

## **CHAPTER 45 – SPOKANE TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

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### **Section 45-1 Name, Purpose, and Scope**

45-1.01 Name. This Ordinance shall be known as the “Spokane Tribal Employment Rights Ordinance”.

Legislative History: Adopted 2/20/19, Resolu. 2019-165.

45-1.02 Purpose. The purpose of this Ordinance is to assist in and require the fair employment of Indian Preference Applicant/Employees on the Reservation and to prevent discrimination against Indian Preference Applicant/Employees in the employment practices of Covered Employers through the creation of the Tribal Employment Rights Commission and the establishment of rules, regulations and policies governing its responsibility and authority to ensure compliance with this Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-1.03 Scope. Unless otherwise limited by federal law, this Ordinance shall apply to all Covered Employers, regardless of tier, who engage in Covered Projects on the Reservation, with or without an approved land lease, where the Covered Project is either substantially performed on the Reservation, or where at least fifty percent (50%) of the services, unfinished products, or by-products come from within the Reservation. This Ordinance shall not apply to the Tribe, the Federal Government, or the State of Washington, including any political subdivision thereof, or the contractors and/or subcontractors of such governmental entities.

## **Section 45-2 Definitions**

45-2.01 Definitions. For the purposes of this Ordinance, the following words or phrases shall have the meanings indicated:

- (a) "Agent" means any employee or individual authorized to act on behalf of the Commission.
- (b) "Agriculture" means the cultivation of land and breeding of animals and plants to provide food, fibers, medicinal plants, and other products.
- (c) "Business for Profit" means any business enterprise or operation which is not considered a non-profit or not-for-profit organization by the IRS.
- (d) "Chairperson" means the Chairperson of the Spokane Tribal Employment Rights Commission.
- (e) "Commission" means the Spokane Tribal Employment Rights Commission.
- (f) "Commissioner" means a Commissioner of the Spokane Tribal Employment Rights Commission.
- (g) "Contract" means any agreement, whether written or oral, for goods or services, including but not limited to contracts for construction, supplies, materials, services, and equipment, unless exempted under this Ordinance. "Contract" is intended to be interpreted broadly and shall include subcontracts.
- (h) "Construction" means the process of constructing a Covered Project such as a building or infrastructure. Construction includes, but is not limited to, clearing, cleaning, dredging, excavating, and grading of land and other activity associated with buildings, structures, or other types of real property, such as bridges, dams, and roads.
- (i) "Wage Scale" requires all Covered Employers to compensate all Indian Preference Applicant/Employees at a rate equal to the wages paid to their non-Indian Preference employees performing the same job or scope of work on any Covered Project. If the Covered Employer is a signatory to a trade union, the current pay scale and benefits of that trade will be paid. If tribally determined wage rates or Davis Bacon wage rates are required by Tribal or Federal law, those wages shall be paid.

- (j) "Core Crew" means key personnel required by the Covered Employer who are regular, permanent employees and who are in a supervisory or other key position; only the first and thereafter every seventh employee may be employed as key personnel and/or core crew by a Covered Employer (for example, after the sixth (6<sup>th</sup>) tribal/TERO employee, the seventh (7<sup>th</sup>) can be a core crew member or key personnel).
- (k) "Council" means the Spokane Tribal Business Council.
- (l) "Court" means the Spokane Tribal Court.
- (m) "Covered Activities" are activities, inclusive of labor, goods and services, that are directly related to Agriculture, Construction, Forestry, Manufacturing, or Mining.
- (n) "Covered Employer" means Employers, including but not limited to General Contractors, who perform Covered Activities for Covered Projects. For purposes of clarity, "Covered Employer" does not include the Tribe, the Federal Government, or the State of Washington, including any political subdivision thereof, or the contractors and/or subcontractors of such governmental entities.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165; Amended 7/02/21, Resolu. 2021-382.

- (o) "Covered Project" occurs when a Covered Employer receives ten thousand dollars (\$10,000.00) or more in total compensation to perform Covered Activities for a Project, or pays employees in order to perform Covered Activities worth a total value of ten thousand dollars (\$10,000.00) or more for a Project, and the Project is:
  - (1) substantially performed on the Reservation; or
  - (2) at least fifty percent (50%) of the services are performed on the Reservation; or
  - (3) at least fifty percent (50%) of the unfinished products or by-products come from the Reservation.
- (p) "Direct Federal Contract" means a contract let by an agency of the United States directly to a General Contractor or other Covered Employer.
- (q) "Director" means the Director of the Spokane Tribal Employment Rights Program.
- (r) "EEOC" means the Equal Employment Opportunity Commission of the United States.

- (s) "Employer" any person, business, or other entity with two (2) or more employees and the owners, agents, or representatives thereof. However, the Tribe, the Federal Government and the State of Washington, including any political subdivision thereof, are excluded from this definition of Employer and are not subject to this Ordinance.
- (t) "Engaged in a Covered Project" means a Covered Employer performs work related to a Covered Project and the Covered Project is either substantially performed on the Reservation, or where at least fifty percent (50%) of the services, unfinished products, or by-products related to the Covered Project come from within the Reservation.
- (u) "Federally Funded Contract" means a contract in which the Federal Government has contracted or granted funds to a Covered Employer.
- (v) "For the Benefit of Indians" means work performed under a Direct Federal Contract or Federally Funded Contract if the benefits provided to Indians are in addition to or incidental to any benefits which might occur to the general public.
- (w) "Forestry" means the science or practice of creating, managing, using, conserving, and repairing forests, woodlands, and associated resources for various uses, including protection, recreation, commercial, and industrial uses. Forestry includes, but is not limited to: establishing, planting, cultivation, maintenance, managing, and caring for forests; management of growing timber; harvesting and logging activities; creation of wildlife habitat; water quality management; biodiversity management; watershed management; erosion control; reforestation activities; and efforts to protect forests from weeds, insects, fungal diseases, and fire.
- (x) A "General Contract" mean a Contract for a Covered Project, including but not limited to, purchasing Covered Project materials, hiring and paying Covered Project subcontractors, or coordinating or supervising Covered Project work.
- (y) A "General Contractor" means a Covered Employer who is responsible for coordinating or supervising a Covered Project, including but not limited to, purchasing Covered Project materials, hiring and paying Covered Project subcontractors, and coordinating or supervising all the Covered Project work. An owner who self-performs the General Contractor role shall be considered a General Contractor.
- (z) "Indian Preference" means a unique legal right that Indian Tribes enjoy by which qualified Indian Preference Applicant/Employees have first

consideration for all employment related to Covered Projects and all training related to Covered Activities. Order of preference is provided in § 45-2.01(aa).

- (aa) "Indian Preference Applicant/Employee" means a person who is recognized as falling within one of the below listed categories in the following order of preference, except a different order of preference may be followed if required as a condition of a Federal or State funded project:
- (1) Enrolled member of the Spokane Tribe of Indians.
  - (2) Child of an enrolled member of the Spokane Tribe of Indians.
  - (3) Spouse of an enrolled member of the Spokane Tribe of Indians.
  - (4) Enrolled member of a federally recognized tribe of Indians.
  - (5) Enrolled member of a state recognized tribe of Indians.
- (bb) "Indian Owned Business" means either:
- (1) a business owned by an Indian Preference individual as per the categories specified in § 45-2.01(aa) and either has social and economic ties to the Tribe with their primary place of residence within the Reservation; or
  - (2) a business "owned by" a Tribal Member. "Owned by" shall mean a business entity of which at least fifty-one percent (51%) is actively owned, operated, and managed by the Tribal Member.
- (cc) "Mining" means:
- (1) The act, process, or industry of obtaining or extracting hydrocarbons, rock, stone, gravel, sand, radioactive materials, ores, coal, minerals, or any other geological materials or geothermal resources from the earth, whether through a surface mine or any other means;
  - (2) The act, process, or industry of obtaining or extracting any non-renewable resource such as oil, petroleum, natural gas, and water;
  - (3) On-site mineral processing, including asphalt or concrete batching, concrete recycling, other aggregate recycling;
  - (4) Transporting minerals to and from a Covered Project, on-site road maintenance, road maintenance for roads used exclusively for mining activities, traffic safety, and traffic control;
  - (5) Reclamation and clean-up related to mining activities, such as water treatment including but not limited to treatment facilities, cap, fill, or storage ponds;
  - (6) All other mining related activities including, but not limited to, activities which affect noise generation, air quality, surface and ground water quality, water quantity, water flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits.

