

STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As amended through Resolution 10-047 (June 7, 2010)

TRIBAL EMPLOYMENT RIGHTS OFFICE
CODE

CONFEDERATED TRIBES
OF THE
UMATILLA INDIAN RESERVATION

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CHAPTER 1. GENERAL PROVISIONS

SECTION 1.01. TITLE

This Code shall be known as the Tribal Employment Rights Office Code.

SECTION 1.02. PURPOSE

The purposes of this Code are:

- A. To prevent employment related discrimination against American Indians;
- B. To ensure compliance with this Code that is intended to give preference in employment, contracting and sub-contracting, and training to American Indians; and
- C. To maximize utilization of Indian workers in all employment opportunities on and near the Umatilla Indian Reservation.
- D. To ensure the Indian workforce on the Umatilla Indian Reservation are trained and equipped to enter the workforce and maintain employment of their choosing.

SECTION 1.03. STATEMENT OF POLICY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation find that:

- A. Jobs in the private employment sector on and near the Umatilla Indian Reservation are an important resource for Indians residing on and near the reservation
- B. In order to attract private employers to locate on the Umatilla Indian Reservation, Indians residing on or near the Reservation need to have the training and skills those employers require.
- C. This Code is consistent and supplemental to existing federal and tribal law prohibiting employment discrimination against Indians and providing employment and contract preference to individual Indians and Indian-owned enterprises.
- D. Indian unemployment on the Umatilla Indian Reservation continues to be a problem of sufficient magnitude to warrant the enactment and implementation of this Code which is designed to improve training and employment opportunities for Indians living on and near the Reservation.
- E. Many unemployed Indians on the Umatilla Indian Reservation may have social barriers to for employment such as poor education, substance abuse, the lack of vocational training or the lack of tools and other equipment needed by their preferred vocation that need to be addressed.

SECTION 1.04. JURISDICTION

- A. This Code shall apply to all Employers located or engaged in business on the Umatilla Indian Reservation as set forth in this Code. This Code shall also apply to ODOT Contractors outside the Umatilla Indian Reservation as permitted by this Code and applicable federal and state law as authorized in the Memorandum of Understanding.
- B. This Code shall not apply to any direct employment by the Tribe, its enterprises or tribally owned corporations, or by federal, state or other governments; however,

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construction contractors and subcontractors of these governmental entities shall be subject to the Code.

- C. This Code is not intended to preempt or interfere with the rights or obligations set forth in the Tribes' Personnel Policies and Procedures, the Yellowhawk Personnel Manual, the Umatilla Tribal Police Department Manual, or the personnel manuals of Tribal enterprises including Wildhorse Resort and Casino, Tamástlikt Cultural Institute, Cayuse Technologies, Arrowhead Travel Plaza and Mission Market and other Tribal enterprises now or later established. The employees of the Tribe and Tribal enterprises shall be limited to the rights and remedies provided in the duly adopted manuals or procedures enacted by the Tribe for those employees. This Code shall not apply to or be enforced against Tribal enterprises including, but not limited to, Wildhorse Resort and Casino, the Tamástlikt Cultural Institute, Arrowhead Travel Plaza and Mission Market, Cayuse Technologies and other enterprises established and owned by the Tribe. Indian employment preference shall be provided at each Tribal enterprise in personnel manuals developed for each enterprise.
- D. Contract disputes between contractors and their subcontractors or their employees are outside the scope or jurisdiction of this Code and are not subject to enforcement, compliance or the issuance of a citation under this Code. Contract disputes shall be resolved through specified contract procedures for such disputes or through a court of competent jurisdiction.

SECTION 1.05. DEFINITIONS

- A. **BOARD OF TRUSTEES** - shall mean the governing body of the Confederated Tribes of the Umatilla Indian Reservation.
- B. **COMMISSION** - shall mean the Umatilla Tribal Employment Rights Commission.
- C. **COMMISSIONER** - shall mean a member of the Umatilla Tribal Rights Commission.
- D. **COMMISSION CHAIRPERSON** - shall mean the Chairperson of the Commission which shall be elected by the Commission on an annual basis. The Chairperson of the Commission shall preside at all meetings of the Commission.
- E. **COMPLIANCE AGREEMENT** — an agreement between an Employer or ODOT Contractor and the Tribal Employment Rights Office (TERO), setting forth how the Employer will meet Indian preference hiring and subcontracting goals and that they will comply with this Code. The Compliance Agreement must be executed prior to commencement of any portion of a construction contract or sub-contract within the Umatilla Indian Reservation, or in the case of an ODOT Contractor, near the Reservation.
- F. **CORE CREW** – means the essential, permanent employees of an Employer. Core Crew employees must have been regular employees of the Employer for at least six (6) months. "Core Crew" requests must be submitted to the TERO in writing, showing that each Core Crew member meets these criteria before the start of any project work, and approved by TERO Program Manager.
- G. **CONSTRUCTION EMPLOYER** - shall mean any person, company, contractor, subcontractor or entity located or engaged in construction work on the Umatilla Indian Reservation including new construction, remodeling, repair or maintenance of structures, infrastructure, equipment and support facilities. The term "Employer" shall include, but not be limited to, construction contractors and subcontractors of federal, state, county and other local governments, and shall include government owned enterprises, doing work on the Umatilla Indian Reservation. The term shall not mean or include the Tribe, federal, state or local governments when they are employers.

