property rights upon the appointee. The Board of Trustees may revoke a person's appointment to the TERO Commission at any time, regardless of the length of time remaining in the person's appointment. It is not required that the Board state a reason for revoking the appointment or provide the person an opportunity to appear before the Board. A majority vote by the Board is sufficient to revoke any appointment. Revocation decisions by the Board are not subject to review or appeal to any administrative or judicial forum.
- G. **Removal by Commission Motion.** Whenever it comes to the attention of the TERO Commission that one of its members may: (1) fail to meet the minimum qualifications for membership, (2) have a gross conflict of interest, or (3) have committed neglect of duty or gross misconduct, the Commission by motion, may decide to hold a hearing inquiring into the matter.
1. At least five business days before the hearing is scheduled, the Chairperson shall provide notice of the hearing to the Commission member whose conduct is the subject of the hearing. The notice of the hearing shall include a written statement of the charges against the Commission member.
  2. At the hearing, the Commission member shall have an opportunity to appear before the Commission and answer all charges against him or her before the Commission votes. The Commission member shall represent his or her self, and shall not be represented by an attorney. If the Commission concludes by majority vote that the Commission member fails to meet minimum qualifications for membership, has a gross conflict of interest, or has committed neglect of duty or gross misconduct, the Chairperson shall promptly notify the Commission member and the Secretary of the Board of Trustees that the Commission member has been removed from the Commission.
  3. The decision of the Commission shall be final, except the Board of Trustees may review the decision on the Board's own motion, and may impose a different decision than the one ordered by the Commission. If the Board does this, it will immediately convey its decision in writing to the Chairperson of the Commission.
- H. **Resignation by Letter.** Any Commission member who wishes to resign from the TERO Commission shall submit his or her written resignation to the Chairperson.
- I. **Resignation by Default.** If any Commission member is absent from three consecutive meetings of the committee without excuse or misses more than 50% of the regular meetings during a year, that Commission member shall be considered to have resigned without providing notice to the Chairperson.

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

**SECTION 3.03. DUTIES, POWERS AND LIMITATIONS**

- A. Duties. The TERO Commission shall carry out its duties under this Code consistent with the Confederated Tribes Constitution and Bylaws. In exercise of its duties, the Commission shall:
1. Review on-the-job training hours as recorded by TERO staff for Tribal Apprenticeship Programs;
  2. Review recommendations for Code amendments;
  3. Review regulations developed by the TERO Program Manager; and
  4. Hear appeals under Chapter 9.
- B. Limitations.
1. The Commission is prohibited from inquiring into, participating in, or attempting to influence managerial decisions concerning the Human Resources Department, the TERO Program or TERO staff.
  2. Except when authorized by the Commission, no individual Commissioner may take action or make any commitment on behalf of the Commission or TERO Program. The TERO Commission does not represent the TERO Program or staff.
  3. The TERO Commission has no authority to waive the sovereign immunity of the Tribe, its agents or entities.
- C. Meetings.
1. Meetings of the TERO Commission shall be held at regularly scheduled times each month.
  2. Special meetings shall be called only upon the written authorization of the Commission Chairperson and, except when of an emergency nature, shall be posted at least five days in advance.
  3. Regular meetings shall be open to the public. Whenever necessary, in the judgment of the committee Chairperson, to protect the confidentiality of sensitive information, the committee shall hold private deliberations. A committee Chairperson may temporarily recess a regular or special meeting in order to conduct private deliberations. Members of the public, including members of the General Council, are prohibited from attending private deliberations. Staff may only attend private deliberations if as a consequence of their job duties they have specialized information or responsibilities concerning the matter being discussed, and the committee Chairperson allows them to attend. Board of Trustees members and senior staff (or the senior staffs' designees) are entitled to attend any private deliberations of a committee so long as the person attending does not have a conflict of interest concerning the matter being discussed. Because private deliberations take place while the committee is in recess, no taking of minutes or recording of the deliberations shall take place. No notice of private deliberations is required. If a closed session occurs in the absence of a committee member who does not have a conflict of interest concerning the subject matter being discussed, the absent committee member may request an oral report on the subject matter discussed by the committee members who were present for the closed session.
- D. Quorum. Commission business may only take place when two or more voting members are present in addition to the presiding Chairperson. Voting by proxy shall not be

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

allowed. A Commission meeting shall not be cancelled if a quorum is present, except by consensus of the Commission's members.

- E. Meeting Business. The Commission shall attempt whenever possible to execute its powers by consensus. If a consensus cannot be achieved, the affirmative vote of a majority of the Commissioners shall be required to take Commission action. The Chairperson shall vote only in the event of a tie. All documents requiring Commission signature, shall bear the signature of the Chairperson and at least one other Commissioner.

**SECTION 3.04 COMMISSION TRAINING**

The Commission will be afforded annual training on hearing procedures and decision-making techniques.

**CHAPTER 4. TERO WORKFORCE**

**SECTION 4.01. INDIAN PREFERENCE**

- A. Scope. Indian Preference shall be applied in all aspects of employment on employment projects under this Code.
- B. Layoffs. In all layoffs and reductions in force, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed. The non-Indian shall be terminated first if the Indian possesses threshold qualifications for the job classification. If an Employer lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classification are employed elsewhere on the job site, except for non-Indians hired as Core Crew pursuant to negotiated Compliance Agreements.
- C. Promotions. Each Employer shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For each promotion or supervisory position filled by a non-Indian, the Employer shall file a report with the TERO Program Manager 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 an Indian was not selected.
- D. Core Crew. Core Crew requests must be submitted to the TERO staff in writing, showing that each Core Crew member meets these criteria before the start of any project work. Approval of Core Crew members does not exempt any Employer from TERO hiring goals or other compliance agreement terms.
- E. Indian Core Crew members may count toward the hiring goal.
  - 1. The Indian Core Crew members must be registered with the TERO Program.
  - 2. The Indian Core Crew members must be identified prior to signing the Compliance Agreement.

**SECTION 4.02. TRIBAL HIRING HALL**

- A. The Program Manager shall establish and maintain a hiring hall to assist Employers doing business on TERO jurisdiction lands in placing qualified Indians in job positions.
- B. An Employer shall not hire a non-Indian in violation of the Compliance Agreement until the Program Manager has certified within a reasonable time that no qualified Indian is available to fill the vacancy. For purposes of this section, "reasonable time" for

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

construction jobs shall mean that the Program Manager shall have 48 hours from time of notice of manpower needs to locate and refer a qualified Indian.

- C. The Program Manager may waive the 48-hour time period upon a showing by the Employer that such time period imposes an undue burden upon the Employer, the business or the construction project in question.

**SECTION 4.03. UNIONS**

Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code, its rules and regulations, applicable Memorandums of Understanding and their Compliance Agreement. 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 tribal recognition of any union or tribal endorsement of any union activities on TERO jurisdiction lands.

Any existing or prospective labor organizations on the CTUIR are required to comply with the registration and operation procedures outlined in the CTUIR Right to Work Code.

**CHAPTER 5. CERTIFIED INDIAN OWNED BUSINESSES**

**SECTION 5.01. SCOPE**

Employers shall give preference to Indian Owned Businesses in the award of contracts or subcontracts to the extent permitted by applicable law. Indian Owned Businesses must be certified by the TERO Program Manager to be included on TERO's Indian Owned Business Directory and to obtain Indian Preference under this Code in contract bids on TERO jurisdiction lands.

**SECTION 5.02. CERTIFIED INDIAN OWNED BUSINESS DIRECTORY**

The Program Manager shall maintain an updated list of certified Indian Owned Businesses.

**SECTION 5.03. CERTIFICATION OF INDIAN OWNED BUSINESSES**

- A. All applicants seeking to be certified as a TERO certified Indian Owned Business, at a minimum, along with a complete certification application, shall provide the following documentation to the TERO office to prove the business is at least 60% owned, operated and controlled by an Indian:
1. Proof of enrollment/membership with a federally recognized tribe, nation or band, including Alaskan Native villages, communities and corporations;
  2. Proof of ownership of the business with at least 60% Indian ownership and proof that the Indian owner exercises majority control of the business and is substantially involved in the day-to-day management and operations;
  3. The Indian owner(s) must establish that they provide real value for their stated ownership interests by providing legal documents such as stock ownership, capital, assets, structure, management, control, financing and salary commensurate with the value of their ownership share;
  4. The Indian owner(s) will receive a percentage of all profits equal to their ownership interest. Any provision that give a non-Indian owner a greater share of the profits, such as but not limited to: management fees, equipment rental fees or bonuses will result in decertification;

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

5. Business license certifications, business structure documents (sole proprietor, partnerships, incorporations, LLC), insurance and bonding capabilities;
  6. Business Plan that includes proof of the experience and staff expertise in the specific field, projected financials and references;
  7. Portfolio that includes proof of the experience and staff expertise in the specific field listed, resume of jobs completed and references;
  8. Any additional licensing documentation specific for the service provided;
  9. When applicable, proof of certification as an Indian Owned Business by another entity or organization along with a signed release of information to access records and the review process; and
  10. Any other documentation or pertinent information required by TERO. Applicants missing documents from this subsection shall submit written justification for those missing items.
- B. TERO shall have sole discretion in determining the legitimacy of submitted documentation. TERO reserves the right to exempt any documentation requirement if deemed not necessary for the type of service provided.
- C. The TERO staff, along with the Office of Legal Counsel and the Tax Administrator, as appropriate, shall review completed applications and all supporting documentation.