- (dd) "Manufacturing" means the process of converting raw materials, components, or parts into finished goods, wares, or any article of value, by manual labor or by machinery, especially on a large scale or when carried on systematically with division of labor.
- (ee) "OFCCP" means the Office of Federal Contract Compliance Programs of the United States.
- (ff) "Project" means an individual or collaborative piece of work, consisting of any number of Transactions, planned and designed to achieve a particular aim or purpose. For example, if the intended aim or purpose is to construct a single detached dwelling, then the Project is to construct a single home. If the aim or purpose is to construct a housing development, then the Project is to construct an entire housing development. Additionally, if the Project is for the construction of a single-family home, then the related plumbing, electrical, landscaping, etc. contracts would all still be part of the same Project.
- (gg) "Reservation" means the Spokane Indian Reservation in Washington, including all extensions thereof, including all land, whether owned by the United States in trust for the Tribe or a Tribal Member, or fee lands located therein, and any lands owned by the United States in trust for the benefit of the Tribe or a Tribal Member, wherever they are located.
- (hh) "Respondent" means any Covered Employer, union, or other entity, or any individual owner or employee thereof, facing a complaint for a violation of this Ordinance or the rules, regulations, or decisions of the Commission or the Director, including any entity which appeals such complaint to the Court.
- (ii) "Secretary" means the Secretary of the Interior or his duly authorized representatives.
- (jj) "Subcontract" means any contract let by a General Contractor to its subcontractors for supplies or work related to a Covered Project, regardless of tier.
- (kk) "Transaction" means an agreement, including but not limited to a Contract, whether oral or in writing, whereby an Employer agrees to provide goods or services, or otherwise engage in a Covered Project.
- (ll) "Tribal Member" means a person who is a duly enrolled member of the Tribe.

(mm) "Tribe" means the Spokane Tribe of Indians.

(nn) "Tribally Owned Business" means a business that is at least fifty-one percent (51%) owned by the Tribe.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-3 Spokane Tribal Employment Rights Commission**

45-3.01 Appointment. The Commission shall be comprised of five (5) members and two (2) alternates appointed by the Council.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-3.02 Terms of Office. The members of the Commission shall be appointed for a term of three (3) years. To ensure continuity, the Council shall appoint two (2) members plus two (2) alternates for a three-year (3) term, two (2) members for a two-year (2) term and one (1) for a one-year (1) term. The Council shall fill each vacancy by appointing a new member or reinstating the member whose term is expiring. An alternate shall replace any member who is removed or for some other reason cannot fulfill their term. An alternate shall also sit in place of any member of the Commission absent whose presence is required to create a quorum as required by § 45-3.08.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-3.03 Removal from Office. A Commissioner may be removed by the Council only for good cause shown after notice and hearing by the Council.

Legislative History: Codified 2/20/19, Resolu. 2019-165.

45-3.04 Vacancy and Interim Appointment. If a Commissioner shall die, resign, become incapacitated or be removed from office, a vacancy on the Commission shall be created automatically, and the unexpired term shall be filled by the Alternate. If two (2) or more vacancies are created, Council members shall be appointed to serve the unexpired terms.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-3.05 Chairperson. The Chairperson shall be elected by the members of the Commission on an annual basis. The Chairperson shall preside at all formal and informal meetings and hearings of the full Commission.

Legislative History: Codified 2/20/19, Resolu. 2019-165.

45-3.06 Duties of the Commission. The Commission or its authorized representatives shall administer this Tribal Employment Rights Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-3.07 Powers of the Commission. The Commission or its authorized representatives shall have the following powers and authority:

- (a) To present written recommendation to the Council for the appointment of the Director, who thereafter shall be subject to the supervision of the Commission. The Spokane Tribe of Indians Employee Policy Manual shall

be followed when filling the Director position and when supervising the Director. The Commission shall provide written guidelines on how to implement supervision of the Director, subject to Tribal Council's approval.

- (b) To pay salaries pursuant to a salary schedule approved by the Council.
- (c) To delegate powers of the Commission to the Director consistent with this Ordinance.
- (d) To promulgate regulations consistent with this Ordinance, which shall be subject to approval by the Council.
- (e) To make recommendations to the Council on amendments to this Ordinance.
- (f) To expend funds appropriated by the Council for the Spokane Tribal Employment Rights Program and funds collected from Covered Employers as provided herein.
- (g) To obtain funding from Federal, State or other sources to supplement Council appropriations.
- (h) To establish numerical hiring goals and timetables specifying the minimum number of Indians a Covered Employer must hire by craft or skill level.
- (i) To require Covered Employers to establish or participate in job training programs as the Commission or the Director deems necessary to increase the pool of Indians eligible for employment on the Reservation.
- (j) To establish and administer the Tribal Hiring Hall and require Covered Employers to use the Hiring Hall.
- (k) To prohibit Covered Employers from using job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are bona fide and necessary occupational qualifications for employment. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the Reservation.
- (l) To enter into agreements with Unions to insure union compliance with this Ordinance.



- (m) To require Covered Employers to give preference to Tribally Owned Businesses and Indian Owned Businesses in the award of Contracts related to Covered Projects.
- (n) To establish counseling programs to assist Indians in obtaining and retaining employment.
- (o) To hold hearings and to subpoena witnesses and documents in accordance with this Ordinance.
- (p) To assess fines and penalties consistent with this Tribal Employment Rights Ordinance.
- (q) To require Covered Employers to submit reports and take all action deemed necessary by the Commission or the Director to ensure compliance with this Ordinance.
- (r) To enter into cooperative agreements with Federal agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation as well as to enter into agreements with the Council for the same purposes.
- (s) To take such other actions consistent with this Ordinance as are necessary to achieve the purpose and objectives of the Spokane Employment Rights Program established in this Ordinance.
- (t) The Commission including any of its agents, employees or delegates, shall retain all rights and privileges of sovereign immunity of the Tribe.
- (u) The Commission can operate and manage job training or similar programs when such programs are delegated to the Commission by the Spokane Tribe's other Agencies and Departments that are charged to operate such programs, or when establishment of new job training or similar programs are deemed necessary and delegated to the Commission by the Tribal Business Council.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165; Amended 11/10/20, Resolu. 2020-336.

#### 45-3.08 Commission Obligations.

- (a) In establishing and maintaining the numerical goals provided for in §45-4.03, and the requirements for training programs as provided for in §45-4.04, the Commission shall consult with affected Covered Employers and shall consider their input and recommendations.

- (b) The Commission may hold such formal and informal meetings, and regulate the times and procedures thereof as it may deem necessary in order to carry out its duties and powers under this Ordinance.
- (c) The Commission shall attempt, whenever possible, to administer this Ordinance and execute its powers hereunder by a consensus approach. If a consensus cannot be achieved, the affirmative vote of at least three Commissioners shall be required to render effective any decision or action of the Commission, and the Chairperson shall be entitled to vote on any decision or action.
- (d) All written agreements or plans, directives, orders, complaints, and appeals which the Commission is authorized or required to issue or file hereunder shall bear the signature of at least two Commissioners.
- (e) Any actual or apparent conflict of interest by a Commissioner or TERO Employee must be identified and reported immediately by said Commissioner or Employee to the Commission. Failure to report an actual or apparent conflict of interest shall be reported to the Council, which may take action pursuant to §45-3.03 of this Ordinance and such failure is determined by this Code to be "good cause". These requirements shall apply to personal conflicts of interest, including but not limited to immediate family members, business conflicts of interest, and other conflicts of interest.
- (f) The Commission shall establish and administer a Tribal Hiring Hall, as per §45-4.07.
- (g) The Commission is authorized to develop a Local Indian Business Support Program, as per § 45-4.08(d).
- (h) The Commission shall have additional obligations as identified elsewhere in this Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-3.09 Removal of Director.

