

THE YUROK TRIBE

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT



BID PACKET

Wautec Home & Facility Electrical Rehabilitation Project

Bid Due Date: December 15, 2016

Contact Person: Gino O'Rourke

Phone: (707) 482-1350 ext. 1359

Email: eorourke@yuroktribe.nsn.us

TABLE OF CONTENTS

Advertisement for Bids.....	1
Invitation to Bid.....	3
Attachment- A.....	6
Area Map	7
Attachment –B.....	8
Site Map/ Electrical information.....	9
Attachment-C.....	24
Bid Form	25
Contract Questionnaire.....	26
Non-collusive affidavit.....	28
Attachment- D.....	29
Work Order.....	30
Change order.....	31
Work Schedule.....	32
Sample contract.....	33
Attachment- E.....	44
Application for Contractor/ Business Certification.....	45
TERO Indian Preference Plan/ Labor Force Projection	50

TERO Employment Performance Review.....	56
TERO Job Request Form.....	57
TERO Weekly Labor Force Report.....	58
TERO Contractors Packet Info Sheet.....	59
TERO Ordinance 2014 with cover.....	61



Advertisement for Bids

The Yurok Tribe is soliciting sealed bids from California licensed contractors to provide electrical retrofits to residential homes and tribal facilities and electrical service connections to a newly constructed Pacific Gas & Electrical main line on the Yurok Reservation. The project will include the assessment and installation of all necessary electrical wiring, equipment and infrastructure required to connect approximately twenty (20) residential homes and six (6) non-residential tribal facilities to the Pacific Gas & Electric main electrical line. The residences and facilities are located in or near the community of Wautec, California (see Project Location Map – Attachment B). The non-residential tribal facilities consist of a fire station, water system, small laundry facility, a rural camp site and two churches.

The scope of work may include, but is not limited to, the items required to safely electrify residences and facilities:

1. Installation of interior and exterior electrical wiring, including electrical and telephone outlets;
2. Installation of customer owned service poles;
3. Installation of 100 amp electrical service panels;
4. Installation of 100 ampere transfer switches;
5. Installation of weather heads;
6. Installation of grounding;
7. Connection of existing wires from alternate sources;
8. Connection of residences/facilities to main PG&E electrical line; and
9. Other miscellaneous electrical work that may be required to successfully connect residences/facilitates to electrical power.

The contractor shall provide all required materials, tools, labor and other items required to successfully complete the work. All work must conform to Uniform Building Codes and Pacific Gas and Electrical standards and requirements. All workmanship must meet Pacific Gas & requirements and PG&E inspections, and meet the International Electrical Code, and Uniform Building Codes.

Since individual retrofit needs may vary from structure to structure, final work orders shall be negotiated utilizing line item costs identified by the bidder in their **Yurok Bid Form – Attachment C**.

After a contract is awarded, the successful bidder will be allowed to inspect each individual residence or tribal facility and develop an individual site cost proposal utilizing the line item costs identified in the **Yurok Bid Form - Attachment A**. The



Tribe shall then issue a **Work Order** to the contractor for specific projects. Projects may be awarded in smaller groups, based upon location and/or convenience.

All bidders must complete the attached **Yurok Bid Form – Attachment C**. The responsible bidder that provides the overall lowest and most reasonable line item cost projections will be selected. A 3% TERO fee shall be deducted from all contractor payments and therefore all bidders must include the 3% TERO fee in their line item bid amounts.

NOTE: THIS PROJECT IS SUBJECT TO THE DAVIS BACON AND RELATED ACTS. Certified Payrolls shall be submitted along with request for payments.

BID DEADLINE is December 15, 2016 at 3:00 pm, after which bids will be publically opened and read out loud in the lobby of the Yurok Tribal office in Klamath CA.

MAIL or HAND DELIVER BIDS TO

Attention: Gino O'Rourke
Yurok Tribe Klamath Office
P.O. Box 1027, 190 Klamath Blvd
Klamath, Ca 95548

FOR MORE INFORMATION CONTACT:

Gino O'Rourke at: 1(707) 482-1350 ext. 1359 or e-mail at eorourke@yuroktribe.nsn.us.



Invitation for Bid

INTRODUCTION

The Yurok Tribe is currently working on extending PG&E powerline for approximately 6.8 miles, from Mettah to Wautec, (Johnson's) California located on Highway 169, off Highway 96 near Weitchpec, CA, (**See Area Map - Attachment A**). The PG&E main electrical grid will be a combination of overhead and underground electrical lines (**See Wautec Line Extension Plans – Attachment B**).

The Tribe is currently soliciting bids for electrical retrofits and service connections for approximately twenty (20) residential homes and six (6) non-residential tribal facilities that have not previously had electrical grid power. Homes consist of a mixture of older and newer stick frame homes, as well as, mobile homes or travel trailers. The non-residential facilities, which include a fire station, water system, small laundry facility, a rural campsite and two churches. The location of these structures, as well as other contract documents and information, can be found on our website <http://www.yuroktribe.org/departments/planning/RequestforProposal.htm>

SCOPE OF WORK

The successful bidder (contractor) will inspect and assess each residence and structure to determine what is required to allow PG&E to electrify the residence or tribal facility.

The contractor will be responsible for furnishing all materials, labor, equipment and other required costs, including, but not limited to, electrical wiring, hardware, customer owned service poles, 100 amp electrical service panels, 100 ampere transfer switches, weather heads, electrical outlets, light fixtures, grounding, connection of existing wires from alternative energy sources such as solar and micro hydro systems, and generators.

Customer owned service poles must be purchased by the contractor from a PG&E approved materials provider. Installation of customer owned services poles must be installed in accordance with PG&E requirements and must meet all PG&E inspection requirements, including anchoring when required.

The contractor will be required to provide an inspection report to the Tribe and PGE prepared by a licensed electrician acceptable to PG&E that states all requirements have been met in conformance with Humboldt County's building code, as well as, PG&E's standards to allow the structure to be electrified by PG&E.

Electrical requirements and needs will vary from structure to structure. Therefore, the contractor will be required to inspect and make a house-by-house or facility assessment in order to develop and submit **Scope of Work** and **Cost Proposal** for each residence or facility. The contractor shall prepare individual **Cost Proposals** based upon prices provided by the contractor in their Bid **Form - Attachment C**. The Tribe shall then issue an authorized **Work Order – Attachment D** for each residence or facility. It will be the contractor's responsibility to



confirm with PG&E all requirements to connect the home or facility to PG&E grid power and to include all necessary costs in the contractors detailed site ***Cost Proposal***.

Projects may be awarded in smaller groups, based upon location and/or convenience. Upon approval of a ***Work Order*** by the Yurok Planning Director, the contractor will schedule the authorized work with the home-owner. Each residence or tribal facility will be allocated not to exceed budget which may not be surpassed without the written approval of the Yurok Planning Director. The project priority is to provide all necessary electrical work that allows the structure to be connected to the newly constructed PG&E electrical main grid.

The project must comply with the Davis Bacon and Related Acts. Certified Payrolls are required and must be submitted to the Project Manager prior to receiving payment for work.

All work must be in compliance to the Uniform Building Codes, International Electric Code, and PG&E standards and regulations.

BID INFORMATION

Requirements: All bidders must fill out and return the ***Contractor Questionnaire***, the ***Bid Form*** the ***Non-Collusive Affidavit*** and, if claiming Indian preference, the ***Application for Contractor Business Certification*** and other applicable bid/contract documents, listed on the website under Wautec Home & Facility Electrical Rehabilitation Project .

All bidders must have either a valid California 1) General Building Contractor's license, or 2) a C-10 Electrical Contractor License and be in good standing with the California Contractor Licensing Board. Bidders must provide their valid contractor's license number on the ***Contractor's Questionnaire (See Attachment C)***.

The Contractor must **not have** been deemed ineligible to receive Federal awards and contracts by the Federal Government at the time of bid submittal.

The Contractor must maintain workman's compensation insurance and liability insurance in an amount of not less than one million dollars (\$1,000,000.00). Proof of Liability and Worker's Compensation Insurance must be submitted prior to the issuance of the ***Notice to Proceed***.

Prevailing Wage- This project is subjected to Davis Bacon wages and Related Acts. Wage Determination (wage rates) can be found at <http://www.wdol.gov/dba.aspx>. Contractors will be required to submit Certified Payrolls to the Project Manager for all work completed under this contract.

TERO- All contractors contracting with the Yurok Tribe are subject to the ***Yurok Tribal Employment Rights (TERO) Ordinance***. The ordinance requires all contractors to obtain a



TERO permit from the Yurok Tribe's TERO Department before a *Notice to Proceed* is issued and work can be performed. A 3% TERO tax will be deducted from all payments made to the

contractor. Contractors are also required to submit a *Pre-Award Labor Force Projection Form (See Attachment D)* to the TERO Officer prior to receiving a TERO Permit.

Native American Preference If a qualified Native American owned Company comes within 5% percent of the lowest qualified bidder's total bid, that company may match the lowest bid and receive the award; unless the original lowest bidder is a Native American owned business. A Native American owned business is defined as a Business in which at least 51% of the Company is owned by a person who is an enrolled member of a federally recognized tribe. Any contractor claiming Native American preference shall fill out the form titled *Statement of Qualifications, Alaskan Native or Indian Owned Enterprise*.

Bids need to be turned in on or before **the deadline December 21, 2016 at 3:00 PM**. All bids must be submitted in a sealed envelope and can be turned in by hand or shipped to Gino O'Rourke at the Yurok Tribe Klamath office 190 Klamath Blvd Klamath, Ca 95548, or mailed to P.O. Box 1027. Bids will be publically opened in the lobby of the Yurok Tribe's office in Klamath at 3:01 on the deadline date. The bidder with the lowest total bid who is deemed responsible and responsive will be awarded the bid. The Yurok Tribe reserves the right to refuse any and all bids.

