

TITLE:
YAKAMA NATION
TRIBAL EMPLOYMENT RIGHTS ORDINANCE

BE IT ENACTED BY THE YAKAMA TRIBAL COUNCIL
ASSEMBLED:

SECTION: 1. GENERAL PROVISIONS AND PURPOSE.

1.1 NAME. This ordinance shall be known as the Yakama Nation, “Tribal Employment Rights Ordinance”.

1.2 STATEMENT OF PURPOSE. The Yakama Nation believes that it is important to create employment and training opportunities for Yakama Nation Tribal Members and other Indians and to eradicate discrimination against Indian People. The Yakama Tribal Council in its duty to guarantee the unique employment rights of Indians necessitates enactment of a Tribal Employment Rights Office. Further, it establishes a Tribal Employment Rights Commission to ensure equal and effective application of this Ordinance.

1.3 COVERAGE. All employers are required to give preference to Indians in hiring, promotion, training, temporary reductions in work force and all other aspects of employment, contracting and subcontracting, and must comply with this Ordinance and the rules, regulations and orders of the Commission.

1.4 CONSISTENT WITH FEDERAL LAWS. Nothing contained in this Ordinance shall supersede or be inconsistent with Federal Law on Equal Employment Opportunity, namely:

- a. Title VII of the Civil Rights Act, which prohibits preferential employment on the basis of race, color, sex, national origin, and religion. However Title VII contains a special exemption that makes Indian Preference permissible. “Section 703 (i) of the 1964 Civil Rights Act” states:
“Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to any publicly announced employment practices of such business or enterprise under which a

preferential treatment is given to any individual because he/she is Indian,” and,

- b. The Office of Federal Contract Compliance Programs Executive Order 11246 issued in 1977 which states: “Work on or near Indian Reservations.” “It shall not be a violation of the equal opportunity clause for construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian Reservation. The use of the word ‘near’ would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with the other requirement contained in this chapter.”
 - c. THE INDIAN SELF-DETERMINATION ACT. The Bureau of Indian Affairs in its regulation implementing the Indian Self-Determination Act, Public Law 93-638, 1975. Section 7 (b) , provides for Indian Preference in employment and training, and contracting and subcontracting on all contracts negotiated or let on behalf of an Indian tribe pursuant to the Act.
- 1.5 CONGRESSIONAL ENDORSEMENT. The United States exemption is consistent with the Federal Government’s policy on encouraging Indian employment and with the special legal position of Indians.”

SECTION: 2. DEFINITIONS.

2.1 CHAIRMAN. The term “Chairman” shall mean the Chairman of the Yakama Tribal Employment Rights Commission.

2.2 COMMERCE. The term “Commerce” shall mean the exchange of goods, services, and/or property without reference to the locality where carried on.

2.3 COMMISSION. The term “Commission” shall mean the Yakama Tribal Employment Rights Commission, which shall consist of four (4) regular members, selected from enrolled Yakama members who reside within the exterior boundaries of the Yakama Reservation. The Executive Committee of the Yakama Tribal Council shall appoint the Commission. The Commission shall designate one of such commissioners as Commission Chairman. To ensure continuity, the commissioner’s terms shall be staggered. The initial appointments will consist of two members being given four-year terms and the remaining two members being given three-year terms. Thereafter, all commissioners shall be appointed to four-year terms.

2.4 COMMISSIONER. The term “Commissioner” shall mean the Commissioner of the Yakama Tribal Employment Rights Commission.

2.5 COUNCIL. The term “Council” shall mean the Tribal Council of the Confederated Tribes and Bands of the Yakama Nation.

2.6 EEOC. The term “EEOC” shall mean the Equal Employment Opportunity Commission of the United States.

2.7 EMPLOYEE ON THE YAKAMA RESERVATION. The term “Employee on the Yakama Reservation” shall include any employee who holds a non-supervisory or non-managerial position and spends more than one-tenth of his/her working hours per month or per pay period, whichever is shorter, on the Yakama Reservation; and shall include any employee who holds a supervisory or managerial position on the Yakama Reservation; and shall include any employee who in a supervisory or managerial position and spends more than one-twentieth of his/her working hours per month or per pay period whichever is shorter on the Yakama Reservation.

2.8 EMPLOYER. The term “Employer” includes, but is not limited to, any person who engages in commerce through paid agents or servants, or who is hired through contracts for services, within the exterior boundaries of the Yakama Reservation. The term “employer” includes any person acting as an agent, contractor or subcontractor of any employer,

directly or indirectly, but shall not include the United States or any wholly owned Government Corporation of the United States or any state or political subdivision thereof.