- (a) Only the Council may remove the Director, and only for good cause after notice and hearing by the Council.
- (b) The Council may consider written Commission recommendations concerning removal of the Director. Such recommendations are not binding, nor are they required for Council to remove the Director. The Commission does not have authority to remove the Director.

- (c) Before voting to remove the Director, the Council shall give the Director reasonable written notice of the reasons for the proposed removal and an opportunity to respond to such notice at a meeting of the Council. If, after such a meeting, the Council determines to remove the Director, the decision of the Council shall only be reviewable as provided for in the Spokane Tribe's Employee Policy Manual.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-3.10 Duties and Powers of the Director.

- (a) Subject to the supervision and direction of the Commission, the Director shall exercise all those duties and powers under this Ordinance which may be delegated to the Director by the Commission, provided, however that any decision which the Commission is authorized or required to make hereunder, including the issuance or filing of the written materials listed in §45-3.08 hereof, shall not be so delegated. The Commission may delegate routine or administrative correspondence not involving any decision-making powers of the Commission to the Director.
- (b) The Commission shall define by rule or regulation the specific powers and duties hereunder which the Director shall exercise.
- (c) The Director shall maintain a list of Tribally Owned Businesses and Indian Owned Businesses.
- (d) To make recommendations to the Council, or the Council's authorized designee, when hiring and/or firing TERO Program employees. The Spokane Tribe of Indians Employee Policy Manual, and all applicable limitations and requirements thereof, shall be utilized in the hiring and/or firing process.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-4 Spokane Employment Rights Program**

#### 45-4.01 Coverage and Scope.

- (a) All Covered Employers who perform Covered Projects are required to apply Indian Preference, as per § 45-2.01(aa), in hiring, promotion, and training, of employees who perform Covered Project activities. All Covered Employers shall ensure that Covered Project comply with this Ordinance and the rules, regulations and orders of the Commission.
- (b) The foregoing requirements shall apply only to Covered Employers engaged in Covered Projects. When a Covered Employer has previously agreed in a Contract, lease or other Transaction to give preference to Indian Preference Applicant/Employees, this Ordinance and authorized Commission rules,

regulations, and directives shall define the specific minimum obligations of the Covered Employer pursuant to such written agreement.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.02 General Contractors and Subcontractors.

- (a) The Indian Preference requirements contained in this Ordinance shall be binding on all Covered Employers, regardless of tier, and shall be deemed part of all Contract specifications.
- (b) The General Contractor shall have the initial and primary responsibility for insuring all contractors and subcontractors comply with these requirements.
- (c) If a contractor or subcontractor of a General Contractor fails to comply with all Indian Preference requirements or otherwise violates this Ordinance in any way, the General Contractor, as well as the contractor or subcontractor, shall be subject to penalties provided by this Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.03 Minimum Numerical Goals and Timetables for Indian Employment.

- (a) The Commission or the Director may establish the annual numerical goals for the minimum number of Indian Preference Applicant/Employees each Covered Employer must employ on his work force during any year that he or any of his employees are engaged in Covered Projects. Numerical goals may be set for each craft, skill, or job classification, etc., used by the Covered Employer and shall include, but is not be limited to, administrative, supervisory and professional categories. The goals shall be expressed in terms of man hours of Indian Preference Applicant/Employee employment as a percentage of the total man hours worked by the Covered Employer's work force in the job classification involved.
- (b) For both new and existing Covered Employers, the goal(s) shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in number of Indian Preference Applicant/Employees available or changes in Covered Employer hiring plans.
- (c) Each Covered Employer shall submit a monthly report to the Director indicating the number of Indian Preference Employees in their work force, how close the Covered Employer is to meeting his goals, all persons hired and/or fired during the last month, the job positions involved, and other information requested or required by the Commission.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.04 Training.

- (a) The Commission may require Covered Employers to participate in training programs to assist Indian Preference Applicant/Employees to become qualified in the various job classifications used by the Covered Employer.
- (b) The Commission shall set the ratio of Indian Preference Applicant/Employee trainees to fully qualified workers after consultation with the Director and Covered Employers.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.05 TERO Fee.

- (a) A Covered Employer shall pay an annual TERO Fee of five percent (5%) of the value of all Covered Activities performed by the Covered Employer for Covered Projects, as determined by the Commission as per Subsection 45-4.05 (e).
- (b) The Director may invoice the Covered Employer and payment shall be due within fourteen (14) days from the date of the invoice. The absence of an invoice shall not relieve the Covered Employer of the obligation to pay the TERO Fee. Where good cause is shown, the Director may authorize installment payments to be paid over the course of the year.
- (c) If for any reason the value of a Covered Project increases or decreases, the Covered Employer, or the General Contractor who has elected to be responsible for TERO compliance for the entire Covered Project, shall notify the Director of this change within fifteen (15) business days, and any change in the TERO Fee shall be assessed and paid or refunded as applicable.
- (d) If for any reason a General Contractor does not pay a required TERO Fee in full and in the time period required by §45-4.05(b), the Director may, in the Director's sole discretion, require subcontractor Covered Employers to pay the applicable portion of the TERO Fee as per this § 45-4.05.
- (e) For purposes of calculating the TERO Fee, the value of Covered Activities shall be annually determined by the Commission in one of the following ways:
  - (1) The actual audited value of the Covered Activities as substantiated by the Covered Employer and verified by the Commission; or
  - (2) The Commission may impose an assessment in lieu of the actual audited value of the Covered Activities as determined by Subsection 45-4.05(e)(1); or

- (3) In lieu of audited value or an assessment, the Commission, the Director, and Covered Employer may mutually agree to an assessed value of the Covered Activities based upon alternative methods for calculation and determination.
- (f) A Covered Employer who disagrees with the amount of the required TERO Fee may appeal the determination pursuant to Section 45-7.
  - (1) If the Covered Employer appeals an assessment imposed under Subsection 45-4.05(e)(2), the Covered Employer shall bear the burden of proof and must prove the Commission's assessment is manifestly unreasonable in light of the actual value of the Covered Activities.

Legislative History: Amended 3/31/2009, Resolu. 2009-172; Amended 6/26/2012; Resolu. 2012-260; Repealed and Replaced 2/20/19, Resolu. 2019-165; Amended 3/14/2019, Resolu. 2019-188.

#### 45-4.06 Job Qualification and Personnel Requirements.

- (a) Covered Employers are prohibited from using job qualification criteria or personnel requirements which bar Indian Preference Applicant/Employees from employment unless such criteria or requirements are required by business necessity and are bona fide occupational qualifications for employment as listed in the most recent version of the Dictionary of Occupational Titles established by the U.S. Department of Labor, or unless the Indian Preference Applicant/Employee is unemployable for other valid reasons.
- (b) Covered Employers may designate key personnel who are regular, permanent employees in a supervisory or other key position as Core Crew. Only the first and thereafter every seventh employee may be employed as Core Crew by a Covered Employer.
- (c) At no time shall Core Crew displace actual or potential Indian Preference Applicant/Employees by performing work outside the Core Crew's normal classification.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.07 Tribal Hiring Hall.

- (a) The Commission will establish and administer a Tribal Hiring Hall to assist the Director and Covered Employers in placing Indian Preference Applicant/Employees in job positions. A Covered Employer may recruit and hire workers from whatever process he chooses, as long as he complies with this Ordinance, and the Federal Equal Opportunity Act, in hiring

practices, and Indian Preference regulations and agreements pertaining to Covered Employer's operation.

- (b) The Director will determine grade level for Indian Preference Applicant/Employees pursuant to either industry guidelines or a Commission-approved program which documents grade levels in a manner consistent with industry standards.
- (c) Covered Employers must pay employees who perform Covered Project activities wages as required by the Wage Scale and applicable wage rates.
- (d) A Covered Employer who disagrees with the Director's determination may appeal the determination pursuant to Section 45-7 of this Code.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.08 Counseling and Support Programs.