For more information

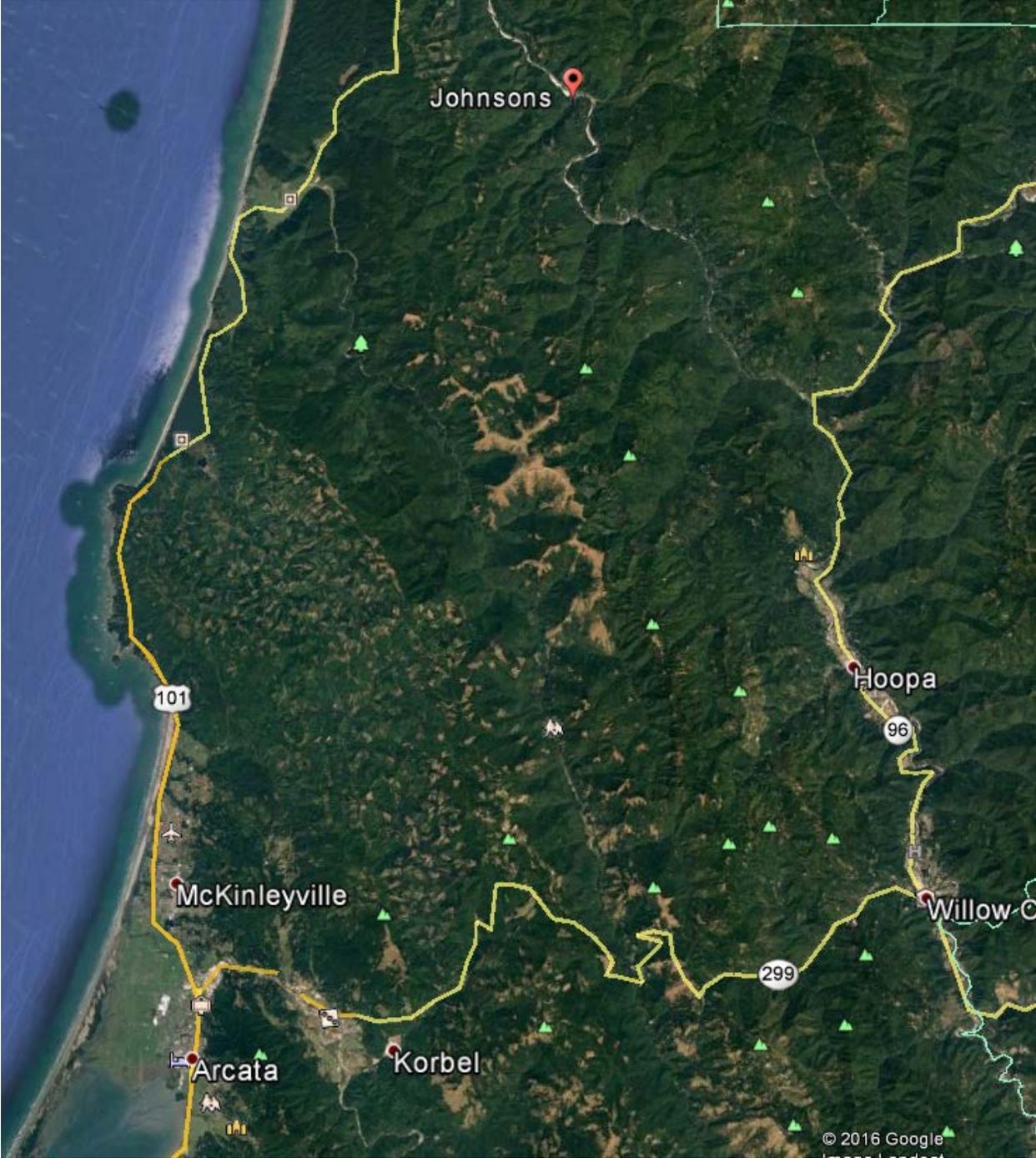
Contact: Gino O'Rourke

Phone: (707) 482- 1350 ext. 1359 or (707) 954-5306

Email: eorourke@yuroktribe.nsn.us

ATTACHMENT - A

Attachment A : Area Map



ATTACHMENT - B

ATTACHMENT - C

YUROK BID FORM

The *Cost Amount* shall include the cost of all materials, taxes, labor, travel, shipping, 3% Yurok Tribe TERO tax, etc. The *Cost Amount* will be used in order to evaluate the reasonableness of the bid. Individual Work Orders will be negotiated for each residence once a contract has been awarded.

#	Description	Unit	Cost Amount
1.	Customer owned permanent wood pole. Must meet all PG&E requirements, including all guying, bracing, required hardware and purchase from authorized PG&E supplier.	Cost per Pole	\$
2.	100 amp electrical service panel	Cost per residence	\$
3.	100 amp transfer switches	Cost per Residence	\$
4.	Weather heads	Cost per Residence	\$
5.	Duplex wall outlets	Cost per Outlet	\$
6.	30 amp electrical dyer receptacle/wiring	Cost per Outlet	\$
7.	40 amp electrical range/oven receptacle/wiring	Cost per Outlet	\$
8.	Combo smoke and carbon monoxide detector	Cost per Unit	\$
9.	Grounding	Cost per Residence	\$
10.	Electrical wiring	Cost per Linear Foot	\$
11.	Interior electrical conduit	Cost per Linear Foot	\$
12.	Trenching/ installation underground wiring, including all required conduit.	Cost per Linear Foot	\$
13.	Exterior electrical conduit	Cost per Linear Foot	
	TOTAL		

The undersigned BIDDER does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same work, and that it is made in pursuance of and subject to all the terms and conditions of the Construction Contract

Signature

Date

Title

Address

License No.

Expiration Date

CONTRACTOR QUESTIONNAIRE

NAME: _____

DUNS NUMBER: _____

D.B.A.: _____

STREET ADDRESS: _____

CITY: _____

TELEPHONE: _____

STATE: _____ LICENSE NO.: _____

TYPE: _____

BANK REFERENCES: _____

LIST THREE MOST RECENT /RELEVANT CONSTRUCTION JOBS BY NAME AND ADDRESS:

HOW LONG IN BUSINESS: _____ HOW MANY EMPLOYEES: _____

ARE YOU AN EQUAL OPPORTUNITY EMPLOYER? _____

ARE YOU ELIGIBLE TO PERFORM FEDERAL GOVERNMENT WORK? _____

NAME AND ADDRESS OF INSURANCE CARRIER: _____

Conflict of Interest: Are you or any member of your family related to any employee of the Owner or member of the governing board of the Owner?

No _____; Yes _____. If yes, please explain relationship:

HAVE YOU HAD NOW OR IN THE PAST ANY SANCTIONS IN YUROK TRIBAL COURT AND/OR WITH TERO?

No _____; Yes _____. If yes, please explain:

Signature of License Holder

Date _____

Signature of Company Representative
(if different)

Date _____

NON-COLLUSIVE AFFIDAVIT
FORM OF NON-COLLUSIVE AFFIDAVIT

AFFIDAVIT

State of _____)
County of _____) SS

_____, being first duly sworn, deposes and says:
(Print name)

That I am an owner, a partner or an officer of _____ the party making the foregoing proposal for bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not, in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price submitted or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Owner or any person interested in the proposed contract, and that all statements in said proposal for bid are true.

Project Name. _____

Location _____

Signature

Name and title

(Signature should be notarized.)

State of _____

County _____

of _____

Subscribed and sworn to (or affirmed) before me

Date

_____, Notary Public

(Name of Notary)

on this

(Date the Signer personally appeared and signed the document)

(Name of document signer (affiant))

Proved to me on the basis of satisfactory evidence to be the person who appeared before me.

WITNESS my hand and official Seal

Signature of Notary Public

(notary seal)

ATTACHMENT-D

Yurok Tribe Planning & Community Development

Project Work Order

Work Order No.:	Date:	Contract No.	
Description of Work:			
Original Contract Amount:		Work Order Amount:	
New Contract Amount: \$		Completion Date:	
Additional Information:			
Authorized By:		Accepted By:	
Date:		Date:	



CHANGE ORDER

ORDER NUMBER:

DATE:

AGREEMENT DATE:

NAME OF PROJECT:

OWNER:

CONTRACTOR:

PROJECT NUMBER:

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

CHANGE TO CONTRACT PRICE:

Original CONTRACT PRICE:

Current CONTRACT PRICE
(Includes previous CHANGE ORDER(s)):

Amount of this CHANGE ORDER (increase) (decrease):
The new CONTRACT PRICE including this CHANGE ORDER is:

Change to CONTRACT TIME: The CONTRACT TIME will be (increased)
(decreased) by calendar days. The date for completion of all work will be

Reviewed by Owner: _____

Accepted by Contractor: _____





CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT IS BETWEEN

Yurok Tribe PO Box 1027 190 Klamath Boulevard Klamath, California 95548 707-482-1350	AND	[contractor name] [contractor business name] [contractor address] [(xxx) xxx-xxxx]
--	-----	---

FOR THE YUROK TRIBE

Department:

Contact Person:

Phone Number:

Brief Description of Contract:

Contract Provisions At-a-Glance	
Contract Amount: _____	Contract Time Frame: _____
Department Code: _____	Project Code: _____
Account Code: _____	Agenda Item No.: _____

Department Review (please submit to departments in order listed):	
Department Director: _____	Date: _____
1) COMPLIANCE: _____	Date: _____
2) TERO: _____	Date: _____
3) LEGAL: _____	Date: _____
4) FISCAL: _____	Date: _____
5) EXECUTIVE: _____	Date: _____

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement, entered into as of the date of last signature ("Effective Date"), is between **YUROK TRIBE** and *[Insert Contractor Name]* ("Contractor") (collectively, "the Parties").

The Parties agree as follows:

1. **Project Covered.** Yurok Tribe hereby engages Contractor to provide _____ ("the Project"). *[Please fill in the blank with a brief description of the services to be provided. Requests for proposals, the proposal for services, the bid documents, or other documents specifying the services to be provided should be attached to the agreement. If appropriate, include the following sentence: Services will be provided as detailed in the Project request for proposals and Contractor's proposal for services, which are attached and incorporated into this Agreement.]*

2. **Taxpayer Identification Number.** Prior to commencing the Project, Contractor shall provide Yurok Tribe with a duly executed IRS Form W-9 and obtain an Employer Identification Number (EIN) from the IRS and an EDD registration number.

3. **No Training or Instructions.** Yurok Tribe enters into this Agreement based on Contractor's demonstrated ability to perform the type of services that it believes, and that Contractor has represented, are needed to accomplish the Project. Consequently, Yurok Tribe does not contemplate providing Contractor with any training or instructions with respect to the Project.

4. **Intent of Independent Contractor Relationship.**

(a) The Parties intend that the relationship created by this Agreement shall be that of service recipient and independent contractor.

