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**THE CONFEDERATED TRIBES OF THE
GRAND RONDE COMMUNITY OF OREGON**

**CHAPTER 604
TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

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**THE CONFEDERATED TRIBES OF THE
GRAND RONDE COMMUNITY OF OREGON**

**Chapter 604
Tribal Employment Rights Ordinance**

PART I – GENERAL PROVISIONS

(a) PREAMBLE. The Tribe has enacted this Ordinance pursuant to its inherent sovereign powers in order to promote the interests of self-governance and to ensure that Indian people have employment, training, contracting, subcontracting, and other business opportunities on and near the Grand Ronde Reservation.

(b) PURPOSE. This Ordinance shall be liberally construed to fulfill the following purposes:

(1) To provide Tribal laws and rules governing preference in employment and contracting within the Tribe’s jurisdiction;

(2) To increase employment of Grand Ronde Tribal Members and other Indians;

(3) To establish the Tribal Employment Rights Office (“TERO”) and empower the Tribal Employment Rights Commission (“Commission”) and TERO staff to enforce the laws and rules governing employment and contracting preference; and

(4) To provide a fair, enforceable, and effective system of priorities in contracting or subcontracting where a significant part of the work will be performed on or near the Tribe’s Reservation.

(c) DEFINITIONS. Terms used in this Ordinance are hereby defined as follows:

(1) Compliance Agreement. An agreement between a Construction Contractor or ODOT Contractor and the TERO, setting forth how the contractor will meet the Tribal and/or Indian preference in hiring, and if applicable, subcontracting goals and other obligations under this Ordinance.

(2) Construction Contractor. A Covered Employer, other than an Oregon Department of Transportation (“ODOT”) Contractor or Tribal Employer, who contracts or subcontracts to perform construction work on the Tribe’s Reservation.

(3) Covered Employer. An Employer subject to this Ordinance pursuant to Part I, Section (d) below.

(4) Employer. Any person, partnership, corporation, company, government, governmental enterprise, contractor, subcontractor or other entity that employs for wages or other remuneration two (2) or more individuals. The term shall not include state or

county governments or state or county governmental agencies, but shall include contractors and subcontractors of said governments or governmental agencies.

(5) Executive Level Position. A position that reports directly to the Tribal Council or to the Spirit Mountain Gaming, Inc. Board of Directors.

(6) Grand Ronde Owned Business. A business that is at least 51% or more owned, operated, and controlled by a Grand Ronde Tribal Member or the Grand Ronde Tribe.

(7) Grand Ronde Tribe or Tribe. The Confederated Tribes of the Grand Ronde Community of Oregon.

(8) Grand Ronde Tribal Member. An enrolled member of the Grand Ronde Tribe.

(9) His/Himself. Shall refer equally to “Her/Herself.” The use of masculine pronouns throughout this Ordinance is in the interest of simplicity, uniformity, and expediency only.

(10) Human Resources Department. The individual, staff, division, or unit of a Tribal Employer responsible for finding, screening, and recruiting job applicants, as well as administering personnel policies and employee benefits.

(11) Immediate Family. A brother, sister, child, mother, father, or spouse, regardless of whether they are step, half, or adoptive relations.

(12) Indian. A member of a federally recognized Indian Tribe.

(13) Indian Owned Business (“IOB”). A business that is at least 51% owned, operated and controlled by an Indian or Indian Tribe.

(14) Indian Tribe. Any federally recognized Indian Tribe.

(15) Local Resident. A person who lives on or within a reasonable daily commuting distance of the Tribe’s Reservation.

(16) ODOT Contractor. Any contractor engaged in specified highway construction projects under contract with ODOT subject to the Tribal/ODOT MOU.

(17) Qualified. The individual meets the minimum job qualification criteria set forth in the job description and in any written personnel requirements of the Covered Employer. An individual’s work performance for a Covered Employer, including any failure to comply with workplace policies, may be considered in assessing the individual’s qualifications. In general, only individuals with a history of chronic or serious violations of workplace policy (e.g., harassment, criminal activity) or repeated involuntary separations from employment should be disqualified under this provision. An individual should not be disqualified based on activities occurring more than seven years

before the date of interview unless those activities give rise to current workplace safety concerns. In the case of Executive Level Positions or licensed health providers, qualified shall also mean that the individual's work history and references demonstrate their competency to perform the job as reasonably determined by the Covered Employer. In the case of contracting, it shall also mean a responsive and responsible bidder.

(18) Registered Workers. Enrolled Grand Ronde Tribal Members and other Indians who are Local Residents and who are registered with the TERO.

(19) Tribal Council. The nine (9) member governing body of the Grand Ronde Tribe.

(20) Tribal Employer. Includes the Tribal government and all wholly owned corporations, companies, businesses, or other entities of the Tribe.

