

**Tribal Employment Rights Ordinance
of the
Bishop Paiute Tribe**



AS AMENDED AND APPROVED ON
NOVEMBER 14, 2019
BY THE
BISHOP PAIUTE TRIBAL COUNCIL

Tribal Employment Rights Ordinance of the Bishop Paiute Tribe

As amended on November 14, 2019

TABLE OF CONTENTS

Section 1.0	Name.....	1
Section 2.0	Purpose.....	1
Section 3.0	Definitions.....	1-4
Section 4.0	Establishment and Purpose of the Tribal Employment Rights Commission.....	5
Section 5.0	General and Specific Powers of the Commission and TERO Manager.....	5-10
Section 6.0	Tribal Indian Employment Preference Policy, Fair Employment, Discrimination and Procedures.....	10-17
Section 7.0	Compliance by Unions.....	17
Section 8.0	Complaints and Administrative Non-Compliance.....	17-20
Section 9.0	Hearings.....	20
Section 10.0	Penalties for Violations.....	21
Section 11.0	Appeals.....	21-22
Section 12.0	Publication of Ordinance.....	22
Section 13.0	Compliance Plan Agreement.....	22
Section 14.0	Reporting, Information for Verification and On-Site Inspections.....	23
Section 15.0	Rules and Regulations.....	23
Section 16.0	Commission Funds.....	23
Section 17.0	Employment Administrative Fee.....	23-24
Section 18.0	Retaliation and Reprisal.....	25
Section 19.0	Principles of Construction.....	25
Section 20.0	Severability.....	25
Section 21.0	Sovereign Immunity Preserved.....	25
Section 22.0	Amendments.....	25
Section 23.0	Effective Date.....	26
	Resolution T-1992-01 Establishment of the Tribal Employment Rights Ordinance	
	Resolution T-2008-14 to Approve the Amended and Updated TERO Ordinance	
	Resolution T-2012-15 to Approve the Amended and Updated TERO Ordinance	

TRIBAL EMPLOYMENT RIGHTS ORDINANCE OF THE BISHOP PAIUTE TRIBE

SECTION 1.0 NAME

This Ordinance shall be known as the "Bishop Tribal Employment Rights Ordinance". The short name shall be the "Tribal Employment Rights Ordinance", or "TERO".

SECTION 2.0 PURPOSE

The Purpose of this Ordinance is to:

- a) Assist in employment on or near the Bishop Paiute Reservation;
- b) Prevent discrimination against Indians in the employment practices of Reservation employers and contractors, and secondarily to prevent other types of discrimination in employment practices of employers and contractors;
- c) Ensure fair employment practices for all employees;
- d) Require Tribal and Indian Preference in employment; and
- e) Provide training for all Indians to help them receive skills needed for employment or advancement.

SECTION 3.0 DEFINITIONS

- 3.1 "Adjudicate" or "Adjudication" means the act of resolving a complaint by means of an official ruling or decision
- 3.2 "Chairman" means the Chairman of the Tribal Employment Rights Commission.
- 3.3 "Commission" means the Tribal Employment Rights Commission.

- 3.4 "Contractor" means any person, independent contractor, prime/general contractor or sub-contractor engaging in one or more construction trades or employment activities located on or near the Bishop Paiute Reservation.
- 3.5 "Direct federal contract" means a contract in which the federal agency leads directly to a prime contract.
- 3.6 "Discriminate" or "Discrimination" shall mean any act, policy or practice by any person, employer or contractor which violates the below Tribal Indian Preference Tier and its requirements, the Tribe's below requirements for preference in contracting and subcontracting, or any other Indian preference law in any manner including but not limited to employment decisions regarding the training, hiring or retention of employees in the workplace; it shall also mean any act, policy or practice by any person, employer, or contractor which makes or has the effect of making a distinction on the basis of age, race, color, religion, sex, national origin, disability, pregnancy, or sexual orientation in any employment decisions including but not limited to the training, hiring or retention of employees in the workplace.
- 3.7 "Domestic Partner" Is a person with a legal or personal relationship with a Bishop Paiute Tribal Member, who is not married to a Bishop Paiute Tribal Member but lives with and shares a common domestic life (one year minimum) with a Bishop Paiute Tribal Member, and provides for children of a Bishop Paiute Tribal Member who has been certified as a domestic partner by the TERO Manager. Certification requirements include but are not limited to submitting the necessary documentation as required by the TERO Manager (which may include but is not limited to a domestic partnership certificate, registration form, or agreement, or in the alternative signed written verification from the Bishop Paiute Tribal Member regarding the claimed domestic partnership, and proof of physical address for both individuals in the claimed domestic partnership during the necessary timeframe above). For the purposes of this definition children of a Bishop Paiute Tribal Member include children under 18 years of age, children 18-25 years of age so long as they are enrolled in an educational institution full-time, and adult disabled children.
- 3.8 "EEOC" means the Equal Employment Opportunity Commission of the United States.
- 3.9 "Employee" means any person employed for monetary payment.
- 3.10 "Employer" means any person, company, business, contractor, sub-contractor, or entity engaging in commercial or employment activity located on or near the Bishop Paiute Reservation.
- 3.11 "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial

organization, agency or department. The term "entity" is intended to be as broad and encompassing as possible to ensure the Ordinance's coverage over all employment and contract activities within the Tribe's jurisdiction and the term shall be so interpreted by the Tribal Employment Rights Commission and the Bishop Tribal Council.