(b) For all purposes, including but not limited to the Federal Insurance Contributions Act ("FICA"), the Social Security Act, the Federal Unemployment Tax Act ("FUTA"), income tax withholding requirements, California Personal Income Tax Withholding ("PIT"), California Unemployment taxes ("UI"), California Disability Insurance ("SDI"), and all other federal, state and local laws, rules and regulations, Contractor (and all Contractor's respective employees, if any) shall be treated as an

independent contractor and not as an employee with respect to Yurok Tribe.

5. **No Benefits.** None of the benefits that are provided by the Yurok Tribe to its employees shall be available to Contractor (or Contractor's employees, if any, which for purposes of this paragraph shall be included in the term "Contractor"). Contractor's exclusion from benefit programs maintained by Yurok Tribe is a material term of the terms of compensation negotiated by the Parties, and is not premised on Contractor's status as a non-employee with respect to Yurok Tribe. To the extent that Contractor may become eligible for any benefit programs maintained by Yurok Tribe (regardless of the timing of or reason for eligibility), Contractor hereby waives all rights to participate in these programs. Contractor's waiver is not conditioned on any representation or assumption concerning Contractor's status under the common law test. Contractor agrees that, consistent with his independent contractor status, Contractor will not apply for any government-sponsored benefits that are intended to apply to employees, including, but not limited to, unemployment benefits.

6. **Tax Reporting and Filing.** Contractor acknowledges and agrees that Contractor shall be responsible (as a self-employed individual) for filing all tax returns, tax declarations, and tax schedules, and for the payment of all taxes required, when due, with respect to all compensation earned by Contractor under this Agreement. Yurok Tribe will not withhold any employment taxes from compensation it pays Contractor. Rather, Yurok Tribe will report the amount it pays Contractor on IRS Forms 1099, to the extent required to do so under applicable Internal Revenue Code provisions and state or local law.

7. **Compensation.** Contractor's compensation for the Project shall not exceed \$_____, payable upon completion of the Project. Contractor shall be solely responsible for all costs incurred in connection with the accomplishment of the Project. Upon receiving each invoice for this contract, the Yurok Tribe Fiscal Department shall have thirty (30) working days to process payment. *[Generally, this section should include a provision indicating a maximum, do not exceed amount and state how compensation shall be paid, such as upon completion or monthly invoices. The maximum, total contract amount stated should include any TERO fee. It should also state whether travel expenses are included in the stated contract amount and if not, the maximum allowable travel amount. If appropriate to the contract, this section may also include the following sentence: Project costs shall not exceed the amount identified in this*

section unless agreed to in advance in writing by the Director of the [Insert contracting department name].]

8. **Liability Insurance.** [Generally, \$1,000,000 is an appropriate liability insurance amount. If the contracting department is unsure of what, if any, insurance is required, contact the Office of the Tribal Attorney and/or the Fiscal Department for help determining an appropriate amount.] Liability insurance in the amount of \$1,000,000 is required to be obtained by the Contractor no less than five (5) days prior to commencement of this project. A certificate of insurance naming the Yurok Tribe as additionally insured shall be filed with the Yurok Tribe at the same time. The Tribe will assume no liability based upon negligence or intentional acts of the Contractor and should such negligence or intentional acts occur, Contractor agrees to assume full liability and indemnify and hold Yurok Tribe harmless for all such actions.

9. **Equipment and Tools.** Contractor shall provide and be responsible for maintaining any equipment and tools that Contractor uses, or determines is necessary, to accomplish the Project.

10. **Manner, Time, and Location.** [Fill in specifics, attach an addendum such as a scope of work, or write in "Not applicable."]

11. **Right to Engage Assistants.** Contractor shall have the right to engage others to assist in the accomplishment of the Project. Contractor shall be solely responsible for paying all compensation owed to any assistants engaged and for paying, and/or withholding and remitting to the appropriate government agency, any applicable employment taxes that might be owed with respect to this compensation. Contractor also shall indemnify and hold Yurok Tribe harmless against any and all liabilities attributable to the obligations imposed on Contractor under this Paragraph 11. The Parties acknowledge that Contractor shall retain the exclusive right to determine which workers Contractor shall engage for these purposes. Contractor agrees to provide proof of Workers' Compensation insurance coverage for all assistants he engages.

12. **Tribal Employment Rights Ordinance (TERO).** Contractor acknowledges that Contractor has had the opportunity to read the Yurok Tribe TERO Ordinance, is fully aware of the legal effects of the TERO Ordinance on this agreement, and agrees to comply with the TERO Ordinance, including payment of all applicable TERO fees. **The TERO fee of _____ will be automatically deducted upon receipt of any invoice.** [Fill in the TERO fee percentage. The TERO

Ordinance calls for a one-time fee of 3% of the total contract for construction contracts or ½ of 1% for all other contracts. Education, cultural, child care, fiscal, and TERO contracts are exempt from the TERO fee. If the contracting department is unsure of what the appropriate TERO fee percentage or amount should be, contact the TERO Office.]

13. Performing Services for Others. Yurok Tribe agrees that Contractor may perform services for others, so long as the performance of these services does not interfere with the completion of the Project.

14. Status Reports. *[If status reports are required or desired, fill-in here. Otherwise attach an addendum, scope of work, or write in "Not applicable."]*

15. Confidentiality. Contractor agrees that it obtains only the right to use any data and information provided by the Yurok Tribe, its agents, or its representatives or developed by Contractor for the sole purpose of completing the Project. Contractor agrees that no right, title, or interest in or to any copyrights, trademarks, or other proprietary rights relating to the data or information is transferred or licensed from the Yurok Tribe to Contractor. This Agreement does not grant Contractor the right to reveal, discuss, or transfer any data to third parties, other than as provided in this Agreement. Contractor understands and agrees that, despite any wording to the contrary in this Agreement, it shall not transfer cultural data to third parties without written authorization from the Yurok Tribe. The provisions of this section will survive the expiration or termination of this Agreement.

16. Ownership of Information and Documents. Any and all data, information, discussions, memoranda, presentations and documents developed or prepared by Contractor for the Project shall be held in strict confidence and shall not be used by Contractor for any other work unless approved by the Yurok Tribe in writing prior to any disclosure of such information. The Yurok Tribe may require all such information to be marked with the legend "Property of the Yurok Tribe - Confidential - Do Not Disclose." Immediately upon expiration, suspension, or termination of this agreement, Contractor agrees to provide the Yurok Tribe all such data, documents, and other information, whether generated by Contractor or received by Contractor from the Yurok Tribe, that is in Contractor's possession or under its control. This shall not preclude disclosure of information pursuant to judicial or administrative processes of the Yurok Tribal Court or other court

with competent jurisdiction. The provisions of this section will survive the expiration or termination of this Agreement.

17. **Term; Completion Date.** Contractor agrees to complete the Project by no later than [REDACTED], 20[REDACTED]. Failure to complete the Project by [REDACTED], 20[REDACTED] shall subject Contractor to a financial obligation of \$150 per day. This Agreement shall expire upon completion of the Project unless otherwise terminated pursuant to the terms of this Agreement.

18. **Termination For Cause.** In the case of a material breach of this Agreement by one Party, the other Party shall have the right to terminate this Agreement with no advance notice if, after providing the breaching Party with notice of the breach, the breaching Party fails to cure the breach within ten (10) days after receipt of the notice of breach. In such case, the Yurok Tribe may complete the Project by whatever method the Yurok Tribe deems expedient.

19. **Termination by the Yurok Tribe for Convenience.** The Yurok Tribe reserves the right to terminate the Agreement at any time upon determination of the Tribal Council that it is in the best interest of the Yurok Tribe. The Yurok Tribe shall provide Contractor notice specifying the date of termination. All finished or unfinished work and materials previously paid for shall, at the option of the Yurok Tribe, become the Yurok Tribe's property. Contractor shall be paid for all costs incurred for work provided up to the date of termination.

20. **Sovereign Immunity.** Nothing in this agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Yurok Tribe or Yurok Tribal officials or employees acting within their official or individual capacities.

21. **Drug and Alcohol Policy.** Contractor and all employees or subcontractors of Contractor working on Tribal property are subject to the Yurok Tribe's Drug and Alcohol Free Workplace Policy.

22. **Clean Air Act.** Contractor and all employees or subcontractors of Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 40 U.S.C. 7401 et seq. The Contractor further agrees to report each violation to the Yurok Tribal Environmental Program ("YTEP") and understands and agrees that YTEP will, in turn, report each violation as required to assure notification to the Federal

Emergency Management Agency ("FEMA"), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$100,000.00 financed in whole or in part with Federal assistance provided by FEMA. Delete/remove this Section if contract amount in Section 7 is \$150,000.00 or less.

23. Federal Water Pollution Control Act. Contractor and all employees or subcontractors of Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Act, as amended, 33 U.S.C. 1251 et seq. The Contractor further agrees to report each violation to the Yurok Tribal Environmental Program ("YTEP") and understands and agrees that YTEP will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency ("FEMA"), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$100,000.00 financed in whole or in part with Federal assistance provided by FEMA. Delete/remove this Section if contract amount in Section 7 is \$150,000.00 or less.

24. Contract Work Hours and Safety Standards Act.

- a. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause

set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

- c. Withholding for unpaid wages and liquidated damages. The Yurok Tribe shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. No Contractor and all employees or subcontractors of Contractor are subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-370), as amended.

Delete/remove this Section if contract amount in Section 7 is \$100,000 or less OR contract does not involvement employment of "mechanics or laborers".

25. **Indemnification.** Contractor indemnifies and holds harmless Yurok Tribe from and against any and all liabilities, losses, damages, claims or causes of action, and any connected expenses (including reasonable attorneys' fees) that are caused, directly or indirectly, by or as a result of the performance by Contractor or its employees or agents of the Project. The Yurok Tribe indemnifies Contractor for any and all claims resulting from the Yurok Tribe's use of data, documents, or other information prepared by the Contractor for the Project for purposes beyond those of this Agreement.

26. **Performance Bond.** The Tribe reserves the right to require that a bond satisfactory to the Approving officer in an amount equal to the value of this contract be delivered before a notice to proceed is issued.