**SECTION 5.04. RECERTIFICATION**

Certified Indian Owned Business must be recertified every two years. Businesses wishing to maintain their status as a Certified Indian Owned Business will need to submit all the documentation as required in Section 5.03 at least ninety days prior to their two-year anniversary to allow adequate time for the recertification review and prevent a lapse in status.

**SECTION 5.05. DECERTIFICATION**

- A. Certified Indian Owned Business may be de-certified at any time for any one or more of the following:
1. Failure to meet the requirements of Section 5.03 of this Code;
  2. Failure to notify TERO in writing of changes in ownership, operation and/or control status within thirty days after the change(s) have occurred;
  3. Participation in illegal or prohibited activities; or
  4. Subject to disciplinary action in another jurisdiction.
- B. A business de-certified by TERO is banned from reapplying for Indian Owned Business certification for two years if it was banned for any reason except failure to recertify in time.

**SECTION 5.06. SOLICITATION PROCESS**

- A. Indian Owned Businesses shall be given preference as provided in this Section 5.06 in any procurement process permitted under Fiscal Management Policies applicable to an Employer adopted by the Board of Trustees and, for all other Employers, by any other competitive solicitation or bid process that the Employer may use. An Employer shall be authorized to use standard evaluation tools to determine if an IOB has the experience,

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

expertise, personnel and resources to provide the goods or services on the schedule needed by that Employer. If an IOB is qualified and timely submits a responsive bid, that IOB shall receive the preference set forth in Section 5.06.B.

- B. Any responsive and qualified Indian Owned Business that timely bids on a project and is not the lowest responsive and qualified bid will be awarded the contract if their bid is within the applicable percentages of the lowest non-Indian bidder. In the event of multiple responsive and qualified Indian Owned Business bids, the lowest and most qualified will be awarded the contract. Applicable percentages are as follows:

<u>Contract Price</u>	<u>Added Bidding Value</u>
Less than \$100,000	10% of the lowest bid or a maximum of \$9,000
At least \$100,000 but less than \$250,000	8% of the lowest bid or a maximum of \$20,000
At least \$250,000 but less than \$500,000	6% of the lowest bid or a maximum of \$30,000
At least \$500,000 but less than \$1 million	5% of the lowest bid or a maximum of \$45,000
At least \$1 million but less than \$5 million	3% of the lowest bid or a maximum of \$150,000
At least \$5 million but less than \$10 million	2% of the lowest bid or a maximum of \$200,000
\$10 million or more	1% of the lowest bid, with no dollar limit

- C. The Indian Owned Businesses preference does not prevent an Employer from rejecting a sole responsive bidder or rejecting all bids.

- D. Employers are responsible for enforcing the solicitation process.

**SECTION 5.07. APPEALS**

Businesses denied certification, recertification, solicitation preference or who are decertified may appeal within ten business days of denial per the Appeal process in Chapter 9.

**CHAPTER 6. EMPLOYER REQUIREMENTS**

**SECTION 6.01. SCOPE**

All Employers performing work on TERO jurisdiction lands, at a minimum, shall:

- A. Give preference to Indians in hiring, promotion, training and all other aspects of employment.
- B. Comply with the terms of this Code and its implementing regulations.
- C. Ensure a safe working environment as defined by applicable law and industry standards.
- D. Comply with all Compliance Agreements executed under this Code.



***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

**SECTION 6.02. COMPLIANCE AGREEMENT**

- A. Each Employer shall be required to coordinate with the TERO Program to negotiate and execute a Compliance Agreement which sets forth:
1. **Hiring Goals.** The minimum number of Indians that shall be hired for any particular project while the Employer is located or engaged in work on TERO jurisdiction lands. This includes numerical goals and timetables for each craft, skill area, job classification, etc., as a percentage of total hours worked on the project, used by the Employer including, but not limited to: general labor, skilled, administrative, supervisory, and professional categories;
  2. **Wage Rates.** Applicable wage scale provisions, prevailing wage standards and salary compensation terms that may be applicable to a project or contract under applicable federal or state law, or tribal law, if a Tribal minimum or prevailing wage has been promulgated as provided in Section 2.03 of this Code;
  3. **Reporting Requirements.** Periodic reporting requirements to the TERO Program on the number of Indians employed; a record of persons hired, fired or promoted during the reporting period; and a statement regarding compliance with the hiring goals set forth in the Compliance Agreement;
  4. **Compliance Tax Rate.** See Section 6.03 for additional information; and
  5. **Business Directory.** All Employers are required to work with TERO and the Indian Owned Business Directory to solicit Indian Owned Businesses on projects within TERO jurisdiction lands. Due diligence to provide economic opportunities must be a goal of each project.
  6. **Indian sub-contracting hiring goals.**
  7. **On-the-job training hours, if applicable.**
- B. The numerical goals set forth in the Compliance Agreement shall be based upon the available and qualified Indian work force, contractor availability and projected employment opportunities on TERO jurisdiction lands.
- C. Compliance Agreements shall be reviewed periodically and revised as necessary to reflect changes in the number of Indians available or changes in Employer hiring needs.
- D. No Employer shall commence work or site mobilization until a Compliance Agreement has been negotiated and executed.
- E. Employers must make every reasonable effort to achieve the hiring goals outlined in the Compliance Agreement.
- F. Any violation of an executed Compliance Agreement shall be subject to citation and penalty per Chapters 7 and 8 of this Code.
- G. Employers shall inform the TERO Program before any TERO worker is terminated to allow for counseling, when possible.
- H. When a TERO worker is terminated or unable to continue working, the Employer shall immediately notify the TERO office which may provide a substitute referral within three business days or notify the Employer that it has no referrals for the position, after which time the Employer will be authorized to hire a permanent replacement. The Employer may submit a written request and justification for a shorter rehire period.

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

**SECTION 6.03. COMPLIANCE TAXES**

The Program Manager shall assess and collect a compliance tax after a review of the entire eligible project costs.

A. The tax rates for projects costs are as follows:

\$0 – \$24,999	n/a
\$25,000 – \$99,999	4%
\$100,000 – \$999,999	3%
\$1,000,000 – \$9,999,999	2%
\$10,000,000 +	1%

B. The maximum tax amount shall be capped at \$500,000.

C. Compliance taxes must be paid by the Employer prior to commencing work on TERO jurisdiction lands.

D. The Program Manager has the authority to negotiate alternative compliance taxes for projects that partially overlap TERO jurisdiction lands per a memorandum of understanding. All MOU's are subject to Board approval.

E. Compliance taxes shall be used by the TERO Program per the TERO Tax Guidelines.

**SECTION 6.04. EMPLOYER AS GENERAL CONTRACTOR**

Where the Employer is a general contractor on a project under this Code, that general contractor shall ensure that it and all its subcontractors, also employers, comply with this Code. The general contractor may be held liable for violations of this Code by its subcontractors.

**SECTION 6.05. JOB QUALIFICATIONS AND PERSONNEL REQUIREMENTS**

An Employer shall not use qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the Employer is able to demonstrate that such criteria or requirements are required by business necessity.

**SECTION 6.06. INSPECTIONS**

A. The Program Manager and any authorized TERO staff shall have the authority to make on-site inspections during regular working hours in order to monitor compliance with this Code and the applicable Compliance Agreement by an Employer.

B. The Program Manager and any authorized TERO staff shall have the right to inspect and copy all relevant records of an Employer, of any signatory union or subcontractor of an Employer, and shall have the right to speak to workers and to conduct an investigation on the job site.

C. All information collected by the Program Manager and/or TERO staff during inspection shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

**CHAPTER 7. VIOLATION PROCEDURES**

**SECTION 7.01. INVESTIGATION BY THE PROGRAM MANAGER**

Whenever a violation of this Code or a Compliance Agreement has been alleged and is brought to the attention of the Program Manager, the Program Manager shall ensure a prompt and

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

thorough investigation of the alleged violation. The Program Manager shall seek to achieve an informal settlement of the alleged violation, with a written report of findings provided to the Commission.