- 3.12 "Fair Employment Practices" means practices, policies or procedures that are identified and followed by employers and used equally in employment decisions including but not limited to job creation, job descriptions, development, recruitment, interview process, hiring or retaining employees including disciplinary actions and terminations.
- 3.13 "Federally-funded contract" means a contract in which the federal government has contracted or granted funds to an entity which, in turn, leads the prime contract.
- 3.14 "General Council" means the entirety of Tribal enrolled members of the Bishop Tribe who are eligible to vote in a regular or specially called meeting or election.
- 3.15 "Indian" means any person who meets any of the following criteria unless otherwise limited by the context and use of the term:
- a) Is a member of the Bishop Paiute Tribe;
 - b) Is a member of a federally recognized tribe;
 - c) Is a member of a non-federally recognized tribe or is a lineal descendant of someone listed on the California judgment rolls.
- 3.16 "Indian Contractor" means a contractor that is 51% or more Indian-owned, managed, and controlled. The Tribal Employment Rights Commission reserves the right to require such proof as it deems necessary to substantiate that a firm qualifies as an Indian contractor.
- 3.17 "Indian-Owned Business" means a business entity in which fifty-one percent (51%) or more of the ownership is held by, and fifty-one percent (51%) of the actual management and control is exercised by an Indian or Indians which percentages shall be certified by the TERO Commission.
- 3.18 "Indian Preference" is the preference provision mandated by this Tribe in this Ordinance and the following or any other Indian preference law:
- a) Section 7(b) of the Indian Self-Determination Act, Public Law 93-638, 1975, and
 - b) Title VII, Section 703(l) of the 1964 Civil Rights Act, Equal Employment Opportunities Commission, (EEOC), and

- c) Executive Order 11246, Office of Federal Contract Compliance Programs, (OFCCP), 1977.

- 3.19 "Key Personnel" means any regular, permanent employee of an employer, who has been on the annual payroll of that employer for a period of at least six months continuously, and/or who provides a specialized service to that employer. Key personnel shall include, but shall not be limited to, administrative or program directors, superintendents, foremen, other employees in similar positions, and licensed professional employees.
- 3.20 "Minimum Threshold" means a minimum level above which Indian preference will be required as established by the requesting employer with review by TERO and defined by experience, education or both as it pertains to the job qualifications for each individual job announcement, RFP, RFQ or contract.
- 3.21 "Near the Reservation" means within a reasonable day's commute (60 miles) of the Bishop Paiute Reservation.
- 3.22 "OFCCP" means the Office of Federal Contract Compliance Programs of the United States.
- 3.23 "Prime Contractor" means the prime construction contractor the entity responsible for the construction of the project in its entirety.
- 3.24 "Reservation" means the Bishop Paiute Reservation.
- 3.25 "Reservation Employer" means a business that resides on the Bishop Paiute Reservation with at least one employee.
- 3.26 "Subcontractor" means any contract led by a prime contract or its subcontracts for supplies or work on prime contracts.
- 3.27 "TERO Manager" means the Manager of the Tribal Employment Rights Commission.
- 3.28 "Tribal Council" means the elected governing body of the Bishop Paiute Tribe elected by the General Council.
- 3.29 "Tribal Preference" means Bishop Paiute Tribal Members have priority in hiring or contracting.
- 3.30 "Tribe" means the Bishop Paiute Tribe.
- 3.31 "Violation" and "Failure to comply" and "Non-compliance" are interchangeable terms all meaning a failure to abide by this Ordinance which is Tribal law.

SECTION 4.0 ESTABLISHMENT AND PURPOSE OF THE TRIBAL EMPLOYMENT RIGHTS COMMISSION

4.1 THE PURPOSE OF THE TERO COMMISSION

There is hereby established the Bishop Tribal Employment Rights Commission for the purpose of:

- (A) The Bishop Paiute TERO department will enforce Indian Preference, in accordance with this Ordinance.
- (B) Ensure independent investigation and administrative review of all employment related-policies, procedures, fair employment practices, activities and actions of all employers, contractors, and sub-contractors covered by this Ordinance, including all programs Tribal entities and projects on Bishop Tribal land.
- (C) Adjudicate complaints or grievances of all employment-related matters under its authority.
- (D) Regulate employment practices of reservation employers to insure fair employment practices.
- (E) Prevent discrimination in employment.
- (F) Ensure Indian preference in employment, training, contracting, and subcontracting activities on the Bishop Paiute Reservation as required by this Ordinance.

SECTION 5.0 GENERAL AND SPECIFIC POWERS OF THE COMMISSION AND TERO MANAGER

5.1 ORGANIZATIONAL AUTHORITY

The Commission may hire a TERO Manager, within the Personnel Policies of the Bishop Paiute Tribe. The Commission may obligate funds appropriated by the Tribal Council, and secure and use funding from Federal, State or other sources to carry out its duties and functions under this Ordinance, as approved by the annual budget adopted by the Tribal Council. The Commission is further authorized and directed to adopt such organizational by-laws as are necessary to enable it to carry out its duties and functions, once reviewed and approved by the Tribal Council. The Commission shall report directly to the Tribal Council no less than on a quarterly basis.

5.2 REGULATORY AUTHORITY

- (A) The Commission is authorized to issue all necessary rules, regulations, guidelines and interpretations of law for Indian preference, fair employment practices and other employment issues to implement this Ordinance. Such rules shall become effective upon written approval of the Tribal Council. TERO shall take reasonable steps to ensure that the general Reservation community is on notice of all Indian preference and employment-related laws.
Indian Self-Determination and Education Assistance Act (24 U.S.C. 450, et seq.) 25 CFR 271.44 and other relevant laws.
- (B) The Commission is authorized to certify an Indian-owned business for purposes of determining required preference in contracting and subcontracting in accordance with Federal Regulations.
- (C) The Commission is authorized to approve Preference Plans as required by this Ordinance.