- (a) The Commission shall cause to be established counseling and other support programs to assist Indian Preference Applicant/Employees to obtain and retain employment. Such counseling and other support programs shall operate according to the preference guidelines of § 45-2.01(aa).
- (b) Every Covered Employer shall be required to cooperate with the Commission or the Director regarding such counseling and support programs.
- (c) Every Covered Employer must provide opportunity to any Indian Preference Applicant/Employee to enter any such program for counseling prior to termination unless the Indian Preference Applicant/Employee was terminated for good cause as defined in § 45-4.09(a).
- (d) The Commission is authorized to develop a Local Indian Business Support Program to promote, facilitate and encourage the success of Indian Owned Businesses. The Commission is authorized to develop and set criteria allowing for the reimbursement of certain administrative fees to Indian Owned Businesses who participate in the Local Indian Business Support Program.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.09 Layoffs and Terminations.

- (a) In making any layoffs and reductions in force, all Covered Employers shall maintain ratios of Indian Preference Applicant/Employees as required by this Ordinance. Furthermore, no Covered Employer shall terminate or layoff any Indian Preference Applicant/Employee who is employed pursuant to

this Ordinance without good cause for such termination. "Good cause for termination" means failure to adequately perform the job, failure to follow orders, any illegal or fraudulent act pertaining to employment with Covered Employer, or any act which puts the Covered Employer or other employees of Covered Employer in an unsafe position in the course of the Indian Preference Applicant/Employee's employment.

- (b) The Covered Employer shall apply any and all layoffs in a reasonable and fair fashion. Layoffs should only occur when there is not adequate work to keep all employees on the job or when the Covered Employer has a cash flow shortage necessitating reduction in the work force.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-4.10 Promotions. Every Covered Employer shall, in accordance with ratios as required by this Ordinance, give Indian Preference Applicant/Employees who perform Covered Project activities preferential consideration for all promotion opportunities and shall encourage Indian Preference Applicant/Employees to seek such opportunities.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-4.11 Summer Students. For Covered Projects, Covered Employers shall give preferential consideration for summer student employment in accordance with the preferences set forth in § 45-2.01(aa). Covered Employers shall make every effort to promote after-school, summer, and vacation employment for Indian Preference students.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-4.12 Indian Preference Requirements in Awarding General Contracts and Contracts.

- (a) Covered Employers shall give preference in the award of Contracts to Tribally Owned Businesses and Indian Owned Businesses. These rules and regulations apply to all Covered Employers Engaged in a Covered Project. Tribally Owned Business and Indian Owned preference requirements set out herein shall apply to:
  - (1) All Contracts which are not Direct Federal Contracts or Federally Funded Contracts, except as provided in § 45-4.12(a)(2); and
  - (2) All Contracts which are For the Benefit of Indians and which are covered by Section 7(b) of the Indian Self Determination Act, P.L. 93-638, 25 U.S.C. 45(e) (b).
- (b) As between equally qualified Indian Owned Businesses, the order of preference set forth in § 45-2.01(aa) shall be adhered to.
- (c) Any Covered Employer or Indian Owned Business may bid as a supplier, General Contractor, or subcontractor on the Reservation, but shall not



submit bids for a Contract or to be supplier if bidding on the General Contract, and shall sign a non-collusion statement for each contract.

- (d) Covered Employers shall notify the Director of all bid openings and the Director shall have the option to attend all bid openings.
- (e) The Director shall maintain a list of Tribally Owned Businesses and Indian Owned Businesses which shall be supplied to Employers for their use.
- (f) For all Covered Projects worth seventy-five thousand dollars (\$75,000.00) or more, Covered Employers shall provide an "Indian Contracting Utilization Plan" to the Commission, which must be approved before the Covered Employer may commence work on the Covered Project. The Indian Contracting Utilization Plan must set forth how the Covered Employer intends to meet the requirements of this Ordinance when awarding General Contracts and Contracts, and must also provide documentation with respect to:
  - (1) How bids from Tribally Owned Businesses or Indian Owned Businesses were solicited; and
  - (2) Who was awarded the Contract or Transaction; and
  - (3) Why a particular Contract or Transaction was awarded to the particular bidder.
- (g) If the General Contractor or Covered Employer asking for bids has reason to believe that two (2) or more qualified Tribally Owned Businesses or Indian Owned Businesses can bid for work included within a Covered Project, then the invitation for bids shall be restricted to qualified Tribally Owned Businesses and Indian Owned Businesses. If bids are restricted only to qualified Tribally Owned Businesses and Indian Owned Businesses and the Tribally Owned Businesses and Indian Owned Businesses fail to submit a qualified bid, the invitation for bids shall be open to competition from non-Indian owned businesses and firms.
- (h) If there are less than two (2) Tribally Owned Business or Indian Owned Business bidders, then the invitation for bids shall also be open to competition from non-Indian owned businesses and firms.
- (i) Unless there are no Tribally Owned Business or Indian Owned Business bidders, the lowest qualified Tribally Owned Business or Indian Owned Business bidder shall be awarded the General Contract or Contract, provided that such bid is within budgetary limits of the specific Covered Project or component thereof. In such instances, Tribally Owned Businesses and Indian Owned Businesses shall be entitled to an allowance

as between non-Indian Owned Business bidders in the amounts set forth in § 45-4.12(k).

- (j) In the case of § 45-4.12(a)(2), the lowest qualified Tribally Owned Business or Indian Owned Business bidder shall be awarded the General Contract or Contract if the lowest qualified Tribally Owned or Indian Owned bidder is within budgetary limits established for the specific project or component of the project. In such instances, Tribally Owned Businesses and Indian Owned Businesses shall be entitled to an allowance as between non-Indian Owned Business bidders in the amounts set forth in § 45-4.12(k).
- (k) The lowest qualified Indian Owned Business or Tribally Owned Business bidder shall be entitled to an allowance as between the lowest qualified non-Indian Owned Business bidder in an amount that is not more than the following fixed percentages:

**PERCENTAGE OF BID OR DOLLAR AMOUNT, WHICH**

<b>When the lowest responsive bid is or bid amount</b>		<b>Percentage</b>
<b><u>At LEAST</u></b>	<b><u>but LESS than</u></b>	<b>(whichever is lowest)</b>
\$000,000	\$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 million	5% or \$40,000.
\$1 million	\$2 million	4% or \$60,000.
\$2 million	\$4 million	3% or \$80,000.
\$4 million	\$7 million	2% or \$105,000.
\$7 million or more responsive		1% of lowest bid, w/no \$ amt

**(Based on annual Contract value)**

- (l) A Covered Employer who fails to provide an Indian Contracting Utilization Plan shall be deemed in violation of this Ordinance and shall be subject to enforcement actions, including assessment of fines and penalties, as set forth in this Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-4.13 Burden of Proof. In any hearing before the Commission where the issue is Covered Employer compliance with any of the requirements of § 45-4.14, the burden of proof shall be on the Covered Employer to show compliance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-4.14 Prohibited Activities.

- (a) The following is a non-exhaustive list of prohibited activities.
  - (1) Submitting false or fraudulent information to the Director or the Commission;
  - (2) Operating as a front or pass through company; or
  - (3) Preventing or interfering with a Covered Employer's compliance with this Ordinance.
  
- (b) Bid collusion is strictly prohibited for Covered Projects and will result in enforcement as set forth in this Ordinance and as otherwise provided under the laws of the Tribe, including but not limited to debarment.
  - (1) Bid collusion shall include, but is not limited, to price fixing, bid rigging, allocation schemes, or any other action or inaction that restricts competition or impacts project pricing. Any practice involving or comparable to informing a competitor of the amount of the bid or offering them an opportunity to underbid will be considered bid collusion.
  - (2) If a Covered Employer determines that a contractor, subcontractor, or other Covered Employer has engaged in bid collusion, the Covered Employer shall disqualify the bid and refer the matter to the Director. The Covered Employer or Tribal entity shall provide the Director with all documentation supporting its determination. If the Director makes a finding that bid collusion did occur, the Director shall proceed as set forth in this Ordinance.
  - (3) The Commission reserves the right to exercise all available equitable and legal remedies, including cancellation of the Covered Project and debarment from future bidding on Covered Projects and/or decertification with the Tribe for up to one (1) year. Willful and/or repeated violations may result in debarment for up to three (3) years.