**SECTION 7.02. ISSUANCE OF CITATION**

- A. If the Program Manager determines that a violation of the Code or a Compliance Agreement occurred, and an informal settlement cannot be achieved, the Program Manager shall issue a warning to the Employer. This warning shall specify the nature of the violation and direct that the violation be corrected within three business days or sooner where warranted.
- B. If the violation is not corrected within the time specified, the Program Manager shall issue a citation to the Employer which shall:
  - 1. Be in writing and in the name of the Confederated Tribes;
  - 2. State the name of the violator;
  - 3. Bear the signature of the Program Manager or the authorized representative;
  - 4. State the name and section number of the Code provision or Compliance Agreement violated;
  - 5. State a brief summary of the facts constituting the violation; and
  - 6. State a time and place the Employer must appear to answer to the violation at a Program Manager review.

**SECTION 7.03. PROGRAM MANAGER REVIEW**

An Employer who receives a citation, or has revoked or is refused a Compliance Agreement, shall be entitled to a review with the Program Manager no later than ten business days after receipt of a citation or Compliance Agreement revocation or refusal.

- A. **Program Manager Review.** Program Manager review meeting procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The evidence against the Employer will be shared by the Program Manager. The Employer shall be entitled to present evidence and to call witnesses to demonstrate that it has complied with the requirements of this Code or Compliance Agreement or that it made its best effort to do so, or did not operate an unsafe work environment as defined by applicable law and industry standards, and therefore should not be subject to sanctions, or revocation or refusal of a Compliance Agreement.
- B. **Program Manager Decision and Sanctions.** On the basis of evidence presented at the review, and the information collected by the Office, the Program Manager shall determine whether or not the Employer complied with this Code or Compliance Agreement. If the Program Manager determines that the Employer, by clear and convincing evidence, is out of compliance and has not made a best effort to comply, the Program Manager shall impose one or more of the sanctions provided for in this Code, as appropriate, and shall order the Employer to take such corrective action as is necessary to remedy any harm done to the Tribe or individual Indians caused by the non-compliance. If the Program Manager determines that an Employer has, by clear and convincing evidence, operated an unsafe work environment, he or she shall continue the revocation or refusal of a Compliance Agreement. The Program Manager shall send written notice to all parties within ten business days after the review meeting is completed.

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

**SECTION 7.04. EMERGENCY CITATION AND SANCTIONS**

When the Program Manager determines that a violation has occurred that is of a critical nature requiring immediate action, the Program Manager may issue a citation without delay, stating sanctions to be placed on the offending Employer. The Employer shall have the right to appeal the citation and any imposition of emergency sanctions to the TERO Commission. The TERO Commission shall schedule a hearing on any appeal of a decision by the Program Manager granting emergency action pursuant to this subsection to be held within seven business days.

**SECTION 7.05. INDIVIDUAL COMPLAINT PROCEDURE**

- A. Any Indian employee who believes that an Employer has failed to comply with this Code or applicable Compliance Agreement, or who believes that he/she has been discriminated against in violation of tribal law because they are Indian, may file a complaint with the TERO Program. The complainant shall be responsible for providing the TERO Program with evidence of the discriminatory practices.
- B. Upon receipt of a complaint supported by sufficient evidence of discrimination against an Indian employee, the TERO Program Manager or designated staff shall conduct an investigation of the allegation(s), which shall include interviews of the project manager for the Employer and any person(s) allegedly responsible for the discriminatory conduct, and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the Program Manager shall hold a review on the matter, shall make a determination on the validity of the allegation, and shall order such relief as is necessary to make whole any Indian who is harmed by the Employer's non-compliance or discriminatory behavior. The decision shall be in writing and shall be sent to all parties within seven business days after the review meeting is completed.
- C. In conducting the review, the Program Manager shall have the same powers, and shall be bound by the same review requirements as provided in Sections 7.03 and 7.04 of this Chapter.

**CHAPTER 8. PENALTIES**

**SECTION 8.01. PENALTIES FOR VIOLATION**

An Employer who violates this Code or a Compliance Agreement shall be subject to penalties including, but not limited to:

- A. Denial of the right to commence or continue business on TERO jurisdiction lands;
- B. Suspension of operations on TERO jurisdiction lands;
- C. Payment of back pay and/or damages to compensate any injured party;
- D. An order to summarily remove employees hired in violation of this Code or a Compliance Agreement;
- E. Imposition of monetary civil penalties pursuant to applicable sections of this Code. Consideration will be given to the severity of the violation, whether any other penalty pursuant to this section was imposed and whether the person or entity that is subject to the fine has any prior history of violating this Code; or
- F. An order specifying requirements for employment, promotion, and training Indians injured by the violation.

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

**SECTION 8.02. MONETARY FINES**

The maximum monetary penalty that may be imposed for a violation is one thousand dollars (\$1,000) per violation per day. For purposes of the imposition of penalties determined by the Court or sanction by the Program Manager, each day during which a violation exists shall constitute a separate violation.

**SECTION 8.03. ENFORCEMENT**

- A. The Program Manager shall be entitled to pursue the enforcement of any order of the TERO Commission or the Umatilla Tribal Court when necessary to ensure compliance with the terms and conditions of the order.
- B. Any cost associated with the enforcement of such order issued pursuant to this Code shall be assessed against the Employer who is out of compliance. These may include, but not be limited to: document reproduction costs, filing fees, attorney fees and costs incurred by the Tribe or the Office related to securing enforcement of the order.
- C. Employers who do not comply with the provisions of this Code, and leave TERO jurisdiction lands before enforcement penalties are imposed and collected or an enforcement order is issued by the TERO Commission or the Umatilla Tribal Court, shall be denied the privilege of contracting or doing further business on TERO jurisdiction lands.

**CHAPTER 9. APPEALS AND HEARINGS**

**SECTION 9.01. APPEALS AND DECISIONS THAT CAN BE APPEALED**

The following may be appealed:

- A. Appeal of decision on citation issued to Employer by Program Manager;
- B. Appeal of Program Manager's written decision on an individual's complaint under Section 7.05;
- C. Appeal of Program Manager's written decision to grant emergency action against an Employer;
- D. Appeal of a Program Manager's written revocation or refusal of a Compliance Agreement; and
- E. Appeal of Program Manager's written decision regarding certification, recertification or decertification of Indian Owned Business status.
- F. Appeal of the use of Indian Preference for an Indian Owned Business in the solicitation process.

**SECTION 9.02. CONTENT OF APPEAL**

To initiate an appeal, the appealing employee or Employer shall file a written statement of appeal with the TERO Commission Chairperson, with a copy to the Program Manager, within seven business days of the receipt of the Program Manager's decision. The appeal shall describe the nature of the Program Manager's action or decision being appealed, a summary of the factual and legal basis for the appeal and the relief requested. Incomplete appeal statements will not be accepted.

**STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)**

**SECTION 9.03. SCHEDULING APPEAL HEARING**

Upon receipt of an appeal that has been timely filed, the TERO Commission has three business days to issue a written notice to the appealing party and the Program Manager designating a schedule hearing date, time and place. The hearing shall occur within ten business days of the filing of the appeal. A hearing on an appeal of a grant of emergency action pursuant to Section 7.04 of this Code shall be scheduled within seven business days of the filing of the appeal.

**SECTION 9.04. REQUEST TO RESCHEDULE APPEAL HEARING**

The Program Manager or the appealing party may make written requests to reschedule appeal hearings. The TERO Commission shall promptly rule on such requests and immediately notify the parties of its decision. Reasonable requests to reschedule will be granted.

**SECTION 9.05. APPEAL HEARING PARTICIPANTS**

Appeal hearings are not open to the public. Only the party filing the appeal, TERO staff, legal advisors and each party's witnesses may attend the hearing. Both the appealing party and the Program Manager may be represented by counsel at the hearing.

**SECTION 9.06. HEARING PROCEDURE**

- A. All appeal hearings will be recorded.
- B. Each party shall be responsible for ensuring that their witnesses attend the hearing.
- C. Both parties will be afforded the opportunity to present opening statements with respect to what they intend to present to the TERO Commission. Following opening statements, first the appellant and then the Program Manager may present witnesses and evidence in support of their position on the issues being appealed.
- D. The TERO Commission Chairperson will preside over the hearing and will take whatever action is necessary to ensure an equitable and expeditious hearing. Parties will abide by the TERO Commission Chairperson's rulings. The TERO Commission Chairperson may limit the number of witnesses when testimony would be unduly repetitious, and exclude any person from the hearing for contemptuous or inappropriate misbehavior that obstructs the hearing. TERO Commission hearings are not subject to the Rules of Evidence.

**SECTION 9.07. TERO COMMISSION DECISION**

The TERO Commission shall use a clear and convincing evidence standard of review. The TERO Commission will render a decision within ten business days from the date of the hearing. The parties will be notified in writing of the TERO Commission's decision.

