40.01 Purpose and Authority.

This Tribal Employment Rights Ordinance is adopted pursuant to the authority vested in the Klamath Tribes General Council by virtue of its inherent sovereignty as an Indian tribal government and the Constitution of the Klamath Tribes, Article IV – Jurisdiction, Article V – Judicial Branch, and Article VI - Powers. The purposes of this Ordinance are to establish a process whereby employment and training opportunities are created for tribal members and other Indians in an attempt to eliminate employment discrimination against Indian people.

40.02 Definitions.

(a) "Certified Indian-Owned Firm" means and includes any commercial, industrial, or other business firm or Entity in which fifty-one (51%) or more of the ownership is held by and fifty-one (51%) or more of the actual management and control is exercised by an Indian or Indians which percentages shall be certified by the Director;

(b) "Complainant" is a person who files a complaint pursuant to Section 40.10 of this Ordinance.

(c) "Covered Employer" means any employer employing two or more Employees who during any twenty (20) day period spend, cumulatively, 16 or more hours performing work within the Reservation lands;

(d) "EEOC" means the Equal Employment Opportunity Commission of the United States.

(e) "Employee" means any person employed for remuneration. It shall also include any currently working employee, any applicant for employment, and any employee whose work has ceased as a consequence of, or in connection with, any current labor dispute or as a result of unfair labor practices and who has not secured any alternative regular and substantially equivalent employment; however, the term shall not mean and include any individual employed in the domestic services with any family or person at it/his/her home, or any individual employed by any other individual who is not an "employer" as such term is defined hereinafter;

(f) "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure this Chapter's jurisdiction, and the term shall be so interpreted by the Director and the courts;

(g) "General Council" means the General Council of the Klamath Tribes;

(h) "Indian" means and includes any individual who is a duly enrolled member of a federally recognized Indian tribe under the laws of that tribe;

(i) "Indian Preference" means that Indians shall be given preference over non-Indians in employment, training, contracting, and subcontracting, with the first preference given to Klamath Tribal Members;

(j) "Klamath Tribal Member" means an enrolled member of the Klamath Tribes.

(k) "Ordinance" means this Tribal Employment Rights Ordinance;

(l) "Reservation" means all lands held in trust for the Klamath Tribes and all lands held in fee by the Klamath Tribes.

(m) "Person" means and includes both natural persons and artificial persons, including but not limited to, corporation, partnerships, joint ventures, sole proprietorships, associations, union, trust, trustees and agents.

(n) "TERO Commission" means the Tribal Employment Rights Commission established pursuant to this Ordinance.

(o) "TERO Director" means the Director of the Tribal Employment Rights Office established pursuant to this Ordinance.

(p) "TERO Office" means the Tribal Employment Rights Office established pursuant to this Ordinance.

(q) "Tribal Council" means the Tribal Council of the Klamath Tribes;

(r) "Tribal Service Area" means the service area of the Klamath Tribes, which is currently Klamath County.

40.03 Applicability.

The provisions set forth in this Ordinance shall apply to any and all lands situated within the boundaries of the Reservation. This Ordinance shall be applicable to all Covered Employers whether such Person is doing business within the boundaries of the Reservation at the time of the effective date hereof or will be so doing business subsequent hereto.

40.04 Indian Preference in Employment

(a) All Covered Employers, for all employment occurring within the boundaries of the Reservation, shall give first preference to Klamath Tribal Members and second preference to other Indians, provided that such applicant meets the threshold requirements of the job, with the first preference to Klamath Tribal Members and the second preference to other Indians, in all hiring, promotion,

training, layoffs, and all other aspects of employment.

(b) All Covered Employers shall comply with this chapter and the rules, regulations, guidelines and orders duly and lawfully adopted pursuant to it that set forth the specific obligations of employers in regard to Indian Preference.

(c) This Chapter shall not apply to direct employment by the Klamath Tribes, by the federal, state, or other governments or their subdivisions; provided, it shall apply to all contractors or grantees of such governments; and provided further, it shall apply to governmental corporations, partnerships or limited liability companies organized under Klamath Tribal law.