(21) Tribal/ODOT MOU. The Agreement between the Grand Ronde Tribe and ODOT providing preference in employment for Indians on ODOT specified transportation projects and authorizing TERO to impose a compliance fee on ODOT contractors on these projects.

(22) Tribe's Reservation. Includes the Grand Ronde Reservation and all other land within the jurisdiction of the Tribe.

(d) JURISDICTION. This Ordinance shall apply to all Employers who:

(1) Are located or operating a business on the Tribe's Reservation;

(2) Contract with the Tribe to perform work on the Tribe's Reservation; or

(3) Are otherwise within the jurisdiction of the Tribe, including ODOT Contractors as authorized by applicable federal law, this Ordinance, and the Tribal/ODOT MOU.

(e) NOTIFICATION. TERO staff shall make good faith efforts to educate all Covered Employers and the public about this Ordinance. All contracting agencies shall also make good faith efforts to notify contractors/subcontractors of their obligations under this Ordinance. Notwithstanding the above, it shall not be a defense to any enforcement action for a person or entity to allege that they have failed to receive notification of the requirements of this Ordinance.

PART II – TRIBAL EMPLOYMENT RIGHTS OFFICE

(a) **ESTABLISHMENT OF COMMISSION.** The Tribal Employment Rights Commission is hereby established as the regulatory body charged with enforcement of the provisions set forth in this Ordinance. The Commission will consist of at least three (3), but no more than five (5) individuals who are appointed, and may be removed with or without cause, by the Tribal Council. Commissioners shall be Public Officials subject to the Tribal Ethical Standards Ordinance, Tribal Code Chapter 107.

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

- (A) Human Resources;
- (B) Tribal Employment Rights;
- (C) Construction Management;
- (D) Regulatory Enforcement; or
- (E) Auditing or Investigations.

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

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

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

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

(6) The Commission shall meet at least quarterly.

(7) At its first meeting, and annually thereafter, the Commission shall select a Chair, Vice-Chair, and Secretary. The Chair shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.

(b) DUTIES AND POWERS OF THE COMMISSION. The Commission has the power, jurisdiction, responsibility, and authority to:

- (1) Take all appropriate actions necessary to implement the provisions of this Ordinance.
- (2) In consultation with the TERO Director perform the following:
 - (A) Make recommendations to Tribal Council on amendments to this Ordinance; and
 - (B) Formulate, adopt, amend, and rescind rules and guidelines consistent with and necessary to carry out the provisions of this Ordinance.
- (3) Establish a system for certifying firms as Indian Owned Businesses or Grand Ronde Owned Businesses.
- (4) Hold public hearings on matters covered by this Ordinance.
- (5) Assist in presentations to the public on Indian employment and contracting preference requirements.
- (6) Issue notices to appear and order relief or sanctions that are necessary and appropriate to enforce this Ordinance.
- (7) Review and recommend the annual TERO budget prepared by the TERO Director for approval.
- (8) Consult with the Tribal Attorney's Office on legal questions, appeals, and rule-making.

(c) RECUSAL OF COMMISSION MEMBERS.

- (1) No member of the Commission shall participate in any action or decision by the Commission directly involving himself, a member of his Immediate Family or any person, business, or other entity of which he or a member of his Immediate Family is an employee, has a substantial ownership interest, or with which he or a member of his Immediate Family has a contractual relationship.
- (2) No member of the Commission shall have contact with a Complainant (as that term is defined in Part V, Section (b)(1)) regarding the specifics of a complaint prior to a Commission hearing or decision on the complaint. In the event of such contact, the Commissioner shall recuse himself from participating in any hearing and decision on the complaint.

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

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

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

(4) If a Commissioner does not voluntarily recuse himself or decline to participate in an action or decision of the Commission when required by Part II, Sections (c)(1)-(3) above, and the Commission determines, after hearing any arguments for and/or against recusal, that recusal is appropriate and necessary to preserve the integrity and fairness of the process, the Commissioner may be disqualified from participating in the action or decision by a majority vote of the remaining Commissioners.

(5) Nothing in this Ordinance shall be deemed to prevent a Commissioner from entering into a contractual relationship or business relationship with the Tribe, provided that such relationship does not violate the terms of this Ordinance or any Commission policies and procedures, and that the Commissioner has disclosed the nature of the relationship to the Commission. If a Commissioner has an employment or ownership interest in a business that bids on, or contracts to perform, construction work on the Tribe's Reservation, then the following shall apply: (1) the Commissioner shall be prohibited from viewing any documents for the construction work that are not generally available to all bidders; (2) the Commissioner shall not directly or indirectly participate in the negotiation of any compliance agreement with TERO staff for the construction work; and (3) the Commissioner shall be recused from participating in any Commission review of matters arising out of or related to the construction work.

(d) TERO DIRECTOR.