2.9 COVERED EMPLOYER. The term “Covered Employer” includes any employer who employs two or more employees on the Yakama Reservation.

2.10 INDIAN. The term “Indian” means: Any member of any federally recognized Indian Tribe now under Federal jurisdiction.

2.11 INDIAN PREFERENCE. The term “Indian Preference” means that Indians residing on the Yakama Reservation, without regard to tribal affiliation, are given preference over non-resident Indians and non-Indians in employment, training and other economic development activities.

2.12 INDIAN OWNED FIRM OR ENTITY. The term “ Indian owned firm or entity” means any commercial, industrial or other business activity owned firm or entity provided that such Indian Ownership constitutes not less than 51% of the enterprise.

2.13 YAKAMA INDIAN OWNED FIRM OR ENTITY. The term “Yakama Indian owned firm or entity” means any commercial, industrial or other business activity owned firm or entity provided that such Yakama Indian Ownership constitutes not less than 100%.

2.14 LOCATED NEAR THE RESERVATION. The term “Located near the reservation “ shall mean any employer located within daily commuting distance of the reservation.

2.15 NOTICE. The term “Notice” shall mean as it is required to be given by the Yakama Tribal Employment Rights Commission, shall be sufficient as to unnamed parties in an action, all interested persons who are not parties to an action, and in all instances, where a specific person in not addressed, if it is published and posted in a public place within the Yakama Nation Reservation Boundaries for not less than five working days and is on file in the Yakama Tribal Employment Rights Office and open to public inspection.

2.16 OFCCP. The term “OFCCP” shall mean the Office of Federal Contract Compliance Programs of the United States.

2.17 PERSON. The term “Person” shall include both natural and artificial persons, including, but not limited to, corporations, trusts, partnerships, unions, agents, societies, and sole proprietorships.

2.18 TRIBE. The term “Tribe” shall mean the Confederated Tribes and Bands of the Yakama Nation.

2.19 UNION OR LABOR UNION. The term “Union or Labor Union” shall mean any organizations of any kind, or any agency or employee representation committee or plan, associated or organized for the purposes of collective bargaining in which employees participate and which exists for the purpose, in whole or in part dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work.

2.20 RESERVATION. The term “Reservation” shall mean the Yakama Reservation, Washington, and its allotted lands outside the exterior boundaries.

SECTION 3. THE YAKAMA NATION TRIBAL EMPLOYMENT RIGHTS COMMISSION.

3.1 AUTHORITY. Through its inherent sovereign powers the Council, has hereby created a Commission to be known as the Yakama Tribal Employment Rights Commission; (Herein after referred to as the Commission) which shall be composed of the four (4) appointed members as stated in Section 2.3. The Chairman of the Commission shall be responsible on the behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance to the Commission By-laws or Procedures, such officers, agents and employees, as he deems necessary to assist the Commission to advise and assist the Commission in their duties and responsibilities.

3.2 QUORUM. Three (3) members of the Commission shall constitute a quorum.

3.3 COMMISSION REPORT. The Commission shall, at the end of each fiscal quarter, report to the Council concerning the actions it has taken within such quarter; The commission shall make other reports on the causes of discrimination and make recommendations for further resolutions/ordinances as may appear desirable to eliminate such discrimination.

3.4 COMMISSION'S OFFICE. The Commission's Office shall be located on the Yakama Reservation, however, it may meet or exercise any or all its powers at any other place deemed appropriate by the Commission.

3.5 COMMISSION EXPENSES. The Commission shall not be compensated, but shall be reimbursed for any expenses incurred in connection with carrying out its duties under this Ordinance pursuant to Tribal Council operations document #T-10-61.

3.6 DUTIES OF THE COMMISSION. The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful Indian Preference Employment Practices as set forth in the Yakama Tribal Employment Rights Ordinance.

3.7 POWERS OF THE COMMISSION. The Commission has jurisdiction and authority to:

- a. Formulate, adopt, amend and rescind rules, regulations and guidelines reasonably necessary to carry out the provisions of this Ordinance.
- b. Hold hearings and subpoena witnesses and documents in accordance with this Ordinance.
- c. Prohibit employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment, unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this requirement, the Commission shall adopt the EEOC guidelines on these matters to the extent that they are appropriate. The Commission shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines.
- e. Require employers to submit reports and take all actions deemed necessary by the Commission for the fair and vigorous implementation of this Ordinance.