5.3 ADJUDICATIVE AUTHORITY

The Commission can hold hearings related to complaints including but not limited to complaints and/or alleged violations, including, but not limited to:

- All phases and aspects of Employment
- Hiring
- Terminations
- Layoffs
- Promotions
- Wages
- On the job training(OJT)
- Discrimination
- Disciplinary Action
- Any other Fair Employment related practices

5.4 CO-OPERATIVE AGREEMENTS WITH OTHER GOVERNMENTS AND ENTITIES

- A) The Tribal Council on behalf of TERO will enter into co-operative agreements with agencies of the State and Federal governments in order to implement the intent of this Ordinance and eliminate unlawful discrimination.
- B) The Tribal Council on behalf of TERO may authorize qualified Indian entities to perform specific duties or functions of the Commission for and on behalf of

TERO, which the Commission deems necessary and appropriate. However, the Commission may not delegate its power or duty to:

- 1) Adopt, amend, or rescind rules, regulations, orders, decisions, or awards of the Commission.
- 2) Conduct formal hearings or impose penalties.

5.5 SPECIFIC POWERS OF THE COMMISSION

- A) To employ and terminate the TERO Manager within the personnel policies of the Bishop Paiute Tribe, and to pay salaries pursuant to a salary schedule established by the Tribal Council in the annual budget.
- B) To ensure numerical hiring goals and timetables specifying the minimum number of Indians an employer/contractor must hire by craft or skill level.
- C) To prohibit employers/contractors from using job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are consistent with Bona-fide Occupations Qualification (BFOQ) criteria as defined by the EEOC. Commission regulations may adopt EEOC guidelines or similar guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the Reservation.
- D) To require employers/contractors to give preference to Tribally-owned and Indian-owned businesses in the award of contracts and sub-contracts in accordance with Federal Regulations.
- E) To require employers/contractors to establish or participate in job training programs, if employers/contractors have not met the minimum number of Indian employees in their profession or as the Commission deems when necessary to increase the pool of Indians eligible for employment on the Reservation.
- F) To ensure procedures are developed for counseling programs which may be necessary to assist Indians in obtaining and retaining employment.
- G) To ensure the administration of a Tribal Skills Bank and require employers/contractors to use the Skills Bank, when qualified Indian employees are available in the employers/contractors profession.
- H) To require employers/contractors to submit reports and to ensure that fair employment practices are followed.

- I) To enter into agreement with Unions to ensure Union compliance with this Ordinance, with prior review and approval of such agreement by the Tribal Council.
- J) To establish good working relationships with federal employment rights agencies, such as the EEOC and OFCCP, to eliminate discrimination against Indians and other protected classes, both on and off the Reservation.
- K) To issue notices of non-compliance, administer oaths or affirmations, subpoena witnesses, take evidence and require by subpoena the production of books, papers, contracts, agreements, or other documents, records, or information which it deems relevant or material to properly carry out the duties and functions of the Commission.
- L) To delegate such inspections or investigations within the exterior boundaries of the Reservation necessary to carry out the duties and functions of the Commission.
- M) To impose penalties against employers/contractors or entities as the Commission deems necessary for non-compliance in accordance with this Ordinance.
- N) To take any other such action as is necessary to achieve the purpose and objectives of this Ordinance and to carry out the duties and functions of the Commission.
- O) To ensure fair employment practices of all people are adhered to by all employers on the Bishop Paiute Reservation.
- P) To ensure policies and procedures of all employers are followed to provide fair treatment and fair employment practices for all people.
- Q) To provide independent investigation and administrative review of all employment related policies, procedures, activities, actions and issues of all Tribal entities, and any other tribal enactments regulating employment practices of the Tribe, its entities, other employers and contractors within the Bishop Paiute Reservation.

5.6 COMPOSITION OF THE COMMISSION

- A) The Commission shall be composed of five (5) enrolled Tribal Members, as appointed by the Tribal Council. Commission members shall hold office for a term of two (2) years, these terms will commence in a staggered format, so that each commissioner serves their term with an oncoming Commissioner. Any Commissioner may be removed by the Tribal Council at any time for

breach of duty, misconduct, or other act of malfeasance as determined by the Tribal Council.

- B) Commission members shall always display high moral character.
- C) Decisions of the Commission will be made by majority vote. A quorum shall consist of three (3) Commission members. No decisions may be made if a quorum is not established.
- D) The TERO Commission Chairman shall be elected by vote of the Commission subject to ratification by the Tribal Council.

5.7 ETHICAL RESPONSIBILITIES OF TERO COMMISSION AND STAFF

A) CONFLICT OF INTEREST

Members of the TERO office or Commission will not use the office for purposes which are, or give the appearance of being motivated by personal gain by the individual. For purposes of this section, "immediate relatives" is defined as a spouse, child, parent, sibling, grand parent, grandchild, aunt, uncle, first cousin, corresponding in-law, or any member of the employee's household. To eliminate the perceived conflict, the Commission member or TERO staff member should remove themselves in the following;

1. If an individual or an immediate family member is a party to a hearing, grievance or dispute, or has an interest in any outcome that arise from a decision.
2. If an individual sits on a board with a grievant or a complainant, or has a financial interest in any of the parties involved in the hearing.
3. Is a member of the entity or organization against whom a complaint is filed.

B) CONFIDENTIALITY

Members of the TERO office and Commission have a duty to protect the confidentiality of the Commission and the TERO Department. No TERO Staff or Commissioner shall disclose information or documentation received in connection with serving as a Commission member or staff member, including but not limited to financial and personnel information of the TERO Department, and any information related to a TERO Complaint or TERO Hearing.

5.8 DUTIES OF THE TERO MANAGER

The TERO Manager shall have those duties delegated by the Commission, as it deems necessary to properly carry out the duties and functions of the Commission. The TERO Manager shall be responsible for the investigating, researching, reporting, and documenting of any information required by the Commission, whenever warranted.

The TERO Manager shall have the right to employ and terminate TERO staff within the personnel policies of the Bishop Paiute Tribe, and to pay salaries pursuant to a salary schedule established by the Tribal Council in the annual budget approved by the TERO Commission. The TERO Commission may serve in an advisory capacity regarding hirings and firings of TERO staff upon the request of the TERO Manager.