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- H. ENGAGED IN WORK ON THE RESERVATION – a Construction Employer is "engaged in work on the reservation" if during any portion of a business enterprise or specific project, contract or subcontract, he or any of his employees spends time performing work within the exterior boundaries of the Reservation.
- I. INDIAN - shall mean any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to American Indians.
- J. INDIAN OWNED BUSINESS - a business that is at least 51% owned, operated and controlled by an Indian.
- K. INDIAN PREFERENCE - shall mean a preference for enrolled Indians in all aspects of employment, including but not limited to, hiring, training, promotions, layoffs, contracting and subcontracting for work within the Umatilla Indian Reservation. Qualified, available Indians shall receive an Indian preference according to negotiated Compliance Agreement.
- L. LOCATED ON THE RESERVATION - a Construction an Employer is "located on the Reservation" if during any portion of the construction contract it maintains a temporary or permanent office or facility within the exterior boundaries of the Reservation.
- M. MEMORANDUM OF UNDERSTANDING – shall mean the agreement between the Tribe and the Oregon Department of Transportation providing Indian preference in employment for Indians on ODOT transportation projects and authorizing TERO to impose a compliance fee on ODOT contractors.
- N. NEAR THE RESERVATION - shall mean jobs within 60 miles of the exterior boundaries of the Umatilla Indian Reservation.
- O. ODOT – shall mean the Oregon Department of Transportation.
- P. ODOT Contractor – shall mean a transportation construction contractor, and all related subcontractors, to ODOT that are subject to the TERO Indian employment and subcontracting preference and Compliance Agreement under the Memorandum of Understanding.
- Q. OFFICE – shall mean the Umatilla Tribal Employment Rights Office.
- R. PROGRAM MANAGER - shall mean the Program Manager of the Umatilla Tribal Employment Rights Office.
- S. RESERVATION - shall mean the Umatilla Indian Reservation.
- T. TRIBE or TRIBAL - shall mean the Confederated Tribes of the Umatilla Indian Reservation of Oregon.
- U. TRIBAL COURT - shall mean the Umatilla Tribal Court.
- V. WORKFORCE DEVELOPMENT – shall be the training and employment component of the TERO program.

CHAPTER 2. TRIBAL EMPLOYMENT RIGHTS OFFICE

SECTION 2.01. PROGRAM MANAGER

The Program Manager of the Tribal Employment Rights Office shall be responsible for administering the provisions of this Code and provide direction, leadership and oversight to Office staff.

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SECTION 2.02. GENERAL AUTHORITIES

The Program Manager shall have the authority to hire staff, to obtain and expend funds from tribal, federal, state, or other sources to carry out the purposes of this Code as provided in the annual budget of the Tribe, to establish Construction Employer and ODOT Contractor record-keeping requirements, to implement a workforce development program plan to consult with the TERO Commission on policy issues related to the implementation of this Code, and to take such other actions as are necessary for the fair and vigorous enforcement of this Code. The Program Manager will report TERO activities in the Human Resource Department Annual Work Plan for Board of Trustee review.

SECTION 2.03. SPECIFIC AUTHORITIES

The Program Manager shall have the authority to:

- A. Enter Compliance Agreements with Construction Employers and ODOT Contractors;
- B. Investigate violations of, and impose penalties on Construction Employers and ODOT Contractors who violate, the provisions of the Code;
- C. Assist the Commission to develop and promulgate regulations necessary to implement the provisions of this Code;
- D. For purposes of Compliance Agreements, develop and impose numerical hiring goals and timetables that reflect the available Indian labor pool and other employment opportunities for each craft and skill category.
- E. Require Construction Employers and ODOT Contractors that have established training or apprentice programs to provide preference to Indians.
- F. Establish and maintain a tribal hiring hall that maintains a record of qualified, employable Indians that is to be used by employers to fill vacancies;
- G. Prohibit any Construction Employer and ODOT Contractor from imposing employment qualification criteria that serve as barriers to Indian employment unless it can be demonstrated that such criteria are required by business necessity;
- H. To work cooperatively with other Tribal programs, including, but not limited to, Yellowhawk, DCFS and Education, to establish counseling, education and training, substance abuse treatment and other support programs for Indian workers to assist them in acquiring and retaining employment;
- I. To enter into cooperative agreements with federal and state agencies to minimize employment discrimination against Indians both on or near the Reservation, to promote Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Code;
- J. Through required payroll reports, from Construction Employers and ODOT Contractors, monitor wage scale and salaries to ensure equitable compensation of Indian workers.
- K. To assess fees on Construction Employers and ODOT Contractors to support the operation of the Office.
- L. To apply for federal funding to provide workforce training opportunities for Indians living on or near the Reservation pursuant to the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, Public Law 102-477.