(1) The Tribe shall, with input from the Commission, hire a Director of the TERO, who shall be an employee of the Tribe and, subject to the direction of the Commission, be responsible for administering the provisions of this Ordinance, including implementing and enforcing rules and regulations promulgated by the Commission. The TERO Director shall be responsible for the development and day-to-day management of the TERO Program and the Program budget. The TERO Director shall also provide direction, leadership, and management of TERO staff. The TERO Director shall be subject to administrative supervision by the Chief of Staff, or in his/her absence the General Manager, but only with regard to compliance with Tribal policies including without limitation, all personnel, finance, travel, and procurement policies. The Commission shall be responsible for review and evaluation of the TERO Director's job performance, but may seek input from the General Manager.

(2) The authority and duties of the TERO Director, or his designee, shall include, but are not limited to, the following:

- (A) Implement and enforce the provisions of this Ordinance, as well as any properly adopted rules, regulations, or policies promulgated by the Commission.
- (B) Hire and manage staff, administer the TERO budget, and expend designated funds from the approved TERO budget.
- (C) Recommend regulations, amendments, and agreements to the Commission.
- (D) Establish Construction Contractor and ODOT Contractor record keeping requirements.
- (E) Enter Compliance Agreements with Construction Contractors and ODOT Contractors.
- (F) Investigate and process complaints alleging violations of this Ordinance.
- (G) Impose penalties or recommend remedies, as applicable, for violations of this Ordinance or any regulations adopted hereunder.
- (H) Represent the TERO at Tribal Council meetings, Commission hearings, and Tribal Court proceedings.
- (I) Coordinate and provide reports for Commission meetings.
- (J) For purposes of Compliance Agreements, negotiate workforce requirements that reflect the available labor pool and the TERO fee payment schedule, if applicable, with Construction Contractors and ODOT Contractors. The TERO Director shall consult with the Tribe's Project Manager regarding workforce requirements prior to negotiating or specifying the number of Registered Workers required on Tribal construction projects.
- (K) Work cooperatively with Tribal programs, including, but not limited to, any Tribal Career Development Programs to provide education, training, and other support programs for Tribal/Indian workers to assist them in acquiring and retaining employment.
- (L) Certify Grand Ronde Owned or Indian Owned Businesses.
- (M) Maintain a list of Grand Ronde Tribal Members and Indians who are Local Residents available for employment, and assist such persons with job placement.
- (N) Ensure compliance with the quarterly reporting requirements set forth in the Tribal/ODOT MOU.

(O) Conduct Certification Workshops for ODOT Contractors bidding on Tribal/ODOT MOU projects.

PART III – TERO EMPLOYMENT AND CONTRACTING OBLIGATIONS

(a) APPLICATION. Unless expressly stated otherwise, the provisions of this Part III shall not apply to ODOT Contractors

(b) TRIBAL AND INDIAN PREFERENCE IN EMPLOYMENT.

(1) Covered Employers. Unless prohibited by applicable federal law, all Covered Employers shall give preference to Qualified Grand Ronde Tribal Members in hiring, promotion, retention, training and all other aspects of employment and shall comply with the terms of this Ordinance and any applicable rules or policies adopted by the Commission.

(2) Federal Law Requirements. Where prohibited by applicable federal law, the preference set forth in Part III, Section (b)(1) above shall not apply. In such case, and to the extent permitted by federal law, Indian preference shall be given, with the first preference given to Qualified Indians who are Local Residents.

(3) Job Qualifications and Requirements. All Covered Employers shall establish written job requirements for each employment position in their work force. A Covered Employer shall not create excessive and unnecessary job skill qualification criteria or personnel requirements that are not required by business necessity and which serve as barriers to the preference objectives of this Ordinance. Written job requirements shall be provided to the TERO Director at least three (3) business days prior to posting a position. The TERO Director may grant a waiver of this requirement where the Covered Employer shows that the time period would result in an undue burden to the Covered Employer’s business.

(4) Layoffs. Unless prohibited by applicable federal law, in the event of a reduction-in-force affecting a certain class of positions, Covered Employers shall retain Qualified Grand Ronde Tribal Members, until all non-Grand Ronde Tribal Members in that class of positions are laid off.

(c) INDIAN PREFERENCE IN CONTRACTING.

(1) All Covered Employers advertising or soliciting responses or bids for projects or contracts, including contracts to provide materials, goods, or services, shall include IOBs in the relevant trade who are certified and registered with the TERO, in the solicitation process. Unless prohibited by federal law, preference in the selection shall be given to qualified IOBs who submit responsive bids within five percent (5%) of the low bid as follows:

Order of Preference	Business
1 st Preference	Certified Grand Ronde Owned Businesses who submit a bid where 50% or more of the bid amount is for work to

	be performed by Grand Ronde Owned Business certified by TERO.
2 nd Preference	Certified Grand Ronde Owned Businesses.
3 rd Preference	IOB certified by TERO who submits a bid where 50% or more of the bid amount is for work that will be performed by Grand Ronde Owned Businesses certified by TERO.
4 th Preference	IOBs certified by TERO.
5 th Preference	Non-IOB who submits a bid where 50% or more of the work will be performed by Grand Ronde Owned Business certified by TERO.