The TERO Manager shall report administratively to the Tribal Administrator/CEO of the Tribe regarding administrative duties and responsibilities including but not limited to reports to Tribal Council, assistance to other tribal departments, and abiding by all policies and procedures established for tribal employees and departments. The TERO Manager shall report substantively and be under the direction of the TERO Commission for all matters and duties specifically related to this Ordinance, including all matters which are by this Ordinance tasked to the TERO Manager, all duties which have been delegated to the TERO Manager by the TERO Commission, and any and all assistance to the TERO Commission regarding the Commissions' duties and responsibilities of this Ordinance.

Under no circumstances must the TERO Manager report to the Tribal Administrator regarding a TERO complaint involving a Tribal department ultimately under the Supervision of the Tribal Administrator/CEO. Under no circumstances must the TERO Manager inform or report TERO complaint specific information to Tribal Council prior to an appeal from a TERO Commission decision.

SECTION 6.0 TRIBAL INDIAN EMPLOYMENT PREFERENCE POLICY, FAIR EMPLOYMENT, DISCRIMINATION AND PROCEDURES

6.1 TRIBAL INDIAN PREFERENCE TIER

All employers/contractors are required to follow Tribal Indian Preference, as provided herein, in all aspects of employment, including but not limited to recruitment, hiring, promotion, lateral transfers, retention, training, and contracting/sub-contracting to the greatest legal extent possible.

*-

Tribal Indian Preference Tier, in order of preference:

1. Bishop Paiute Tribal Members;
2. Spouse or domestic partner of a Bishop Paiute Tribal Member, parent of a Tribal Member dependent child, or current legal guardian of a Tribal Member

dependent child (with a proper letter of temporary or permanent legal guardianship from a court);

3. Indian from a Federally recognized Tribe; and
4. Indian from a Non-Federally recognized organized Tribe, or lineal descendant of someone listed on the California Judgment Rolls.

6.2 COVERAGE

No employer/contractor may recruit, hire or otherwise employ any non-Indian for any employment position covered by this Ordinance unless the TERO Manager has issued written notice to said employer/contractor that no qualified individual from the Tribal Indian Preference Tier is available for such position.

6.3 APPLICABILITY

- (A) Unless clearly and expressly prohibited by federal law, this Ordinance shall apply to all employers/contractors, including but not limited to private employers, independent contractors and sub-contractors, those performing work for the Tribe or its entities (including entities chartered by the Tribe), public utility companies, the State of California, or the United States. If any part of the preference tier in Section 6.1 is prohibited by funding restrictions, all employers/contractors shall still apply the preference tier to the maximum extent legally possible under federal law.
- (B) The preference requirements contained in this Ordinance shall apply to each and every job classification, skilled area, or craft recognized or utilized by an employer/contractor, including administrative, supervisory, and professional classification. However, the Commission or the TERO Manager may grant exceptions to this requirement on a case-by-case basis for key personnel of an employer/contractor.
- (C) Land assignment holder's private residential improvement projects are exempted from this Ordinance.-

6.4 EMPLOYERS, CONTRACTOR/S AND SUBCONTRACTOR/S, FAIR EMPLOYMENT AND DISCRIMINATION AND VIOLATIONS

This Ordinance and its requirements shall be binding on all employers, contractors/sub-contractors, regardless of tier, and shall be deemed part of all contract and subcontract specifications. All employers and contractors must provide fair employment practices to their employees. All employers, contractors and subcontractors must not discriminate in any manner. Any employer or contractor may be subject to penalties provided herein for violation of this Ordinance if the employer or contractor/sub-contractor fails to comply with any provision of this Ordinance, including

but not limited to failure to provide fair employment practices to its employees, or any acts of discrimination.

6.5 JOB QUALIFICATION AND JOB PERSONNEL

An Indian or other person on the preference tier, shall be qualified for employment in a position if they meet the minimum threshold requirements for such position, and such person shall be accorded the preference to which they are entitled under this Ordinance. All employers and contractors must have minimum threshold requirements stated clearly in each job description for each job.

No employer/contractor may utilize any employment criteria that are not a Bona-Fide Occupational Qualification (BFOQ) reasonably necessary for the normal operation of the business enterprise.

6.6 MINIMUM NUMERICAL GOALS AND TIMETABLES FOR INDIAN EMPLOYMENT; MONTHLY AND QUARTERLY REPORTING REQUIREMENTS

- (A) The Commission may, upon consultation with the employer/contractor, establish the minimum number of Indians each employer/contractor must employ on his workforce during any job that the employer/contractor or any of his employees are engaged in work on the Reservation. Numerical goals will be set for each craft, skill, job classification, etc. used by the employer/contractor and shall include, but not be limited to administrative, supervisory and professional categories. The goals may be expressed in terms of man-hours of Indian employment as a percentage of the total man-hours worked by the employer/contractor's work force in the job classification involved.
- (B) For both new and existing employers/contractors, the goals shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in employer/ contractor hiring plans.
- (C) Each employer/contractor shall submit a monthly report to the Commission indicating:
 - 1. Statistics of all persons who have applied and interviewed for any open position;
 - 2. Statistics of all persons hired or fired each month;
 - 3. Statistics of all persons laterally transferred each month;
 - 4. Statistics of all persons promoted each month;
 - 5. Statistics of all persons hired for temporary positions each month and any persons transitioned from a temporary position to permanent employment;

6. Tier preference indication on all statistics or lack of, i.e. indication of any and all individuals that are within a tier preference, which tier preference category they belong to, or if an individual is not within any tier preference;
7. The names of all individuals and titles of all job positions involved for each of the above;
8. Job descriptions and advertisements for each position involved in each of the above; and
9. Any other information required by the Commission.