**CHAPTER 10. TRIBAL COURT ENFORCEMENT AND JUDICIAL REVIEW**

**SECTION 10.01. JUDICIAL REVIEW OF TERO COMMISSION DECISIONS**

- A. Filing for Judicial Review. Any party to an appeal to the TERO Commission pursuant to Section 9.01 of this Code who is dissatisfied with the TERO Commission's decision or if the TERO Commission fails to timely schedule, hold or decide an appeal may appeal to the Umatilla Tribal Court. Such appeal shall be in writing and shall be filed with the Tribal Court within thirty days of the date of the TERO Commission's decision and shall set forth the factual and legal issues on appeal and a brief statement of the factual and legal arguments supporting the appealing party's position. The appeal shall also state the relief requested from the Tribal Court. The appeal shall include a copy of the TERO Commission's final decision. Failure to timely file an appeal containing the required

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

information constitutes a waiver of the right to do so and acceptance of the TERO Commission's decision. The party filing the appeal shall pay any court or filing fees imposed by the Tribal Court.

The TERO Commission shall be responsible for providing the hearing recording and exhibits to the Tribal Court once an appeal has been filed.

- B. Court Process. The Tribal Court shall promptly schedule a conference call between the parties to develop a briefing schedule and dates for oral argument or trial, if applicable. Oral arguments shall only be scheduled at the request of either part and if approved by the Tribal Court.
- C. Scope of the Appeal. Tribal Court appeals shall be limited to the factual record and legal arguments presented in the TERO Commission appeal hearing.
- D. Burden of Proof. The Petitioner shall carry the burden of proof that the TERO Commission decision was based on findings of fact that were not supported by the record or on legal conclusions that are in error.
- E. Standard of Review. The Tribal Court shall defer to the factual findings made by the TERO Commission provided that such findings are supported by clear and convincing evidence in the record developed by the TERO Commission. The Tribal Court shall conduct a de novo review of the application of applicable law by the TERO Commission.
- F. Decision of Tribal Court. The Tribal Court shall issue its decision in writing following the submission of briefs and oral argument, if oral argument is scheduled. The decision of the Tribal Court is final.
- G. Stay Pending Appeal. The TERO Commission's decision shall be stayed during the appeal unless the Tribal Court orders it remain in effect.

**SECTION 10.02. TRIBAL COURT ENFORCEMENT OF TERO COMMISSION AND PROGRAM MANAGER DECISIONS**

- A. The Tribal Court shall have the authority to issue any order or take any action necessary to enforce any Program Manager or TERO Commission decision following an appeal to the TERO Commission, provided that such order or decision is final and has not been appealed as permitted by this Code. To request such a Tribal Court order, the Program Manager shall file a petition with the Tribal Court containing the following information: a copy of the decision sought to be enforced, a brief summary of the proceedings leading to the decision and a statement about the finality of that decision (i.e. the appeal deadline has lapsed), the identity of the person or entity subject to the decision and facts to show how the decision is not being complied with.
- B. The Program Manager shall ensure service to all named parties.
- C. Upon receipt of the petition, the Tribal Court shall schedule a hearing and subpoena all necessary parties. The hearing shall be held within ten business days from the date the petition is filed.
- D. The Program Manager shall have the burden of proving to the Tribal Court that either the Program Manager or TERO Commission decision has not been complied with. The parties to the hearing on the petition may produce oral testimony or written documentation to support their case.
- E. The Tribal Court shall render a decision on the petition filed by the Program Manager within fourteen business days and enter whatever order is necessary or appropriate. The decision of the Tribal Court shall be final and binding.

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

**SECTION 10.03. COURT RULES**

The Court shall be responsible for establishing rules and procedures necessary to hear and adjudicate actions brought hereunder.

**SECTION 10.04. REMEDIES**

Ruling on matters arising under this Code, the Tribal Court shall have the authority to assess and collect civil penalties, to enjoin or mandate actions to enforce the provisions of this Code, and to provide any other relief the Tribal Court deems lawful and equitable; provided that nothing in this Code shall be construed as a waiver of the sovereign immunity of the Confederated Tribes. Accordingly, nothing in this Code shall be construed as any authority for a claim for money damages against the Tribe, the Office or Tribal officials and employees acting pursuant to their authority under this Code.



***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

**APPENDIX A**

**TRIBAL EMPLOYMENT RIGHTS OFFICE CODE**

**LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Tribal Employment Rights Office Ordinance in Resolution 78-53 (August 7, 1978).

The Board enacted a revised Tribal Employment Rights Office (TERO) Ordinance in Resolution 82-64 (September 20, 1982). The revised ordinance included a new, 14 page TERO Guidelines document. The revised Tribal Employment Rights Ordinance was amended three times, as follows: Resolution 84-21 (February 15, 1984), Resolution 88-07 (November 5, 1987), and Resolution 89-32 (April 5, 1989).

The Board enacted the second revised Tribal Employment Rights Office Ordinance in Resolution 90-51 (September 19, 1990). In enacting the second revised Tribal Employment Rights Office Ordinance, the Board explicitly repealed all prior resolutions concerning the TERO, with the sole exception of Resolution 89-17. As the second revised Tribal Employment Rights Office Ordinance did not contain the TERO Guidelines, these were repealed by Resolution 90-51.

The Board enacted the third revised Tribal Employment Rights Office Ordinance in Resolution 96-67 (July 31, 1996). It has not been amended.

In Resolution 83-78 (September 7, 1983), the Board approved an agreement between the Confederated Tribes and the Four Basic Trade Unions on compliance with the Tribal Employment Rights Ordinance and Guidelines. This agreement reportedly terminated at the end of five years and was not renewed.

In Resolution 89-17 (January 25, 1989), the Board approved a Memorandum of Understanding with the State of Oregon Department of Transportation that ensured compliance with the Tribal Employment Rights Ordinance whenever the Department of Transportation contracted to perform highway construction activities on the Umatilla Indian Reservation. In Resolution 94-13 (February 22, 1994), the Board approved a new Memorandum of Understanding with the State of Oregon Department of Transportation which superseded the 1989 Memorandum of Understanding. This Memorandum of Understanding ensures compliance with the Tribal Employment Rights Ordinance whenever the Department of Transportation contracts to perform highway construction activities on the Umatilla Indian Reservation or within 60 miles of the Reservation.

A fourth revision of this code has been proposed but has not yet been enacted by the Board of Trustees. If it is enacted, it will be included in the next edition of *Statutes of the Confederated Tribes of the Umatilla Indian Reservation*.

During preparation of this compilation, the following editorial changes were made to this code:

1. The name was changed from “Tribal Employment Rights Office Ordinance” to “Tribal Employment Rights Office Code;” and
2. The Code was put into the uniform code format used in the *Statutes of the Confederated Tribes of the Umatilla Indian Reservation*.

The Approval of Public Law 102-477 was adopted by the Board of Trustees through Resolution 08-063 on June 30, 2008.

On July 17, 2017, the Board of Trustees adopted the revised TERO Code via Resolution No 17-053. The amendments expand the types of work and costs subject TERO, expand TERO jurisdiction lands, transfer TERO fees into TERO taxes, institute new tax brackets, impose a preference system for

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 17-053 (July 17, 2017)***

contractor selection, outline the Indian Owned Business certification process, transfer appeal hearings to a Hearings Officer and create the TERO Committee as an advisory body.

## **SPECIAL PROVISION**

### **INDIAN PREFERENCE IN EMPLOYMENT ON FEDERAL-AID HIGHWAY PROJECTS ON AND NEAR INDIAN RESERVATIONS**

**January 1, 2019**

#### **PURPOSE**

The purpose of this Special Provision is to outline the Indian Employment Preference requirements and procedures to be followed by The Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Oregon Department of Transportation (ODOT), and all Contractors or subcontractors engaged in highway construction work that is under contract with ODOT on federal-aid highway projects that are located on and near the Umatilla Indian Reservation.

#### **BACKGROUND**

The Surface Transportation Assistance Act (as reauthorized in 1987), the Intermodal Surface Transportation Efficiency Act of 1991, the Moving Ahead for Progress in the 21st Century Act of 2012 and the Fixing America's Surface Transportation Act of 2015, permit Indian Preference employment goals on the Federal-Aid highway projects located on or near Indian reservations. Section 140(d) of the United States Code, Title 23 provides, "States may implement a preference for employment of Indians on projects carried out under this title near Indian reservation."

#### **AUTHORITY**

ODOT acknowledges the inherent sovereign authority of the CTUIR to promulgate and enforce the Tribal Employment Rights Office Code ("TERO Code") within the boundaries of the Umatilla Indian Reservation and acknowledges Title 23, Section 140(d) of the USC.