(2) Where federal law prohibits Tribal preference in contracting, preference in contractor selection shall be given to IOBs as authorized by federal law.

(3) The preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors of Covered Employers, regardless of tier, and shall be deemed part of all contract and subcontract specifications. The Covered Employer shall have the initial and primary responsibility for insuring all contractors and subcontractors comply with these requirements.

(4) The TERO Director shall maintain a list of Grand Ronde Owned Businesses and IOBs which shall be supplied to Covered Employers for their use.

(d) PROHIBITED ACTIVITIES. The following is a non-exhaustive list of prohibited activities. Covered Employers who engage in prohibited activities or otherwise violate this Ordinance shall be subject to penalties in accordance with Part V, Section (d) of this Ordinance.

(1) Submitting false or fraudulent information to TERO;

(2) Operating as a front or pass through company; or

(3) Preventing or interfering with a Covered Employer's compliance with this Ordinance.

(e) SPECIFIC PROVISIONS FOR CONSTRUCTION CONTRACTORS. The following provisions set forth additional requirements for Construction Contractors.

(1) Workforce.

(A) The TERO may specify the number of Grand Ronde Tribal Members or, when only Indian preference is applicable, the number of Indians a Construction Contractor shall hire by craft and skill level on a specific project. The TERO shall establish a TERO workforce utilization goal percentage on a project-by-project basis on each construction project. Contractor performance in attainment

of the goal will be monitored through regular submittals of payrolls and contractors may be directed to take corrective action to meet the set goal. A violation of the Ordinance may be issued and a penalty assessed if the contractor is unresponsive to corrective action.

(B) Construction Contractors must contact the TERO at least seventy-two (72) hours prior to commencing work to negotiate the workforce requirements and to provide the TERO an opportunity to locate and refer Qualified Registered Workers available to work. If no Qualified Registered Workers are available for work, the Construction Contractor may recruit from other resources.

(C) A contractor shall not create excessive or unnecessary job skill qualifications on TERO referred workers. If qualifications for a position require further review, a contractor shall submit any requested job descriptions to TERO. Upon review, if the skill qualifications appear to be excessive or unnecessary, the contractor shall submit a justification to TERO.

(2) Core Crew. Construction Contractors may, if necessary, have a core crew on a construction project which is exempt from the Tribal/Indian preference requirements of this Ordinance. A core crew is comprised of permanent and key employees. Any Indian already employed by a Construction Contractor shall be considered part of the Core Crew, but shall not be counted for purposes of calculating the maximum percentage of key and permanent employees.

(A) Prior to commencing work on or near the Tribe's Reservation, all Construction Contractors shall provide the TERO Director with a list of all permanent and key employees.

(B) A permanent employee is one who is and has been continuously employed by the Construction Contractor for at least one (1) year in a regular position of the employer or as an owner of the firm.

(C) A key employee is one who is in a top position or performs a critical function such that the Construction Contractor would likely risk financial damage or loss if that task were assigned to a person unknown to the employer.

(D) Permanent and key employees shall not exceed fifty percent (50%) of the workforce unless the total number of employees needed for the job is less than ten (10). The TERO Director may, at his or her discretion, grant an employer a larger core crew upon satisfactory demonstration by the employer that a larger core crew is necessary due to unique or specialized positions that are essential for the operation of business or performance of the work.

(3) Construction Wage Scale. All Construction Contractors shall compensate all Tribal/Indian workers at a rate consistent with the wages paid to their non-Indian employees performing the same jobs and shall ensure that Tribal/Indian workers are

afforded an opportunity to work as many hours as those non-Indian employees for the full term of the project. If the Construction Contractor is a signatory to a Construction Trade Union, the current pay scale and benefits of that trade will be paid. If Tribally determined wage rates or Davis Bacon wage rates are required by federal law, those wages shall be paid.

(4) Compliance Agreement.

(A) All Construction Contractors shall, no less than seventy-two (72) hours prior to commencing any work, prepare a plan acceptable to the TERO Director setting out how the Construction Contractor will comply with the requirements of this Ordinance regarding Indian employment and contract preference. A compliance agreement shall be used to monitor compliance with this Ordinance. Compliance agreement requirements and goals may be tailored to the individual circumstances of the Construction Contractor in order to maximize Indian employment and IOB contracting.