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- M. To address the needs of Indian persons living on or near the Reservation that are now unemployed or underemployed and/or dependent on public assistance, through the linkage of employment and vocational training, substance abuse counseling and other needed social services. Specifically, the Office will provide, or facilitate the provision of, special services to enable such Indian persons to receive the education, training and other medical and social services they need to become productive employees in the workforce. The Program Manager shall carry out these duties as set forth in Chapter 9 of this Code.
- N. Advertise, collect data, investigate, communicate and make recommendations to the TERO Commission regarding any application or re-certification process on the Indian Owned Business Directory. The TERO program will ensure each applicant has been reviewed and certified and shall make a recommendation to deny or approve the application to the TERO Commission. The TERO program will ensure each Indian Owned Business on the Directory will be re-certified every 2 years and update the TERO Commission on an annual basis.

CHAPTER 3. TRIBAL EMPLOYMENT RIGHTS PROGRAM

SECTION 3.01. SCOPE

All Construction Employer and ODOT Contractors performing work within or near the Reservation shall:

- A. Give preference to Indians in hiring, promotion, training and all other aspects of employment, contracting and subcontracting, business opportunities and shall comply with the terms of the Code and its implementation regulations.
- B. Comply with the Compliance Agreement executed under this Code.

SECTION 3.02. COMPLIANCE AGREEMENT

- A. Each Construction Employer and ODOT Contractor shall be required to meet with the Program Manager to negotiate and execute a Compliance Agreement which sets forth:
 - 1. The minimum number of Indians that shall be hired for any particular project while the Construction Employer is located or engaged in work on the Reservation, or an ODOT Contractor is engaged in working near the Reservation, numerical goals and timetables for each craft, skill area, job classification, *etc.*, used by the Construction Employer or ODOT Contractor including, but not limited to: general labor, skilled, administrative, supervisory, and professional categories;
 - 2. Applicable wage scale provisions, prevailing wage standards and salary compensation terms that may be applicable to a project or contract under applicable federal or state law, or Tribal law, provided that any Tribal minimum or prevailing wage has been promulgated as provided in section 3.12 of this Code;
 - 3. Periodic reporting requirements to the Program Manager on the number of Indians employed, a 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.
- B. The numerical goals set forth in the Compliance Agreement shall be based upon surveys conducted by the Program Manager of the available and qualified Indian work force and of projected employment opportunities on or near the Reservation.

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- C. Compliance Agreements shall be reviewed periodically and revised as necessary to reflect changes in the number of Indians available or changes in Construction Employer or ODOT Contractor hiring plans.
- D. No Construction Employer or ODOT Contractor shall commence work or site mobilization until a Compliance Agreement has been negotiated and executed.
- E. Any violation of an executed Compliance Agreement shall be a violation of this Code.
- F. When a TERO employee referral to a Construction Employer or ODOT Contractor is unable to continue working, the Construction Employer or ODOT Contractor shall immediately notify the TERO office who shall provide a substitute referral within three (3) business days or notify the Construction Employer or ODOT Contractor that it has no referrals for the position, after which time the Construction Employer or ODOT Contractor will be authorized to hire a permanent replacement.

SECTION 3.03. JOB QUALIFICATIONS AND PERSONNEL REQUIREMENTS

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

SECTION 3.04. TRIBAL HIRING HALL

- A. The Program Manager shall establish and maintain a hiring hall to assist Construction Employers and ODOT Contractors and all other employers doing business on the Reservation in placing qualified Indians in job positions.
- B. A Construction Employer and ODOT Contractors shall not hire a non-Indian in violation of the Compliance Agreement until the Program Manager has certified within a reasonable time that no qualified Indian is available to fill the vacancy. For purposes of this section, "reasonable time" for construction jobs shall mean that the Program Manager shall have 48 hours from time of notice of manpower needs to locate and refer a qualified Indian.
- C. The Program Manager may waive the 48-hour time period upon a showing by the Construction Employer or ODOT Contractor that such time period imposes an undue burden upon the Construction Employer or ODOT Contractor, the business or the construction project in question.

SECTION 3.05. UNIONS

Construction Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code, its rules and regulations and their Compliance Agreement. ODOT Contractors with collective bargaining agreements with a union are responsible for informing such unions of this Code, the Memorandum of Understanding and their Compliance Agreement. 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 tribal recognition of any union or tribal endorsement of any union activities on or near the Umatilla Indian Reservation.

SECTION 3.06. CONTRACTORS AND SUBCONTRACTORS

Where the general contractor on a project is a Construction Employer, that general contractor shall ensure that all its subcontractors comply with this Code. The general contractor who is a Construction Employer may be held liable for violations of this Code by its subcontractors.

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SECTION 3.07. PREFERENCE IN CONTRACTING AND SUBCONTRACTING

- A. For Construction Employers. Construction Employers shall give preference to Indian Owned Businesses in the award of contracts or subcontracts to the extent permitted by applicable law. The Program Manager shall maintain a list of Indian Owned Businesses which shall be supplied to Construction Employers and ODOT Contractors upon request. Indian Owned Businesses shall be certified by the Program Manager to ensure that they meet the requirements of such an entity as set forth in section 1.05(I) of this Code. Indian Owned Businesses will submit re-certification applications every two (2) years to remain active.
- B. All other Reservation Employers. All other Reservation employers shall give preference to Indian Owned Businesses in the award of contractor subcontracts to the maximum extent feasible as permitted by federal law and the law, budget and fiscal policies of the Tribe.