Debarred Individuals may not bid or participate in any Covered Projects or any other Contracts with the Tribe as owners or key employees of other companies during the period of debarment.

- (4) If a Covered Employer is engaged in Covered Projects at the time they are found to have engaged in bid collusion, the Director in their discretion may require the Covered Employer to complete their current work, and during this period the Covered Employer shall be suspended from bidding and or performing any work on any other Covered Projects. The debarment period shall commence when the current Covered Project is completed.
  - (5) Any Covered Employer found to have engaged in bid collusion may be liable for damages for any losses suffered by another firm.
  - (6) Any Covered Employer disputing a Director determination on bid collusion may appeal the determination to the TERO Commission, as per hearing pursuant to § 45-7.03.
- (c) Covered Employers who engage in activities prohibited by this Section 45-4, or who otherwise violate this Ordinance, shall be subject to enforcement actions as set forth in this Ordinance.

Legislative History: Adopted 2/20/19, Resolu. 2019-165.

## **Section 45-5 Compliance Plans**

### **45-5.01 Scope.**

- (a) Covered Employers who engage in Covered Projects shall abide by a hiring and employment Compliance Plan approved and issued by the Commission. The Compliance Plan shall set forth how the Covered Employer will meet the goal of one-hundred percent (100%) Indian Preference employment in each job classification and other obligations set out herein for all Covered Projects, subject to any exceptions provided by this Ordinance. Within thirty (30) days of the Director's initial approval, the Director shall obtain final approval from the Commission at which time the Compliance Plan shall be issued.
- (b) No Covered Employer as identified above may commence work unless it has submitted a Commission-approved Compliance Plan setting forth how the Covered Employer intends to meet the Compliance Plan goals and objectives during the one-year period of said Compliance Plan.

Legislative History: Codified and Amended 2/21/19, Resolu. 2019-165, Amended 3/14/2019, Resolu. 2019-188.

### **45-5.02 Compliance Plan for Covered Employers.**

- (a) All Covered Employers who engage in Covered Projects shall provide a proposed Compliance Plan for consideration by the TERO Director who shall approve, approve with modifications or reject the proposed Compliance

Plan. The TERO Director shall present approved Compliance Plans to the Commission for consideration of final approval and issuance pursuant to Section 45-5.01.

- (b) Each Covered Employer shall meet with the Director at least five (5) business days prior to actually beginning work on a Covered Project and shall furnish the Director with a precise list of the number and kinds of employees the Covered Employer expects to employ. The Commission shall issue a Compliance Plan after considering any special factors or circumstances the Covered Employer wishes to present.
- (c) Each Compliance Plan shall establish the goal of one-hundred percent (100%) Indian Preference employment in each job classification for Covered Projects if:
  - (1) Qualified Indian Preference Applicant/Employees are reasonably available when the Compliance Plan is adopted to fill all job positions in each job classification anticipated by the Covered Employer; or
  - (2) Qualified Indian Preference Applicant/Employees can reasonably be expected to become available from training programs or other sources to fill all such positions during the one-year period of the Compliance Plan.
  - (3) If qualified Indian Preference Applicant/Employees are not available, then a Compliance Plan may provide for goals of less than 100% Indian Preference employment in affected job classifications.
- (d) If the Covered Employer was already engaged in a Covered Project prior to the effective date of this Ordinance, and the Covered Project is not yet complete, that Covered Employer shall comply with § 45-5.03 to develop a Compliance Plan for that Covered Project.

Legislative History: Codified and Amended 2/21/19, Resolu. 2019-165, Amended 3/14/2019, Resolu. 2019-188.

#### 45-5.03 Compliance Plans for Existing Covered Employers.

- (a) Covered Employers who engaged in a Covered Project prior to the effective date of this Ordinance shall provide proposed Compliance Plans which establish hiring and employment goals for employees expected to be employed after the effective date of this Ordinance during the one (1) year period of any Compliance Plan.
- (b) Within thirty (30) calendar days after the effective date of this Ordinance, or longer period of time as determined by the Director, each existing Covered Employer shall meet with the Director and shall furnish a

reasonably specific list of the number and kinds of new employees the Covered Employer expects to employ in the following calendar year. The Commission shall issue a Compliance Plan after considering any special factors or circumstances the Covered Employer wishes to present.

- (c) Compliance Plans for existing Covered Employers shall establish the goal of one-hundred percent (100%) Indian Preference employment for new hiring in each job classification if qualified Indian Preference Applicant/Employees can reasonably be expected to become available to fill such new positions during the duration of the Plan. If qualified Indian Preference Applicant/Employees are not available, then Compliance Plans may provide for goals of less than one-hundred percent (100%) Indian Preference employment in affected job classifications.

Legislative History: Codified and Amended 2/21/19, Resolu. 2019-165, Amended 3/14/2019, Resolu. 2019-188.

#### 45-5.04 Compliance Plans; Enforceability.

- (a) A Compliance Plan shall be fully enforceable by the Commission or Director, as applicable.
- (b) Failure to obtain a Compliance Plan, failure to adhere to the terms of a Compliance Plan approved by the Director, or supplying false information to the Director, shall subject the non-complying Covered Employer to monetary penalties of up to five-thousand dollars (\$5,000.00) per violation, per day. Penalties assessed may be appealed to the Commission.
- (c) Covered Employers engaged in Covered Projects without an approved Compliance Plan shall be required to stop work on all Covered Projects until an acceptable Compliance Plan has been submitted to and approved by the Director.

Legislative History: Repealed and Replaced 2/21/19, Resolu. 2019-165, Amended 3/14/2019, Resolu. 2019-188.

#### 45-5.05 Revision of Compliance Plans; Monthly Employer Reports.

- (a) Each Covered Employer subject to a Compliance Plan shall submit a monthly report to the Director, or other report as otherwise directed by the Commission, on a form provided, indicating:
  - (1) The number of Indian Preference Applicant/Employees in the Covered Employer's work force;
  - (2) How close the Covered Employer is to meeting Compliance Plan goals;
  - (3) The total number of persons hired or terminated during the month and the affected job positions; and

- (4) Any other information specified by the Commission and reasonably necessary in monitoring the Covered Employer's efforts to abide by the Compliance Plan.
- (b) The Director shall meet at least annually with each Covered Employer to review the goals of every Compliance Plan. Any Compliance Plan may be revised at any time, after meetings between the Director and Covered Employer, when necessary to reflect changes in the number of qualified Indian Preference Applicant/Employees available or changes in Covered Employer hiring practices.

Legislative History: Codified and Amended 2/21/19, Resolu. 2019-165, Amended 3/14/2019, Resolu. 2019-188.

#### 45-5.06 Compliance Monitoring.

- (a) Upon request of the Director, all Covered Employers shall submit reports and other information, including but not limited to contractor documents and certified payroll and personnel records as requested.
- (b) Covered Employers are required to regularly submit payroll information of all workers on the Covered Project to determine compliance with the Compliance Plan. Payroll information shall be due at the time the Covered Employer issues payroll.
- (c) Covered Employers shall allow on-site monitoring of Covered Projects for compliance with this Ordinance and to confirm workforce utilization requirements.

Legislative History: Adopted 2/20/19, Resolu. 2019-165.

45-5.07 Non-Compliance or Violations. If any Covered Employer fails or refuses to comply with the Compliance Plan, such non-compliance shall be deemed a violation of this Ordinance and subject to fees and penalties set forth in Section 45-6 of this Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-5.08 Compliance by Unions.