(See Exhibit A to this Ordinance for Sample Monthly Hiring Report)

An employer/contractor who fails to submit monthly reports may be subject to penalties provided under this Ordinance.

(D) Each employer/contractor shall submit a quarterly report to the Commission indicating:

1. The number of Indians in their workforce along with total number of employees;
2. The number of individuals in the Tribal Indian Preference Tier in their workforce, including individuals in each individual preference tier;
3. How close the employer/contractor is to meeting minimum numerical goals if any have been established; and
4. Any other information required by the Commission.

An employer/contractor who fails to submit quarterly reports may be subject to penalties provided under this Ordinance.

6.7 TRIBAL SKILLS BANK

The Commission shall establish and maintain a Tribal Skills Bank to assist the Commission and employers/contractors in placing Indians in job positions. This Skills Bank will be updated on a regular basis, but in no case less than once every six months.

6.8 TEMPORARY JOB REFERRALS

When seeking to fill any temporary job position, every employer/contractor shall give notice to the TERO Manager and allow the TERO Manager a reasonable time to locate and refer a qualified Indian to said employer/contractor. For the purpose of this section, "reasonable time" shall be defined as follows:

For all jobs, the TERO Manager shall have forty-eight (48) hours to locate and refer a qualified Indian. The TERO Manager shall consider waivers of these time periods upon a showing by the employer/ contractor that an emergency exists or that such time periods impose an undue burden on the employer/contractor.

After 180 days all entities must advertise all temporary employee/contractor positions, unless, at the discretion of the hiring staff, the temporary employee qualifies under the Tribal Indian Preference Tier above and is being hired into the position permanently. All entities must request a waiver for an extension.

6.9 TRAINING

TERO may require upon consultation with the employer/ contractor programs to assist Indians to become qualified in the various job classifications used by the employer/contractor. The ratio of Indian trainees to fully qualified workers shall be set by TERO after consultation with the employer/contractor.

6.10 COUNSELING AND SUPPORT PROGRAMS

TERO may refer clients to counseling and other support programs (such as alcohol and drug testing, treatment, and other mental health counseling as deemed necessary) to assist Indians to obtain and retain employment. Every employer/contractor shall be required to cooperate with TERO regarding such counseling and support programs, should employer/contractor not have such support programs established within their organization.

6.11 PREFERENCE IN CONTRACTING AND SUBCONTRACTING

Employers shall give preference in the award of all contracts to Tribally owned and Indian owned businesses.

The Commission shall maintain a list of Tribally-owned and Indian-owned businesses, which shall be supplied to employers/ contractors for their use. The list of tribally owned and Indian-owned businesses will be updated at least once every six (6) months.

Each entity, including the Tribal Council and its entities, Indian Organizations, the State of California, private corporations, associations, partnerships, and individuals, on the Reservation shall comply with these requirements when awarding prime contract(s) and/or subcontract(s).

1. If the entity asking for bids has reason to believe that two or more qualified Indian firms will bid, then the Invitation to Bids shall be restricted to qualified Indian owned enterprises and Indian Organizations.
2. If there are less than two Indian bidders, the Invitation for Bids shall open competition to Indian and non-Indian firms alike.

In the case of #1 above, a Tribal Indian Preference bidder that is highest on the Tribal Indian Preference tier shall be awarded the contract and/or subcontract. In the case #2 above, the bidder who is highest on the Tribal Indian Preference tier, shall be awarded the contract and/or subcontract, if:

- A. The lowest responsive Tribal Indian preference bidder is within budgetary limits established for the specific project and/or component of the project; and,
- B. The lowest responsive Tribal Indian Preference bidder is not more than a fixed percentage higher than the total bid price of the lowest responsive bid from any qualified bidder; and
- C. The responsive Tribal Indian Preference bidder is in good standing.

The fixed percentage is determined as follows:

When the lowest responsive bid is:

<u>At least</u>	<u>But less than</u>	<u>Bid Percent or Amount</u>
\$ 1.00	\$ 100,000	10% or \$ 9,000
\$ 100,000	\$ 200,000	9% or \$16,000
\$ 200,000	\$ 300,000	8% or \$ 21,000
\$ 300,000	\$ 400,000	7% or \$ 24,000
\$ 400,000	\$ 500,000	6% or \$ 25,000
\$ 500,000	\$1,000,000	5% or \$ 40,000
\$ 1,000,000	\$ 2,000,000	4% or \$ 60,000

\$ 2,000,000	\$3,000,000	3% or \$ 80,000
\$ 4,000,000	\$7,000,000	2% or \$ 105,000
\$ 7,000,000	and over (No dollar limit)	1% of lowest responsive bid,

These rules and regulations apply to all contracts and subcontracts that will take place on or near the Bishop Paiute Reservation. A contract or subcontract taking place "on or near the Bishop Paiute Reservation" means fifty percent (50%) or more of the work under contract or subcontract is to be performed within Reservation boundaries.

Indian contract preference requirements set out in Section 6.0 of this section shall apply to:

1. All contracts and subcontracts which are not direct federal or federally-funded contracts;
2. All contracts and subcontracts which are federally-funded; and
3. All subcontracts or direct federal contracts which are for the benefit of Indians which therefore are covered by section 7(b) of the Indian Self Determination Act (P.L. 93-638, 25 U.S.C. 450 e (b)).

6.12 LAY-OFFS

No lay off will be made without following the Tribal Indian Preference tier (section 6.1), or as long as the person lower on the tier remains employed in the same job classification. However, the TERO Manager may grant exemptions to this requirement on a case-by-case basis for key personnel of an employer/contractor.

6.13 BURDEN OF PROOF

In any hearing before the Commission where the issue is compliance by an employer/contractor in any of the requirements and provisions of the foregoing subsections of Section 6, the burden of proof of compliance shall be on the employer rather than on the employee or other complainant.