SECTION 3.08. LAYOFFS

In all layoffs and reductions in force for a Construction Employer and ODOT Contractors, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed. The non-Indian shall be terminated first if the Indian possesses threshold qualifications for the job classification. If a Construction Employer or ODOT Contractor lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classification are employed elsewhere on the job site, except for non-Indians hired as Core Crew pursuant to negotiated Compliance Agreements.

SECTION 3.09. PROMOTION

Each Construction Employer and ODOT Contractor shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For each promotion or supervisory position filled by a non-Indian, the Construction Employer or ODOT Contractor shall file a report with the Program Manager 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 3.10. COMPLIANCE FEES

The Program Manager shall assess and collect a compliance fee as follows:

- A. Every Construction Employer with a construction, renovation, improvement or expansion contract in the sum of ten thousand dollars (\$10,000) or more shall pay a fee of 2 ½% of the total amount of the contract. Such fee shall be paid by the Construction Employer prior to commencing work on the Reservation.
- B. The Program Manager may develop a sliding scale fee that reduces the 2 ½% fee applicable to Construction Employers based upon the Construction Employer meeting Indian Preference goals and Indian Owned Business subcontracting targets, provided that the fee shall not be reduced below 1.5%. All TERO compliance fee adjustments must be presented to the Program Manager for approval.
- C. The Program Manager shall be authorized to assess a compliance fee on ODOT Contractors engaged in construction projects on or near the Reservation as may be permitted by the Memorandum of Agreement or federal transportation agency managing the transportation construction project.
- D. Compliance fees shall be used for the Tribal Employment Rights Office operating budget. Compliance fees shall be appropriated by the Tribes' annual budget process.

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- E. The Program Manager shall be authorized to do the following in connection with the payment of the compliance fee:
1. Permit the Employer to pay with the compliance fee in annual payments over the lifetime of the project (for on reservation non-ODOT projects only) being constructed, provided that such payment shall be fully paid within twenty years; and
 2. Provide credit to an Employer (for on reservation non-ODOT projects only) for the payment of the compliance fee when the Employer makes contributions to the Tribal scholarship, vocational training or workforce development programs that are similar to the education and training functions of TERO, or when the Employer establishes and funds an apprenticeship program providing job training for Indians.
- F. The Program Manager shall receive a copy of each compliance fee payment. The Program Manager shall be responsible for collecting the fees and may request that the Commission promulgate such regulations as are necessary to ensure a fair and timely fee collection process. for Construction Employers working on projects that begin off and end on, or begin on and end off the Reservation, will be considered one hundred percent on-Reservation, thus subject to the full compliance fee. However, if fifty percent (50%) or more of the work is off-Reservation, the Program Manager is authorized to negotiate an appropriate compliance fee based upon the percentage of the work performed on the Reservation.

SECTION 3.11. ON SITE INSPECTIONS

The Program Manager shall have the authority to make on-site inspections during regular working hours in order to monitor compliance with this Code and the applicable Compliance Agreement by a Construction Employer or ODOT Contractor. The Program Manager and any authorized TERO staff shall have the right to inspect and copy all relevant records of a Construction Employer or ODOT Contractor, of any signatory union or subcontractor of a Construction Employer or ODOT Contractor, and shall have the right to speak to workers and to conduct an investigation on the job site. All information collected by the Program Manager and/or TERO staff shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

SECTION 3.12. TRIBAL MINIMUM OR PREVAILING WAGE

- A. The Program Manager may promulgate a Tribal Minimum Wage or Prevailing Wage as provided in this Section. Such Tribal Minimum or Prevailing Wage shall only apply to Construction Employers. A Tribal Minimum or Prevailing Wage established under this subsection may be included in a Compliance Agreement pursuant to section 3.02 of this Code.
- B. Definitions. For purposes of this Section, the terms “Minimum Wage” and “Prevailing Wage” are defined as follows:
1. Minimum Wage: Shall mean the lowest wage that the Construction Employer can pay any employee, which Minimum Wage shall not be less than the federal minimum wage;
 2. Prevailing Wage: Shall mean the lowest wage that an Construction Employer can pay any employee by trade or craft. A Prevailing Wage need not limit or put a cap on all employees in a particular craft or trade.
- C. If the Program Manager elects to promulgate a proposed Minimum Wage or Prevailing Wage, the following factors shall be taken into consideration:

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1. The prevailing wage for each job classification in the Oregon or Washington wage classifications;
 2. The prevailing wages established by other Northwest Indian tribe;
 3. The number of Indian persons living on or near the Reservation with the particular craft or trade skills;
 4. The Reservation unemployment rate – especially the unemployment rate for the particular craft or trade;
 5. Local labor and market conditions;
 6. The potential impact of the Prevailing Wage to attract businesses or Construction Employers to do business on the Umatilla Indian Reservation;
 7. The potential impact of the Prevailing Wage in raising the costs of Tribal facilities.
- D. The draft Minimum or Prevailing Wage shall be published in the CUJ with notice of the comment opportunity and comment deadline date and distributed to all Tribal governmental departments, enterprises and to persons or entities that may be impacted by such a proposal for review and comment. The record shall be kept open for at least sixty (60) days to permit comments to be submitted.
- E. Within thirty (30) days of the closing of the record for comments, the Program Director shall either prepare a draft Minimum or Prevailing Wage, submit the proposed Minimum or Prevailing Wage to the TERO Commission for its approval, or shall withdraw the proposal.
- F. Upon receipt of TERO Commission approval, the draft Minimum or Prevailing Wage shall be submitted to the Board of Trustees for approval. The Minimum or Prevailing Wage shall become final upon Board of Trustee approval of the Minimum or Prevailing Wage.