3.8 INTERGOVERNMENTAL RELATIONS. The Commission, acting through the TERO Director, is authorized to enter into cooperative relationships with Federal

Employment Rights Agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Yakama Reservation.

3.9 DELEGATION OF AUTHORITY. The Commission shall delegate such authority to the TERO Director as is convenient or necessary for the efficient administration of this Ordinance, except that the Commission may not delegate its powers or duty to:

- a. Adopt, amend or rescind rules, regulations or guidelines.
- b. Conduct hearings or to impose sanctions pursuant to Section 8.

SECTION 4. THE YAKAMA NATION TRIBAL EMPLOYMENT RIGHTS OFFICE. The Yakama Nation Tribal Employment Rights Office (hereinafter referred to as "TERO") is hereby established, with the supervisory authority to vest in the Yakama Tribal Employment Rights Director (hereinafter "TERO Director"), who shall report directly to the Yakama Tribal Employment Rights Commission.

4.1 TERO DIRECTOR: QUALIFICATIONS, STAFF AND DUTIES.

- a. THE TERO Director shall have such administrative ability, education, and training as the Commission determines necessary.
- b. THE TERO Director shall administer the policies, powers and duties prescribed for him/her by the Commission pursuant to Section 3.9: including but not limited to the authority to:
 - 1) Hire staff, expend funds appropriated by the Yakama Tribal Council, obtain and expend funding from Federal, State, or other sources to carry out the purposes of the Ordinance.
 - 2) Impose numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.
 - 3) Require employers to establish or participate in such training programs, as the Commission deems necessary to increase the pool of Indians eligible for employment on/off the Reservation.
 - 4) Establish and administer a Tribal Hiring Hall.
 - 5) Require that employers may hire non-Indians only after the Tribal Hiring Hall has certified that qualified Indians are unavailable to fill vacant job positions.
 - 6) Require employers to give preference to Tribal and other Indian owned businesses in the award of Contracts and Subcontracts.

- 7) Facilitate support programs to assist Indians to retain employment.
- 8) Recommend actions as are necessary to achieve the purpose and objective of the Yakama Nation Tribal Employment Rights Office established in this Ordinance.

SECTION 5: IMPLEMENTATION OF SPECIFIC INDIAN PREFERENCE REQUIREMENTS.

5.1 CONTRACTORS AND SUBCONTRACTORS. The Indian preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors of employers, and shall be deemed a part of all resulting subcontract specifications. The employer shall have the initial and primary responsibility for insuring that all contractors and subcontractors comply with these requirements. Both the employer and his contractors or subcontractors shall be subject to penalties provided herein for violation of the Ordinance if the contractor or subcontractor fails to comply.

5.2 MINIMUM NUMERICAL GOALS AND TIMETABLES FOR INDIAN EMPLOYMENT. The Commission will establish the minimum number of Indians each employer must employ on his/her work force during any year that he/she or any of his/her employee(s) is/are located or engaged in work on or near the Yakama Reservation. Numerical goals shall be set for each craft, skill area, non-classification, etc. used by the employer and shall include, but not limited to, administrative, supervisory, and professional categories. The goals shall be expressed in terms of project hours of Indian employment as a percentage of the total project hours worked by the employer's work force in the job classification involved. Numerical goals shall be based on surveys of the available Indian labor force and of the projected employment opportunities.

For a new employer, goals shall be established for the entire work force. The employer shall meet with the Commission at least 60 days prior to beginning work and shall furnish the Commission with a precise list of the number and kinds of employees he expects to employ. The Commission shall then set specific goals and timetables for the employer after considering any special factors or circumstances the employer wishes to present. The employer shall incorporate the goals into his plan for complying with this Ordinance and shall agree in writing to meet those goals by signing a compliance agreement. Any employer who fails to provide such a written statement will not be permitted to commence work on the Yakama Reservation.

For an existing employer on or near the Yakama Reservation, the goals shall be a percentage of the new employees expected to be employed during the ensuing year by the employer. The employer shall incorporate the goals into his plan for complying with this Ordinance and shall agree in writing to meet those goals.

For both new and existing employers, the goals shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in the number of Indians available or change in employer hiring plans. Each employer shall submit a monthly report to the Commission on a form provided by the Commission, indicating the number of Indians in his work force, all persons employed or terminated, promotions, training positions during the month, the job positions involved, and other information required by the Commission.