6.14 SUMMER STUDENTS/INTERNS

Employers/contractors shall give students preferential consideration for summer and student employment in accordance with the Tribal Indian Preference Tier. The employer/contractor shall make every effort to encourage and promote internships, after-school summer, and vacation employment opportunities for students within the Tribal Indian Preference Tier.

6.15 PROMOTIONS/LATERAL TRANSFERS

Every employer/contractor shall give individuals within the Tribal Indian Preference Tier preferential consideration for all promotion or lateral advancement opportunities and shall encourage individuals within the Tribal Indian Preference Tier to seek such opportunities for employment when available.

SECTION 7.0 COMPLIANCE BY UNIONS

Every union with a collective bargaining agreement with an employer/contractor must file a written agreement stating the union will comply with this Ordinance and the rules, regulations and orders of the Commission. Until such agreement is filed with the Commission, union contractors and employers may not commence work on the Reservation until a mutual agreement is reached between union and the Commission.

7.1 RECOGNITION OF UNIONS

Nothing herein or any activity by the Commission authorized hereby shall constitute official Tribal recognition of any union or Tribal endorsement of any union activities on the Reservation.

SECTION 8.0 COMPLAINTS AND ADMINISTRATIVE NON-COMPLIANCE

8.1 COMMISSION COMPLAINT PROCEDURE

TERO may only begin an investigation upon discovery of an alleged infraction of an employer/contractor within the last 180 days, or 180 days from the date of an alleged incident, if there is cause to believe that an employer or contractor has failed to comply with this Ordinance. If after an investigation the TERO representative believes they have found sufficient evidence that a violation of this Ordinance has occurred, the TERO representative will hand deliver a Notice of Complaint to the employer/contractor. The employer/contractor will be asked to respond to this complaint along with any supporting documentation within five (5) business days. Upon receiving a response, the TERO manager may set up an informal hearing within ten (10) business days to attempt achievement of an informal settlement. If an informal settlement cannot be reached, the TERO manager shall review the complaint and decide if there continues to be sufficient evidence to proceed. TERO will have fifteen (15) days to set up a formal hearing, if findings make it necessary to proceed. After the formal hearing, the TERO Commission shall issue a written decision that will contain the reasons supporting the decision.

///
///

8.2 INDIVIDUAL COMPLAINT PROCEDURE

An individual must exhaust all internal/department grievance procedures prior to filing a TERO complaint. If an individual believes an employer has violated this Ordinance, they may file a complaint with TERO. Upon receipt of the complaint, a TERO representative will hand deliver a Notice of Complaint to the employer/contractor. The employer/contractor will be asked to respond to this complaint along with any supporting documentation within five (5) business days. Upon receiving a response, the TERO manager may set up an informal hearing within ten (10) business days to attempt achievement of an informal settlement. If an informal settlement cannot be achieved, the TERO manager will notify the complainant. After a determination not to proceed with an informal hearing, or after an informal settlement cannot be achieved through an informal hearing or informal means, the TERO Manager shall determine either to deny further action on the complaint or proceed with a formal hearing in accordance with the below.

If the TERO manager determines there is sufficient evidence or reason to believe a violation has occurred, the TERO manager will have fifteen (15) business days to set up a formal hearing. After the formal hearing, the TERO Commission shall issue a written decision which will contain the reasons supporting the decision.

The TERO manager has the right to deny further action on the complaint prior to a formal hearing before the TERO Commission if the TERO Manager determines there is not sufficient evidence or alternatively there is no reason to believe a violation of this Ordinance has occurred. If the TERO manager denies further action, the individual may within three (3) business days request the matter be reviewed by the TERO Commission. The TERO Commission at that time may preliminarily review the matter and decide to either 1) uphold the TERO Manager's decision and deny further action on the complaint based on lack of sufficient evidence or in the alternative no reason to believe a violation of this Ordinance has occurred, or 2) determine to grant a formal hearing on the matter. If an individual is denied further action by the TERO manager, and that decision is upheld by the TERO Commission, the individual within three (3) business days may request the matter be reviewed by Tribal Council. Tribal Council at that time may preliminarily review the matter and decide to either 1) uphold the TERO Manager's and TERO Commission's decision to deny further action on the complaint based on lack of sufficient evidence or in the alternative no reason to believe a violation of this Ordinance has occurred, or 2) determine that the TERO Commission must hold a formal hearing on the matter. Tribal Council's decision on the matter is conclusive and is not subject to any review or appeal.

8.3 EMPLOYER AND CONTRACTOR COMPLAINT PROCEDURE

If an employer or contractor believes that any provision of this Ordinance is illegal, erroneous, or unfairly applied, they may file a complaint. Upon receipt of the complaint, the TERO manager will set up an informal hearing within five (5) business days to attempt achievement of an informal settlement. If an informal settlement cannot be

achieved, the TERO manager will have fifteen (15) business days to set up a formal hearing. After the formal hearing, the TERO Commission- shall issue a written decision, which shall contain the reasons supporting the decision.

8.4 TIME PERIOD FOR FILING A COMPLAINT

Any written complaint must be filed with TERO within thirty (30) calendar days of the incident, and/or 30 days from the time the grievance process has been exhausted. The complaint shall include the date, place, and circumstances of the alleged violation.