CHAPTER 4. VIOLATION PROCEDURES

SECTION 4.01. INVESTIGATION BY THE PROGRAM MANAGER

Whenever a violation of this Code or a Compliance Agreement has been alleged and is brought to the attention of the Program Manager, the Program Manager shall ensure a prompt and thorough investigation of the alleged violation. The Program Manager shall seek to achieve an informal settlement of the alleged violation, with a written report of findings provided to the Commission.

SECTION 4.02. ISSUANCE OF CITATION

- A. If the Program Manager determines that a violation of the Code or a Compliance Agreement exists, and an informal settlement cannot be achieved, the Program Manager shall issue a warning to the Construction Employer or ODOT Contractor . This warning shall specify the nature of the violation and direct that the violation be corrected within three (3) days or sooner where warranted.
- B. If the violation is not corrected within the time specified, the Program Manager shall issue a citation to the Construction Employer or ODOT Contractor which shall:
1. Be in writing and in the name of the Confederated Tribes;

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2. State the name of the violator;
3. Bear the signature of the Program Manager or the authorized representative;
4. State the name and section number of the Code provision or Compliance Agreement violated;
5. State a brief summary of facts constituting the violation; and
6. State a time and place the Construction Employer or ODOT Contractor must appear to answer to the violation at a Program Manager hearing.

SECTION 4.03. PROGRAM MANAGER HEARING

A Construction Employer or ODOT Contractor that receives a citation shall be entitled to a hearing before the Program Manager no later than ten (10) working days after receipt of a citation. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The Construction Employer or ODOT Contractor shall be entitled to present evidence and to call witnesses to demonstrate that it has complied with the requirements of this Code or Compliance Agreement or that it made its best effort 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 the Office, the Program Manager shall determine whether or not the Construction Employer or ODOT Contractor complied with this Code. If the Program Manager determines that the Construction Employer or ODOT Contractor is out of compliance and has not made a best effort to comply, the Program Manager shall impose one or more of the sanctions provided for in this Code, as appropriate, and shall order the Construction Employer or ODOT Contractor to take such corrective action as is necessary to remedy any harm done to the Tribe or individual Indians caused by the non-compliance. The Program Manager shall send written notice to all parties within ten (10) days after its decision in the matter.

SECTION 4.04. EMERGENCY RELIEF

When the Program Manager determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the Program Manager may issue a citation without delay, stating sanctions to be placed on the offending Construction Employer or ODOT Contractor. The Construction Employer or ODOT Contractor shall have the right to appeal the citation and any imposition of emergency sanctions to the TERO Commission. The TERO Commission shall schedule a hearing on any appeal of a decision by the Program Manager granting emergency relief pursuant to this subsection within 7 working days.

SECTION 4.05. APPEALS

Any person adversely affected by a decision of the Program Manager shall have the right to appeal the decision to the TERO Commission in accordance with this Code.

SECTION 4.06. INDIVIDUAL COMPLAINT PROCEDURE

- A. Any Indian who believes that a Construction Employer or ODOT Contractor has failed to comply with this Code or applicable Compliance Agreement, or who believes that they have been discriminated against by a Construction Employer or ODOT Contractor because they are Indian, may file a complaint with the Office. The complainant shall be responsible for providing the Office with evidence of the discriminatory practices. Upon receipt of a complaint supported by sufficient evidence of discrimination against an Indian complainant, the Office shall conduct an investigation of the charge, which shall include interviews of the project manager for the Construction Employer or ODOT Contractor and any person(s) allegedly responsible for the discriminatory conduct, and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the program manager shall hold a hearing on the matter, shall make a

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determination on the validity of the charge, and shall order such relief as is necessary to make whole any Indian who is harmed by the Construction Employer's or ODOT Contractor's non-compliance or discriminatory behavior. The decision shall be in writing and shall be sent to all parties within seven (7) working days.

- B. In conducting the hearing, the Program Manager shall have the same powers, and shall be bound by the same hearing requirements as provided in sections 4.03, 4.04 and 4.05 of this Chapter.

CHAPTER 5. PENALTIES

SECTION 5.01. PENALTIES FOR VIOLATION

A Construction Employer or ODOT Contractor who violates this Code or a Compliance Agreement shall be subject to penalties including, but not limited to:

- A. Denial of the right to commence or continue business on the Reservation;
- B. Suspension of operations on or near the Reservation;
- C. Payment of back pay and/or damages to compensate any injured party;
- D. An order to summarily remove employees hired in violation of this Code or a Compliance Agreement;
- E. Imposition of monetary civil penalties pursuant to a schedule of penalties promulgated by the Commission, which penalties shall take into consideration the severity of the violation, whether any other penalty pursuant to this section was imposed and whether the person or entity that is subject to the fine has any prior history of violating this Code; or
- F. An order specifying requirements for employment, promotion, and training Indians injured by the violation.