(B) A compliance agreement shall constitute a binding agreement; the terms of which shall be fully enforceable by the TERO. Failure to obtain or adhere to the terms of an approved compliance agreement, or supplying false information to the TERO, shall subject the non-complying party to monetary penalties of up to \$1,000 per violation, per day. Penalties assessed may be appealed to the Commission. Construction Contractors engaged in work without an approved compliance agreement will be required to stop work until an acceptable plan for implementing their obligations has been submitted to and approved by the TERO.

(C) Nothing in this Ordinance shall be construed to prohibit a Tribal Employer from requiring a Construction Contractor to submit a proposed Compliance Agreement as part of a response to a solicitation for bids or request for proposals.

(5) Compliance Monitoring. Upon the request of the TERO, all Construction Contractors shall submit reports and other information, including but not limited to contract documents and certified payroll and personnel records, as requested. On Tribal construction projects, contractors shall be required to regularly submit payroll information of all workers on the project to the TERO to determine compliance to the set workforce utilization goal. Payroll information will be due at the time the contractor issues their payroll. Contractors shall allow for onsite monitoring by TERO staff of construction projects for compliance and to confirm workforce utilization requirements.

(6) TERO Fee.

(A) A TERO fee of 2.5% shall be assessed on projects or contracts with a total contract price of one hundred thousand dollars (\$100,000) or more.

(B) The general contractor on a project shall be responsible for paying the entire TERO fee on the project prior to commencing any work; provided

however, where good cause is shown, TERO may authorize installment payments to be paid over the course of the contract.

(C) The TERO may invoice the general contractor and payment will be due within fourteen (14) days from the date of invoice; provided, however that the fee shall be paid prior to commencement of any work and the absence of an invoice shall not relieve the general contractor of the obligation to pay the TERO fee.

(D) If for any reason the cost of a project increases or decreases, the general contractor shall notify TERO of this change, and any change in the TERO fee shall be assessed and paid or refunded as applicable.

(7) Discipline Determination. Construction Contractors shall make every effort to provide counseling and guidance to employees to correct work performance deficiencies prior to terminating an individual entitled to employment preference pursuant to this Ordinance. The TERO shall be notified prior to the termination of an assigned TERO worker.

(f) SPECIFIC PROVISIONS FOR TRIBAL EMPLOYERS. The following provisions set forth additional requirements specific to Tribal Employers.

(1) Employment Statistics Report. All Tribal Employers, through their respective Human Resources Departments, shall be required to track employees for retention purposes. Tribal Employers shall submit a quarterly report to the TERO for Commission review by the fifteenth (15th) day after the end of each calendar quarter. The report must contain the following employment statistics: number of employees by department; employment level and preference status of current employees, including contract employees; resignations; and terminations.

Months	Report Due
January-March	April 15
April-June	July 15
July-September	October 15
October-December	January 15

(2) Tribal Member Career Development.

(A) *On the Job Training.* Tribal Employers may be required by the TERO to participate in on-the job training or mentor programs (including without limitation, job shadowing) designed by the TERO (or any Tribal career development program recognized by the Tribe) to assist Grand Ronde Tribal Members to become qualified in various job classifications used by the employer.

(B) *Succession Planning.* Tribal Employers shall work cooperatively with TERO in assisting current Tribal employees who demonstrate interest in and the

potential to fill key leadership positions, in developing the necessary experience and education to fill such positions.

(3) Counseling and Support Programs. The TERO (or any Tribal career development program recognized by the Tribe) may establish counseling and other support programs to assist Grand Ronde Tribal Members in obtaining and retaining employment. Tribal Employers shall be required to cooperate with the TERO regarding such counseling and support programs.

(4) Employment Process.

(A) *Assessment of Minimum Qualifications.* The TERO Director or his/her designee shall review all minimum qualification assessments conducted for Tribal member job applicants before job interviews are scheduled. The TERO Director may require reassessment of any Tribal member that TERO believes has been incorrectly assessed as not meeting the minimum qualifications. If Human Resources and/or the hiring manager still screens out the Tribal member applicant after reassessment, they shall provide the TERO Director with a written explanation detailing the reasons the Tribal member was screened out. If within five (5) days of receiving the written explanation, the TERO Director and hiring manager are unable to reach an agreement as to whether the Tribal member meets minimum qualifications, the matter will be referred to the TERO Commission for review. The TERO Commission shall promptly review the matter and issue a determination. The Tribal Employer may not proceed with candidate screening or selection for the position pending TERO Commission review. The Commission's determination shall be final.

(B) *Conducting Interviews.* TERO shall be provided an opportunity to review proposed interview questions prior to job interviews for the purposes of confirming consistency with posted job requirements. Tribal members who are offered a job interview may request TERO staff be present for the interview. TERO's role during the interview will be solely as an observer of the process and to gather information about the Tribal member's interview performance for the purpose of providing feedback and coaching to the Tribal member. TERO shall not participate in the assessment of interviewees or in the selection of the successful candidate. However, TERO may, upon request of the interview panel, offer any additional information it may have about a candidate's qualifications.