The current TERO Code of the CTUIR and its compliance requirements and procedures are incorporated herein and made part of this Special Provision.

ODOT and CTUIR entered into a Memorandum of Understanding (MOU) to implement TERO Code provisions into ODOT contracts.

#### **APPLICABILITY**

Eligible projects for Indian employment preference consideration under this Special Provision are those projects which are on or near Indian Reservation Roads or on the Umatilla Reservation. Roads "near" the Umatilla Indian Reservation are defined by mileposts as shown on Exhibit A attached to the MOU.

## **ELIGIBLE EMPLOYEES**

All Indians are eligible for Indian preference without regard to Tribal affiliation or place of enrollment. However, recruiting efforts will be targeted toward those living on or near the Umatilla Indian Reservation.

Employers with collective bargaining agreements with a union are responsible for informing such unions of this requirement.

## **INDIAN EMPLOYMENT PREFERENCE GOAL**

The Indian Employment Preference goal is indicated in the project Special Provisions.

Classifications for Indian Employment Preference goal consideration are:

- Carpenter
- Laborer
- Equipment Operator
- Cement Masons
- Truck Drivers
- Electricians
- Ironworkers

Classification shall be according to requirements for certified payrolls.

Indian Employment Preference goals will apply to total project work hours and will not be applied individually to the Contractor and subcontractors. Indian Employment Preference goals do not apply to number of persons employed at any given period of time.

Indian Employment Preference goals are for the Contractor's work force who are other than core crew members. A Contractor's core crew is composed of full-time employed individuals necessary to satisfy his/her reasonable needs for supervisory or special experienced personnel to assure an efficient execution of the contract work. Indian employees of the Contractor shall be included in the core crew, regardless of job function, to avoid the unintended results of having a Contractor lay-off or terminate an Indian employee to hire another under this provision.

In setting the Indian Employment Preference goals, consideration has been given to the availability of skilled and unskilled Indian workers, the type of work to be performed, the Contractor's employment requirements, the need for new hires, and unemployment rates prevailing among non-Indians. Consideration has also been given to the employment goals for minorities and women established for the area by

the U.S. Department of Labor's Office of Federal Contract Compliance Programs pursuant to Chapter 41, Code of Federal Regulations, Part 60-4.

The Indian Employment Preference goals may only be changed by ODOT after consultation with the CTUIR and the Contractor, and after consideration of the good faith efforts of the Contractor together with the ability of the CTUIR to refer workers in numbers and in time for the Contractor to meet the Indian Employment Preference goals and to perform the work.

If the CTUIR is unable to provide sufficient qualified or qualifiable applicants to meet the Indian Employment Preference goal within 48 hours of the placement of a job order by the Contractor, the Contractor, ensuring nondiscrimination and providing equal employment opportunity, may recruit from other sources off the Umatilla Indian Reservation. The Contractor shall give full consideration to all qualified job applicants referred by the CTUIR. The Contractor is not required to employ any applicant who, in the Contractor's opinion, is not qualified to perform the classification of work required.

### **FRINGE BENEFITS**

All fringe benefits for Indian workers referred by the Tribal Employment Rights Office of the CTUIR shall be paid in cash. Indian workers who are union members will have the option of fringe benefits in cash or paid into a bonafide plan or program. However, this does not change any agreements between Indian union members and their respective unions.

### **PRECONSTRUCTION CONFERENCE**

The preconstruction conference will be the forum for finalizing all compliance agreements and requirements between the CTUIR and the Contractor and subcontractor(s) and to answer any questions regarding the Indian Employment Preference goal and applicable Special Provisions

### **MANDATORY TERO WORKSHOP**

The Tribal Employment Rights Office of the CTUIR agrees to conduct mandatory prebid quarterly TERO/MOU workshops, and shall issue certificates of completion to those Contractors who sign in, attend, and participate. Contractors must have a certificate in order to be eligible to bid on ODOT Contracts that require compliance with these TERO/MOU requirements. The certificate will be good for 3 years.

### **COMPLIANCE**

The State will follow normal contract compliance procedures to effect compliance. The State may elect to invite the CTUIR to assist their monitoring efforts in all or any part of its compliance process. The State will review the Contractor's employment

practices and take appropriate enforcement actions when the goal is not reached after consideration of good faith efforts. See attached "ON-SITE WORKFORCE AFFIRMATIVE ACTION REQUIREMENTS FOR WOMEN AND MINORITIES ON FEDERAL AID CONTRACTS" or contact the Tribal Employment Rights Office for sanctions that may be imposed for failure to meet these goals.

### **COMPLIANCE FEE**

The Contractor shall pay the compliance fee directly to the TERO before beginning work subject to this Special Provision. Use the Contract Amount to calculate the compliance fee. See Section 5 of the MOU for percentages.

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**STATE OF OREGON DEPARTMENT OF TRANSPORTATION**  
**And**  
**THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION**

THIS AGREEMENT, hereinafter "Agreement" or "MOU," is made and entered into by and between the STATE OF OREGON, acting by and through the Oregon Department of Transportation (ODOT or State); and the Confederated Tribes of Umatilla Indian Reservation (CTUIR or Tribe), acting by and through its elected officials and the Tribal Employment Rights Office (TERO), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." The Agreement pertains to cooperation between the Parties to apply the Indian Employment Preference to Federal-Aid highway projects taking place on or near the Umatilla Indian Reservation.

**RECITALS**

Oregon Revised Statutes (ORS) 190.110 et seq. grants authority to state agencies to enter into agreements with an American Indian tribe or an agency of an American Indian tribe for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

CTUIR has the inherent sovereign authority to promulgate and enforce the Tribal Employment Rights Office (TERO) Code within the boundaries of the Umatilla Indian Reservation ("Reservation").

The Surface Transportation Assistance Act (as reauthorized in 1987), the Intermodal Surface Transportation Efficiency Act of 1991, the Moving Ahead for Progress in the 21st Century Act of 2012, and the Fixing America's Surface Transportation Act of 2015, permit Indian Preference employment goals on Federal-Aid highway projects located on or near Indian reservations. Section 140(d) of the United States Code, Title 23 provides, "States may implement a preference for employment of Indians on projects carried out under this title near Indian reservation."

USDOT Notice 4720.7 states,

In off reservation situations, [Tribal Employment Rights Offices] can bill contractors at an agreed upon rate for services rendered, i.e., recruitment, employee referral and related supportive services. The proceeds are used by the tribes to develop and maintain skills banks, to fund job referral, counseling, liaison, and other services and activities related to the employment and training of Indians.

In the event there is a change in federal law, regulation or guidance applicable to this MOU, or that the Federal Highway Administration changes its interpretations of these laws and

regulations, such change will automatically apply to the MOU from the date of the adoption or publication.

ODOT recognizes that jobs in the private employment sector on and near the Reservation are an important resource for Indians residing on or near the reservation.

ODOT considers the availability of a pool of skilled and trained workers in heavy highway construction trades to be beneficial to Federal-Aid highway projects on or near the Reservation.

The purpose of this Agreement is to establish procedures to be followed by both Parties to aid in ensuring that:

- (1) when contractors are performing work on Federal-Aid highway projects under an ODOT contract on the Reservation, the contractors comply with the TERO Code.
- (2) when contractors are performing work on Federal-Aid highway projects near the Reservation, as defined by Exhibit A, the contractors comply with the MOU Compliance Agreement and TERO Code, as applicable.

Parties enter into this agreement in the spirit of partnership, transparency and communication. In the event problems arise with Contractors under this MOU, both parties agree that it is in the best interest of their ongoing partnership to proactively consult and confer with each other on proposed solutions for the mutual benefit of their separate and combined goals.

This MOU amends and replaces a prior MOU between the parties which took effect on December 14, 2010.

**NOW THEREFORE** in consideration of the mutual understandings and agreements herein set forth, CTUIR and ODOT enter into the following Agreement:

**1. EFFECTIVE DATE AND DURATION.**

Once the agreement has been fully executed, the term of this Agreement shall begin on January 1, 2019, and shall remain in effect for five (5) years, unless earlier terminated per Section 9.

**2. DEFINITIONS.**

- 2.1. Compliance Agreement** – The agreement between the Contractor and their subcontractors, and the TERO, setting forth among other things how the Contractor will meet the Indian Preference in Employment goals.
- 2.2. Contractor** – Firm who has been awarded a contract with ODOT for work occurring in whole or in part within the MOU Boundary.