SECTION 5.02. MONETARY FINES

The maximum monetary penalty that may be imposed for a violation is five hundred dollars (\$500). For purposes of the imposition of penalties determined by the Court or sanction by the Program Manager, each day during which a violation exists shall constitute a separate violation.

SECTION 5.03. ENFORCEMENT

- A. The Program Manager shall be entitled to pursue the enforcement of any order of the Commission or the Umatilla Tribal Court when necessary to collect penalties or to ensure compliance with the terms and conditions of any order issued by the Umatilla Tribal Court or the Commission.
- B. Any cost associated with the enforcement of such Order issued pursuant to this Code shall be assessed against the Construction Employer or ODOT Contractor that is out of compliance. These may include, but not be limited to: document reproduction costs, filing fees, attorney fees and costs incurred by the Tribe or the Office related to securing enforcement of the Order.
- C. Construction Employers that do not comply with the provisions of this Code, and leave the Reservation before enforcement penalties are imposed and collected or an enforcement order is issued by the Commission or the Umatilla Tribal Court, shall be denied the right of contracting or doing further business on the Reservation.

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CHAPTER 6. TRIBAL EMPLOYMENT RIGHTS OFFICE COMMISSION

SECTION 6.01. ESTABLISHMENT

The Tribal Employment Rights Office Commission is hereby established to perform the duties and responsibilities set forth in this Code.

- A. Membership - the Commission shall be comprised of 5 members appointed by the Board of Trustees. The members shall hold office for a period of 1 and 2 years, terms to be determined by the Board of Trustees. There is no limitation on the number of terms a member may serve.
- B. Qualification - any Indian 18 years and older who works or resides on the Umatilla Reservation is qualified to be appointed to the Commission.
- C. Commission Chairperson - the Commission shall elect annually a Chairperson from its membership. The Chairperson shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.
- D. Duties and Powers - the Commission shall be responsible for conducting hearings on Tribal Employment Rights matters in accordance with this Code. In addition to all specific powers set forth in this Code, the Commission shall also have the following powers:
 - 1. Review contractor applications to certify that applicant is eligible for inclusion on Indian Owned Business Directory.
 - 2. Certify On-The-Job training hours as recorded by TERO staff for Tribal Apprenticeship Programs.
 - 3. The TERO Commission may conduct on-site visits if such visits are a part of their investigation for the decision making process for appeals.
 - 4. Develop procedures necessary to implement the provisions of this Code that are consistent with this Code.
 - 5. Conduct an annual review of the Code.
- E. The Commission will hold regular meetings at 1:30 pm, on the first and third Tuesday of every month. Times and procedures for hearings will be set as necessary, when an appeal is filed on a sanction or decision of the Program Manager. The Commission shall attempt whenever possible to execute its powers by consensus. If a consensus cannot be achieved, the affirmative vote of a majority of the 5 Commissioners shall be required to take Commission action. The Chairperson shall be entitled to vote on any decision or action. All written agreements or plans, directives, complaints and appeals which the Commission authorized or required to issue or file, shall bear the signature of at least 2 Commissioners. The Commission will not supervise Tribal Employment Rights and Workforce Development personnel.

CHAPTER 7. COMMISSION APPEALS AND HEARINGS

SECTION 7.01. APPEALS AND DECISIONS THAT CAN BE APPEALED TO THE COMMISSION

The following may be appealed to the Commission:

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- A. Appeal of decision on citation issued to Construction Employer or ODOT Contractor following Program Manager hearing pursuant to section 4.03 of this Code;
- B. Appeal of Program Manager decision on individual complaint following Program Manager Hearing pursuant to section 4.03 of this Code; and
- C. Appeal of Program Manager's decision to grant emergency relief against a Construction Employer or ODOT Contractor pursuant to section 4.04 of this Code.

SECTION 7.02. CONTENT OF APPEAL

To initiate an appeal, the person or entity appealing a sanction or decision of the Program Manager shall file a written statement of appeal with the Commission, with a copy to the Program Manager, within seven (7) days of the receipt of the Program Manager's decision. The appeal shall describe the nature of the Program Manager's action or decision being appealed, a summary of the factual and legal basis for the appeal and the relief requested.

SECTION 7.03. SCHEDULING APPEAL HEARING

Upon receipt of an appeal that has been timely filed, the Commission shall establish a hearing date, time and place and shall notify in writing the appealing party and the Program Manager. Each party shall be responsible for ensuring that their witnesses attend the hearing. A hearing on an appeal of a grant of emergency relief pursuant to section 4.04 of this Code shall be scheduled within seven (7) working days of the filing of the appeal. All other hearings shall be scheduled as soon as possible.

SECTION 7.04. REQUEST TO RESCHEDULE COMMISSION HEARING

Upon receipt of a request by a party to a Commission appeal hearing requesting the rescheduling of a Commission hearing, the Commission shall promptly rule on such request and immediately notify the parties of its decision.