- (a) Each union with a collective bargaining agreement with a Covered Employer must file a written agreement stating the union will comply with this Ordinance and the rules, regulations and directives of the Commission ("Union Agreements"). Until such Union Agreement is filed with the Director and approved by the Commission, the Covered Employers thereunder may not commence work on any Covered Project.
- (b) Union Agreements must be filed with the Director and must provide:

- (1) That the union will give preference to Indian Preference Applicant/Employees in job referrals regardless of which union referral list they are on
  - (2) That the union will cooperate with the Director in all aspects and assist in the compliance and enforcement of this Ordinance and related regulations and agreements.
  - (3) That the union will establish a mechanism allowing Indian Preference Applicant/Employees to register for job referral lists by telephone or mail.
  - (4) The union will establish journeyman upgrade and advance apprenticeship programs for Indian Applicants and Employees.
  - (5) That the union will grant temporary work permits to Indian Preference Applicant/Employees who do not wish to join the union.
- (c) The Director will provide a memorandum of agreement for use by all unions who have collective bargaining agreements with a Covered Employer.
- (d) Nothing herein or any activity by the Commission or the Director shall constitute official Tribal recognition of any union or Tribal endorsement of any union activities on the Reservation.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

**45-5.09 Burden of Proof.** In any hearing before the Commission where the issue is compliance by a Covered Employer or union with any of the requirements of this Section 45-5, the burden of proof shall be on the Covered Employer to demonstrate compliance.

Legislative History: Codified and Amended 2/21/19, Resolu. 2019-165, Amended 3/14/2019, Resolu. 2019-188.

## **Section 45-6 Enforcement and Penalties for Violations**

**45-6.01 Enforcement and Penalties for Violations.** The Director is authorized to enforce this Ordinance and the rules and regulations of the Commission as follows:

- (a) Informal Settlement. If the Director has reason to believe a violation of this Ordinance has occurred, whether upon investigation initiated by a complaint filed pursuant to § 45-7.2, or on their own initiative, the Director shall then issue written Notice of Violation to the accused Covered Employer. The Director and the accused Covered Employer may seek an informal settlement of the alleged violation immediately. If no settlement can reasonably be made, the Director shall submit the Notice of Violation to the Chairperson of the Commission, who shall issue a Notice of Hearing.
- (b) Notice of Violation. The Notice of Violation shall set out the nature of the alleged violation and the steps necessary to come into compliance ("Corrective Measures"). The accused Covered Employer shall be provided not more than five (5) calendar days to implement the Compliance



Measures. This time may be shortened in the Director's reasonable discretion to irreparable harm.

- (c) If the Covered Employer disagrees with the Notice of Violation, he may submit a written Request for Hearing to the Commission. The Request for Hearing may include a request that Corrective Measures be stayed pending a Final Decision.
- (d) If a Covered Employer refuses to comply with requirements within the time imposed by the Director and submitted a Request for Hearing on the matter pursuant to § 45-7.2(c), the Director may submit a motion to the Commission to impose one or more penalties below upon said violator. After being fully advised on the matter, the Commission may issue an order imposing such penalties it deems necessary. Said order shall constitute a Final Decision of the Commission and can be appealed only pursuant to Section 45-8.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-6.02 Enforcement.

- (a) Any Covered Employer, or any employee thereof, found in violation of this Ordinance or the rules, regulations, or decisions of the Commission or the Director may be subject to the following penalties:
  - (1) Denial of any opportunity to commence, continue, or engage in Covered Projects;
  - (2) Immediate suspension of any and/or all work on Covered Projects;
  - (3) Payment of damages and back-pay to compensate any injured party;
  - (4) Removal of employees hired in violation of this Ordinance or the rules, regulations, or decisions of the Commission or the Director;
  - (5) Imposition of monetary civil penalties;
  - (6) Prohibition from engaging in future work on the Reservation;
  - (7) Order requiring changes in procedures and policies necessary to eliminate the violation(s);
  - (8) Employment, promotion and/or training of Indian Preference Applicant/Employees injured by the violation;
  - (9) Any other order deemed necessary by the Commission to alleviate, eliminate, and compensate for any violation(s);
  - (10) Imposition of a one-time ten-percent (10%) penalty fee on all amounts due on monetary payments ordered by the Commission if not paid within thirty (30) days of Final Decision. If ordered payments are not paid within sixty (60) calendar days of the initial billing, then an additional one-time thirty-percent (30%) penalty fee shall be imposed in addition to the ten-percent (10%) referred to

above. After sixty (60) calendar days, interest shall accrue at the rate of one percent (1%) per month on any unpaid balance;

(11) If enforcement and/or collection action becomes necessary for any Commission Final Decision the Respondent shall pay all reasonable attorney fees and costs incurred in such proceeding.

(b) The maximum penalty which may be imposed is five-thousand dollars (\$5,000.00) for each violation.

(c) Each day during which a violation exists shall constitute a separate violation.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

## **Section 45-7 Complaints and Hearings**

### **45-7.01 Notice of Hearing.**

(a) If the Commission orders a hearing, the Director shall cause a written notice of hearing to be served upon Respondent and all interested parties stating the nature of the hearing and the evidence to be presented.

(b) The notice shall advise Respondent and interested parties of the alleged violation, their required presence or the presence of a representative on their behalf, their right to be present at the hearing, to present testimony of witnesses or other evidence, and to be advised by counsel at their own expense.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **45-7.02 Complaints.**

(a) Any individual, business, organization, or other entity that believes, or reasonably believes, any Covered Employer is in violation of this Ordinance, or any rules or regulations issued thereunder, may file a complaint with the Director, or the Commission's authorized agent.

(1) The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation.

(2) The Director shall investigate every complaint filed.

(3) If upon investigation, the Director has reason to believe a violation has occurred, the Director shall proceed pursuant to the provisions of Section 45-6.

(4) Within twenty (20) business days after receipt of the complaint, and on a regular basis thereafter, the Director shall provide the complaining party with a written report on the status of the complaint.

- (b) Complaints filed under § 45-7.02(a) shall be filed with the Director or the Commission's authorized agent within thirty (30) calendar days after the alleged violation(s), whether by action or omission, occurred.
- (c) The complaint shall include the date, place, and circumstances of the alleged violation(s) of this Ordinance. The complaint shall be served upon the Respondent(s) against whom the charge(s) are made within ten (10) business days of the complaint's filing.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-7.03 Complaints Regarding Administrative Acts of the Commission or Director.

- (a) Any Covered Employer, employee, or other party may challenge any action of the Commission or the Director by filing a written complaint with the Director, or the Commission's authorized agent within five (5) business days from said action.
- (b) The Commission will review the complaint and will advise the complaining party of its determination, including any corrective action taken.
- (c) To assist in evaluating the allegations in the Complaint, the Commission may order an investigation and/or the production of documents, evidence and witnesses. The Commission may also hold such Hearings as necessary.

Legislative History: Adopted 2/20/19, Resolu. 2019-165.

#### 45-7.04 Service of Complaints. Complaints may be served by registered mail or hand delivery with receipt.

Legislative History: Codified 2/20/19, Resolu. 2019-165.

#### 45-7.05 Investigations.

- (a) On the Director's own initiative or pursuant to a complaint, the Director may conduct an investigation to determine whether any provision of this Ordinance or any rules, regulations, or decisions hereunder have been violated.
- (b) The Director or designee may enter, during business hours, the place of business or employment of any Covered Employer the Director deems necessary to monitor for compliance with the requirements of this Ordinance or any rules, regulations, or directives hereunder.
- (c) The Director or his designee shall show official identification adequate to identify them as the authorized agents of the Commission to make such investigation.