(C) *Selection of Candidate for Hire.* Tribal Employers shall notify the TERO Director of all hiring decisions, Tribal and Non-Tribal, prior to extending an offer of employment to the selected candidate.

(D) *Retention.* Tribal Employers shall notify provide any Tribal member approaching separation of employment for attendance or performance issues with written notice of their opportunity to seek job training or other job assistance services from TERO.

(5) Promotions. A Tribal Employer may promote an employee, in good standing, to an open position within a department which is no more than two (2) salary grades higher than the employee's current position without advertising the position. Tribal Employers must consult with TERO prior to making such a promotion. A Tribal Employer shall not promote a non-Tribal member over an equally qualified Tribal member within the department.

(6) Prohibition Against Retaliation. It shall be a violation of this Ordinance for any Tribal Employer, Tribal Council member, or any appointed Board Member or Commissioner, to retaliate against a Tribal employee or Tribal job applicant as a result of their preference status under this Ordinance. Any individual who believes they have been retaliated against because of the preference afforded by this Ordinance may file a complaint with TERO. The TERO Director shall investigate the complaint and may issue a notice of violation to any employee determined to have retaliated against a Tribal member in violation of this Ordinance. The notice of violation may be appealed to the TERO Commission as provided in Section (e) below. An employee who is determined to have retaliated in violation of this Ordinance is subject to disciplinary action by their employer.

(g) UNIONS.

(1) Nothing herein shall constitute official recognition by the Tribe of any union or endorsement of any union activities. The unions will honor the Tribe's sovereign authority and recognize the Tribe's jurisdiction to regulate employment and contracting activities within the boundaries of the Reservation.

(2) Covered Employers with collective bargaining agreements with a union are responsible for informing such unions of this Ordinance. No union agreement shall supersede the requirements of this Ordinance.

(3) As stated in the Tribe's Right to Work Ordinance, no Registered Workers shall be required to become or remain a member of any union or labor organization as a condition of employment, or continuation of employment, while they are working on the Reservation.

PART IV – ODOT CONTRACTORS

(a) **APPLICATION.** Unless expressly stated otherwise, the provisions of this Part IV shall apply only to ODOT Contractors.

(b) **ODOT CONTRACTOR OBLIGATIONS.** ODOT Contractors performing work within the MOU Boundary as defined in the Tribal/ODOT MOU shall:

(1) Give preference to Indians who are Local Residents in hiring, promotion, training, and all other aspects of employment.

(2) Notify the TERO Director whenever a Registered Worker is not performing adequately. The contractor shall not terminate an Indian employee until the TERO Director or his/her designee has had an opportunity to provide counseling.

(3) In all layoffs and reductions in force, no Tribal/Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed.

(4) An ODOT Contractor shall not use qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the ODOT Contractor is able to demonstrate that such criteria or requirements are required by business necessity.

(5) Attend mandatory pre-bid certification workshops conducted by the TERO. ODOT Contractors must have a certificate of completion from the TERO in order to be eligible to bid on ODOT contracts that require compliance with the Tribal/ODOT MOU requirements.

(6) Comply with the requirements of the Compliance Agreement executed pursuant to Section (c) below.

(7) Pay the TERO fee as specified in the Tribal/ODOT MOU prior to commencement of work.

(8) Provide certified weekly payroll reports to the TERO Director as required.

(9) Allow on-site inspections by TERO representatives.

(c) **COMPLIANCE AGREEMENT.**

(1) Each ODOT Contractor shall be required to meet with the TERO Director to negotiate and execute a Compliance Agreement which sets forth:

(A) The minimum number of Indians that shall be hired for a particular project with numerical goals for each craft, skill area, or job classification used by the ODOT Contractor including, but not limited to, general labor, skilled, administrative, supervisory, and professional categories. The Indian employment

goals are for the Contractor's work force who are other than "core crew" members as that term is used in Part III, Section (e)(2). Indian employees of an ODOT Contractor shall be included in the core crew, regardless of job function, but shall not count towards the Contractor's maximum core crew.

(B) The contractor's agreement to utilize qualified and available Registered Workers referred by the TERO Director.

(C) Periodic reporting requirements to the TERO Director on the number of Indians employed, record of persons hired, fired, or promoted during the reporting period, and a statement regarding compliance with the hiring goals set forth in the Compliance Agreement.

(D) Applicable wage scale provisions, prevailing wage standards, and salary compensation terms that may be applicable to a project or contract.

(2) No ODOT Contractor shall commence work or site mobilization until a Compliance Agreement has been negotiated and executed.

(3) Any violation of an executed Compliance Agreement shall be a violation of this Ordinance.

(4) An ODOT Contractor is subject to penalties and/or sanctions as provided in Part V below for violating this Ordinance or a Compliance Agreement.