SECTION 7.05. COMMISSION HEARING PARTICIPANTS

Only the party filing the appeal, the Program Manager and the witnesses that may be called by the parties in the hearing may attend the hearing. The Commission may determine if a court reporter should record the hearing. Both the appealing party and the Program Manager may be represented by counsel at the hearing.

SECTION 7.06. HEARING PROCEDURE

- A. Both parties will be afforded the opportunity to present opening statements with respect to what they intend to present to the Commission. Following opening statements, first the appellant and then the Program Manager may present witnesses and evidence in support of their position on the issues being appealed.
- B. The Commission Chairperson will preside over the hearing and will take whatever action is necessary to ensure an equitable and expeditious hearing. Parties will abide by the presiding official's rulings. The Chairperson may limit the number of witnesses when testimony would be unduly repetitious, and exclude any person from the hearing for contemptuous or inappropriate misbehavior that obstructs the hearing.

SECTION 7.07. COMMISSION DECISION

The Commission will render a decision within ten (10) working days from the date of the hearing. The parties will be notified in writing of the Commission's decision.

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SECTION 7.08. COMMISSION TRAINING

The Commission will be afforded annual training on hearing procedures and decision making techniques.

CHAPTER 8. TRIBAL COURT ENFORCEMENT AND JUDICIAL REVIEW

SECTION 8.01. JUDICIAL REVIEW OF COMMISSION DECISIONS

Any party to an appeal to the Commission pursuant to section 7.01 of this Code who is dissatisfied with the Commission's decision may appeal the Commission decision to the Umatilla Tribal Court. Such appeal shall be in writing and shall be filed with the Tribal Court within thirty (30) days of the date of the Commission decision and shall set forth the factual and legal issues on appeal and a brief statement of the factual and legal arguments supporting the appealing party's position. The appeal shall also state the relief requested from the Tribal Court. The Tribal Court shall promptly schedule a conference call between the parties to develop a briefing schedule and date for oral argument, if desired by the parties and approved by the Tribal Court. The Tribal Court shall issue its decision in writing following the submission of briefs and oral argument, if oral argument is scheduled.

SECTION 8.02. TRIBAL COURT ENFORCEMENT OF COMMISSION AND PROGRAM MANAGER DECISIONS

- A. The Tribal Court shall have the authority to issue any order or take any action necessary to enforce any Program Manager decision following a Program Manager hearing, or a Commission decision following an appeal to the Commission, provided that such order or decision is final and has not been appealed as permitted by this Code. To request such a Tribal Court order, the Program Manager shall file a petition with the Tribal Court containing the following information: a copy of the decision sought to be enforced, a brief summary of the proceedings leading to the decision and a statement about the finality of that decision (i.e. the appeal deadline has lapsed), shall identify the person or entity subject to the decision and shall set forth facts to show how the decision is not being complied with.
- B. The Program Manager shall serve the party against whom the decision was rendered with copies of the petition.
- C. Upon receipt of the petition, the Tribal Court shall schedule a hearing and subpoena all necessary parties. The hearing shall be held within ten (10) days from the date the petition is filed.
- D. The Program Manager shall have the burden of proving to the Tribal Court that either the Program Manager or Commission decision has not been complied with. The parties to the hearing on the petition may produce oral testimony or written documentation to support their case.
- E. The Tribal Court shall render a decision on the petition filed by the Program Manager within fourteen (14) working days and enter whatever order is necessary or appropriate. The decision of the Tribal Court shall be final and binding.

SECTION 8.03. COURT RULES

The Court shall be responsible for establishing rules and procedures necessary to hear and adjudicate actions brought hereunder.

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SECTION 8.04. REMEDIES

Ruling on matters arising under this Code, the Tribal Court shall have the authority to assess and collect civil penalties, to enjoin or mandate actions to enforce the provisions of this Code, and to provide any other relief the Tribal Court deems lawful and equitable; provided that nothing in this Code shall be construed as a waiver of the sovereign immunity of the Confederated Tribes. Accordingly, nothing in this Code shall be construed as any authority for a claim for money damages against the Tribe, the Office or Tribal officials and employees acting pursuant to their authority under this Code.

CHAPTER 9. WORKFORCE DEVELOPMENT

SECTION 9.01. AUTHORIZATION

The Program Manager shall prepare for Board of Trustee approval of a Workforce Development Plan pursuant to the Indian Employment, Training and Related Services Demonstration Act of 1992, 25 U.S.C. §3404 et seq. The Plan shall be submitted to the Department of Interior for its review, approval and funding. The Plan shall be developed by the Program Manager in consultation with the Tribal Executive Director, the Tribal Human Resources Director, the Yellowhawk Chief Executive Officer and the Directors of the Department of Children and Family Services and the Department of Education.