Should the Commission have reason to believe that an employer is violating this Ordinance by not meeting agreed upon goals, it shall notify the employer of the alleged violation pursuant to Section 8 of this Ordinance. The Commission shall bear the initial burden of proving that an employer has failed or is failing to meet its goals. Upon prima facie proof of such failure, the employer shall then bear the burden of proving that he has met or is meeting his goals or has made a good faith effort to meet his goals. A union's collective bargaining agreement providing for exclusive referral shall not be justification not to refer Indians.

5.3 TRAINING. Every employer may be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. Every employer shall employ Indian trainees or apprentices. The Commission shall set the ratio of Indian trainees or apprentices to fully qualified journeyman after consultation with the employer. For construction projects, the number shall be no less than the minimum ratio established by the Department of Labor. Every employer with a collective bargaining agreement with a union shall be required to obtain an agreement with a union shall be required to obtain an agreement from the union to establish an advanced journeyman upgrade and apprenticeship program.

5.4 TRIBAL HIRING HALL. The TERO Director shall establish and administer a tribal hiring hall to assist the TERO Office and employers in placing Indians. An employer may recruit and hire workers from whatever sources provided that no non-Indians are employed until a reasonable time period to locate qualified Indians has lapsed or the tribal hiring hall has certified that a qualified Indian is unavailable to fill the vacant job position.

5.5 REASONABLE NOTICE. For purposes of this section, "reasonable time" shall be defined as follows: For construction jobs the TERO Office shall be given 48 hours to

locate and an additional 12 hours to refer a qualified Indian. For all other kinds of employment, the TERO Office shall have a minimum of 5 working days to locate and refer a qualified Indian. The TERO Office may grant a waiver of these time periods upon a showing by the employer that such time periods impose an undue burden upon the project. An employer subject to a collective bargaining agreement with a union shall be exempt from this procedure if the union agrees to place on its referral list all names supplied by the TERO Office. However, if any union fails to meet its obligation to refer Indians to an employer, the TERO Office may require the employer to accept Indian referrals from sources other than the union.

If any non-Indian worker is found to be employed in a job, in violation of this section, the employer shall be required by the TERO Office to remove the employee summarily and shall be subject to the penalties provided in Section 11 of this Ordinance. Removal of employees will be subject to the Commissions due process.

5.6 COUNSELING AND SUPPORT PROGRAMS. The TERO Office will establish counseling and other support programs to assist Indians in retaining employment.

5.7 PREFERENCE IN CONTRACTING AND SUBCONTRACTING. Every employer shall give preference in the award of any contract or subcontract to tribally owned and Indian-owned businesses. The TERO Office shall register and maintain a list of tribally owned or Indian-owned businesses that shall be supplied to the employers for their use. Employers shall not be required to take any extraordinary measure to identify or locate tribally owned or Indian-owned businesses. Each Yakama owned or Indian owned contractor/subcontractor shall apply for certification with the TERO Office and must be certified. Such contractor must be certified before accepting an Indian preference or Yakama preference contract award. Applications for certification shall include all information in Sec. 5.7.2 to 5.7.5 of this ordinance.

5.7.1 Yakama Preference in awarding on contracts and subcontracts for logging, road construction and all other contracted projects and services in the Closed Area of the Yakama Reservation. Such contracts and subcontract, shall be performed by a 100% Yakama Member owned entities. However, in the event there are no Yakama Member Firms available that can perform the proposed projects and services, or if all such entities decline contract offers, then Indian Preference eligible contractors and non-Indian contractors may be considered in that order. Such contracts shall be subject to all applicable Yakama preference and Indian preference

hiring policies. Yakama preference shall not apply to any federal or federally assisted contracts or sub-contracts, but does apply to tribal 93-638 contracts or sub-contracts.

5.7.2 Preparation of Financial Statement: For a firm showing a net worth in excess of \$100,000.00 or more, the applicant must provide, with the questionnaire, a copy of its financial statement as audited or reviewed for its last fiscal year, prepared in accordance with the standards of the American Institute of Certified Public Accountants. An independent certified accountant must prepare the statement. Balance Sheets, Income Statements, a Statement of Retained Earnings, Supporting Schedules, notes and the opinion of the independent auditor must accompany the financial statement. A compiled financial statement is not acceptable. Additional information may be furnished for consideration at any time. If the financial position or significant changes occur within the structure of an organization, it must file a new Application Questionnaire and Financial Statement.

5.7.3 FIRM IDENTIFICATION:

- a. Name of Firm (exactly as it appears on all documents)
- b. Address, telephone, Date, Company contact.
- c. Type of Business (a separate application is required for each type of business).
- d. Federal Identification Number
- e. Number of Employees, Number of Indian Employees.
- f. Year Business was established.