27. **Notices.** Any notice under this Agreement must be in writing and shall be effective upon delivery by hand or three (3) business

days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to Yurok Tribe or to Contractor at the corresponding address below. Contractor shall be obligated to notify Yurok Tribe in writing of any change in his address. Notice of change of address shall be effective only when done in accordance with this Paragraph.

Yurok Tribe's Notice Address:

[tribal contact person]
[tribal department]
Yurok Tribe
PO Box 1027
190 Klamath Boulevard
Klamath, California 95548
(707) 482-1350

Contractor's Notice Address:

[contractor name]
[contractor business name]
[contractor address]
[(xxx) xxx-xxxx]

28. **Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of Contractor's engagement by Yurok Tribe. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the engagement of Contractor, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of Yurok Tribe, now or in the future, apply to Contractor and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

29. **Amendments; Waivers.** This Agreement may not be amended except by an instrument in writing, signed by each of the Parties. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

30. **Assignment; Successors and Assigns.** Neither Yurok Tribe nor Contractor shall assign any rights or obligations under this Agreement.

31. **Severability.** If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect, however, nothing in this section shall be construed to waive the Yurok Tribe's sovereign immunity.

32. **Account Number.** Payment for services rendered by Contractor shall be made from account number **[Insert project number]**.

33. **Dispute Resolution.** In the event of any dispute between the Parties, Contractor will not stop work but will continue to diligently complete the Project in the manner directed by the Yurok Tribe. The Parties agree that any and all actions which may arise from or out of this dispute that cannot be amicably resolved shall be adjudicated in Yurok Tribal Court. This Agreement shall be governed by and construed in accordance with the law of the Yurok Tribe.

34. **Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the Party receiving a benefit nor against the Party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

35. **Contractor Acknowledgment.** Contractor acknowledges that Contractor has read and understands this agreement and has had the opportunity to consult legal counsel in regard to this Agreement. Contractor further acknowledges that Contractor has entered into it freely and voluntarily and based on Contractor's own judgment and not on any representations or promises other than those contained in this Agreement and further agrees to submit to the jurisdiction of the Yurok Tribal Court for all actions arising out of this Agreement.

The Parties have duly executed this Agreement as of the date of last signature.

[INSERT NAME OF CONTRACTOR]

_____ Date: _____
[Authorized signer name]
[Authorized signer's position with Contractor]

YUROK TRIBE

_____ Date: _____
[Department manager name]
[Tribal Department]

_____ Date: _____
Thomas O'Rourke, Sr., Chair
Yurok Tribe

Brief Description of Contract:
[Copy and paste brief description from page 1 here]

ATTACHMENT-E

YUROK TRIBE

TRIBAL EMPLOYMENT RIGHTS OFFICE

190 Klamath Blvd., P.O. Box 1027 Klamath, California 95548 (707) 482-1350 ext1388 (707) 482-1377 Fax



A Contractor/Business must pre-register with the Yurok Tribe TERO to be placed on a “bidders” list certified as Indian Preference. A Contractor’s/Business certification must be submitted by each contractor/business interested in bidding on a job within the jurisdiction of the Yurok Tribe. If a Contractor/Business intends to subcontract any portion of the work on which it is bidding, it may only utilize subcontractors that are also registered. Thus, each prospective contractor/business, and all subcontractors it will employ, must complete a separate certification.

This certification is not a public record and is not open to public inspection. All information provided will be kept confidential to the extent permitted by law. The Yurok Tribe reserves the right to reject any and all “certification forms” and to waive any irregularities in the information contained therein. Each certifying contractor/business shall be required to re-submit a new certification annually, although the Yurok Tribe reserves the right to require a contractor to submit a new certification at any time. An individual who has the legal authority to bind the contractor or subcontractor on whose behalf that person is signing must sign each certification under penalty of perjury. If any information provided by a contractor/business or subcontractor becomes inaccurate, the party that provided the information must immediately notify the TERO and provide updated accurate information in writing and under penalty of perjury.

INDIAN PREFERENCE CERTIFICATION

This certification is also intended for certification of a majority or wholly-owned Native American business interested in providing their services and/or products via contracting opportunities under the purview of the TERO program as provided for by the Indian Self-Determination and Education Assistance Act, (P.L. 93-638), specifically 7(b), and other applicable federal and tribal laws.

Certification of Native American-owned businesses is designed to: 1.) Verify that the applicant is Native American; 2.) That the applicant is majority owner, if not 100% of the business, and; 3.) That the applicant is the primary beneficiary of the business being certified. Documentation and information required is essential to fulfill the criteria. Any deliberate or intentional effort to misrepresent the ownership of the business applying for certification will result in exclusion of contract opportunities by the Yurok Tribe.

GENERAL INFORMATION:

1. **Firm Name and Address:** _____

Telephone Number(s): _____

Fax Number: _____

E-mail or Web Site: _____

Contractors/Business License # _____

**Please Provide Proof of Licensing:
California State Licensing Board (CSLB) Include all licenses
E.g. Electrical, Plumbing, Roofing, etc.**

Has License been revoked at any time in the last five years? Yes No
If yes, please use a separate sheet to explain.

Has Contractor filed bankruptcy within the last 10 years? Yes No

Federal Identification No: _____

**Please Provide Proof of Certification:
From any state Minority Business Enterprise (MBE), Women Business Enterprises (WBE),
Disadvantaged Business Enterprises (DVBE), or Emerging Small Business (ESB) program.**

State(s) Certified: _____

Small Business Administration 8(a) Certification No.: _____ Expires: _____

Yurok Tribe Incorporation I.D. No.: _____

2. **Type of Business:** _____

3. **Organizational Structure:**

_____ SOLE PROPRIETOR

_____ PARTNERSHIP

_____ CORPORATION

_____ JOINT VENTURE

_____ OTHER

4. **Name of Owner/Owners:** _____

5. **Tribal Affiliation of Owner Claiming Indian Preference:** _____
Please Provide Proof of Tribal Enrollment

(Must be supported by documentation from the Bureau of Indian Affairs and/or Tribal Chief or Chairman). Please attach a copy of Indian Preference Verification for each officer, partner, or individual designated as an Indian if filing as a Partnership or Corporation.

If your company is either a Partnership or Corporation, explain in narrative form, the stock ownership, structure, management, control, financing, and salary or profit sharing arrangements of the enterprise. Attach copies of all shareholder agreements, including voting trust, employment contracts, agreements between owners and enterprise. Include information on salaries, fees, profit sharing, material purchases, and equipment lease or purchase agreements. Evidence relating to structure, management, control, and financing should be specifically included. Also, list the specific management responsibilities of each principal, sole proprietor, partner, or party to a joint venture.

6. **Ownership Interest:** _____ PARTIAL (List percentages of Ownership)
_____ 100% OWNERSHIP

7. Provide a listing of individuals and organizational structure of your firm's management staff. Also, provide resumes for Key Personnel. Indicate the core crew employees in your work force, their job titles, and whether they are Indian or Non-Indian. Core crew is defined as an individual who is either a current bonafide employee or who is not a current employee but who is regularly employed in a supervisory or other key skilled position when work is available. ***Attach a separate list to this questionnaire.

8. Specify, what type of construction/contracting your firm engages in:

9. **Geographical Area of Interest:** _____

10. Magnitude of Project on which you desire to bid (If Applicable):

Under \$25,000 _____
Up to \$200,000 _____
Up to \$500,000 _____
Up to \$1,000,000 _____
Over \$1,000,000 _____

11. Experience:

Please list at least five (5) of your most recent projects. Give name of an Individual for your Reference:

PROJECT	AMOUNT	REFERENCE	PRIME/SUB
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

12. SUBCONTRACTORS:

List six subcontractors with whom your company currently does the most business.

COMPANY	CONTACT PERSON	PHONE #
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

13. SUPPLIERS:

List four or more major suppliers from whom you purchase construction materials. Include names and phone numbers.

SUPPLIER NAME	PHONE NUMBER
_____	_____
_____	_____
_____	_____
_____	_____

CERTIFICATION

I CERTIFY THAT ALL STATEMENTS MADE BY ME ON THIS CONTRACTOR'S CERTIFICATION ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HEREBY GRANT PERMISSION TO THE YUOK TRIBE AND TERO TO CONFIRM BY PERSONAL INQUIRY OR OTHERWISE, THE INFORMATION I HAVE PROVIDED. I UNDERSTAND THAT ANY WILLFUL MISREPRESENTATION OF FACTS GIVEN TO THIS PROCESS IS GROUNDS FOR REJECTION OF THIS QUALIFICATION FOR INDIAN PREFERENCE CONTRACTOR'S CERTIFICATION OR DISMISSAL IF EMPLOYED. I RELEASE ALL PERSONS CONNECTED WITH ANY REQUESTS FOR INFORMATION FROM ALL CLAIMS, LIABILITY, AND DAMAGES FOR WHATEVER REASON ARISING OUT OF FURNISHING THE INFORMATION.

I hereby acknowledge that I have read and understand the above statement.

OWNER/CONTRACTOR'S SIGNATURE

DATE

PARTNER'S SIGNATURE (IF APPLICABLE)

DATE

IF APPLICANT IS A CORPORATION
AFFIX CORPORATE SEAL:

CORPORATE SEAL

BY: _____
SIGNATURE

PRESIDENT'S
DATE

ATTESTED BY: _____
CORPORATE SECRETARY

DATE

APPROVED FOR INDIAN PREFERENCE BY:

Donald Barnes - TERO Director
TRIBAL EMPLOYMENT RIGHTS OFFICE

DATE

Office Use Only:

Indian Preference

Expiration Date:

YUROK TRIBE

TRIBAL EMPLOYMENT RIGHTS OFFICE

190 Klamath Blvd., P.O. Box 1027 Klamath, California 95548 (707) 482-1350 (707) 482-1377 Fax



Jobs in the private employment sector are an important resource on the Yurok Reservation, thus the Yurok Tribe is committed to securing such jobs for its Tribal members and local Indians as they become available. Furthermore, the Tribe helps drive the local economy and asks employers to use local goods and services when developing a project, with first preference given to qualified Indian-owned businesses and entrepreneurs.