40.05 Indian Preference in Contracting.

(a) All entities awarding contracts or subcontracts for supplies, services, labor and/or materials in an amount of $2,500 or more where the majority of the work on the contract or subcontract will occur within the boundaries of the Reservation, shall give preference in contracting and subcontracting to qualified entities that are certified by the Director as 51% or more Indian owned or controlled, with the first preference given to businesses that are certified by the TERO Director as more than 51% owned or controlled by Klamath Tribal Members.

(b) These requirements shall not apply to the award of contracts awarded directly by the Tribal Council or General Council or by the federal or state government or their subdivisions. However, these requirements shall apply to all subcontracts awarded by a tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. However, if this section's contracting requirements conflict with applicable federal law or regulations, the applicable federal laws or regulations shall supersede this section.

(c) All covered entities shall comply with the rules, regulations, guidelines, and orders of the Director that set forth the specific obligations of such entities in regard to Indian Preference in contracting and subcontracting.

(d) The Director by regulation shall establish a system for certifying firms as Indian Preference eligible.

(e) Any Covered Employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with the Indian preference laws and with the rules, regulations, and guidelines of the Klamath Tribes. Such agreement shall be subject to the approval of the Director.

40.06 Tribal Employment Rights Commission.

(a) Establishment of TERO Commission. The Tribal Chairman is hereby authorized, pursuant to Article X, Section IV of the Tribal Constitution, to appoint the TERO Commission (subject to the consent of the Tribal Council) as the regulatory body charged with enforcement of the provisions set forth in this Ordinance, which shall act in such capacity until such time as the Tribes amend Article X of the Tribal Constitution to add the TERO Commission.

(b) The TERO Commission will consist of at least three (3), but no more than five (5) individuals who are appointed, and may be removed with or without cause, by the Chairman, who must obtain the approval of the Tribal Council for such appointments and removals. TERO Commissioners shall be Public Officials of the Klamath Tribes.

(1) At least three of the TERO Commissioners shall have education or experience in one or more of the following areas:

(A) Human Resources;

(B) Tribal Employment Rights;

(C) Construction Management;

(D) Regulatory Enforcement; or

(E) Auditing or Investigations.

(2) TERO Commissioners shall serve for terms of three (3) years; provided that the appointments to the Commission shall be made in such a manner that their terms shall be staggered, so that the terms of no more than two (2) Commissioners shall terminate in any year.

(3) Three (3) TERO Commissioners shall constitute a quorum to transact business. All decisions of the TERO Commission shall be made by a majority vote.

(4) Current Human Resources Department employees are not eligible to serve on the T E R O Commission.

(5) TERO Commissioners may receive a stipend for their services at a rate established by the Tribal Council. TERO Commissioners shall be reimbursed for actual expenses incurred on TERO Commission business, including necessary travel expenses in a manner consistent with applicable Tribal policies and procedures.

(6) The TERO Commission shall meet at least quarterly.

(7) At its first meeting, and annually thereafter, the TERO Commission shall select a Chair, Vice-Chair, and Secretary. The TERO Commission Chair shall preside at all meetings of the TERO Commission and shall be authorized to sign required documents in accordance with the powers of the TERO Commission. The TERO Commission Secretary shall record the proceedings of the TERO Commission and make reports as mandated to the Tribal Council and the General Council.

(c) Duties and Powers of the TERO Commission. The TERO Commission has the power, jurisdiction, responsibility, and authority to:

(1) Take all appropriate actions necessary to implement the provisions of this Ordinance.

(2) In consultation with the TERO Director perform the following:

(A) Make recommendations to Tribal Council on amendments to this Ordinance; and

(B) Consult with the TERO Director and Tribal Council for the development of guidance, rules, and regulations necessary to carry out the provisions of this Ordinance.

(3) Establish a system for certifying firms as Klamath Tribal Member Owned and Indian Owned Businesses.

(4) Hold public hearings on matters covered by this Ordinance.

(5) Assist in presentations to the public on Indian employment and contracting preference requirements.