- 2.3. **Federal-Aid highway project** – Projects that occur on Federal-Aid highway that are funded under USC Title 23. Federal-Aid highway projects may be eligible for Indian Preference in Employment if they are on or near the Reservation, per USDOT Notice 4207.7.
- 2.4. **Indian** – Any person enrolled in a federally recognized tribe.
- 2.5. **MOU Boundary** – The region of land identified on map attached as Exhibit A.
- 2.6. **MOU Compliance Agreement** – The agreement between the Contractor and their subcontractors and the TERO, setting forth how the Contractor will meet the Indian Preference in Employment goals for contracts on projects subject to the Indian Preference in Employment. The form for this agreement is attached as Exhibit B.
- 2.7. **ODOT MOU Project** – Federal-Aid highway project in whole or in part within MOU Boundary. ODOT requires contractors for these projects to sign the MOU Compliance Agreement and comply with the TERO Code as applicable.
- 2.8. **On-Reservation Project** – Federal-Aid highway project for work on the Reservation. ODOT requires contractors for these projects to comply with the TERO Code and sign the Compliance Agreement.
- 2.9. **TERO** – Tribal Employment Rights Office of the Confederated Tribes of the Umatilla Indian Reservation.
- 2.10. **TERO Code** – Tribal Employment Rights Office Code, Statutes of the Confederated Tribes of the Umatilla Indian Reservation, as amended through Resolution No. 17-053 (July 17, 2017) unless the parties mutually agree to apply a subsequent code at their annual spring meeting discussed in section 4.1.
- 2.11. **Tribal Hiring Hall** – Program established and maintained by TERO Program Manager to maintain a record of qualified, employable Indians to be used by Contractors and their subcontractors to fill vacancies.

### 3. **ON-RESERVATION PROJECTS.**

The State acknowledges the inherent sovereign authority of CTUIR to assess and collect the Compliance Fees set forth in the TERO Code, Section 6.03 (therein described as “Compliance Taxes”) for contracts within the Reservation. The compliance fee for On-Reservation contracts shall be consistent with the established fee as set by the CTUIR Board of Trustees within the TERO Code. The applicable fee is determined by the TERO Code in existence at the time the contract was bid and included in the ODOT bid documents.

ODOT agrees that a condition of award of contract for these On-Reservation Contracts is that Contractor and their subcontractors agree to be subject to the TERO Code and execute the Compliance Agreement. ODOT will include a copy of the TERO Code in existence at the time the contract was bid in the contract documents for such projects.

These projects will also be subject to the goal setting process outlined in Section 4. TERO will provide goals with sufficient time to be included in ODOT's bid documents.

#### **4. PROJECT ADMINISTRATION.**

##### **4.1. Project Planning**

ODOT and TERO will work together to identify projects eligible under this MOU to promote and support Indian employment. ODOT will share the State Transportation Improvement Program (STIP) with the TERO and identify those projects that are Federal-Aid highway projects that have work within the MOU Boundary. Parties agree that contractors and their subcontractors for ODOT MOU Projects will be subject to the MOU Compliance Agreement and TERO Code as applicable and that On-Reservation Projects will be subject to direct application of the TERO Code and inherent tribal authority.

ODOT and TERO will meet annually each spring to discuss project selection and specific project workforce training and needs. Discussion may include project schedule, bid documents (applicable deadlines, Compliance Agreement form, and TERO Code version), scope, and duration.

Parties may also discuss fee-supported training activities, goal setting process, reporting summaries, and challenges or successes in contractor compliance, such as participation and performance of contractors under respective compliance agreements.

##### **4.2. Goal Setting**

TERO shall analyze each On-Reservation Project and each project selected to become an ODOT MOU Project to establish an accomplishable hiring goal. The established goal shall be based on an assessment of workforce availability and worker skill needs for the project.

Eligible employees for goals include all Indians without regard to tribal affiliation or place of enrollment.

Hiring goals apply to job classifications related to heavy highway construction trades, including but not limited to carpenter, laborer, equipment operator, cement mason, truck driver, electrician, and ironworker.

##### **4.3. MOU Compliance Agreement**

TERO agrees to meet with each Contractor awarded a contract for an ODOT Project to develop a numerical hiring goal for each eligible job craft which shall be used on the contract. TERO will formalize the hiring goals using the MOU Compliance Agreement form, attached as Exhibit B.

The Parties agree that TERO will use the form substantially the same as the one set forth in Exhibit B for each MOU Compliance Agreement with a Contractor. Parties may mutually decide to revise the MOU Compliance agreement at the annual meeting without formal amendment to this MOU.

ODOT agrees that a condition to award of the contract for the ODOT Project will be that the contractor executes a MOU Compliance Agreement.

**4.4. Mandatory MOU Workshop**

TERO agrees to conduct mandatory pre-bid quarterly TERO/MOU workshops, and shall issue certificates of completion to those Contractors who sign in, attend, participate, and pay the applicable fee. ODOT agrees to make a good faith effort to participate in such workshops. TERO agrees that the certificate may be valid for three (3) years from the date of the workshop.

ODOT will require Contractors to obtain a valid certificate of completion issued by TERO in order to be eligible to bid for contract on an ODOT Project.

**4.5. Pre-Construction Conference**

Pre-construction conferences for contractors of ODOT MOU Projects and On-Reservation Projects shall be held at a mutually agreeable location. At the pre-construction conference TERO and ODOT shall be available to provide a detailed explanation of, and answer questions about, the provisions of the TERO Code, if applicable, and Indian Preference goals. The pre-construction conference shall be the forum for finalizing all compliance agreements and requirements between TERO and the Contractor and Subcontractor(s) and answering any questions on Indian Preference and applicable special contract provisions.

**4.6 Specialty and Service Provider Contractor Exclusion**

All specialty and service provider contractors who are not required by ODOT to have a full subcontract will be exempt from entering into a compliance agreement with TERO, provided ODOT and TERO mutually agree that a given contractor qualifies as a "specialty service provider" prior to such exclusion applying.

**5. MOU COMPLIANCE FEE.**

**5.1. Compliance Fee Calculation**

Parties agree that TERO may assess a Compliance Fee on ODOT Projects. When an ODOT MOU Project has a hiring goal greater than 0%, the compliance fee is the percentage of the total cost of the project, as set forth below:

<b>Contract Value</b>	<b>Fee % allowed</b>
First \$500,000	1.00%
Next \$500,000	0.75%
Next \$1,000,000	0.50%
Remaining contract value (above \$2,000,000)	0.25%

When a Federal-Aid highway project is solely an On-Reservation Project, the most recent TERO Code fee structure in effect at the time of bidding applies.

When a Federal-Aid highway project results in both an ODOT MOU Project and On-Reservation Program, the portion of work on the Reservation is subject to the fee percentage established in the TERO Code and the portion of the work that is within the MOU Boundary is subject to the MOU Compliance Fee.

When a Federal-Aid highway project results in a contract that occurs both within the MOU Boundary and outside the MOU Boundary, only the portion of work within the MOU Boundary is subject to the MOU Compliance Fee. For these contracts, the applicable TERO hiring goal shall apply to the entire contract. However, applicable TERO Code jurisdiction set forth in the MOU Compliance Agreement is limited to the project areas within the MOU Boundary.

When the ODOT MOU Project has a hiring goal of 0%, the compliance fee of \$1,000 per project will be assessed to cover TERO administrative costs of the project.

## **5.2. Reporting**

Parties agree that the Compliance Fees paid under this Agreement are to be used by the TERO to develop and maintain a TERO Program including a Tribal Hiring Hall, to fund job referral, conduct screening, career counseling, liaison representation, training, and apprenticeship.

TERO will provide a Tribal Hiring Hall referral report (Referral Report) on a monthly basis to ODOT Office of Civil Rights. Each Referral Report will provide the following data:

- month and year of report submitted,
- names of TERO employee referrals,
- dates referred,
- contractors referred to,
- trades,
- last four digits of employees' social security number,
- notation if registered apprentice, and
- active or terminated dates.

TERO will provide to ODOT quarterly reports summarizing Compliance Fee-supported activities (Quarterly Fee Report) within thirty (30) days after the completion of each quarter of CTUIR's fiscal year. Reports will provide the following data:

- total compliance fees collected,
- number of Tribal Hiring Hall referrals,
- trade breakout of referrals,
- gender breakout of referrals,
- support activities such as screening, orientations, counseling, trainings, and
- other activities supported with Compliance Fees collected under this Agreement.

The parties agree to consult within thirty (30) days of any failure to deliver the Quarterly Fee Report in a timely manner.

ODOT, through its Office of Civil Rights, shall provide TERO with, at a minimum, a copy of the "TERO Project Employment for Umatilla" report, or its future equivalent, on a monthly basis.

**6. NOTICES; ADMINISTRATORS.**

**6.1. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or CTUIR at the address, number or email address set forth in this Agreement. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective, any notice transmitted by facsimile must be confirmed by telephone notice to the other party's Administrator in Section 6.3. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

**6.2. Service.** All notices required or authorized to be served on either Party shall be served by first class mail to Party's Administrator in Section 6.3.