Contractor Obligations:

As a contractor/subcontractor conducting business within the Yurok Tribe’s Ancestral Territory, or with the Yurok Indian Housing Authority (YIHA), your specific obligations under the Tribal Employment Rights Ordinance (TERO), TERO Permit and Indian Preference Plan include the following:

1. Provide TERO with a precise listing of positions you will use on this project from the superintendent on down, and the number of each craft. Contractors/employees shall be required to hire and maintain as many local Tribal Members as apply for and are qualified for each craft or skill. The order of hiring shall be according to the Tribe’s Hiring Preference Policy as follows:
 - Tier 1: Qualified Yurok Tribal Members
 - Tier 2: Spouses of Yurok Tribal Members
 - Tier 3: Other Indians of Federally recognized Tribes
 - Other qualified persons
2. Identification of Core/Key Employees. A Core/Key employee is an employee of a covered employer in a managerial or project supervisory position, or who performs an essential job function as identified on a case by case basis by TERO and prior to issuance of a TERO Permit.
3. The contracting and subcontracting preference shall be manifested through giving bidding preference to Indian-owned businesses. Indian Preference Applications and Certification are obtained through the TERO Office.
4. Inform TERO of all signatory trade unions to be involved in the project. TERO obligations have priority over union obligations by a contractor signatory to any trade unions. However, TERO will consider Indian workers of the trade unions in order for contractors to meet their hiring goals.

5. Notify TERO of all job vacancies. All available Indian applicants shall be considered first before any non-Indians are considered for employment and training. If no qualified Indians are available, TERO will provide a consent form to waive this obligation.
6. Employees referred by the TERO office will have preference in retention of employment from the beginning to the end of the project. Inform TERO of any lay-offs.
7. Before any TERO referral is terminated from the project you must inform TERO immediately to allow for informal counseling.
8. Allow on-site inspections by TERO representatives.
9. Provide copies of certified payroll reports to the TERO office upon request.
10. No work on the scheduled project will begin until all applicable agreements are signed and a TERO Permit has been issued. Failure to sign the required agreements shall serve as just cause for the contractor/subcontractor to be subject to sanction(s) as prescribed in the TERO Ordinance.
11. Any employer, contractor, subcontractor, or union who violates the TERO Ordinance or the rules, regulations, or orders promulgated by the TERO Officer or Council will be subject to penalties for such violations, including the maximum monetary civil penalty permitted under the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302. Every day during which a violation exists shall be deemed a separate occurrence. (See the Yurok Tribe TERO Ordinance, Chapter 8, for Enforcement & Sanctions.)

Certification of Service:

I, _____, respectfully submit as evidence by my signature that I understand my obligations of Indian Preference hiring as a contractor conducting business on the Yurok Reservation or with the Yurok Indian Housing Authority. I attest to the fact that the TERO representative whose signature is found below did in fact explain these specific obligations and allowed for an opportunity to represent questions, comment or discussion on these requirements related to this agreement.

Company/Contract Representative	Position	Date

Company Name

TERO Representative	Position	Date
---------------------	----------	------

Labor Force Projection - Section A: Project Information

PROJECT:			
EMPLOYER/SUPPLIER:			
MAILING ADDRESS:	CITY	STATE:	ZIP:
E-MAIL:	PHONE:	FAX:	CELL:
CONTACT PERSON:	PHONE:		
SCOPE OF WORK:			
START DATE:	COMPLETION DATE:		
AMOUNT OF CONTRACT:	TERO FEE: 3% of Total Project Cost		

TERO Fee:

With respect to each project/contract or subcontract of \$5,000.00 or more, operating within the exterior boundaries of the Yurok Indian Reservation or with the Yurok Indian Housing Authority, the contractor shall pay a onetime fee of 3% of the total project/contract costs (i.e. equipment, labor, materials and operations), and any increase of the contract/project or subcontract amount prior to commencing work. If the covered employer initially enters into a contract/project or subcontract of less than \$5,000.00, but subsequently increases costs, as a result in the total contract/project or subcontract amount of \$5,000.00 or more, the fee shall apply to the total amount including increases.

Checks are to be made payable to: YUROK TRIBE TERO.

Job Qualifications, Personnel Requirements & Cultural Traditions Requirement:

An employer may not use any job qualification criteria or personnel requirements which serve as barriers to the employment of Native Americans which are not required by business necessity. Any education &/or certification(s) required of TERO members for employment must also be provided for all employees of the covered employers within the same classification. The TERO Officer will review the job duties and may require the employer to eliminate the personnel requirements at issue. Employers shall also make reasonable accommodation to the tribal holidays and cultural traditions of Native workers.

Labor Force Projection - Section B: Work Force

Core/Key Employees:

Name	Position	Wage	Hire Date	Native: Y/N

Tribal Member Hiring:

The TERO representative shall establish and administer a Tribal hiring opportunity to assist employers in placing preferred employees in job positions. An employer may recruit and hire workers from whatever sources are available to them to achieve the same preference hiring goals, but is subject to inform the TERO representative. The employer may not employ a nonlocal Indian until the employer has given the TERO office 72 hours to locate and refer a qualified local Indian.

Positions needed for Project	# of Positions	Wage	Start Date/End Date

Contracting & Subcontracting:

The preference requirements contained in the TERO Ordinance shall be binding on all contractors and subcontractors, regardless of tier, and shall be deemed a part of all resulting subcontract specifications. The covered employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements. TERO Certified Indian Firms that are qualified and come within 5% of the low bid, will be provided negotiated preference.

All Subcontractors must submit an Indian Preference Plan to be negotiated with TERO.

Labor Force Projection - Section C: Compliance

I declare that all the answers and statements are true, correct and complete to the best of my knowledge. I understand that untruthful or misleading answers are cause for denial of my application and may follow under the Yurok Tribe TERO Ordinance, Chapter 8: **Enforcement and Sanctions** - A covered employer who violates this ordinance shall be subject to sanctions for such violations. Such sanctions shall be remedial in nature and shall be designed and intended to compel compliance, prevent future violation, or compensate injured parties and shall include, but not be limited to:

- Denial of right to commence or continue business or contracts inside the Yurok Indian Reservation, with a Tribal entity, or involving Tribal funds;
- Suspension of all operations inside the Reservation;
- Debarment or prohibition from engaging in commerce or contracts on Yurok lands;
- Payment of back pay and damages to compensate any injured party;
- An order to stop work until the provisions of the TERO ordinance are satisfied;
- An order to summarily remove employees hired in violation of the TERO Ordinance;
- An order requiring employment, promotion and training of Indians injured by the violation;
- An order mandating changes in procedures and policies necessary to eliminate or correct the violation;

YUROK TRIBE

TRIBAL EMPLOYMENT RIGHTS OFFICE

190 Klamath Blvd., P.O. Box 1027 Klamath, California 95548 (707) 482-1350 Fax (707) 482-1377



Employee Name:				Date Hired:	
Job Title:				Reviewer:	
Date of Review:		Next Review:		<input type="checkbox"/> 30 Days <input type="checkbox"/> 90 Days <input type="checkbox"/> 1 Year	
Performance Evaluation	Excellent	Good	Fair	Poor	Comments
Job Knowledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Productivity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Work Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Technical Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Work Consistency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Enthusiasm	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Cooperation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Attitude	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Initiative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Work Relations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Creativity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Punctuality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Attendance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Dependability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Communication Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Leadership Ability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Overall Rating	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Development Opportunities					
Reviewer's Comments					

By signing this form you are confirming this evaluation is true to the best of your knowledge as a representative of the business listed below and is for the sole purpose of following up on a job referral from the Yurok Tribe TERO Department and compliance.

Reviewer's Signature

Business Name

Date

TRIBAL EMPLOYMENT RIGHTS OFFICE

190 Klamath Blvd., P.O. Box 1027 Klamath, California 95548 (707) 482-1350 Fax (707) 482-1377



JOB REQUEST FORM



Position:		Employer:	
Project:		Physical Location of Job:	
Report to:	Title:	Phone:	
Today's Date:		Job Start Date:	
Work Days: <input type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> T <input type="checkbox"/> F <input type="checkbox"/> S		No. of Positions:	
Type of Employment: <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time		Wage: \$	
<input type="checkbox"/> Temporary <input type="checkbox"/> Seasonal		<input type="checkbox"/> Hourly <input type="checkbox"/> Monthly <input type="checkbox"/> Annually	
Skills Required (Include job description):			
Driver's License Required: <input type="checkbox"/> Yes <input type="checkbox"/> No CDL Class: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D Motor Vehicle Record: <input type="checkbox"/> Yes <input type="checkbox"/> No			
Certification Required: <input type="checkbox"/> OSHA <input type="checkbox"/> HAZMAT <input type="checkbox"/> CPR/First Aid <input type="checkbox"/> Flagger <input type="checkbox"/> Food Handler <input type="checkbox"/> EMT/CNA			
<small>**Any education &/or certification(s) required of TERO members for employment must also be provided for all employees of the covered employers within the same classification.**</small>			

TERO Applicant Referral List (provided by TERO only):

Name	Phone #	Reference/Phone #
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

TERO Authorization

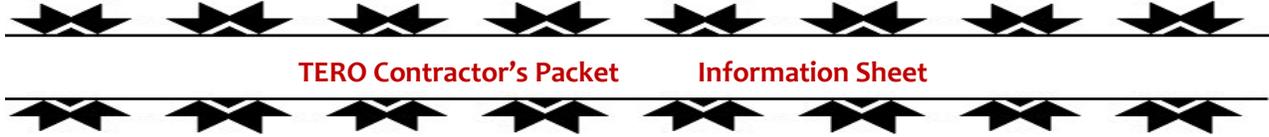
Date

TERO JOB REQUEST FORM

YUROK TRIBE

TRIBAL EMPLOYMENT RIGHTS OFFICE

190 Klamath Blvd., P.O. Box 1027 Klamath, California 95548 (707) 482-1350 Fax (707) 482-1377



Dear Perspective Contractor/Business Owner,

Thank you for your interest in becoming an active contractor/business owner with the Yurok Tribe. Attached, you will find all paperwork necessary for you to be eligible and compliant with TERO and our Ordinance. Please read all documentation provided and return any relevant documents to TERO.

The paperwork attached for you are as follows:

Read & Submit for issuance of TERO Permit, **BEFORE contracted work begins:**

1. **TERO Ordinance** - For your reference, our legal document that outlines TERO's authority/jurisdiction with respect to employment and contracts/contractors. Please review.
2. **Indian Preference (IP) Plan** - Labor force must be negotiated before work begins. Only identify Core/Key crew, as the rest will be negotiated between contractor and TERO by skill set/type. Once we have a complete IP Plan in place for all contractors, a TERO Permit will be issued for the contracted work.