5.7.4 OWNERSHIP:

- a. Type of Ownership;
 1. Sole-Proprietorship
 2. Partnership (attach copy of any partnership agreement with all amendments since creation of partnership).
 3. Corporation (attach copy of Certificate of Incorporation, Articles of Incorporation, and Bylaws, including all amendments since creation of the corporation).
- b. Percent of Indian Ownership:
 1. For each Indian owner, provide name, Tribal Affiliation, enrollment number, percent of

ownership, amount of investment in the firm, method of investment (cash, equipment, loan or promissory note indicating who the loan is from), percent of voting control and position in the firm.

2. Proof of Profit Share for each Indian owner, provide financial documents that substantiate the Indian owner(s) 51% share of the firm or entities profit.
3. For each non-Indian owner, provide name, address, percent of ownership, amount of investment in firm, method of investment (cash, equipment, loan or promissory note indicating who the loan or note is from), percent of voting control, position in the firm, name of all other firms in which the owner holds or has held within the past year and ownership interest (other than publicly-held corporations and similar ownership's sole for investment) or a management position.
4. List any management fee, equipment rental, bonuses, or other arrangements that will provide payment to non-Indian owner(s) beyond their share of profits and salaries, as indicated above.
5. Describe or attach any stock options or other ownership options that are outstanding and any agreements between owners or between owner and third parties which restrict ownership or control of Indian owner(s).
6. Identify any owner or management official or the named company who is or has been an employee of another company that has an ownership interest in or a present business relationship with the named company present business relationships include shared space, equipment, financing, or employees as both companies having some of the same owners.
7. Indicate if this company or other companies with any of the same officers have previously received or been denied certification or participation as an Indian Preference Firm and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

5.7.5 MANAGEMENT:

1. For each owner of more than 5% interest, all senior management personnel and members of the Board of Directors provide the following:
 - a. Name, address, social security number and if Indian, list Tribe and Enrollment number.
 - b. Present position (description of all duties)
 - 1) Previous business experience.
 - 2) Previous work experience in areas in which firm intends to engage.
 - 3) Other previous work experience.
 - 4) Education and Training.
 - 5) Other jobs presently held.
2. Control of company. Identify by name, race, sex and title in the company those individuals (owners and non-owners) who are responsible for day-to-day management, including, but not limited to those with prime responsibility for:
 - a. Financial Decisions.
 - 1) Management decisions, such as: Marketing and sales, Hiring and firing, Purchase of major equipment or supplies, supervision of field personnel.
3. CAPITAL AND EQUIPMENT:
 - a. List all equipment costing \$100.00 or more. Include the Quantity, description, price (book value), how the equipment was obtained (purchased, provided by owner, etc).
 - b. Attach a current balance sheet. Identify the amount and source of original and present capital (e.g. contributed by owner, bank loan, if loan, indicate name(s) of those legally bound to repay if other than corporation).
4. ADDITIONAL SUBMISSIONS: Each applicant must submit the following with their application:
 - a. List of officers, principal stockholders and directors, with post office addresses and number of shares held by each.
 - b. A sworn statement of the proper officer showing: The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or if paid in property, the kind, quantity and value of the same per share.

Of the stock sold, how much remains unpaid and subject to assessment. The amount of cash the company has in its treasury elsewhere. The property, exclusive of cash, owned by the company and its value. The total indebtedness of the company and the nature of its obligations.

5. Certification: The applicant must certify that the information provided in the application is true and complete to the best of their knowledge and belief. Further the applicant certifies that he/she has read the applicable ordinances of the Yakama Nation, criteria and procedures and do hereby submit to the jurisdiction provided herein.

5.8 LAY-OFFS. In all lay-offs 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 must first be terminated if the Indian possesses the 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.

5.9 PROMOTION. Every employer shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For every supervisory position filled by a non-Indian, the employer shall file a report with the Commission stating what efforts were made to inform Indian workers about the position, how many Indians applied for the position, and the reasons why each Indian was not hired for the position.

5.10 SUMMER STUDENTS. Every employer shall give Indians preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer vacation employment for Indian students.

SECTION 6: THE YAKAMA TRIBAL EMPLOYMENT RIGHTS FEE.

6.1 A Yakama Tribal Employment Rights fee, to raise revenue for the operation of the TERO Office, is imposed as follows:

- a. Every employer with a contract, in the sum of \$25,000.00 or more shall pay a one-time fee of 3% of the total amount of the contract. The fee may be paid in installments over the term of the contract.