**6.3. Administrators for this Agreement are:**

ODOT	CTUIR
ODOT IGA #	CTUIR #
Administrator: Angela Crain Title: Manager, Office of Civil Rights Address: 3930 Fairview Industrial Dr., SE M-S 32 Salem, OR 97302 Phone: 503-986-4353 Email: <a href="mailto:angela.m.crain@odot.state.or.us">angela.m.crain@odot.state.or.us</a>	Administrator: Aaron Hines Title: TERO Program Manager Address: 46411 Timine Way Pendleton, OR 97801 Phone: 541-429-7489 Email: <a href="mailto:aaronhines@ctuir.org">aaronhines@ctuir.org</a>

Parties may make changes to the specified Administrators in this section, and such changes shall constitute contract administration for purposes of this Agreement. Such change shall be provided to the other party in writing, which shall be effective without the necessity of a formal amendment to this Agreement.

**7. CHOICE OF LAWS.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. In no event shall anything be construed as a waiver by either party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

**8. AMENDMENTS.**

This Agreement may be amended by mutual agreement of both parties, but only to the extent permitted by applicable statutes and administrative rules. No amendment to this Agreement shall be effective unless it is in writing signed by the Parties and all approvals required by applicable law have been obtained.

In the event CTUIR amends its TERO Code before the expiration of this agreement, the parties agree to confer regarding relevant changes to this Agreement. The applicable TERO Code to a given contract may change based on annual spring consultations and mutual agreement, confirmed in writing, without the need for formal amendment to this MOU. Parties may agree to amend the MOU Compliance Agreement, attached at Exhibit B, without formal amendment.

**9. TERMINATION.**

- 9.1. This agreement shall remain in effect for five years, unless one of the following events occurs:
  - 9.1.1. This Agreement is terminated by written agreement of both parties.
  - 9.1.2. Either party serves the other with notice of termination at least 30 days prior to proposed termination.
  - 9.1.3. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited from paying for such work from the planned funding source.
- 9.2. In the event the parties terminate this Agreement and there is on-going work on a project within the MOU Boundary, the parties agree that ODOT may enter the project site and finish work by whatever method ODOT deems expedient.
- 9.3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**10. REPRESENTATIONS AND WARRANTIES OF THE PARTIES.**

- 10.1. The CTUIR represents and warrants to ODOT that the CTUIR has the power and authority to enter into and perform this Agreement and the person executing this Agreement on behalf of the CTUIR has the necessary authority to execute this Agreement for and on behalf of the CTUIR.
- 10.2. ODOT represents and warrants that ODOT has the power and authority to enter into and perform this Agreement.

**11. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart

**12. NONAPPROPRIATION.**

Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

**CONFEDERATED TRIBES OF THE  
UMATILLA INDIAN RESERVATION**

By *Darryl Buckler*

Name:  
Title:

Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

By *[Signature]*

Name:  
Title: *Attorney*

Date *12/27/18*

**STATE OF OREGON, by and through  
its DEPARTMENT OF TRANSPORTATION**

By *[Signature]*

Name: Matthew L. Garrett  
Title: Director

Date *12-31-18*

**APPROVED AS TO LEGAL SUFFICIENCY**

By *Karen E. Clevering*

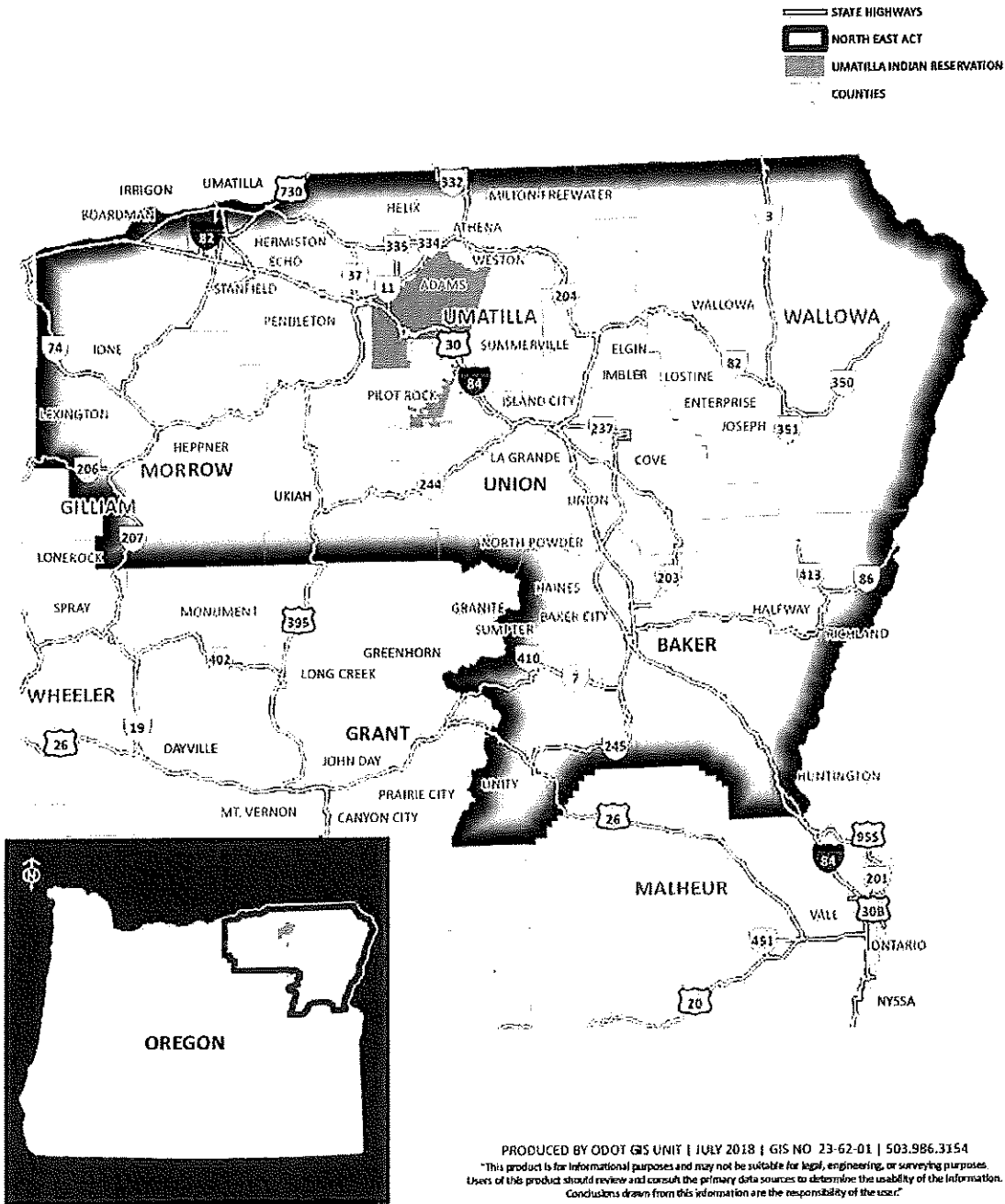
Karen E. Clevering  
Assistant Attorney General

Date *12/28/18*

Exhibit A – MOU Boundary

OREGON DEPARTMENT OF TRANSPORTATION

**NORTH EAST AREA COMMISSION ON TRANSPORTATION BOUNDARY MAP**







## Exhibit B – ODOT MOU Compliance

Confederated Tribes of the Umatilla Indian Reservation  
Tribal Employment Rights Office – TERO  
46411 Timine Way | Pendleton, OR 97801  
Office (541) 429-7180 | Fax (541) 429-7190 | email: terostaff@ctuir.org

### ODOT MOU COMPLIANCE AGREEMENT

Check all that apply Prime/General  Subcontractor  Union

Contractor Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

Scope of work: \_\_\_\_\_

Performance Period: Approximate Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Project Type: CTUIR Project  ODOT Project

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Duration of the entire project: Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_  
*(for prime contractor only)*

#### A. Contractor Information

#### B. Project Information

#### C. TERO Tax/Fee

1. The TERO Tax/Fee amount shall be calculated as described in the most recent version of the MOU.

## Exhibit B – ODOT MOU Compliance

### D. TERO Workforce

1. The contractor agrees to utilize the TERO Hiring Hall to fulfill its hiring goals per this Agreement. The hiring goal includes numerical goals and timetables for each craft, skill area, job classification, etc., as a percentage of total hours worked on the project, used by the Employer.
2. When a TERO worker is terminated or unable to continue working, the Employer shall immediately notify the TERO office which may provide a substitute referral within three business days or notify the Employer that it has no referrals for the position, after which time the Employer will be authorized to hire a permanent replacement. The Employer may submit a written request and justification for a shorter rehire period.
3. In all layoffs and reductions in force, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed. The non-Indian shall be terminated first if the Indian possesses threshold qualifications for the job classification. If an Employer lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classification are employed elsewhere on the job site, except for non-Indians hired as Core Crew pursuant to negotiated Compliance Agreements.
4. Preference will be given to TERO referrals for any training opportunities on this project.
5. Contractors who are in violation of the TERO Code or this compliance agreement may be subject to citations and/or penalties per the TERO Code. Possible sanctions include:
  - a. Immediate replacement with a TERO referral;
  - b. Back pay to TERO referral and/or reinstatement;
  - c. The maximum daily monetary penalty listed in the TERO Code incorporated by Contractor's ODOT contract.
6. Any form of harassment or discrimination directed towards TERO referrals by Contractor employees on the project will not be tolerated.
7. Core Crew requests must be submitted to the TERO staff in writing, showing that each Core Crew member meets these criteria before the start of any project work. Approval of Core Crew members does not exempt any Employer from TERO hiring goals or other compliance agreement terms.
  - a. Indian Core Crew members may count toward the hiring goal.
  - b. The Indian Core Crew members must be registered with the TERO Program.
  - c. The Indian Core Crew members must be identified prior to signing the Compliance Agreement.