8.5 ADMINISTRATIVE NON-COMPLIANCE

Any violation of this Ordinance or instance of non-compliance with this Ordinance that is strictly administrative in nature, such as violations that do not involve a particular employee or contractor, including but not limited to:

1. Failure to pay the Employment Administrative Fee;
2. Failure to respond to requests for reports;
3. Failure of an employer or contractor to respond to a Notice of Complaint as required above;
4. Failure to respond to a request of any other information by the TERO Commission or TERO Manager as permitted under this Ordinance; or
5. Failure to abide by a TERO Commission decision or Tribal Council Appeal decision as indicated below in section 9.4 or 11.2.

shall result in a Notice of Non-Compliance by the TERO Manager. Any offending person, employer, or contractor will be given Notice of Non-Compliance which must include description of the specific instances of non-compliance, and description of the specific actions that must be taken to remedy the non-compliance and avoid penalties under Section 10.0 of this Ordinance, including but not limited to exclusion from the Reservation. The Notice of Non-Compliance shall include a deadline of no less than five (5) no more than ten (10) business days to either remedy the non-compliance, make arrangements with the TERO office for an extension to remedy the non-compliance along with justification for such an extension, or demonstrate the offending person, employer, or contractor is not in non-compliance (an action which must include providing any and all documentation to substantiate such a claim). The TERO Manager shall decide if the non-compliance has been remedied, an extension should be granted, or if the offending person, employer, or contractor is not in non-compliance based on the information provided. The TERO Manager's decision on the above is conclusive. If the offending person, employer, or contractor does not remedy the non-compliance, make approved extension arrangements, or proves they are administratively compliant, they will be subject to any and all appropriate penalties for the non-compliance as provided in Section 10.0. Any monetary amounts involved in the non-compliance or violation, and any monetary amounts imposed under Section 10.0, must be paid prior to filing a

complaint under Section 8.3 above or the right to file a complaint under Section 8.3 shall be forfeited.

SECTION 9.0 HEARINGS

9.1 If a formal hearing is requested by the TERO Manager, the TERO Commission, Tribal Council or an employer pursuant to Section 8.0, the TERO Manager shall provide all concerned parties with written notice within ten (10) business days stating the nature of the hearing and the evidence to be presented.

9.2 Hearings shall follow these rules of procedure:

- (A) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.
- (B) The Commission may at the hearing have the advice and assistance of counsel provided by the Tribe.
- (C) The Chairman of the Commission or the Vice- Chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
- (D) The hearing may be adjourned, postponed, or continued at the discretion of the Commission.
- (E) At the close of the hearing, the Commission may take immediate action or take the matter under advisement.
- (F) The Commission shall notify all parties of its final decision in the case within 15 days after the hearing.

9.3 The Commission shall not be bound by technical rules of evidence in the conduct of hearings and no formality in any proceeding, as in the matter of taking testimony, shall invalidate any decision, rule, regulation or order made, approved or confirmed by the Commission.

9.4 Failure of any party to abide by a TERO Commission decision shall be a violation of this Ordinance, unless the matter is being appealed to Tribal Council or has been appealed to Tribal Council and Tribal Council has rendered its own decision.

///

SECTION 10.0 PENALTIES FOR VIOLATIONS

10.1 Any employer, contractor or subcontractor who violates or fails to comply this Ordinance *may* be subject to penalties for such violation or non-compliance, including but not limited to the following:

- (A) Imposition of monetary penalties.
- (B) Payment of back pay and damages to compensate any party harmed as a result of non-compliance with or violation of this Ordinance.
- (C) An order to summarily remove employees hired in violation of this Ordinance.
- (D) An order requiring changes in employer policies and procedures necessary to eliminate the violation or non-compliance.
- (E) An order requiring employment, reinstatement, promotion, or training of any person or party injured by the violation or non-compliance.
- (F) Denial of right to commence or continue business on the Reservation.
- (G) Suspension of operations on the Reservation.
- (H) Prohibition from engaging in future operations on the Reservation.
- (I) Exclusion from the Reservation in accordance with the Tribe's Exclusion Code.
- (J) An order making any other provision deemed necessary by the Commission to alleviate, eliminate, or compensate for any violation.

10.2 The maximum monetary penalty, which may be imposed, is \$1000.00 per business day for each violation or non-compliance.

SECTION 11.0 APPEALS

11.1 Any party to a formal hearing shall have the right to appeal to the Tribal Council any decision by the TERO Commission within five (5) business days of receiving that decision. The Tribal Council shall review appeals within ten (10) business days or as defined in the Tribal Council's Policy and Procedures. Tribal Council may summarily deny any appeal that is untimely or that violates Tribal Council's Policy and Procedures. Any Tribal Council review shall be final.

Any request from a denial of a hearing under Section 8.2 above is not subject to formal appeal and shall be bound by the rules in Section 8.2.

- 11.2 Failure of any party to abide by a Tribal Council decision shall be a violation of this Ordinance.

SECTION 12.0 PUBLICATION OF ORDINANCE

- 12.1 Notification will be sent to all employers and prospective contractors of this Ordinance and their obligation to comply, prior to the commencement to any project to the greatest extent feasible.
- 12.2 All bid announcements, Request for Proposals (RFP), Request for Quotes (RFQ), etc. issued by any tribal, federal, or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this TERO Ordinance, as well as with all rules and regulations, and orders of the Commission.
- 12.3 All Tribal agencies responsible for issuing business permits for Reservation activities or otherwise engaged in activities involving contact with prospective employers and contractors on the Reservation shall be responsible for advising such prospective employers and contractors of their obligations under this Ordinance and all rules, regulations and orders of the Commission.
- 12.4 A copy of the TERO Ordinance shall be available upon request for public view.
- 12.5 In order to qualify to do business on the reservation all employers must attend a TERO orientation once a year.

SECTION 13.0 COMPLIANCE PLAN AGREEMENT

- 13.1 Every employer or contractor shall be required to submit a Compliance Plan to the TERO manager for approval. The Compliance Plan shall set forth how the employer/contractor intends to meet their obligations under this Ordinance. ***No employer/contractor may commence work on the Reservation until said Compliance Plan is approved by the TERO Manager. Regardless of submission and approval of a Compliance Plan, every employer/contractor must adhere to the requirements of the TERO Ordinance and are subject to all penalties in this Ordinance for any violations or instances of non-compliance with this Ordinance.***

///

///

SECTION 14.0 REPORTING, INFORMATION FOR VERIFICATION AND ON-SITE INSPECTIONS

14.1 Employers/contractors shall submit reports and any other information requested by the Commission or the TERO Manager on behalf of the Commission. In addition to the monthly and quarterly reports the TERO Commission and TERO Manager have the right to request additional reports.