- b. Every employer, other than construction contractors working on the Yakama Reservation, or with gross sales on the Yakama Reservation of \$25,000.00 or more, shall pay an annual fee of 3% of his/her employee's annual payroll.
- c. Such fees shall be paid to the Confederated Tribes and Bands of the Yakama Nation and shall be credited to the account of the Yakama Tribal Employment Rights Office to meet its operating costs. The TERO Director shall carry over all unused TERO funds to be used for the administration of the TERO program in the following Fiscal Year Budget. The TERO Director may contribute surplus TERO revenue to the treasury of the Confederated Tribes and Bands of the Yakama Nation, as a contribution to the overall economic development of the Tribe.
- d. A surplus will be recognized when the cumulative balance of the TERO Revenue Account exceeds 200% of the current fiscal year TERO Programs approved budget. The 200% is over and above the current years approved budget. This is necessary because many TERO contracts have a three-year contract life.
- e. All withdrawals from the TERO Revenue Account will require notice and approval of the TERO Director and the TERO Commission.

SECTION 7. COMPLIANCE BY UNIONS.

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Ordinance and the rules, regulations and orders of the Commission. Until such agreement(s) is/are filed with the Commission, the employer may not commence work on the Yakama Reservation.

7.1 CONTENTS OF UNION AGREEMENTS. Every union agreement with an employer, filed with the Commission must provide:

- a. **INDIAN PREFERENCE.** The union will give absolute preference to Indians in job referrals regardless of which union referral list they occupy.

- b. COOPERATION WITH THE COMMISSION. The union will cooperate with the commission and the TERO Director in all respects.
- c. REGISTRATION. The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.
- d. TRAINING PROGRAMS. The union will blanket-in all Indians who qualify for journeyman status and wish to join the union.
- f. TEMPORARY WORK PERMITS. The union will grant temporary work permits to Indians who do not wish to join the union.

7.2 MODEL UNION AGREEMENT. The Commission shall provide a model union agreement for use by all unions who have collective bargaining agreements with any employer. This may be used for reference in formulating an official agreement to be used for compliance purposes.

7.3 RECOGNITION OF UNIONS. Nothing herein or any activity by the Commission or TERO Officer authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities on the Yakama Reservation.

SECTION 8. DUE PROCESS/HEARINGS.

8.1 NOTICE. If a hearing is requested by the Commission, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all parties concerned as to the nature of the hearing and shall advise such parties of their right to be present at the hearing, to present testimony of witnesses and other evidence, to be represented by counsel at their own expense, and that the Commission may be represented by counsel for the Yakama Nation.

8.2 COMMISSION COMPLAINT PROCEDURE. If the Commission believes that an employer, contractor, subcontractor, or union has failed to comply with the Ordinance or any rules, regulations or orders of the Commission, shall file a written complaint and notify such party of the alleged violations. The Commission will attempt to achieve an

informal settlement of the matter, but if an informal settlement cannot be achieved, the Commission may request a hearing upon the matter pursuant to Section 8.1.

8.3 INDIVIDUAL COMPLAINT PROCEDURE. If any person believes that an employer has failed to comply with this Ordinance or rules, regulations or orders of the Commission, or believes he has been discriminated against by an employer because he/she is an Indian, he/she shall file a written complaint with the TERO Office, and/or Commission specifying the alleged violation. Upon receipt of the complaint, the Commission and/or TERO Director shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or the Commission may request a hearing upon the matter pursuant to Section 8.1.

If any employer fires, lays-off, or penalizes in any manner any Indian employee who utilizes the individual complaint procedure provided herein or exercises any right provided herein, the employer shall be subject to the penalties provided in Section 11 of the Ordinance.

8.4 EMPLOYER OR UNION COMPLAINT PROCEDURE. If any employer or union believes that any provision of this Ordinance or any rule, regulation or order of the Commission is illegal or erroneous, a complaint shall be filed with the Commission specifying the alleged illegality or error. Upon receipt of the complaint, the Commission shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the employer, union or Commission may request a hearing upon the matter pursuant to Section 8.1.

8.5 INVESTIGATIONS. The TERO Director or any field compliance officer designated by the Commission may make such public or private investigations within or without the exterior boundaries of the Yakama Reservation as he/she or the Commission deems necessary to determine whether any employer has violated any provision of this Ordinance or any rule or order hereunder, and may enter the place of business or employment of any employer for the purpose of such investigations.