(6) Issue notices to appear and order relief or sanctions that are necessary and appropriate to enforce this Ordinance.

(7) Review and recommend the annual TERO budget prepared by the TERO Director for approval.

(8) Consult with the Tribal attorneys on legal questions, appeals, and rulemaking.

(9) Hear appeals pursuant to Section 40.10(g) of this Ordinance.

(d) Recusal of TERO Commissioner.

(1) No TERO Commissioner shall participate in any action or decision by the TERO Commission directly involving him/herself, a member of his/her

Immediate Family or any person, business, or other entity of which he/she or a member of his/her Immediate Family is an employee, has a substantial ownership interest, or with which he/she or a member of his/her Immediate Family has a contractual relationship.

(2) No TERO Commissioner shall have contact with a Complainant (as that term is defined in Section 40.02 of this Ordinance) regarding the specifics of a complaint prior to a TERO Commission hearing or decision on the complaint. In the event of such contact, the TERO Commissioner shall recuse him/herself from participating in any hearing and decision on the complaint.

(3) A Commissioner shall recuse him/herself and decline to participate in any action or decision when the TERO Commissioner, in his/her discretion, believes that:

(A) He/she cannot act fairly or without bias; or

(B) There is or may be a perception that they cannot act fairly or without bias.

(4) If a TERO Commissioner does not voluntarily recuse him/herself or decline to participate in an action or decision of the TERO Commission when required by the prior subsection, and the TERO Commission determines, after hearing any arguments for and/or against recusal, that recusal is appropriate and necessary to preserve the integrity and fairness of the process, the TERO Commissioner may be disqualified from participating in the action or decision by a majority vote of the remaining TERO Commissioners.

(5) Nothing in this Ordinance shall be deemed to prevent a Commissioner from entering into a contractual relationship or business relationship with the Tribe, provided that such relationship does not violate the terms of this Ordinance or any Commission policies and procedures, and that the Commissioner has disclosed the nature of the relationship to the Commission. If a Commissioner has an employment or ownership interest in a business that bids on, or contracts to perform, construction work on the Tribes' Reservation, then the following shall apply:

(A) the TERO Commissioner shall be prohibited from viewing any documents for the construction work that are not generally available to all bidders;
(B) the TERO Commissioner shall not directly or indirectly participate in the negotiation of any compliance agreement with TERO staff for the construction work; and
(C) the TERO Commissioner shall be recused from participating in any TERO Commission review of matters arising out of or related to the construction work.

40.07 Tribal Employment Rights Office

(a) There is established a TERO Office, which shall be vested with the general authority to implement the policy of Indian Preference in employment and in contracting as established and espoused by the Tribal Council in consultation with the TERO Commission and TERO Director. The TERO Office shall have the specific duty and responsibility of engaging in the daily implementation of the provisions set forth in this Ordinance subject to the oversight and in consultation with the TERO Commission, in any and all supplementary ordinances, and in any and all rules and regulations, and/or guidelines promulgated by the TERO Director and approved by the Tribal Council in consultation with the TERO Commission.

(b) The supervisory authority over the staff of the TERO Office shall be vested in the TERO Director, as set out in Section 40.08 of this Ordinance. The TERO Director and persons who serve as staff within the TERO Office shall serve in accordance with the Klamath Tribes Personnel Policies and Procedures.

(c) The TERO Office shall perform the following:

(1) Develop and maintain in updated status a register setting forth the names of Indian-owned firms certified for Indian Preference by the TERO Director, together with an identification of the respective areas of work in which such firms are considered qualified;

(2) Develop and maintain a plan for disseminating the certification register to all appropriate Covered Employers;

(3) Develop and maintain a plan for the dissemination of this Ordinance, of any and all supplementary ordinances, and of any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and the TERO Director, to all Covered Employers and to all governmental entities letting contracts within the boundaries of the Reservation;

(4) Ensure compliance by Covered Employers with any and all reporting requirements as prescribed by this Ordinance, in any and all supplementary ordinances, and all rules, regulations and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director;

(5) Enter into formal negotiations with representatives of Covered Employers in an effort to resolve, on an informal, voluntary basis, any claim of noncompliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director;

