

TRIBAL EMPLOYMENT RIGHTS COMMISSION COMPLIANCE PLAN
BETWEEN:
THE CONFEDERATED TRIBES AND BANDS OF THE
YAKAMA NATION
HEREIN CALLED "TERO"
AND

HEREIN CALLED "EMPLOYER"

To Be Implemented on:

NOTE: ANY EMPLOYER, CONTRACTOR OR SUBCONTRACTOR WHO FAILS TO SUBMIT AN ACCEPTABLE COMPLIANCE PLAN MAY BE DENIED THE RIGHT TO COMMENCE OR CONTINUE TO CONDUCT BUSINESS WITHIN OR IN IMMEDIATE PROXIMITY TO THE EXTERIOR BOUNDARIES OF THE YAKAMA NATION.

A. **COMPLIANCE PLAN RESPONSIBILITIES:** Pursuant to Section 9.1 of the Yakama Nation Tribal Employment Rights Ordinance: As of the effective date of this Ordinance no employer may commence work on the Yakama Reservation until they have consulted with the TERO Commission or its appointed representative on meeting their obligations under this Ordinance.

B. **COVERAGE:** The intent of the Yakama Nation Tribal Employment Rights Ordinance is to employ a Local Indian Preference Work Force which will inevitably strengthen the reservations economy. All positions will be cleared through the TERO Compliance Office and hiring criteria filed for each craft, before project initiation.

C. **HIRING:** A **minimum rate of 50%** local Indian Preference employment by work force hours is required. Qualified local Indian Preference applicants will fill all skilled craftsmen and laborer positions that require the use of hand tools, power tools, and equipment. Therefore, partnership(s)/owner(s) shall be allowed in management and/or supervisory positions only. Specialized skills that require only limited crews or schedules will be considered for approval on a case-by-case basis.

D. **HIRING HALL:** Employer agrees to utilize the TERO Hiring Hall to meet all work force needs other than the contractors certified core crew. Core Crew shall not exceed **25%** of total work force hours. The employer may utilize other sources of personnel to fill vacancies only in the event that the TERO Office has certified in writing that they are unable to provide a qualified eligible referral. If the TERO Office waives a position it may be included in the required **50%** of work force hours unless it becomes vacant again, when TERO will make another attempt to fill the position.

E. **PAYROLL HOURS:** The TERO Office reserves the right to review employers' payroll records to insure that Local Indian Preference is in effect. A minimum of 50% of the total work force hours is required for Indian Preference Employees.

F. **TRAINING:** Training ratios shall be as stated in the project specifications.

G. TRAINING PROGRAMS: Training Programs shall be developed and administered by the employer with the assistance of the TERO Office when possible.

H. QUALIFICATION OF INDIAN PREFERENCE EMPLOYEES: Minimal standards will be developed and hiring criteria (in written form) filed with the TERO Office prior to the employers request for a referral in that skill. NOTE: Employers are prohibited from using job qualification criteria or personnel requirements that present artificial barriers to local Indian Preference employment or training unless such criteria can be proven to be of either safety or business necessity.

(a) The TERO Compliance Office and individual employers have the responsibility of deciding if an employee is qualified for a job or in a craft. (b) The burden of proof shall be on the TERO Office in all disputes of minimal qualifications standards and on termination of Indian Preference Employees based on lack of qualifications.

I. PROMOTIONS: Employer shall give Indian Preference Employees consideration for promotion opportunities and shall encourage Indian employees to pursue such opportunities. Indian Preference Employees shall be considered first in each craft or skill, when promotions are plausible. Selection of non-Indian individuals for promotion will require a written justification. If an Indian Preference Employee fails to meet job requirements and is demoted the employer shall provide TERO with written documentation justifying the action. Indian Preference Employees declining a promotion opportunity shall verify such denial in writing.

J. REFERRALS: The TERO Office shall be given a twenty-four (24)-business hour time period (minimum) to furnish a qualified referral.

K. COUNSELING: Employer shall effectively utilize the TERO Office for the job counseling needs of the Indian Preference Employees. Prior to termination of any Indian Preference Employee the employer shall give TERO the opportunity for counseling.