For use **DURING contracted work:**

3. **Job Request Form** - For you to use once work has begun and if it is determined you have more labor force needs that were not met via the I.P. Plan. If a labor need arises, simply fill out the top of the form, including all specific skills needed for the position, email/fax it to TERO, and we will see if we can accommodate the request with our membership. If we do have qualified members, we will send you a list with their qualifications, and it is then up to you to screen and contact them in any manner you see fit. We simply ask that you notify TERO on any member(s)

selected. If we do not have any qualified members, we will send you a waiver of Indian Preference so you can bring onto the job anyone you choose.

4. **Employee Performance Review** - TERO asks that employers submit an Employment Performance Evaluation for all TERO members weekly. If a TERO member is not meeting employment expectations, documentation is needed from the member's acting supervisor/foreman. TERO will work with the contractor and member to resolve any performance issues, ranging from developing an Employee Improvement Plan up to and including removal of the TERO member.

5. **Weekly Labor Force Report** - documents the amount of hours worked for all employees of the contractor on the job. Please submit this report no later than Monday following the reporting week.

I have also attached a **Contractor Application** which will allow access to inclusion in our Contractor/Business database. With inclusion, TERO will notify you when economic possibilities arise on Yurok Country. You will also be notified when training and other small business opportunities are presented.

If you have any questions please feel free to contact TERO. We look forward to working with you in the future.

Don Barnes

TERO Director & Compliance Officer



THE YUROK TRIBE



TRIBAL EMPLOJMENT RIGHTS ORDINANCE



OF THE

YUROK TRIBE

Yurok Tribal Code, Business and Labor

YUROK TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE

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

TABLE OF CONTENTS

GENERAL PROVISIONS.....64
SECTION 4001. Short Title 64
SECTION 4002. Findings..... 64
SECTION 4003. Purpose..... 65
SECTION 4004. Scope 65
SECTION 4005. Sovereign Immunity Preserved 65
SECTION 4006. Effective Date..... 66
SECTION 4008. Severability 66
SECTION 4009. Definitions 66
CHAPTER 1. TRIBAL EMPLOYMENT RIGHTS OFFICE.....69
SECTION 4101. Establishment and Organization of TERO 69
SECTION 4102. Duties of TERO Officer 69
SECTION 4103. Powers and Authorities of TERO Officer 69
SECTION 4104. Inspections 70
CHAPTER 2. OVERSIGHT BY TRIBAL COUNCIL.....70
SECTION 4201. Powers and Authorities of Council..... 70
SECTION 4202. Complaints Against TERO..... 71
CHAPTER 3. INDIAN PREFERENCE IN EMPLOYMENT71
SECTION 4301. Indian Preference in Employment..... 71
SECTION 4302. Covered Positions..... 71
SECTION 4303. Qualified Indians 72
SECTION 4304. Eligible Indians 72
SECTION 4305. Proof of Yurok or Indian Eligibility 72
SECTION 4306. Tribal Skills Bank..... 73

SECTION 4307. TERO Card.....	73
CHAPTER 4. INDIAN PREFERENCE IN CONTRACTING.....	73
SECTION 4401. Indian Preference in Contracting.....	73
SECTION 4402. Indian Firm Eligibility Requirements.....	74
SECTION 4403. Certification of an Indian Firm.....	74
SECTION 4404. Eligible Indian Firms.....	75
SECTION 4405. Specific Indian Preference Obligations of Contractors.....	76
SECTION 4406. Subcontractors.....	77
SECTION 4407. Unions.....	77
SECTION 4408. Tribal Prevailing Wage.....	77
CHAPTER 5. IMPLEMENTATION OF INDIAN PREFERENCE IN CONTRACTING.....	77
SECTION 4501. Indian Preference Plan.....	77
SECTION 4502. Indian Preference Goals for Indian Preference Plan.....	78
SECTION 4503. TERO Permit.....	78
SECTION 4504. Ongoing TERO Compliance; Filling Available Positions.....	78
SECTION 4505. Final Payment; Compliance.....	79
SECTION 4506. Training.....	79
SECTION 4507. Layoffs or Reductions in Workforce.....	80
SECTION 4508. Promotions.....	80
SECTION 4509. Employment Procedures.....	80
SECTION 4510. Prohibition Against Retaliation.....	80
CHAPTER 6. TERO FEE IN CONTRACTING.....	81
SECTION 4601. TERO Fee.....	81
SECTION 4602. TERO Fee Collection.....	81
SECTION 4603. TERO Fee Exemption.....	82
SECTION 4604. TERO Fee Reconciliation.....	82
CHAPTER 7. HEARINGS AND APPEALS.....	82
SECTION 4701. Filing Procedure for Alleged Violation.....	82
SECTION 4702. Investigation by TERO Officer.....	82
SECTION 4703. Issuance of Citation.....	83

SECTION 4704. TERO Officer Hearing Procedures 83

SECTION 4705. Emergency Relief..... 84

SECTION 4706. Administrative Appeals..... 84

SECTION 4707. Final Administrative Action 84

CHAPTER 8. ENFORCEMENT AND SANCTIONS 84

SECTION 4801. Sanctions 84

SECTION 4802. TERO Applicant Responsibilities 85

SECTION 4803. Willful Violation of TERO Ordinance 85

SECTION 4804. Debarment 86

SECTION 4805. Monetary Civil Penalties 86

SECTION 4806. Late Payment of Fees; Interest..... 86

SECTION 4807. Enforcement; Costs..... 86

CHAPTER 9. TRIBAL COURT REVIEW AND ENFORCEMENT..... 86

SECTION 4901. Tribal Court Review of Decisions..... 86

SECTION 4902. Standard of Judicial Review 87

SECTION 4903. Tribal Court Enforcement of Decisions..... 87

SECTION 4904. Remedies 87

GENERAL PROVISIONS

SECTION 4001. Short Title

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

SECTION 4002. Findings

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

- (a) Title VII of the Civil Rights Act, including section 703(i), which makes Indian and Tribal member preference in employment possible.
- (b) Executive Order 11246, enforced by the Office of Federal Contract Compliance Programs and exempting from the general requirements contractors extending preference in employment for Indians living on or near an Indian Reservation, and which further

prohibits discrimination among Indians as a group on the basis of religion, sex, or tribal affiliation. Executive Order 11246 applies only to employers working under federal contracts.

- (c) The Indian Self-Determination Act, Section 7(b) of Public Law 93-638, which provides for Indian preference in employment, training, and contracting or subcontracting on all contracts negotiated or let on behalf of an Indian Tribe.
- (d) The Indian Civil Rights Act of 1968, which prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights similar to those individual rights guaranteed under the Bill of Rights of the United States Constitution.

SECTION 4003. Purpose

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

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

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

SECTION 4004. Scope

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

SECTION 4005. Sovereign Immunity Preserved

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

SECTION 4006. Effective Date

This ordinance shall take effect immediately after its adoption by Council.

Commentary: This ordinance is not intended to apply retroactively to contracts or contractors. Contracts previously determined to be exempt from TERO requirements under the previous TERO Ordinance should remain exempt. Contractors operating pursuant to a valid TERO Permit under the previous TERO Ordinance may continue to operate pursuant to that permit, including use of an Indian firm. Upon enactment of this ordinance, however, TERO may send notice to existing Indian firms requiring that such firms demonstrate Indian firm certification requirements pursuant to this ordinance before such entities could receive Indian preference in contracting.

SECTION 4007. Repeal of Conflicting Ordinance Provisions

The Yurok Tribal Employment Rights Ordinance previously enacted by the Tribal Council on October 22, 2003, and subsequently amended on June 9, 2005, is hereby repealed. All prior ordinance provisions or resolutions previously enacted by the Tribal Council and inconsistent with the provisions of this ordinance are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance or resolution, the provisions of this ordinance shall control.

SECTION 4008. Severability

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

SECTION 4009. Definitions

- (a) *Contractor* means a covered employer who undertakes a contract or subcontract for supplies, services, labor, or materials where:
 - (1) The total contract amount exceeds:
 - (A) \$5,000 in the case of a construction contract, or (B) \$2,000 in the case of a non-construction contract; and
 - (2) Either of the following two conditions are satisfied:
 - (A) The majority of the work under the contract or subcontract will occur on Yurok lands, or
 - (B) The work utilizes Tribal funds.

Commentary: This definition of contractor includes any contractor contracting with the Tribe or a Tribal entity. Such contracts always utilize Tribal funds either in the contract itself or in contract administration and constitute a consensual relationship with the Tribe for purposes of civil jurisdiction over the contractor.

The intent of subsection (a)(1) is to limit application of the TERO Permit and TERO fee provisions of this ordinance to construction contracts that total more than \$5,000 and non-construction contracts that total more than \$2,000. If a contract does not meet this threshold amount, then the contractor would not be subject to Indian Preference Plan and TERO Permit requirements or the TERO fee. Covered employers would still need to give preference under section 4401 to Indian firms when awarding contracts.

The TERO Officer maintains authority to enforce this ordinance if the TERO Officer determines that a contract is being structured in such a way as to defeat the purposes of this ordinance. For example, if a \$6,000 project is divided into two \$3,000 contracts when it would normally be bid as a single project, then the TERO Officer may require Indian preference requirements be met in compliance with this ordinance. However, the TERO Officer should not prohibit or deter structuring a contract in such a way as to further the purposes of this ordinance. For example, a contract for six houses may be divided into two contracts for three houses in order for an Indian firm to qualify for a bond for which it would otherwise not qualify if the contract was for six houses.

(b) *Covered Employer* means:

- (1) The Yurok Tribe and Tribal entities, regardless of whether the employment or contract activity is on Yurok lands;
- (2) Any person, partnership, corporation, joint venture, government or governmental entity, or other entity that utilizes Tribal funds for a project or that voluntarily submits to Tribal jurisdiction under this ordinance;
- (3) The California Department of Transportation for projects within Yurok ancestral territory; and
- (4) Any person, partnership, corporation, joint venture, government or governmental entity, or other entity that is located or engaged in commerce within the Yurok Reservation and that employs two or more employees.