(6) Inspect any and all non-privileged information set forth in the books and records maintained by any Covered Employer for the purpose of ensuring continued compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director;

(7) Conduct on-site inspections at any time during the actual operation of the business of any Covered Employer for the purpose of monitoring compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director, and to speak with any contractor, subcontractor, or Employee on-site, so long as such conversation does not interfere with the operation of the business;

(8) Review application for Indian Preference certification, conduct whatever investigations are deemed necessary and/or requisite relative to any applicant's qualifications, and submit to the TERO Director a written analysis and recommended disposition of each such application;

(9) Initiate proceedings before the TERO Director for the purpose of suspending or revoking the Indian Preference certification of a firm when changed circumstances so warrant;

(10) Monitor and ensure the collection from Covered Employers of the appropriate employment rights fees for the purpose of providing fiscal support for the operation of the TERO Office;

(11) Secure additional funding from alternative sources (e.g. federal and/or state funding sources, private foundations, and public agencies), if necessary for the continued adequate functioning of the TERO Office;

(12) Implement and maintain a Tribal hiring hall from which Covered Employers shall select and employ qualified Indians to fill employment positions;

(13) Establish minimum numerical hiring goals and timetables setting forth the minimum number of qualified Indians a Covered Employer must employ within its work force, during any year, by craft, skill area, or job classification;

(14) Require Covered Employers to establish and maintain job training or apprenticeship programs for the purpose of assisting Indians to become qualified in the various crafts skill areas, or job classifications used by such employers and of increasing the pool if Indians qualified to engage in the various employments positions available on the Reservation;

(15) Prohibit Covered Employers from instituting and utilizing job qualification criteria and/or personnel requirements, which, in effect, serve as barriers to employment of Indians, unless such criteria and/or requirements can be demonstrated to be required by business necessity;

(16) Work in conjunction and enter into cooperative relationships with federal employment rights agencies, such as the EEOC, and the Office of Federal Contract Compliance Program (OFCCP), in order to eliminate discrimination against Indians on and off the Reservation.

40.08 Tribal Employment Rights Ordinance Director

(a) There shall be a TERO Director.

(b) The TERO Director shall have all of the authority and power to implement the policy of Indian Preference in employment and in contracting on the Reservation.

(c) The TERO Director shall be selected and employed by the Tribal Council with input from the TERO Commission. The TERO Director shall have a direct reporting responsibility to the Tribal Council. The TERO Director shall receive compensation for his/her services and shall be reimbursed for any and all reasonable and documented expenses actually incurred in connection with the performance of their duties and responsibilities.

(d) The TERO Director shall be vested with the general authority to implement the policy of Indian Preference in employment and in contracting. The Director shall have the following specific authority, duties and responsibilities:

(1) To establish and implement rules and regulations governing all activities and procedures of the TERO Office;

(2) To propose, recommend, draft, and administer the policies, authorities, and duties authorized by this Chapter and by the Tribal Council, including investigative procedures, to fully implement the provisions set forth in this Ordinance and those set forth in any and all supplementary ordinances;

(3) To prepare budgets and oversee expenditures of funds therefrom, and may hear any and all initial claims of noncompliance with this Ordinance, with any and all supplementary ordinances, or with any and all rules, regulations and/or guidelines promulgated by by the Tribal Council in consultation with the TERO Commission and TERO Director;

(4) To meet with the TERO Commission and staff members on a monthly basis for the purpose of securing updates relative to the operation of the TERO Office;

(5) To hold formal hearings, issue notices thereof, and subpoena witnesses and

documents in accordance with the hearings procedures set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director and approved by the Tribal Council;

(6) To impose any sanctions and grant any relief as authorized and prescribed by this Ordinance and by any and all supplementary ordinances;

(7) To require any Covered Employer to pursue whatever corrective actions are deemed necessary for such employer to come into compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and/or in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director;

(8) To enter into agreements with unions to ensure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union; and

(9) To take such other actions and engage in such other activities as are deemed necessary to achieve the purposes and objectives inherent in the policy of Indian Preference in employment and in contracting.