PART V – ENFORCEMENT

(a) INVESTIGATIONS.

(1) The TERO Director or his designee may, upon his own initiative or pursuant to a complaint filed in accordance with Part V, Section (b), conduct such investigations as they deem necessary to ensure compliance with this Ordinance, or to determine whether a Covered Employer has violated this Ordinance.

(2) The TERO Director or his designee may enter the place of business of a Covered Employer for the purpose of conducting investigations and, in a manner consistent with orderly operation of business activity, interview employees of the Covered Employer, review and copy documents, and carry out such other activity as the TERO Director deems necessary to the investigation; provided that any review and copying of confidential and proprietary documents shall comply with Part V, Section (a)(4) of this Ordinance. Notwithstanding the above, the TERO Director shall not have authority to review regulatory files of the Grand Ronde Gaming Commission.

(3) If a Covered Employer unreasonably refuses to permit the TERO Director to enter onto business premises during business hours, or to reasonably inspect or copy documents, sanctions may be imposed.

(4) All proprietary and confidential information obtained in connection with an investigation hereunder shall be kept confidential and used only as necessary by the TERO Director, Commission, or parties to a hearing before the Commission or appeal to the Tribal Court, in a manner that, to the maximum extent possible consistent with the requirement of fairness to the parties, protects the confidentiality of the documents.

(5) If at the conclusion of any investigation hereunder, the TERO Director determines that a violation of this Ordinance has occurred, he may take any steps to resolve the violation that he deems appropriate and which are authorized by this Ordinance.

(b) COMPLAINTS.

(1) Filing and Contents of Complaint. Subject to Part V, Section (b)(2), any individual, business, or entity that believes that a Covered Employer has violated the requirements of this Ordinance (“Complainant”), may file a written complaint with the TERO Director. A copy of the complaint shall be provided to the Covered Employer. The complaint shall include a description of all relevant facts, evidence, witnesses, and such other information as is necessary to enable the TERO Director to carry out an investigation.

(2) Timeline for Filing Complaint.

(A) *Exhaustion Requirement.* No complaint may be brought against a Covered Employer unless the Complainant has first attempted to resolve the

complaint directly with the Covered Employer. In the case of a complaint against a Tribal Employer, no complaint may be filed unless the Complainant has, within five (5) days of the alleged violation: 1) filed a complaint directly with the Human Resource Department of the Tribal Employer, and thereafter exhausted any available administrative remedies provided by that Tribal Employer; or 2) filed a complaint with the Tribal Employer and seven (7) days have passed without any action by the Tribal Employer. A complaint is subject to dismissal by the TERO Director when these exhaustion requirements have not been satisfied.

(B) *Maximum Time.* In no event may a complaint be filed more than fourteen (14) days after the date of an alleged violation of this Ordinance.

(3) Action on Complaint. Within ten (10) days of receipt of a timely filed complaint, the TERO Director or his designee shall initiate and complete an investigation of the allegations in the complaint. If the TERO Director finds insufficient evidence of a violation of this Ordinance, he shall dismiss the complaint and notify the Complainant and Covered Employer that the matter is closed. If upon investigation, the TERO Director believes a violation of this Ordinance has occurred, he shall proceed to resolve the matter in accordance with Part V, Section (c) below.

(c) RESOLUTION OF VIOLATIONS.

(1) If, after conducting an investigation either on his own initiative or in response to a complaint, the TERO Director believes that a violation of this Ordinance has occurred (including without limitation, any failure to pay required TERO fees or to comply with an investigatory request), the TERO Director shall notify the Covered Employer, and Complainant if applicable, in writing of the specific violations found and the basis for the findings.

(2) The TERO Director shall make good faith efforts to reach an informal settlement of the violations with the Covered Employer.

(3) If an informal settlement cannot be reached, the TERO Director shall:

(A) In the case of an alleged violation by a Tribal Employer, issue a written notice to the General Manager (or similarly situated head of the Tribal Employer) and Human Resource Department of the Tribal Employer advising them of the nature of the alleged violation and setting forth any recommendations for addressing the violation;

(B) The General Manager (or similarly situated head of the Tribal Employer) of a Tribal Employer who receives a notice of an alleged violation from the TERO Director shall review the notice and determine which recommendations of the TERO Director it will implement and/or propose alternate resolutions to the alleged violation. The General Manager shall notify the TERO Director of his/her determination and provide a written explanation for his/her planned resolution.

(C) In the event the TERO Director is not satisfied by the General Manager's (or similarly situated head of the Tribal Employer's) written explanation, the TERO Director may submit a written request for review by the TERO Commission. The TERO Commission shall promptly hear the matter. The hearing shall be conducted in accordance with Part V, Subsection (f).