## Exhibit B – ODOT MOU Compliance

8. Wages will be paid according to applicable laws.
9. Certified weekly payroll reports must be submitted to the TERO program by Wednesday the following week.

### E. Hiring Goals

1. Employment goals for each project will be set in by the TERO program and the Contractor representatives. The Contractor will meet the prescribed number of TERO referrals according to the hiring goal established in Attachment I – Hiring Goal of the Compliance Agreement. If no qualified TERO referrals are available, TERO will provide a consent form to waive this obligation.
  - a. For projects subject to the CTUIR/ODOT MOU, the employment goal shall be consistent with the annual CTUIR/ODOT assessment for that project.
2. The Contractor will provide TERO with an accurate listing of all positions in Section I on Attachment I that will be used on this project, (that includes core crew members) and the number of employees required for each craft. These positions will be negotiated for, as well as any Core Crew requests.
3. Prime Contractors will be responsible for an overall hiring goal for a project, which is established in the ODOT Contract documents. The overall hiring goal will be established in section II of Attachment I – Hiring Goals. The overall goal is based on the total hours worked by all contractors involved on the project.
4. Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code, its rules and regulations, applicable Memorandums of Understanding and their Compliance Agreement. 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.
5. A TERO Manpower Request form, Attachment III, will be used by the contractor when requesting workers.
6. The Contractor must make every effort to place a job order with the TERO program at least 48 hours prior to needing a TERO referral.
  - a. TERO referrals must be requested from TERO in a timely manner to satisfy the Contractor's new hire process.

### F. Contractor Obligations

1. The Contractor agrees to comply with the TERO Code.
2. The prime contractor is responsible for ensuring each of their subcontractors comply with the provisions of the TERO Code and the Compliance Agreement.
3. Allow on-site inspections by TERO representatives.

### G. Point of Contact

Exhibit B – ODOT MOU Compliance

1. The points of contact for the TERO Program are as follows:

- a. Compliance/Enforcement – Damon McKay, TERO Compliance Officer; Office - 541-429-7491, email – [damonmckay@ctuir.org](mailto:damonmckay@ctuir.org)
- b. Referral/Compliance Agreements – Andrea Rodriguez, TERO Dispatch Officer; Office – 541-429-7490, email – [andrearodriguez@ctuir.org](mailto:andrearodriguez@ctuir.org)
- c. Certified Payroll – Jonni Spencer, TERO Assistant; Office – 541-429-7506, email – [jonnispencer@ctuir.org](mailto:jonnispencer@ctuir.org)
- d. Management – Aaron Hines, TERO Program Manager; Office – 541-429-7489, email – [aaronhines@ctuir.org](mailto:aaronhines@ctuir.org)
- e. TERO All Staff – [terostaff@ctuir.org](mailto:terostaff@ctuir.org), fax – 541-429-7190

2. Contractor must submit a list of relevant staff with the completed Compliance Agreement. Relevant staff include, but are not limited to, main office receptionist and on-site manager/supervisor.

**H. Attachments**

Attachments I, II and III are incorporated as part of this Agreement. Any additional attachments must include the signature of authorized representatives of both parties to be incorporated in this Agreement.

**I. Applicable TERO Code Chapters**

Chapters 4, 6, 7, 8, 9, and 10 of the TERO Code version incorporated into Contractor’s ODOT contract shall apply to Contractor with regard to the ODOT project. Notwithstanding this, the Indian preferences in hiring and hiring goals shall be those set out in this agreement, the TERO Tax/Fee is set out in the ODOT TERO MOU, and any penalty resulting in suspension of business or work occurring under the ODOT project outside of the Umatilla Indian Reservation will only be imposed after coordination and approval from ODOT.

**J. Contractor Compliance Agreement Approval**

I have read and understand the terms, conditions and requirements as set forth in this Compliance Agreement. I understand that a Compliance Agreement is required even if there is no set hiring goal to ensure continued compliance with the TERO Code and monitoring by the TERO Program. I certify that I have full authority to sign on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Contractor Representative (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Contractor Representative (Signature)

\_\_\_\_\_  
Date

Exhibit B – ODOT MOU Compliance

**K. TERO Compliance Agreement Approval**

On behalf of the CTUIR TERO Program, I have reviewed this compliance agreement and certify that the contractor has submitted the required documentation. The contractor has been approved to commence work on the project.

\_\_\_\_\_  
TERO Representative (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
TERO Representative (Signature)

\_\_\_\_\_  
Date

Exhibit B – ODOT MOU Compliance

**CTUIR TERO COMPLIANCE AGREEMENT  
Attachment I – Hiring Goals**

**Section I – Contractor Positions**

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

Position	Start Date	# of each	# of TERO	%	Wage Rate
<b>TOTALS</b>					

TERO reserves the right to negotiate for any positions listed above in order to meet the prescribed hiring goals. This attachment supplements the TERO Compliance Agreement in which the Contractor agrees to meet their obligation pursuant to the CTUIR TERO Code.

**Section II – Overall Project Hiring Goal**

The Prime contractor shall be responsible for ensuring that an overall hiring goal of \_\_\_\_\_%, for the life of the \_\_\_\_\_ project will be met.

\_\_\_\_\_  
Contractor Representative (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Contractor Representative (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
TERO Representative (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
TERO Representative (Signature)

\_\_\_\_\_  
Date

Exhibit B – ODOT MOU Compliance

**CTUIR TERO COMPLIANCE AGREEMENT  
Attachment II – Tax/Fee Calculation**

---

The TERO Compliance Tax/Fee for all applicable projects in the sum of \$25,000 or more, shall be assessed a Compliance per the tax rate structure found in the ODOT TERO MOU.

- A. Project: \_\_\_\_\_
- B. Contractor: \_\_\_\_\_
- C. Effective tax rate: \_\_\_\_\_
- D. TERO tax amount or one-time administrative fee of \$1000: \_\_\_\_\_
- E. Due Date: *due before the date that work commences on the project* – \_\_\_\_\_

\_\_\_\_\_  
Contractor Representative (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Contractor Representative (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
TERO Representative (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
TERO Representative (Signature)

\_\_\_\_\_  
Date

Exhibit B – ODOT MOU Compliance

**CTUIR TERO COMPLIANCE AGREEMENT  
Attachment III – Manpower Request**

A manpower request form will need to be submitted each time the employer is requesting a worker.

Date: \_\_\_\_\_

Check one: Prime Contractor  Sub-contractor

Project Name: \_\_\_\_\_

Project Location: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Representative requesting worker(s) (Name and Title): \_\_\_\_\_

Contact Number: \_\_\_\_\_

Email: \_\_\_\_\_

Job position requesting: \_\_\_\_\_

No. of positions needed: \_\_\_\_\_

Job location: \_\_\_\_\_

Rate of pay: \_\_\_\_\_

Starting date: \_\_\_\_\_

Starting time: \_\_\_\_\_

Name, Title and Contact info of individual(s) that the TERO worker will need to contact when starting work: \_\_\_\_\_

Job Status: Full Time  Part Time

Job Duration: > 1 week  1-2 weeks  2 weeks – 1 month  < 1 month

Schedule: M-F  Weekends  Other: \_\_\_\_\_

Driver's license required? Yes  No  CDL? Yes  No  If yes, type: A  B  C  D

Alcohol/Drug test required? Yes  No  Physical Required? Yes  No

Brief Job Description: \_\_\_\_\_

Skills/Training needed: \_\_\_\_\_

Tools required: \_\_\_\_\_

Special Instructions: \_\_\_\_\_