8.6 HEARING PROCEDURES. Hearings shall be governed by the following rules of procedure:

a. **Review of TERO Files:** The respondent (the employer or entity against whom a charge has been filed) shall have the right to review the case file of the Tribal Employment Rights Ordinance charge in the TERO Office. The respondent may schedule an

appointment during regular work hours, with the TERO Director after receiving notice of a hearing. However, the TERO Director shall have the right to “sanitize” any portion of the file to protect confidential information. The file shall be sanitized in a manner that causes the loss of the least amount of relevant information from the files.

b. List of Witnesses: Ten (10) days prior to the hearing (or as soon as possible if the hearing is to be held within ten (10) days after notice), the respondent and the TERO Director shall submit to the TERO Commission Chairman, a list of witnesses each intends to call at the hearing. The approximate length of their testimony, and the subject matter, and relevance of their testimony will also be given to the Chairman. It shall indicate the witnesses that must be subpoenaed. The TERO Commission shall then issue the subpoenas.

c. The respondent and the TERO Director shall have the right to interview the witnesses of the other party, prior to the hearing. The TERO Director’s witnesses shall be interviewed in the presence of the TERO Director or his delegate. The respondent’s witnesses shall be interviewed under such reasonable conditions as are established by the respondent. Either party may appeal to the TERO Commission Chairman, if cooperation is not forthcoming on the matter. The Chairman is empowered to require such steps as are necessary to resolve the problem.

d. The respondent shall, no later than ten (10) days prior to the hearing (or as soon as possible if the hearing is noticed less than ten (10) days before the hearing) provide the TERO Director with a list of items it wishes to have subpoenaed and the relevance of each. The TERO Director shall subpoena all relevant items listed as well as items needed by the TERO Director. Any disputes shall be brought to the Chairman of the TERO Commission who shall resolve such disputes.

e. Any request for a postponement of the hearing must be submitted in writing to the Chairman of the TERO Commission no fewer than three (3) days prior to the hearing. However, if the TERO Director and respondent mutually submit a request for a postponement because there is a possibility of settling the matter, the request for a postponement may be submitted at any time.

f. As presiding official, the Chairman of the TERO Commission will control the proceedings. He or she will take whatever action is necessary to insure an equitable, orderly and expeditious hearing. Parties will abide by the presiding official’s rulings. The presiding official has the authority, among other things, to:

1. Administer oaths or affirmations;
2. Regulate the course of the hearing;
3. Rule on offers of proof;
4. Limit the number of witnesses when testimony

would be unduly repetitious; and

5. Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing.
 - g. The TERO Director shall represent the TERO on all charges filed by it, even if the charge was initiated by a complaint filed by a private individual.
 - h. The respondent shall be present for the entire hearing and he or his representative (other than an attorney) shall represent him during the proceedings.
 - i. Either party may have an attorney present as an advisor. However, the attorney may not make any presentations, cross-examine witnesses or address the Commission.
 - j. The Commission shall have the hearing tape recorded in full and shall retain the tape(s) for no less than one (1) year after the hearing. The respondent shall also be permitted to tape the hearing.
 - k. Prohibition Against Reprisals: All parties shall have a right to testify on their own behalf, without fear of reprisal.
 - l. Starting Time: The hearing shall be open promptly at the time specified by the Commission.
 - m. Opening Statements: Both parties shall be allowed an opening statement.
 - n. Order of Proceeding: The Director will present the TERO's case first.
 - o. Examination and Cross Examination of Witnesses: Both Parties may subpoena and examine friendly and hostile witnesses. Both parties may examine and cross-examine witnesses. However, no harassment or efforts to intimidate witnesses at any point in their testimony will be tolerated. The testimony of all witnesses shall be under oath or affirmation.
 - p. Irrelevant Testimony: Both parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Commission shall prohibit any testimony that it deems clearly irrelevant in order to keep control of the hearing.
 - q. Written Testimony: Written Testimony will be admitted into evidence during the hearing only when a witness cannot appear in person. When a party wishes to use the written testimony of a witness who cannot appear, the party must submit, in advance of the hearing, a written explanation for the non-appearance of the witness to the TERO Commission. If the Commission is satisfied with the explanation, the party will obtain the testimony by means of an interrogatory. When, for reasons satisfactory to the TERO Commission, an interrogatory cannot be used, an affidavit or a deposition from the witness may be used. A signed, but unsworn statement will be admitted into evidence only under unusual circumstances and when the TERO Commission is satisfied the testimony cannot be obtained otherwise.

r. Closing Statement: Both parties shall be permitted a closing statement. The TERO Director shall proceed first.

s. Audience: The hearing shall be open to the public. However, it may remove any person who disrupts the hearing or behaves in an inappropriate manner.

t. The Decision: The decision shall be in writing and issued within thirty (30) days after the hearing. The decision shall consist of the following parts:

1. The facts,
2. The finding of violation or no violation on each
3. The orders or sanctions imposed, if any,
4. Information on the respondent's right to appeal.
5. Information on the authority of the Commission to
6. The injunctive or bonding requirements, if any, the Commission will seek from the court pending the completion of the appeal, or the running of the time for the appeal, if no appeal is filed.

u. If a decision is not issued within 30 days, the plaintiff may file a complaint in the Yakama Nation Tribal Court.