(D) In the case of a Covered Employer other than a Tribal Employer, issue a corrective order to the Covered Employer specifying any corrective action that must be taken by the Covered Employer and the timeframe in which the corrective action must be taken to avoid penalties. The notice shall also advise the Covered Employer of its right to appeal the corrective order to the Commission. If the TERO Director believes that immediate action is necessary to prevent irreparable harm resulting from an alleged violation of this Ordinance, he may request the Commission order a temporary injunctive order pending a hearing before the Commission on the matter. In no event shall the temporary injunctive order exceed fourteen (14) days.

(4) If a Covered Employer other than a Tribal Employer fails or refuses to comply with a corrective order within the timeframe set forth in the order, and fails to request a hearing before the Commission, the TERO Director may impose additional penalties on the Covered Employer as set forth below.

(d) PENALTIES/SANCTIONS. The following corrective actions, penalties, or sanctions may be imposed on a Covered Employer, other than a Tribal Employer, who violates any provision of this Ordinance.

- (1) A civil fine in an amount not to exceed \$1,000 per violation;
- (2) An order that the employer make payment of back pay or other damages to any aggrieved party;
- (3) Deny the Covered Employer the right to commence business on the Tribe's Reservation;
- (4) Order the Covered Employer to hire, promote, or train a preference individual or IOB;
- (5) Order the Covered Employer to dismiss any employees hired in violation of this Ordinance;
- (6) Order a percentage of lost profits (contract price less estimated expenses, materials, and labor costs); or
- (7) Suspend the Covered Employer's business activity on the Tribe's Reservation.

All monetary penalties assessed under this Ordinance shall be paid within thirty (30) days from the date imposed. If the Covered Employer fails to pay any fine as required, the TERO Director may request a Commission hearing be scheduled. Any Commission hearing so requested shall be conducted in accordance with the hearing procedures set forth in Part V, Section (f).

(e) APPEALS TO THE COMMISSION. Any person or Covered Employer aggrieved by a decision or action of the TERO Director or TERO staff (including any claims that the TERO Director or staff have exceeded the authority granted under this Ordinance) may seek review of the action or decision by filing a petition for review with the Commission. The petition must be filed no later than fourteen (14) days from the date of the action or decision being appealed. The petition shall state the reasons review is being sought and shall include, if applicable, a copy of the decision or order being appealed. The person or Covered Employer filing the Petition shall have the burden of proving, by a preponderance of the evidence, that a violation of this Ordinance did not occur, that a penalty or sanction imposed or corrective action ordered by the TERO Director was improper, or that the TERO Director exceeded his authority.

(f) COMMISSION HEARINGS.

(1) Hearings before the Commission shall be governed by rules of practice and procedure that are adopted by the Commission; provided that the Commission may consider any evidence that it deems relevant to the hearing and the Commission shall establish such procedures and safeguards to ensure the due process rights of all parties are protected.

(2) The Chair of the Commission will direct the proceedings and shall take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing.

(3) The TERO Director shall represent and defend any TERO action or determination challenged at the hearing; provided that the TERO Director may be represented by the Tribal Attorney's Office.

(4) Upon receiving notice of a hearing, a party may review any TERO files relevant to the issues to be addressed at the hearing; provided that TERO staff may remove proprietary or confidential information from the file, which will not be relied upon in the presentation of TERO Director's case.

(5) For good cause, the Chair of the Commission may postpone a hearing to a later date upon the written request of a party.

(6) Within fourteen (14) days of a hearing on a petition for review, the Commission shall issue a written order affirming; modifying, or reversing the TERO Director's decision.

(7) The Commission's order shall be a final order for purposes of appeal to the Tribal Court of the Confederated Tribes of the Grand Ronde Community of Oregon.

(g) APPEALS TO TRIBAL COURT.

(1) Any party adversely affected by a final order of the Commission may file an appeal with the Grand Ronde Tribal Court. A copy of the appeal must be sent to the TERO Director and any other party to the Commission proceeding no later than fourteen (14) days of the date of the Commission order.

(2) The notice of appeal shall set forth the order from which the appeal is taken and the grounds upon which reversal or modification is sought.

(3) The Commission's decision or order shall be stayed pending the determination of the Tribal Court.

(4) The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission was arbitrary and capricious, in violation of the Grand Ronde Constitution, or in excess of the authority granted the Commission.

(h) ENFORCEMENT ORDERS. If a Covered Employer has failed to comply with an order of the Commission or the TERO Director, and the time for filing an appeal of such order has passed, the TERO Director may petition the Tribal Court for enforcement of the order and the Tribal Court may grant such relief as is necessary and appropriate to enforce the Commission or TERO Director order, including, without limitation, confiscation of property within the jurisdiction of the Tribe.

I certify this to be a true copy of the Confederated Tribes of the Grand Ronde Community of Oregon Tribal Employment Rights Ordinance.


Tribal Council Secretary

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