L. INDIAN PREFERENCE - FEDERAL FUNDS UTILIZED: When federal or State funds are utilized, Local Indian Preference language shall prevail. In order for an applicant or employee to qualify under local Indian Preference he/she must live on or near the Yakama Nation and provide the following information to the TERO Office: 1. Name of Tribal Affiliation and Identification number 2. Name of Agency where individual is registered or enrolled.

M. CONTRACTING AND SUBCONTRACTING: Contractors and Subcontractors claiming Indian Preference shall provide certification of such status to the TERO Office to ensure that their business is a legitimate Indian-owned and Indian controlled firm. In order for a firm or joint venture to qualify for Indian Preference it must be 51% or more Indian owned and must be able to demonstrate the following: 1. Formal Ownership - That an Indian(s) own(s) 51% or more of the partnership, corporation, joint venture, or other arrangement for an entity. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes: (a) Financial Ownership and (b) control. 2. Value - That the Indian owner(s) provide real value for his/her 51% or more ownership by providing capital, equipment, real property, or similar assets commensurate

with the value of his ownership share. 3. Profit - That the Indian owner(s) will receive 51% or more of all profits. 4. Management Control - That the Indian(s) must be substantially involved in management and control of daily activity.

Failure to provide such certification shall constitute grounds for the TERO Commission to issue a stop-work order or to prevent contractor/subcontractor from commencing work on the Yakama Reservation.

N. PRIME CONTRACTOR: It shall be the prime contractors responsibility to ensure to the TERO Commission that preference in subcontracting shall be given to Indian Preference certified firm.

O. REVIEW, REPORTING AND ON-SITE MONITORING VISITS: It shall be within TERO rights to require employer to provide payroll information necessary to ensure that the agreed upon 50% or more of the total work force hours are earned by Local Indian Preference Employees. Such information may be requested on a daily, weekly, BI-weekly, or monthly basis and shall include:

1. Personal Data Sheet (TERO Application)
2. Wage and hour report (supported by certified payroll)
3. New hires, date of entrance and wage rate
4. Termination's, date and written justification
5. Disciplinary action taken (documentation)
6. Promotion opportunities
7. Indian Preference Employees in training status

The TERO Office reserves the right to monitor the project through on-site visits, citing any violations of the TERO Ordinance that will be reported directly to the TERO Commission. On-site visits will be conducted in a manner that causes minimal interruption to the work force and the project.

P. TERO FEE PAYMENT: As stated in Section 6 of the TERO Ordinance employer is required to pay a fee equaling 3% (0.03) of the total contract amount. This fee will be paid to the Confederated Tribes and Bands of the Yakama Nation credited to the TERO Fee Account.

The Prime Contractor will pay 3% of the total bid of \$_____ in one payment. This payment of \$_____ will be due prior to project initiation. Any adjustment to bid price (project cost) will require immediate (within 30 days) adjustment to the TERO Fee payment, making all fee payments due within 30 days of project completion.

THE YAKAMA TRIBAL EMPLOYMENT RIGHTS FEE PAYMENT SCHEDULE IS DETERMINED AT THE DISCRETION OF THE TERO OFFICE.

Q. CERTIFICATION AND ACCEPTANCE: On behalf of _____ hereby certify that I have received and reviewed the Yakama Nation's Tribal Employment Rights Ordinance; and understand it is within the Yakama Tribe's sovereign rights to impose Local Indian Preference on work conducted within or in immediate proximity to the exterior boundaries of the Yakama Nation. Therefore, I agree to accept the obligations and responsibilities imposed upon my firm by this Compliance Plan on this _____ day of _____, 2009.

SIGNATURE: _____

TITLE: _____

On behalf of the Yakama Nation's Tribal Employment Rights Office, I hereby attest to the agreed upon compliance plan and will enforce compliance to this agreement through the powers vested to me by the TERO Commission.

SIGNATURE: _____

TITLE: _____ TERO Director _____

APPROVED: _____

TITLE: _____ Chairman, TERO COMMISSION _____