8.7 APPEALS. An appeal to the Yakama Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby. Upon appeal, the case shall be tried de novo. The appeal shall be taken by serving a written notice of appeal on the TERO Director within twenty days after the date of entry of the order. The notice of appeal shall:

- a. Set forth the order from which appeal is taken,
- b. Specify the grounds upon which reversal or modification of order is sought.

The order of the Commission shall abate pending the determination of the Yakama Tribal Court.

SECTION 9. TERO COMPLIANCE.

9.1 As of the effective date of this Ordinance, no employer may commence work on the Yakama Reservation without consulting with the Commission and the TERO Office, and signing an acceptable Compliance Plan and filing it with the Commission for meeting its obligations under this Ordinance.

SECTION 10. REPORTING AND ON-SITE INSPECTIONS.

10.1 Employers shall submit reports and other information requested by the Commission. The Commission shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Ordinance and rules, regulations and orders of the Commission. The Commission shall have the right to inspect and copy all relevant records of any employer, of any signatory union or subcontractor of any employer and shall have the right to speak to workers and conduct investigations on the job site. All information collected by the Commission shall be kept confidential unless disclosure is required during a hearing or appeal as provided in Section 8.6.

SECTION 11. PENALTIES FOR VIOLATIONS.

11.1 Any employer, contractor, subcontractor or union who violates this Ordinance or rules, regulations or orders of the commission shall be subject to penalties for such violations, including, but not limited to:

- a. Denial of right to commence or continue business inside the Yakama Reservation, and/or prohibition from engaging in future operations on the Yakama Reservation.
- b. Payment of back pay and damages to compensate any injured party, an order to summarily remove employees hired in violation of this Ordinance or rules, regulations and orders of the Commission, and/or an order requiring employment, promotion, and training of Indians injured by the violation.
- c. Imposition of monetary civil penalties.
- d. An order requiring changes in procedures and policies necessary to eliminate the violation.
- e. An order making any other provision deemed by the Commission necessary to alleviate, eliminate, or compensate any violation.

The maximum civil penalty that may be imposed is \$500.00 for each violation. Each day during which a violation exists shall constitute a separate violation.

SECTION 12. ORDERS TO THE YAKAMA TRIBAL POLICE.

12.1 The Yakama Tribal Police are hereby expressly authorized and directed to enforce such cease and desist or related order as may from time to time be properly issued by the Commission and the TERO Officer.

SECTION 13. PUBLICATION OF ORDINANCE.

13.1 The TERO Office and the Commission shall notify all employers of this Ordinance and their obligation to comply. All bid announcements issued by any Tribal, Federal, State, or other public or private entity shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and all rules, regulations and orders of the Commission. The Commission and the TERO Office shall send a copy of this Ordinance to every employer operating on the Yakama Reservation and any amendments or revisions thereafter, within 30 days of the effective date of this Ordinance.

SECTION 14. SEVERABILITY.

14.1 If any provision of this Ordinance, or its application to any person or circumstances is held invalid by the appropriate court of law, the remainder of the Ordinance, or the application of the provision to other persons or circumstances is not affected.

SECTION 15. SOVEREIGNTY. Nothing contained in this Ordinance shall constitute a waiver of Tribal Sovereignty or limit the application of Trust Responsibility by the United States Government.

SECTION 16. EFFECTIVE DATE.

This Ordinance shall be effective and enforceable from the date of its approval by the Yakama Tribal Council.

DATE _____, Yakama Tribal Council

CHAIRMAN, YAKAMA TRIBAL COUNCIL

C E R T I F I C A T I O N

The foregoing Ordinance Revision was adopted at a special meeting held on 2002, at which a quorum was present, and the ordinance was adopted by a vote of _____ FOR, and _____ AGAINST, the Chairman or the Vice-Chairman in his absence, being authorized to sign the Ordinance.

SECRETARY, YAKAMA TRIBAL COUNCIL