- (d) If upon the conclusion of the investigation the Director determines that a violation of this Ordinance has occurred, she shall issue a Notice of Violation.
- (e) Upon receipt of a Request for Hearing pursuant to § 45-6.01, the Presiding Official shall issue a Notice of Hearing. The Presiding Official shall have the discretion to stay Corrective Measures pending the issuance of a Final Decision.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

**45-7.06 Hearing Procedure.** Hearings shall be governed by the following 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 have the advice and assistance of legal counsel provided by the Tribe.
- (c) The Chairperson of the Commission, or the Vice-Chairperson, shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
- (d) The hearing may be adjourned, postponed, and continued at the discretion of the Commission and with due notice to the parties.
- (e) At the final close of the hearing, the Commission may take immediate action or take the matter under advisement.
- (f) The Commission shall provide written determination to all parties within thirty (30) calendar days after the hearing.
- (g) If any party with proper notice of the date and time of a hearing fails to appear, a finding of violation may be made against them in default.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

**45-7.07 Power to Require Testimony and Production of Records.** For the purpose of investigations or hearings which, at the reasonable discretion of the Director or the Commission, are necessary and proper for the enforcement of this Ordinance, the Commission, the Director, or any designee thereof, may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements, documents, records, or information which the Director or the Commission deems relevant or material to the inquiry.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-7.08 Prehearing Procedures.

- (a) Review of TERO Files. The Respondent shall have the right to review the Director's relevant case file by scheduling an appointment with him for that purpose during regular working hours at any point after receiving notice of a hearing. The Director shall remove any portion of the file as necessary to protect confidential information. After the Director has removed any confidential information, Respondent may make copies of the Director's relevant case file as necessary at Respondent's sole cost.
- (b) List of Witnesses. Ten (10) business days prior to the hearing, or within two (2) business days if the hearing is to be held less than ten (10) business days after notice, the Respondent and the Director shall submit to the Commission Chairperson a list of witnesses each intends to call at the hearing, the approximate length of their testimony, and the general substance of said testimony. Said list shall also indicate any witnesses to be subpoenaed. The Commission shall then issue any necessary subpoenas.
- (c) Expert Witnesses. Any party, including Respondent, who intends to present testimony of an expert shall, no fewer than fifteen (15) business days prior to the hearing, provide the Commission and the opposing party the name, qualifications, and the substance of said expert testimony. Failure to do so shall disqualify such testimony from the hearing. Hearings which require expert testimony shall be scheduled in a manner to allow for this minimum fifteen (15) business day notice requirement, including by not limited to rescheduling the hearing date.
- (d) Pre-hearing Interview of Witnesses. The Respondent and the Director shall have the right to interview the witnesses of the other party prior to any hearing. The Director's witnesses shall be interviewed in the presence of the Director or his representative. The Respondent's witness shall be interviewed under such reasonable conditions as are established by the Respondent. Either party may appeal to the Chairperson of the Commission if cooperation is not forthcoming. The Chairperson is empowered to require such steps as are necessary to resolve the dispute.
- (e) Production of Documents and Materials. The Parties shall provide each other with a list of documents, papers, and tangible evidence intended to be introduced at hearing, including a statement regarding the substance and relevance of each. Said documents, papers, and tangible evidence shall be provided no later than ten (10) days prior to the hearing or within two (2) days if the hearing date is noticed less than ten (10) days before the hearing. Failure to produce such list and the documents listed within the

time prescribed may render said documents inadmissible at hearing on motion of opposing party and in the Commission's discretion.

- (f) Continuances. Any request for a continuance or postponement of the hearing must be submitted in writing to the Chairperson of the Commission no fewer than three (3) business days prior to the hearing. However, if the Director and Respondent mutually submit a request for postponement because there is a possibility of settling the matter, the request for a postponement may be submitted at any time.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-7.09 Conduct Of The Hearing.

- (a) Presiding Official. The Chairperson or designated Commissioner ("Presiding Official") shall preside over the proceedings. The Presiding Official will take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Parties will abide by the Presiding Official's rulings. The Presiding Official has the authority to:
- (1) Administer oaths or affirmations;
  - (2) Regulate the course of the hearing;
  - (3) Rule on offers of proof;
  - (4) Limit the number of witnesses when testimony would be unduly repetitious; and
  - (5) Exclude any person from the hearing for conduct or misbehavior which obstructs or disrupts the hearing.
- (b) Director. Unless otherwise provided in this Ordinance, the burden shall be on the Director to establish by a preponderance of the evidence that a violation of this Ordinance has occurred. The Director may be represented by an attorney provided by the Tribe.
- (c) Respondent. The Respondent shall be present for the entire hearing. Respondent may represent himself during the proceeding or may be represented by an attorney.
- (d) Recording of the Hearing. All hearings shall be recorded and the Commission shall retain the tape(s) for no less than one (1) year after the hearing.
- (e) Prohibition Against Reprisals. All parties shall have a right to testify on their own behalf, without fear of reprisal.
- (f) Starting Time. The hearing shall begin promptly at the time specified by the Commission.

- (g) Opening Statements. Both parties shall be afforded the opportunity to present opening statements with respect to what they intend to prove at the hearing.
- (h) Order of Proceeding. The Director shall present his case first.
- (i) Examination and Cross Examination of Witnesses. Both parties may subpoena and examine or cross-examine friendly and hostile witnesses. Harassment or efforts to intimidate witnesses shall not be tolerated. Commissioners may examine witnesses at any point during that witness's testimony. The testimony of all witnesses shall be under oath or affirmation.
- (j) Irrelevant Testimony. Parties may object to testimony that is clearly irrelevant, immaterial or unduly prejudicial. The Commission shall prohibit any testimony that is clearly irrelevant, immaterial or unduly prejudicial.
- (k) Written Testimony. Written testimony will be admitted into evidence during the hearing only when the Commission determines that the witness is unavailable to testify at the hearing and good cause exists for the witness's unavailability. When a party wishes to use the written testimony of a witness who cannot appear, the party must submit a written explanation of the witness' nonappearance to the Commission at least fifteen (15) business days prior to the hearing. If the Commission is satisfied with the written explanation, the party shall obtain the witness' testimony by means of deposition. When a deposition cannot be obtained or used, as determined by the Commission's reasonable discretion, an affidavit or a sworn statement from the witness may be used. A signed but unsworn statement shall not be admitted in evidence.
- (l) Closing Statement. Closing Statements for each party will be permitted. The Director shall present his Closing Statement first.
- (m) Audience. The hearing shall be open to the public. However, the Commission may remove any person who disrupts the hearing or behaves in an inappropriate manner.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-7.10 The Commission's Final Decision. The Commission's Final Decision shall be in writing and shall be issued no later than thirty (30) calendar days after the hearing. The Final Decision shall be served on the Respondent by registered mail or by personal service. The Final Decision shall consist of the following parts, in the following order:

- (a) The facts as determined by the Commission;

- (b) The finding of “violation” or “no violation” on each alleged charge against the Respondent along with the legal and factual basis for said finding;
- (c) The orders and sanctions imposed, if any;
- (d) Information on rights to appeal;
- (e) Information on the Commission’s authority to act if the party fails to comply with the Commission’s orders or fails to appeal; and
- (f) The injunctive or bonding requirements, if any, that the Commission will seek from the Court pending the completion of the appeal if an appeal is filed.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-7.11 The Record.

- (a) The Commission shall include copies the Notice of Violation, Request for Hearing, Notice of Hearing, all documents and other evidence admitted to the record at the hearing, and the hearing recording/transcripts in the Official Record.
- (b) The Commission and shall maintain and store Official Records for a period of one (1) calendar year from the date of the Final Decision.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

#### 45-7.12 Finality of the Decision – Appeal.

- (a) Respondent may appeal to the Spokane Tribe Court as provided in Section 45-8 of this Ordinance.
- (b) Final Decisions shall be effective immediately.
- (c) Parties must comply with the Commission’s Final Decision. If Respondent fails to comply with the Commission’s Final Decision, the Commission may petition the Court for such preliminary and permanent injunctive and other relief as necessary to enforce the Final Order.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-8 Appeals**

45-8.01 Right to Appeal. Any Respondent to a hearing shall have the right to appeal a Final Decision of the Commission to the Court by filing a Notice of Appeal with the Court within twenty (20) business days of the issuance of the Final Decision.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.