40.09 Employment Rights Fee.

(a) An employment rights fee is hereby imposed on certain Covered Employers, for the partial purpose of deriving a source of revenue for the administration and operation of the TERO Office.

(b) Construction contract in the sum of $5,000 or more: Every Covered Employer with a construction contract in the sum of $5,000 or more shall pay a one-time fee of 2% of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on the Reservation. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments over the course of the contract.

(c) Employers with two (2) or more Employees working on the Reservation: Every Covered Employer, other than construction contractors, with two (2) or more Employees working on the Reservation shall pay a quarterly fee of 2% of its employees' quarterly payroll which shall be paid within thirty (30) days after the end of each quarter. This fee shall not apply to educational, health, governmental, or nonprofit employers; however, it shall apply to all contracts let by educational, health, governmental or non-profit employers to non-educational, non-health, non-governmental, or for-profit employers.

(d) The TERO Director shall be responsible for collecting said fees and shall

establish such rules and regulations, subject to the approval of the Tribal Council, as are deemed necessary so as to ensure an equitable and timely fee collection procedure. Collected fees shall be paid to the Klamath Tribal finance department and shall be credited to the TERO Office line item in the general fund of the Klamath Tribes.

(e) Any contractor, subcontractor or Covered Employer liable for payment of such fee, who fails to make payment in a timely manner, as presented by the rules and regulations established by the TERO Office, shall be subject to one or more of the sanctions prescribed by and set forth in Section 40.10 of this Ordinance, as imposed by the Director upon formal hearing.

40.10 Complaint and Hearings Procedure.

(a) Any Person, including Covered Employers, Employees, contractors, subcontractors, and the Director, who believes that any other Person has failed to comply with any requirements set forth in this Ordinance, in any and all supplementary ordinances, or any rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director, may file a complaint.

(b) All complaints shall be in writing, shall be signed under oath by the complainant, and shall provide such information as is necessary to enable the TERO Director to carry out an investigation.

(c) Upon the filing of a complaint the TERO Director shall direct written notice of the alleged noncompliance to the Person against whom the allegation of noncompliance has been made.

(d) Within a period of five (5) days from the date of receipt of such notice, the Person against whom the complaint has been filed and the TERO Director shall attempt to achieve a voluntary, informal resolution of the matter through negotiation. As part of the informal resolution process, the TERO Director may request and be provided, specific data from each party with respect to the complaint in question. Additionally, each party may proffer additional evidence or data pertaining to the complaint. In the even that no such resolution is achieved at the expiration of the five (5) day period, the TERO Director shall notify the TERO Commission and shall set a date for a formal hearing before the TERO Commission on the matter within a period of ten (10) business days from the date of such notification.

(e) Upon the TERO Director setting a date for a hearing, the TERO Director shall direct to 1) the Person against whom the allegation of noncompliance has been made, 2) the complainant, and 3) any and all other identified interested Persons, written notice setting forth the date, time, and location of the hearing. In addition, the notice shall advise each Person of 1) the nature of the hearing, 2)

the right to be present at and participate in the hearing, 3) the right to present the testimony of witnesses and documentary evidence and to cross-examine witnesses, and 4) the right to be represented by counsel at his/her/its own expense. On its own initiative, or upon the request of any Person so notified of such hearing, the Director may subpoena identified witnesses and documents and/or records.

(f) The TERO Director shall perform, or cause to have conducted on his/her behalf, a TERO investigation which shall be summarized in a written report of the completed TERO investigation including copies of all documentation presented to the TERO Commission for use in making a determination within a reasonable period of time. The report shall include, but not be limited to, numerical employment goals based on surveys of the available Indian labor force and of projected employment opportunities; specific data pertaining to the Covered Employer in question regarding their entire workforce and subdivided according to each craft, skill area, and job classification used by the Covered Employer with respect to the projects subject to this Chapter, including but not limited to, administrative, supervisory and professional categories; and/or expressed in terms of project hours of Indian employment as a percentage of the total project hours worked by the Covered Employer's work force in the job classification involved.

