Yurok Tribal Code, Business and Labor

YUROK TRIBE PREVAILING WAGE 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 to promote the general welfare and economic development of the Yurok Tribe and its members:

GENERAL PROVISIONS

SECTION 5001. Short Title

This ordinance shall be referred to as the "Yurok Tribe Prevailing Wage Ordinance."

SECTION 5002. Findings

The Yurok Tribe desires to establish a prevailing wage for certain employees as designated by the federal government on the Yurok Reservation in order to promote the general welfare and economic development of the Tribe in exercise of the Tribe's inherent authority and Congressionally delegated authority.

Section 4114(b)(3) of Title 25 of the United States Code expressly provides that the determination of prevailing wages by an Indian Tribe supersedes federal prevailing wage determinations of the Secretary and the Davis-Bacon Act, 40 U.S.C. § 276a et. seq., and upon passage of this ordinance the Tribally determined prevailing wage shall be applied to contracts or agreements, including contracts or agreements for assistance, sale, or lease pursuant to the Native American Housing Assistance and Self Determination Act, 25 U.S.C. § 4101 et. seq.

The prevailing wages established by the Tribe under this ordinance are intended to supersede all federal wage determinations to the greatest extent allowed under federal law and to the fullest legal authority of Tribal law.

SECTION 5003. Purpose

The purpose of this ordinance is to provide for prevailing wages to be determined and paid pursuant to certain agreements to be performed in the area of operation of the Tribe and YIHA.

SECTION 5004. Scope

This ordinance shall apply to the Tribe, YIHA, and any employer or contractor acting under an agreement pursuant to an Act. Any employer or contractor acting under an agreement not pursuant to an Act is exempt from this ordinance.

SECTION 5005. Sovereign Immunity Preserved

Except as judicial review is specifically 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 sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against, the Tribe, YIHA, or individuals acting in their official capacity for the Tribe or YIHA. Any waiver of sovereign immunity for actions brought to enforce this ordinance against the Tribe or YIHA must be made by formal documented action taken by the Council or Housing Board, as appropriate, separately after each action is filed.

SECTION 5006. 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 5007. Definitions

(a) *Act* means any federal legislation, rule, regulation, or contract containing requirements for establishment and payment of a determined prevailing wage, including, but not limited to, wage determinations of the Secretary or wage determinations set under the Davis-Bacon Act, 40 U.S.C. § 276 et. seq., which are applicable to Indian Tribes.

(b) *Agreement* means any contract, subcontract, or agreement for assistance, sale, or lease funded under any Act applicable to Indian Tribes, including, but not limited to, the Native American Housing Assistance and Self-Determination Act of 1996, Pub. L. 104-330, 25 U.S.C. § 4101 et. seq., and such other Tribal agreements as may be determined by Council to be appropriate.

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

(d) *Prevailing Wage* means the wages as determined by the Tribe to be prevailing on the Reservation and with the Tribe's and YIHA's area of operations for each category of employee, including, but not limited to, architect, technical engineer, draftsman, technician, laborer, carpenter, plumber, electrician, maintenance, heavy equipment operator, and mechanic.

(e) *Records Penalty* means any penalty imposed for failing to maintain records required under this ordinance.

(f) *Reservation* or *Yurok Reservation* means all lands within the boundaries of the Yurok Indian Reservation.

(g) *Tribe* means the Yurok Tribe, acting through the Council and its authorized entities and programs.

(h) *Wage Penalty* means any penalty imposed for failure to pay Tribally determined prevailing wages required under this ordinance.

(i) *YIHA* means the Yurok Indian Housing Authority, which is the Tribe's designated housing entity.

CHAPTER 1. PREVAILING WAGES

SECTION 5101. Payment Required in Agreements

Any agreement pursuant to any Act with the Tribe or YIHA for construction, installation, alteration, repair, or maintenance of buildings or works or for provision of labor, services, or materials to be performed within the area of operation of the Tribe or YIHA shall contain a provision requiring not less than prevailing wages as set pursuant to this ordinance shall be paid by the contractor or employer.

SECTION 5102. Volunteers

Prevailing wages under this ordinance shall not apply to any individual who receives no compensation or is only reimbursed or paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the same or similar services on a project shall be considered a volunteer on the same project.

SECTION 5103. Determination of Tribal Prevailing Wage

Not less frequently than biennially, the Tribe's Human Resources Department, in consultation with affected Tribal departments and entities, shall conduct a wage survey in order to determine the prevailing wage.

(a) The Tribe shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall establish the prevailing wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall include the classifications for journeyman, apprentice, and trainee in all trades.

(b) The Tribe shall retain for not less than two years the names and addresses of all sources contacted and the wage rates reported by each source.

(c) Wage rates shall include salary but not the value of fringe benefits paid to or on behalf of employees.

SECTION 5104. Schedule of Prevailing Wages

The results of the survey and the prevailing wage shall be contained in a schedule of prevailing wages, which shall list each covered class of profession or trade and the hourly rate for each at the journeyman, apprentice, and trainee categories, and the effective dates of the schedule. The schedule shall be submitted to Council for approval. Council by resolution without amending this ordinance may adopt a schedule of prevailing wages.

CHAPTER 2. EMPLOYER REQUIREMENTS

SECTION 5201. Payment of Prevailing Wage and Access to Records

The Tribe and YIHA, when performing under an agreement pursuant to any Act, shall pay, or be paid, prevailing wages and shall maintain certified payroll records reporting the hourly rates paid each employee. The certified payroll records of each employee shall be available for inspection and copying during regular office hours by the Tribe and affected employee.

SECTION 5202. Schedule to be Provided

The Tribe and YIHA shall provide every contractor and employer under this ordinance at the time bids or proposals are solicited for work under or pursuant to any Act with a copy of the currently effective schedule of prevailing wages.

SECTION 5203. Posting of Schedule

At all times while performing under an agreement pursuant to any Act, each employer shall post at a conspicuous place on the job site and in its principal office a copy of the schedule of prevailing wages furnished by the Tribe.

CHAPTER 3. ENFORCEMENT AND REMEDIES

SECTION 5301. Agreement and Penalties

Each agreement under this ordinance shall contain provisions consenting to Yurok Tribal Court or Council jurisdiction, as detailed in sections 5302 and 5303, to enforce this ordinance and stating the wage penalty and records penalty.

(a) The wage penalty shall be calculated by determining the difference between the amount the employee was actually paid under the agreement and the amount the employee was entitled to under this ordinance and multiplying the sum by two, but in any event the wage penalty shall not be less than $500. Erroneous payments not resulting from a failure to pay the prevailing rate are not within the scope of this section.

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

THE FOREGOING ORDINANCE, ENTITLED THE YUROK TRIBE PREVAILING WAGE ORDINANCE WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON OCTOBER 12, 2012, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY CONSENSUS IN ACCORDANCE WITH TRIBAL TRADITION AND ARTICLE V, SECTION 6 AND ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUROK TRIBE.

DATED THIS 12th DAY OF OCTOBER 2012

Thomas P. O'Rourke, Sr., Chairperson
Yurok Tribal Council

ATTEST:

Bonnie Green, Secretary
Yurok Tribal Council