SECTION 9.02. WORKFORCE DEVELOPMENT PLAN

The Workforce Development Plan shall, at a minimum, include the following elements:

- A. Identification of the members of the Tribe and other enrolled Indians living on the Reservation between the ages of 18 and 65 who are either unemployed or underemployed;
- B. The employment opportunities for members of the Tribe and enrolled Indians within the Reservation, including a listing of each enterprise, the types and number of employment positions available;
- C. The education, vocational training, scholarships and other training opportunities that might be available to increase the job skills of Indians living on the Reservation;
- D. Identification of the employment obstacles experienced by unemployed and underemployed Indians residing on the Reservation;
- E. Description of Tribal government departments, programs and services that are available to address the obstacles preventing employment by Reservation Indians;
- F. A comprehensive strategy to address and remove the employment obstacles experienced by Reservation Indians, the utilization of Tribal departments, programs and services to address these obstacles and the education, training and employment opportunities available for Indians;
- G. Additional funding and personnel needed to implement the Plan; and
- H. Means to provide incentives for Indian persons to receive the services, education or training needed to remove employment obstacles and seek gainful employment, which may include the removal of governmental benefits in the event that able bodied persons are unwilling to participate in Workforce Development programs or services to enable the participant to gain employment or, if such services or training have been provided, to pursue such employment.

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SECTION 9.03. TRAINING

- A. The Program Manager shall identify training programs necessary in order to increase the pool of qualified Indians for employment on the Reservation.
- B. The Program Manager may initiate and sponsor training programs for employers to participate in, or the Program Manager may work with employers to establish and sponsor their own training programs to assist Indians to become qualified in the various job classifications used by employers.
- C. The ratio of Indian trainees to fully qualified workers shall be negotiated as part of the Compliance Agreement. For construction projects, the number of Indian trainees shall be no less than the minimum ratio established by the Department of Labor. (Moved from earlier section to Workforce Development)

SECTION 9.04. INTER-DEPARTMENTAL PARTICIPATION AND COOPERATION

Removing employment obstacles experienced by Reservation Indians will require the participation and cooperation by all Tribal departments and enterprises. While the Program Manager is charged with developing and implementing the Workforce Development Plan, all Tribal department directors and enterprise managers shall cooperate in the implementation of the Plan to the fullest extent practicable.

SECTION 9.05. REPORTING

The Program Manager shall report quarterly to the Trustees on the status of and progress in developing and implementing the Workforce Development Plan. Such reporting shall include information on the following:

- A. Status of development of Workforce Development Plan;
- B. Status of Department of Interior of Workforce Development Plan;
- C. Amount of federal funding received, expended and available for the implementation of the Workforce Development Plan;
- D. Number of Indian persons receiving services or training pursuant to Workforce Development Plan;
- E. Number of Indian persons who, after receiving Workforce Development services or training, have been employed;
- F. A discussion of problems encountered in addressing employment obstacles experienced by Reservation Indians under the Workforce Development Plan.

APPENDIX A

TRIBAL EMPLOYMENT RIGHTS OFFICE CODE

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Tribal Employment Rights Office Ordinance in Resolution 78-53 (August 7, 1978).

The Board enacted a revised Tribal Employment Rights Office (TERO) Ordinance in Resolution 82-64 (September 20, 1982). The revised ordinance included a new, 14 page TERO Guidelines document. The revised Tribal Employment Rights Ordinance was amended three times, as follows: Resolution 84-21 (February 15, 1984), Resolution 88-07 (November 5, 1987), and Resolution 89-32 (April 5, 1989).

The Board enacted the second revised Tribal Employment Rights Office Ordinance in Resolution 90-51 (September 19, 1990). In enacting the second revised Tribal Employment Rights Office Ordinance, the Board explicitly repealed all prior resolutions concerning the TERO, with the sole exception of Resolution 89-17. As the second revised Tribal Employment Rights Office Ordinance did not contain the TERO Guidelines, these were repealed by Resolution 90-51.

The Board enacted the third revised Tribal Employment Rights Office Ordinance in Resolution 96-67 (July 31, 1996).

During preparation of the 1999 compilation of the *Statutes of the Confederated Tribes of the Umatilla Indian Reservation*, the name of the statute was changed from "Tribal Employment Rights Office Ordinance" to "Tribal Employment Rights Office Code."

In Resolution 10-047 (June 7, 2010), the Board enacted a fourth revision of the Tribal Employment Rights Office Code. As part of this revision, the Code was reformatted to conform to the Confederated Tribes' standard code format.

In Resolution 83-78 (September 7, 1983), the Board approved an agreement between the Confederated Tribes and the Four Basic Trade Unions on compliance with the Tribal Employment Rights Ordinance and Guidelines. This agreement reportedly terminated at the end of five years and was not renewed.

In Resolution 89-17 (January 25, 1989), the Board approved a Memorandum of Understanding with the State of Oregon Department of Transportation that ensured compliance with the Tribal Employment Rights Ordinance whenever the Department of Transportation contracted to perform highway construction activities on the Umatilla Indian Reservation. In Resolution 94-13 (February 22, 1994), the Board approved a new Memorandum of Understanding with the State of Oregon Department of Transportation which superseded the 1989 Memorandum of Understanding. This Memorandum of Understanding ensures compliance with the Tribal Employment Rights Ordinance whenever the Department of Transportation contracts to perform highway construction activities on the Umatilla Indian Reservation or within 60 miles of the Reservation.

The Approval of Public Law 102-477 was adopted by the Board of Trustees through Resolution 08-063 on June 30, 2008.