(f) The following rules of procedure shall be recognized and adhered to at all hearings before the TERO Commission:

(1) The TERO Director shall present his/her findings and determination to the TERO Commission, along with the TERO Director's recommendations for sanctions, if any;

(2) Each notified interested Person shall have the right to be present at and participate in the hearing;

(3) The TERO Director and each such Person shall have the right to present relevant sworn testimony and documentary evidence;

(4) The TERO Director and each such Person shall have the right to call witnesses on his/her/its own behalf and to cross-examine witnesses called by any other hearing participant;

(5) The TERO Director and each suchPerson shall have the right to be represented by counsel at his/her/ its own expense;

(6) The TERO Commission Chair (or an alternate thereof appointed by the Tribal Council if the Tribal Council deems appropriate) shall preside over the proceedings;

(7) Neither the formal rules of evidence nor any formal rules of procedure need be observed, but the party presiding over the proceedings shall proceed to ascertain the facts in the matter in a reasonable and orderly manner;

(8) A complete transcript of the proceedings shall be made and maintained by the TERO Commission. The TERO Commission may charge a reasonable fee to Persons requesting copies of the transcripts to cover the charges of such transcribing;

(9) Any matter to be proven must be so done to the satisfaction of the TERO Commission by a preponderance of the evidence;

(10) At the termination of the proceedings, the TERO Commission, within its discretion, may either render an immediate determination or take the matter under advisement and issue its written decision and order no later than ten (10) business days from the date of the hearing. The written decision and order shall set forth the specific ground therefore and shall direct a copy thereof to each notified interested Person who was present at and participated in the hearing. Should the TERO Commission determine that the Person against whom the complaint was brought did fail to comply with any requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director, the TERO Commission shall impose one or a combination of the sanctions set forth in Section 40.11 of this Ordinance and may order such Person to take such corrective actions as are deemed necessary to remedy any harm caused by the noncompliance at issue. The decision of the TERO Commission shall be final.

(g) Appeals.

(1) An appeal to the Klamath Tribal Court may be taken from any final order of the TERO Commission by any party adversely affected thereby. Except as otherwise provided in this Ordinance, the time lines and filing requirements under the civil procedure shall be used in filing an appeal. The Klamath Tribal Court shall uphold the decision of the TERO Commission unless it is demonstrated that the decision of the TERO Commission is arbitrary, capricious or in excess of the authority of the TERO Commission. Except as provided in the following paragraph of this Sub-section (h), the order of the TERO Commission shall abate pending a final, non-appealable determination by the Klamath Tribal Court. Upon petition, the Klamath Tribal Court may order a party to post a bond sufficient to cover the TERO Commission's assessment against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the TERO Commission's order, if that order is upheld by the Klamath Tribal Court.

(2) If at any stage in the enforcement process the TERO Director has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Klamath Tribal Court, such that the TERO Director or the Klamath Tribal Court will not be able to collect monetary damages or Ordinance fees that are (a) owed by that party pursuant to any outstanding order of the TERO Director or the Klamath Tribal Court, or (b) which will be owed if the charges set out in any outstanding notice of violations are upheld, the Director may petition the Klamath Tribal Court pursuant to the rules and procedures of that court to issue a decision to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the right of the Director and other affected parties. If there are no Tribal Police to enforce such a decision, the TERO Director may seek enforcement of the decision by full faith and credit recognition of the Klamath Tribal Court Decision in the appropriate non-tribal court.

40.11 Sanctions.

Any one or a combination of the following sanctions shall be imposed by the TERO Commission upon its determination that a Person has failed to comply with the requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council Tribal Council in consultation with the TERO Commission and TERO Director.

(a) Imposition of a civil monetary fine not to exceed the amount of Five Hundred and 00/100 Dollars ($500.00) per violation. Each day on which a Person has been determined to have been out of compliance with any TERO Office requirement shall constitute a separate violation.

(b) Suspension or termination of the Person's current conduct of business within the boundaries of the Reservation, provided that such Person be granted a reasonable period of time during which to remove its equipment and other property located on the Reservation and to arrange with another Person the assumption of any of its outstanding contractual obligations.