Commentary: Covered employer is meant to include the Tribe, the Yurok Indian Housing Authority, the Yurok Economic Development Corporation, the Redwood Hotel Casino, and Hoh-kue-moh for any project utilizing Tribal funds, even if the project is outside of the Yurok

Reservation and does not take place on Yurok lands. This definition also includes the California Department of Transportation for projects that are on Yurok lands or on any road included within the Tribe's Tribal Transportation Program inventory (previously the Indian Reservation Road inventory) or successor inventory.

Pursuant to Office of Federal Contract Compliance Program regulation, 41 C.F.R. § 60-1.5(7), a federal contractor may voluntarily submit to Tribal jurisdiction under this ordinance and be considered a covered employer for projects on or near the Yurok Reservation.

(c) *Council* or *Tribal Council* means the Yurok Tribal Council.

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

CHAPTER 1. TRIBAL EMPLOYMENT RIGHTS OFFICE

SECTION 4101. Establishment and Organization of TERO

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

SECTION 4102. Duties of TERO Officer

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

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

SECTION 4103. Powers and Authorities of TERO Officer

The TERO Officer shall have the following powers and authorities:

- (a) Hire TERO staff;
- (b) Develop a TERO budget and expend funds in accordance with a Council-approved budget;
- (c) Issue guidelines and develop forms;
- (d) Conduct audits, investigations, and inspections upon its own initiative or allegation ;
- (e) Issue notice of non-compliance, warnings, and citations;
- (f) Conduct hearings;
- (g) Petition the Tribal Court for such orders as are necessary and appropriate to enforce decisions and sanctions imposed under this ordinance;
- (h) Subpoena documents and witnesses;
- (i) Require covered employers to submit reports, including labor force and payroll reports;

- (j) Issue orders;
- (k) Impose fines;
- (l) Suspend or terminate a covered employer's operation;
- (m) Certify eligible Indians and Indian firms;
- (n) Revoke Indian firm certifications and permits;
- (o) Monitor employers for compliance;
- (p) Restrict or prevent hiring of non-Tribal members or non-Indians;
- (q) Develop numerical hiring goals and timetables for a covered employer;
- (r) Conduct or facilitate training programs and job fairs to meet the purposes of this ordinance;
- (s) Require Indians seeking employment and covered employers to participate in TERO training programs;
- (t) Require covered employers to pay back wages to an aggrieved employee;
- (u) Enforce this ordinance; and
- (v) Take any action necessary to achieve the purposes and goals of this ordinance.

SECTION 4104. Inspections

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

CHAPTER 2. OVERSIGHT BY TRIBAL COUNCIL

SECTION 4201. Powers and Authorities of Council

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

- (a) Review and approve TERO policies;
- (b) Develop amendments to this ordinance;
- (c) Receive and resolve complaints regarding TERO that are not resolved by the Executive Office;
- (d) Review and approve requests to waive Indian preference as otherwise required under this ordinance;

- (e) Waive TERO fees; and
- (f) Approve a TERO budget and annual work plan.

SECTION 4202. Complaints Against TERO

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

Commentary: This ordinance does not create a right of action in Tribal Court for individuals who are dissatisfied with TERO. The Tribal Court does not have jurisdiction to hear civil complaints by an individual, employee, or covered employer against TERO. These types of complaints may include an allegation that TERO is not conforming to this ordinance, that TERO should have found a violation by a covered employer, that TERO failed to properly investigate an alleged violation, or that TERO inappropriately determined that an Indian firm met threshold technical qualifications. All such complaints should be directed to the Executive Office for review.

CHAPTER 3. INDIAN PREFERENCE IN EMPLOYMENT

SECTION 4301. Indian Preference in Employment

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

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

SECTION 4302. Covered Positions

Indian preference shall apply to all occupational classifications, except for key employees of nonTribal entities. The Yurok Tribe and Tribal entities are required to apply Indian preference to the hiring of key employees.

Commentary: Occupational classifications may be identified by the U.S. Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification then in effect.

The Yurok Tribe, the Yurok Indian Housing Authority, the Yurok Economic Development Corporation, the Redwood Hotel Casino, Hoh-kue-moh and any future tribal entity are to apply Indian preference to all positions, including managerial positions or occupational classifications that otherwise meet the definition of key employee.

SECTION 4303. Qualified Indians

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

SECTION 4304. Eligible Indians

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

Commentary: Subsection (b) is intended to conform with Office of Federal Contract Compliance Program regulations, 41 C.F.R. § 60-1.5(7), which permits federal contractors to extend a preference to Indians living on or near an Indian Reservation. Those regulations, however, prohibit contractors when extending an Indian preference to discriminate among Indians on the basis of region, sex, or tribal affiliation. The California Department of Transportation as a covered employer shall apply the tier priorities specified in subsection (b). For purposes of subsection (b), the word *near* means all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

SECTION 4305. Proof of Yurok or Indian Eligibility

- (a) Tribal Member. A person claiming that he or she is a Yurok Tribal member shall present an appropriate Yurok Tribal membership identification card.
- (b) Spouse of Tribal Member. A person claiming that he or she is a spouse of a Yurok Tribal member shall present the Yurok Tribe membership identification card of his or her spouse and proof of marriage.
- (c) Indian. A person claiming that he or she is an Indian shall have the burden to prove membership in a federally recognized tribe. To prove membership in a federally recognized tribe, TERO may require a person to submit the following:

- (1) Certification or verification from a federally recognized tribe or the U.S. Bureau of Indian Affairs indicating that a person is a member of a federally recognized tribe,
- (2) A tribal membership card, or
- (3) Other documentation satisfactory to the TERO Officer.

SECTION 4306. Tribal Skills Bank

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

SECTION 4307. TERO Card

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

CHAPTER 4. INDIAN PREFERENCE IN CONTRACTING

SECTION 4401. Indian Preference in Contracting

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

SECTION 4402. Indian Firm Eligibility Requirements

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

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

SECTION 4403. Certification of an Indian Firm

- (a) Burden of Demonstrating Satisfaction of Eligibility Requirements. An entity claiming that it is an Indian firm and seeking certification shall have the burden to demonstrate to the TERO Officer, by a preponderance of the evidence, that it satisfies Indian firm eligibility requirements. Indian ownership must be real, substantial, and continuing, going beyond pro forma ownership of the entity as reflected in ownership documents.
- (b) Application for Certification. An entity shall submit an Indian Firm Certification Application, in a form acceptable to TERO, and proof of the entity's Indian ownership, which shall include, but not be limited to:
 - (1) Evidence that the entity is at least 51% owned by an Indian or at least 51% owned by a federally recognized tribe,
 - (2) Evidence that at least 51% of all profits will flow to the Indian owner during all portions of the contract or subcontract,
 - (3) Evidence that the Indian owner maintains management control, and
 - (4) The entity's name, address, and telephone number.
- (c) Documentation of Indian Ownership. To establish Indian ownership or maintain certification, the TERO Officer may require an entity to submit the following:
 - (1) Current bank and tax records, incorporation documents, joint venture agreements, or partnership agreements documenting the share of Indian ownership,
 - (2) Certification that an Indian owner is a member of a federally recognized tribe, and
 - (3) Documents demonstrating that an Indian owner is an entity of a federally recognized tribe, such as articles of incorporation, a tribal ordinance or

resolution establishing the entity, or certification by an appropriate authority of the federally recognized tribe that the entity is tribally owned.

- (4) Such other documents as may be reasonably necessary to establish that Indian firm eligibility requirements are satisfied.
- (d) Certification. Upon satisfactory evidence that the requirements are met, the TERO Officer shall certify the entity as an Indian firm. The TERO Officer maintains sole authority to certify an entity as an Indian firm.
- (e) Certified Indian Firms. TERO shall maintain a list or database of certified Indian firms that classifies such Indian firms by major group using the North American Industry Classification System standard. TERO shall confirm certification of an Indian firm upon a contractor's request.
- (f) Ongoing Obligations. An Indian firm maintains ongoing obligations to ensure that Indian firm eligibility requirements are satisfied. The TERO Officer maintains discretion to revoke Indian firm certification upon finding that Indian firm eligibility requirements are not being met.
- (g) Expiration of Certification. An Indian firm must re-submit a certification application every two years to remain in good standing.

Commentary: The intent of this section is to ensure that an entity claiming that it is an Indian firm is in fact owned and controlled by a majority Indian interest. For example, a joint partnership with an Indian holding 51% of the interest generally should have a proportionate share of the profits flowing to the Indian interest holder. An entity only nominally owned or controlled by an Indian interest would not meet eligibility requirements for an Indian firm. The burden is on the entity claiming that it is an Indian firm to prove to the TERO Officer's satisfaction that eligibility requirements are met. In reviewing an Indian Firm Certification Application, TERO may reference and apply certification standards similar to those prescribed in 49 California Code of Regulations Part 26, Subpart D, for Disadvantaged Business Enterprises.

If a firm is certified as an Indian firm, but subsequently the TERO Officer finds that the majority of profits are not flowing to the Indian owner or the Indian owner cannot sufficient direct or control the entity, then the TERO Officer may revoke the firm's certification. For example, if a non-Indian owner handles all billing, invoicing, and check writing, this suggests that the Indian owner lacks adequate managerial or operational control of the business.

SECTION 4404. Eligible Indian Firms

- (a) Covered Employers' Preference for Indian Firms. Covered employers shall extend a preference to Indian firms according to the following priorities:
 - (1) Indian firm that is at least 51% owned, operated, and controlled by a Yurok Tribal member or Yurok Tribal entity
 - (2) Indian firm that is less than 51% owned, operated, and controlled by a Yurok Tribal member or Yurok Tribal entity;

- (3) Indian firm without any ownership share held by a Yurok Tribal member or Yurok Tribal entity.
- (b) Contractors using Federal Funds. Notwithstanding the requirements of subsection (a), contractors using federal funds shall only be required to extend a preference to Indian firms according to the following tier priorities:
 - (1) Indian firm whose Indian owner is living on or near the Yurok Reservation; and
 - (2) Other Indian firms.

Commentary: Subsection (a) establishes a first tier priority for Indian firms that are majority owned by a Yurok Tribal member or members. Indian firms that have Yurok Tribal member owners without a majority interest enjoy a second tier priority. The third tier priority is for Indian firms with no Yurok Tribal member owners.

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

SECTION 4405. Specific Indian Preference Obligations of Contractors

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

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

- (e) Primary Responsibility for TERO Compliance. A contractor shall have initial and primary responsibility for ensuring that it and all of its subcontractors comply with these requirements. A contractor may be held jointly and severally liable for violations of this ordinance by its subcontractors.