The TERO Commission and TERO Manager also have the right to request any pertinent information in regards to any report submitted by an employer/contractor that may be necessary to verify the content of such reports, including but not limited to names of individuals or enrollment numbers necessary to verify individuals are within the Tribal Indian preference tier, enrollment certificates or other proof of membership or proof of lineage to the California judgment rolls, any other information deemed necessary by the TERO Commission or TERO Manager.

The TERO Manager shall have the right to make on-site inspections during working hours in order to monitor any employer/contractor's compliance with this Ordinance, its rules and regulations, and any orders of the Commission. The TERO manager shall have the right to inspect any employer, contractor or sub-contractor, and shall have the right to speak to workers and conduct investigations on job sites.

SECTION 15.0 RULES AND REGULATIONS

15.1 This Ordinance shall establish the Commission and general requirements, policies and procedures to govern it and its work. When the Commission is appointed and organized, it shall with all reasonable speed adopt as necessary, and with the final approval of the Tribal Council, more detailed rules, regulations, policies, and procedures to fully implement this Ordinance and achieve the purpose and responsibilities of the Commission.

SECTION 16.0 COMMISSION FUNDS

16.1 All funds from contractor fees and other sources collected by TERO shall be regularly reviewed by the TERO Commission. A quarterly copy of the TERO statements shall be given to the TERO Office.

SECTION 17.0 EMPLOYMENT ADMINISTRATIVE FEE

TERO shall assess all employers/contractors an Employment Administrative Fee,

according to the fee schedule, in order to provide revenue for:

- The operation of the TERO Office
- The operation of the TERO Commission
- Fund training and education programs for Tribal Members.

All of the Employment Administrative Fees are paid to the Fiscal Office of the Bishop Paiute Tribe. Contractors or employers who fail to pay the required Employment Administrative Fee shall be subject to the penalties provided in Section 10.0 of this Ordinance.

17.1 CONTRACTORS and SUB-CONTRACTORS

Every contractor and sub-contractor and with a contract of \$1,000.00 or more shall pay a one-time Employment Administrative Fee of four percent (4%) of the total amount of the contract, per each contract. Said fee shall be paid prior to commencing work on the Reservation. However, where good cause is shown, the fee may be paid in installments over the length of the contract, if approved in advance by the TERO Manager.

All contracting parties must notify TERO of all contracts of \$1,000.00 or more prior to commencement of work on the reservation and notify TERO of any changes to the original contract amount by providing an approved change order or amended contract. The Employment Administrative Fee shall be increased or reduced as necessary depending on an increase or reduction of the original contract amount.

17.2 OTHER EMPLOYERS

Every employer, other than a contractor or sub-contractor who must comply with Section 17.1 above, with two (2) or more employees on the Reservation or with gross sales/income of \$100,000 or more (regardless of source) shall pay a quarterly Employment Administrative Fee of three percent (3%) of the quarterly gross payroll of employees of that employer on the Reservation.

17.3 TERO WAIVER

An application for waiver of TERO fees must first be made to the TERO Office. Waiver of fees may be made on a case-by-case basis by the TERO Office, TERO Commission or Bishop Tribal Council. Both, the TERO Commission and the Bishop Tribal Council must approve all waivers over \$10,000 per contractual agreement.

///
///

SECTION 18.0 RETALIATION AND REPRISAL

Any harassment, adverse action, discrimination or threat against any person because they, or the company, filed a complaint with TERO, opposed any unfair employment practice, or testified, assisted or participated in any manner in an investigation, proceeding or hearing involving the same is in itself a violation of this Ordinance. Any person or entity causing such retaliation or reprisal shall be subject to the penalties outlined in Section 10.0 of this Ordinance.

SECTION 19.0 PRINCIPLES OF CONSTRUCTION

This Ordinance is remedial legislation intended to rectify the long-standing problem of severe under-employment and discrimination of the Bishop Paiute Tribal Members and other Indians living on and near the Reservation. This Ordinance also constitutes legislation to encourage employment by persons who contribute to Tribal households and Tribal Member children in order to remedy the effects of that underemployment and discrimination. Accordingly, it is to be construed liberally to achieve its purposes.

SECTION 20.0 SEVERABILITY

If any provision of this Ordinance, or its application to any person or circumstance is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances, is not affected.

SECTION 21.0 SOVEREIGN IMMUNITY PRESERVED

Except as expressly provided herein, nothing in this Ordinance is to be construed as a waiver of the Tribe's sovereign immunity from un-consented lawsuit, nor as consent by the Tribe to bring an action against the Tribe, its officers, representatives, departments or entities. The sovereign immunity of the Bishop Paiute Tribe is hereby expressly affirmed.

SECTION 22.0 AMENDMENTS

This Tribal Employment Rights Ordinance and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or specially called meeting.

SECTION 23.0 EFFECTIVE DATE

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

CERTIFICATION

We, the undersigned, as duly elected officers of the Bishop Paiute Tribal Council, Bishop Paiute Reservation, do hereby certify that the foregoing Tribal Employment Rights Ordinance was enacted by the qualified members of the Tribal Council at a duly called Regular Meeting at which a quorum voted, on the 14 day of NOVEMBER, 2019, by a vote of 3 For, 1 Against, and 0 Abstaining.



Allen Summers, Chairman



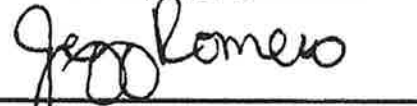
Earleen Williams, Council Member



Tilford P. Denver, Vice-Chairman



Brian Poncho, Council Member



Jeff Romero, Secretary