(c) Prohibition of the Person's engaging in the future conduct of business within the boundaries of the Reservation for a definite or indefinite, period.

(d) Provision of monetary or other appropriate relief as and for damages to compensate any Person harmed as a result of the noncompliance at issue.

(e) Order the immediate termination by the Covered Employer of any individual(s) hired in contravention of any TERO Office requirements relative to Indian Preference in the selection and hiring of Employees.

(f) Order the immediate rescission of any contract(s) entered into by the Covered Employer in contravention of any TERO Office requirements relative to Indian

Preference in contracting and subcontracting.

(g) Order the employment, promotion, and training by the Covered Employer of any Indian individual(s) adversely affected by the noncompliance with any TERO Office requirements relative to Indian Preference in employment opportunities.

(h) Order the award of a contract or subcontract by a Covered Employer to any qualified Indian-owned firm adversely affected by the noncompliance with any TERO Office requirements relative to Indian Preference in contracting and subcontracting.

(i) Order the award of back pay by the Covered Employer to any Indian individual(s) adversely affected by the noncompliance with any TERO Office requirements, relative to Indian Preference in employment opportunities.

(j) Order the Covered Employer to make such changes in its policies, procedures, and/or conduct as are deemed necessary for the purpose of securing compliance with any TERO Office requirements.

(k) Award attorneys' fees to the complaining Person.

(l) Such other or further relief and/or sanctions as the Director should deem just and proper.

40.12 Publication of Ordinance.

(a) The obligation of all employers to fully comply with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the Tribal Council, shall be made known to all Covered Employers doing business within the exterior boundaries of the Reservation whether currently or in the future. It shall be the duty and responsibility of the TERO Office to cause the publication of such requirements to be performed to the extent as prescribed herein.

(b) The TERO Office shall direct copies of this Ordinance, any and all supplementary ordinances, and any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director, to all Covered Employers, and all government agencies and wholly-owned government corporations intending to undertake projects within the boundaries of the Reservation. In addition, the TERO Office will continuously maintain in its files a sufficient number of copies of such ordinances, rules, regulations, and/or guidelines for dissemination to any Person who should request copies thereof.

(c) The TERO Office shall take whatever action is deemed appropriate and necessary to ensure that all bid announcements issued by federal, state, and Tribal agencies and wholly-owned government corporations and by all other

entities, shall comply with the applicable requirements set forth in this Ordinance, in any and all supplementary ordinances, rules, regulations, and/or guidelines.

40.13 Reporting Requirements.

(a) A Covered Employer shall submit to the TERO Office, in a timely manner, such information (including documentation) as the TERO Director should request, from time to time, or report forms furnished by the TERO Office, provided however, that a Covered Employer may refuse to submit any information or documentation which it can demonstrate must remain confidential for valid business purposes.

(b) All written materials, relating to any Covered Employer, including Certified - Owned Firms, maintained on file in the TERO Office shall remain strictly confidential. Such written materials shall include, but not be limited to, Indian Preference certification applications and accompanying documentation, financial records, tax records, corporate and other business organic documents, resumes, and financial institution documents. No Person other than the Director, staff members within the TERO Office, and members of the Tribal Council, shall have any access whatsoever to any such written materials or other information maintained on file in the TERO Office: provided, however, that an authorized representative or agent of a Covered Employer shall have the right to secure access only to the particular file so maintained on such Covered Employer, for the purpose of review and/or photocopying within the location of the TERO Office (i.e., no file or an written materials maintained therein shall be removed from the location of the TERO Office by any such representative or agent of a Covered Employer). In addition, the TERO Director, TERO Commission, TERO Office staff, and Tribal Council shall be obligated to recognize and comply with the policy of such strict confidentiality in the context of the prohibition against their relating, whether verbally or in a written form, any information whatsoever to any other Person relative to such written materials so maintained on file in the TERO Office.