SECTION 4406. Subcontractors

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

Commentary: For large construction projects, subcontractors should meet and negotiate their own Indian Preference Plan with the TERO Officer. The subcontractor is to be treated in the same manner as a contractor under this ordinance. Both the subcontractor and the contractor can be held jointly and severally liable for any violation of the subcontractor's TERO Permit or Indian Preference Plan and both may be subject to sanctions, including a stop work order or monetary civil penalty. Because the Tribe may not be the contracting entity with the subcontractor, the contractor is encouraged to work cooperatively with TERO to ensure the subcontractor meets compliance obligations.

SECTION 4407. Unions

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

SECTION 4408. Tribal Prevailing Wage

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

CHAPTER 5. IMPLEMENTATION OF INDIAN PREFERENCE IN CONTRACTING

SECTION 4501. Indian Preference Plan

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

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

SECTION 4502. Indian Preference Goals for Indian Preference Plan

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

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

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

Commentary: The Tribe does not intend to use strict numerical goals across all contracts. Instead, the TERO Officer shall negotiate an Indian Preference Plan on a contract by contract basis with contractors to ensure a sufficient number of Indians are employed to meet the intent and requirements of this ordinance.

SECTION 4503. TERO Permit

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

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

SECTION 4504. Ongoing TERO Compliance; Filling Available Positions

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

- (a) TERO Card Hiring. A contractor may hire immediately a Tribal member who presents the contractor with a valid TERO Card. The contractor shall notify TERO that a Tribal member has been hired for the available position within 2 days of hiring and shall submit to TERO a copy of the TERO Card.
- (b) Reasonable Efforts To Hire Qualified Indian. A contractor is presumed to have made reasonable efforts if all of the following conditions are satisfied:
 - (1) The contractor notifies TERO in writing of the available position.
 - (2) The contractor requests a list from TERO of qualified Indians for that classification.

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

Commentary: Subsection (c) recognizes that certain contracts, particularly construction contracts, may incur substantial costs if contract work cannot proceed in a timely manner. The TERO Officer may waive requirements of subsection (b) when necessary to ensure timely completion of a project or to avoid unnecessary or substantial costs due to a delay in hiring. The TERO Officer may impose certain conditions on the waiver, permitting immediate hiring on a temporary basis but also requiring that the contractor continue its efforts to hire a qualified Indian for the position.

SECTION 4505. Final Payment; Compliance

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

SECTION 4506. Training

The TERO Officer may require a contractor to participate, or to assign interested Indians to participate, in training programs to assist Indians to become qualified in various occupation classifications used by the contractor. If such training programs are not included in a bid package, the TERO Officer shall give due consideration to the increase in cost, if any, for performing the program and compensate the

contractor for actual costs. Actual costs shall include, but not be limited to, the cost of additional supervision to conduct on-site training.

SECTION 4507. Layoffs or Reductions in Workforce

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

SECTION 4508. Promotions

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

SECTION 4509. Employment Procedures

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

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

Commentary: A contractor is not required to use a specific employment process. Section 4504(b) provides guidelines for what would constitute reasonable efforts to fill a position that opens after work has begun. Those guidelines may also be used to show reasonable efforts for purposes of this section. However, the fact that TERO failed to respond to a list request within the time identified in section 4504(b)(3) does not necessarily excuse the contractor from hiring a qualified Indian since timeliness may be less of a concern for initial hiring than filling a position that opens while work is ongoing.

SECTION 4510. Prohibition Against Retaliation

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

CHAPTER 6. TERO FEE IN CONTRACTING

SECTION 4601. TERO Fee

- (a) TERO Fee Amount. A fee, to raise revenue for the operation of TERO, is imposed on the following activities:
 - (1) Construction Contracts. Contractors with a construction contract exceeding \$5,000 shall pay a fee of 3% of the total contract amount.
 - (2) Non-construction Contracts. Contractors for all non-construction contracts exceeding \$2,000 shall pay a fee of ½ of 1% (.5%) of the total contract amount.
- (b) Changes To Contract Amount. The contractor must notify TERO of any changes to the original contract amount by providing an approved change order or amended contract. The TERO fee assessed shall be increased or reduced in proportion to any increase or reduction of the original contract amount.
- (c) Inapplicable To Certain Agreements. The TERO fee does not apply to financing, loan and similar type agreements.

Commentary: The TERO fee should be calculated in the following manner. The total contract amount should be divided by 1.03 for a construction contract, or 1.005 for a services contract, and this resulting amount subtracted from the total contract amount. For example, the TERO fee for a \$10,000 construction contract is \$291.26 (\$10,000 – \$10,000/1.03), while the TERO fee for a \$10,000 services contract is \$49.75 (\$10,000 – \$10,000/1.005). Note that the TERO fee for these contracts is not \$300 and \$50, respectively. This calculation treats the TERO fee as a contract line item based on the subtotal or bottom line of a contractor. The TERO fee may be specified as a separate line item in a contractor’s bid.

For purposes of this section, construction contract activities include, but are not limited to, the following: building, modifying, refurbishing, or outfitting structures; road construction, maintenance, or upgrading; and supplies and materials for a construction or road project. Contracts for the following activities are considered non-construction contracts: timber harvest activities, legal services, and architect and engineering services.

SECTION 4602. TERO Fee Collection

- (a) Payment and Use. Contractors shall pay the TERO fee to the Yurok Tribe or appropriate Tribal entity and such amount shall be credited to the TERO account. TERO fees shall be used to carry out the purposes of this ordinance, such as job training and preparedness.
- (b) Contractor Consent to Automatic Deduction. For all contracts awarded by the Tribe or a Tribal entity, a contractor shall consent to the Tribe or the Tribal entity deducting the TERO fee amount from the total amount due the contractor under the contract and to pay that amount directly to the Yurok Tribe.

- (c) Automatic Deduction of TERO Fee. The Yurok Tribe Fiscal Department, or corresponding department of a Tribal entity, shall automatically deduct the TERO fee from an invoiced amount due a contractor.
- (d) Authority To Invoice for TERO Fee. The Yurok Tribe Fiscal Department shall have the authority to invoice contractors for the TERO fee, if the TERO fee is not automatically deducted.

SECTION 4603. TERO Fee Exemption

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

- (a) Participation on a Tribal committee;
- (b) Yurok Tribe timber harvest contracts;
- (c) Contracts utilizing exclusively TERO funds for training or job preparedness;
- (d) Contracts for cultural education services;
- (e) Contracts for child care;
- (f) Construction contracts for homes for Yurok Tribal members, where the Tribal member is required to repay the home loan;
- (g) Contracts for cultural monitoring; and
- (h) Contracts for Yurok language services.

SECTION 4604. TERO Fee Reconciliation

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

CHAPTER 7. HEARINGS AND APPEALS

SECTION 4701. Filing Procedure for Alleged Violation

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

SECTION 4702. Investigation by TERO Officer

Upon the TERO Officer's own allegation or upon written allegation of a violation, including violation of an Indian Preference Plan, the TERO Officer shall ensure a prompt and thorough investigation of the alleged violation. The TERO Officer shall seek to achieve an informal settlement of the alleged violation.

The TERO Officer shall monthly report all alleged violations and their settlement, if any, to the Executive Office.

SECTION 4703. Issuance of Citation

- (a) Notice of Non-Compliance. If the TERO Officer determines that a violation of the ordinance exists and an informal settlement cannot be achieved, the TERO Officer shall issue a notice of non-compliance to the covered employer. This notice shall specify the nature of the violation and direct that the violation be corrected within 3 days or sooner where warranted.
- (b) Citation. If the violation is not corrected within the time specified, the TERO Officer shall issue a written citation to the covered employer that includes the following:
 - (1) The name of the violator;
 - (2) The signature of the TERO Officer or an authorized representative;
 - (3) The name and section number of the ordinance provision violated;
 - (4) A brief summary of the facts constituting the violation; and
 - (5) A time and place the covered employer must appear to answer to the violation at a TERO Officer hearing.
- (c) Imposition of Immediate Sanctions. Once the time specified in the notice of noncompliance to correct a violation has expired and prior to a hearing, the TERO Officer may impose any sanction permitted under this ordinance.
- (d) Right To a Hearing. A covered employer that receives a citation shall be entitled to a hearing before the TERO Officer. A covered employer must request such hearing within 10 business days of the date of the TERO Officer's citation. The TERO Officer shall conduct a hearing no later than 10 business days after receipt of a citation, unless the covered employer and TERO Officer agree to a later date.

SECTION 4704. TERO Officer Hearing Procedures

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

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

- (a) Contain a brief summary of the investigation and hearing proceedings;
- (b) Include findings of fact;

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

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

SECTION 4705. Emergency Relief

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

SECTION 4706. Administrative Appeals

Any person adversely affected by a decision of the TERO Officer shall have the right to appeal the decision to the Executive Office. Any such appeal must be made within 10 business days of the date of the TERO Officer's written order. The Executive Office may decide the appeal based on the evidence in the record, including the TERO Officer's written order, or conduct a hearing de novo in accordance with TERO Officer hearing procedures. Within 5 business days of concluding an appeal hearing, or within 15 business days from filing of an appeal, whichever is later, the Executive Office shall issue a written order.

SECTION 4707. Final Administrative Action

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

CHAPTER 8. ENFORCEMENT AND SANCTIONS

SECTION 4801. Sanctions

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

- (a) Denial of the right to commence or continue business or contracts on Yurok lands, with a Tribal entity, or involving Tribal funds;
- (b) Suspension of operations on Yurok lands, with a Tribal entity, or involving Tribal funds;

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

SECTION 4802. TERO Applicant Responsibilities

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

SECTION 4803. Willful Violation of TERO Ordinance

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

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

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

SECTION 4804. Debarment

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

SECTION 4805. Monetary Civil Penalties

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

SECTION 4806. Late Payment of Fees; Interest

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

SECTION 4807. Enforcement; Costs

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

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

CHAPTER 9. TRIBAL COURT REVIEW AND ENFORCEMENT

SECTION 4901. Tribal Court Review of Decisions

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

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

SECTION 4902. Standard of Judicial Review

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

SECTION 4903. Tribal Court Enforcement of Decisions

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

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

SECTION 4904. Remedies

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