40.14 On Site Inspections.

The TERO Director, and the staff members within the TERO Office, shall have the right to conduct periodic on-site inspections at any time during the actual operation of the business of any Covered Employer, in order monitor compliance by such employer with the requirements set forth with any and all rules, regulations, and/or guidelines promulgated by the TERO Director, and with any order issued by the TERO Director. During the period of any such on-site inspection, such TERO Office personnel shall have the right to speak with any contractor, subcontractor, or Employee working on the site, so long as such conversation does not interfere with the operation of the business. In addition, such TERO Office personnel shall have the right to inspect any and all records and other written materials maintained on-site by a Covered Employer, which

cannot be deemed confidential for valid business purposes. Any and all such written materials so inspected shall be subject to the requirements relative to strict confidentiality, as prescribed by and set forth in Section 40.12 of this Ordinance.

40.15 Compliance Plan.

Subsequent to the effective date of this Ordinance, a Covered Employer, who intends to do business within the exterior boundaries of the Reservation, shall not commence the conduct of such business until such time as he/she/it has consulted with the TERO Director and/or staff for the purpose of being advised of his/her/its Indian Preference and other obligations, as prescribed by and set forth in this Ordinance, in any and all supplementary ordinances, and any and all rules, regulations, and/or guidelines promulgated by the Tribal Council in consultation with the TERO Commission and TERO Director.

40.16 Harassment.

No Person, including any representative or agent of a Covered Employer, contractor, subcontractor or Certified Indian-Owned Firm, shall attempt to or, in fact, harass, intimidate, or retaliate against the Director or any member of the staff within the TERO Office, or any member of the Tribal Council. Should any Person be deemed by the TERO Director to have violated such prohibition against harassment, intimidation, and retaliation, the TERO Director shall forthwith direct to such Person's employer, by certified mail, a formal written warning, wherein is set forth a full description of the nature of the alleged harassment, intimidation, and/or retaliation, and a clear admonition that such conduct shall forthwith be discontinued. Should such conduct continue subsequent to the receipt by such employer of the written warning, the TERO Director shall forthwith notify the Tribal Council of the matter and provide a date for a formal hearing thereon. Any such hearing shall be conducted in accordance with the rules of procedure prescribed by and set forth in Section 40.09 of this Ordinance. Should the TERO Director determine that such employer did violate the prohibition against harassment, intimidation, and retaliation, the TERO Director shall impose against the employer, depending upon the degree of severity of such conduct, any one or combination of the sanctions prescribed by and set forth in Section 40.10 of this Ordinance.

Any Covered Employer or other person subject to jurisdiction of the Klamath Tribes which retaliates against any employee, employer, union or other entity because of its exercise or rights under this law, or compliance with provisions of this law, shall be subject to the sanctions set forth in Section 40.10 of this Ordinance.

40.17 Indian Preference Guidelines.

Any and all guidelines promulgated by the Tribal Council, in consultation with the TERO Commission and TERO Director, setting forth requirements for Covered Employers and the TERO Director and staff relative to Indian Preference in

employment practices and in contracting and subcontracting (i.e. minimum numerical hiring goals and timetables, Tribal hiring hall, training, promotions, layoffs, and contract awards), shall be incorporated herein and made part hereof, subject to the approval of the Tribal Council.

40.18 Amendments. This Ordinance may be amended by the Klamath Tribes General Council pursuant to duly adopted Resolution.

40.19 Sovereign Immunity.

Except as expressly and specifically waived by a resolution of the Klamath Tribes or by Klamath Tribal Law, the Klamath Tribes shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties.

40.20 Severability.

Should any provision set forth in this Ordinance, or the application thereof to any Person or circumstance, be held invalid by a court of competent jurisdiction the full remainder of such provision or the application of the provision to another Person or circumstance shall not be affected thereby.

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Regular General Council meeting held on the **19th** day of **October**, 2024 with a quorum present, the General Council took action and duly adopted this Ordinance by a vote of **65** for, **1** opposed, and **5** abstentions by General Council Resolution 2024- 002.

William E. Ray, Jr.
Chairman
The Klamath Tribes

Roberta K. Frost
Secretary
The Klamath Tribes