45-8.02 Scope of Review. The Court shall uphold the Commission's Final Decision unless it is demonstrated that the decision was arbitrary, capricious, unsupported by the weight of the evidence, or in excess of the Commission's authority.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-8.03 Notice of Appeal: Contents. The Notice of Appeal shall:

- (a) Specifically describe the Commission's Final Decision from which appeal is taken (Respondents are encouraged to include a copy of the Final Decision as an attachment to the Notice of Appeal);
- (b) Specify the grounds upon which reversal or modification or order is sought; and
- (c) Be signed by appellant.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-8.04 Stay on Appeal; Bond.

- (a) Unless otherwise ordered by the Spokane Tribal Court, the Final Decision of the Commission shall not abate or stay, and shall remain in effect, pending the outcome of the appeal in Court. If the Court orders a stay, the Director may petition and, for good cause shown, the Court may order the Respondent to post a bond sufficient to cover monetary damages that the Commission previously assessed against the party or some other amount to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Court.
- (b) If the Commission's Final Decision is reversed or modified, the Court shall specifically direct the Commission as to further action on the matter, including making and entering any order(s) in connection therewith and the limitations or conditions to be contained therein.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-8.05 Security for Compliance. If the Commission, in its discretion, has reason to believe Respondent will remove itself or its property from the Reservation during any stage of an enforcement action, the Commission may petition the Court pursuant to the rules and procedures of the Court to attach such property as necessary to ensure payment of any fees or damages owed, or to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

## **Section 45-9 Confiscation and Sale**

45-9.01 Purpose of Procedure.

- (a) If a Covered Employer fails to pay a monetary judgment or damage imposed on it, or otherwise fails to comply with any order or decision of the Commission, including but not limited to a Final Decision, within twenty-one (21) business days after any order or decision of the Commission and no appeal has been filed with the Court, the Commission may petition the Court to order Tribal Law Enforcement to confiscate and hold for sale such property of the Covered Employer as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.
- (b) If a Covered Employer fails to pay a monetary judgment or damage imposed on it, or otherwise fails to comply with any order or decision of the Commission, including but not limited to a Final Decision, and the Covered Employer has filed an Appeal with the Court, the Commission may immediately petition the Court to confiscate and hold, but not sell, such property of the Covered Employer as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.
- (c) The Commission's petition shall be accompanied by a list of Covered Employer property which the Commission has reason to believe is within the jurisdiction of the Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order Tribal Law Enforcement to confiscate and hold said property. Tribal Law Enforcement shall deliver in person, or by certified mail, a notice to the Covered Employer informing it of the confiscation and of the right to redeem said property by complying with the order outstanding against it.
- (d) If the Covered Employer has not come into compliance within thirty (30) days after confiscation, the Court shall order Tribal Law Enforcement to sell said property, the proceeds of which shall be used to first pay any outstanding fees and damages, and then to pay any costs incurred by the Court and Tribal Law Enforcement in the confiscation and sale.
- (e) Any sale made pursuant hereto shall be made in a commercially reasonable manner.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

## **Section 45-10 Commission Funds and Fee Waivers**

45-10.01 Commission Funds. All fees collected pursuant to this Ordinance shall be deposited into the Tribe's designated TERO Fund.

45-10.02 Fee Waivers. The Tribe reserves the right to waive any and all fees required under this Ordinance. Council may advise the Commission of any requested fee waivers.

All fee waivers must be adopted by lawful resolution of the Council, of which the Commission shall receive notice.

Legislative History: Amended 09/07/07, Resolu. 2007-539; Codified and Amended 2/20/19, Resolu. 2019-165.

## **Section 45-11 Equal Employment Opportunities**

45-11.01 Equal Employment Opportunities. No Covered Employer shall discriminate against any Indian Preference Applicant/Employee for employment or promotion opportunities because of color, religion, sex, national origin, or age and must assure advertisements include equal opportunity for access.

Legislative History: Codified and Amended 02/20/19, Resolu. 2019-165.

## **Section 45-12 Wage and Hour Standards**

45-12.01 Equal Pay. Every Covered Employer shall be required to provide equal pay to Indian Preference Applicant/Employees performing work similar or comparable to other employees.

Legislative History: Codified and Amended 02/20/19, Resolu. 2019-165.

45-12.02 Rate of Pay. Every Covered Employer shall be required to pay whichever rate of pay is highest when Federal, State, or Tribal wage, rates, and/or guidelines are used. Wage Rate requirements shall apply.

Legislative History: Amended 07/28/09, Resolu. 2009-357; Codified and Amended 2/20/19, Resolu. 2019-165.

45-12.03 Federal, State, and Local Agencies. The Commission or Director may use Federal, State, or Tribal agencies in resolving a discrepancy concerning wages and hours worked.

Legislative History: Amended 07/28/09, Resolu. 2009-357; Codified and Amended 2/20/19, Resolu. 2019-165.

45-12.04 Violations. Any Covered Employer who is in violation of this Section 45-12 shall be subject to the penalties outlined in Section 45-6.

Legislative History: Adopted 02/20/19, Resolu. 2019-165.

## **Section 45-13 Health, Welfare, and Pension Fund Benefits**

45-13.01 Payroll Deductions. Payroll deductions shall be permissible for health, welfare, and pension fund benefits, but any payroll deduction constituting a contribution on behalf of the Indian Preference Applicant/Employee to any fund established by the Covered Employer, Indian Preference Applicant/Employee, or both, for the purpose of providing medical or hospital care, pensions, annuities, retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or which are applied to payment of insurance to provide any of the foregoing, including unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents shall be permissible, PROVIDED HOWEVER, the following standards must be met:

- (a) The deduction is not otherwise prohibited by law;
- (b) It is either:
  - (1) Voluntarily consented to by the Indian Preference Applicant/Employee in writing and in advance of the period in which the work is to be done, and such consent is not a condition either for obtaining or the continuation of employment, or
  - (2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;
- (c) No profit or other benefit is otherwise obtained directly or indirectly, by the Covered Employer or any affiliated person in the form of commission, dividend, or otherwise; and
- (d) The deduction shall serve the convenience and best interest of the Indian Preference Applicant/Employee.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-14 Retaliation or Reprisal**

#### 45-14.01 Retaliation or Reprisal.

- (a) Any harassment, discrimination, or threat against any person, business, or other entity which has filed a complaint, opposed any unlawful employment practice, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing involving a violation of this Ordinance shall itself constitute a violation of the this Ordinance, PROVIDED HOWEVER, that said harassment, discrimination, or threat must be related to or based upon the person, business, or other entity's participation in such activities.
- (b) Any violation of this Section 45-14 shall be subject to the penalties outlined in Section 45-6.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-15 Covered Employer License Fee**

#### 45-15.01 Covered Employer License Fee.

- (a) All Covered Employers must acquire a "Covered Employer License" to operate on the Reservation as follows:

- (1) The Covered Employer must provide proof of operational record with a minimum of two (2) successful and consecutive years of experience as an Employer performing Covered Activities; or
  - (2) The Covered Employer must provide proof that they are employees who have performed Covered Activities for hire for a minimum of five (5) years.
- (b) A license fee of shall be imposed for said license, the amount to be determined by the Council.
  - (c) The license and license application must be renewed on a yearly basis, expiring one year from the day said license was purchased.
  - (d) Failure to obtain or renew a Spokane Tribal Contractor License shall be a violation of this Ordinance and is subject to sanctions outlined in Section 45-6.

Legislative History: Amended 06/17/2008, Resolu. 2008-382; Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-16 Publication of Ordinance**

45-16.01 Publication of Ordinance. The Commission or the Director shall make a current copy of this Ordinance, including any amendments thereto, available to a Covered Employer upon request. Unless otherwise excluded by this Ordinance, all bid announcements issued by any Tribal, Federal, State or other Covered Employer shall contain a statement that the successful bidder shall be obligated to comply with this Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-16.02 Licensing and Business Permits. All Tribal agencies responsible for issuing business permits for Covered Activities or who are otherwise engaged in activities involving contact with prospective Covered Employers shall be responsible for advising such prospective Covered Employers of their obligations under this Ordinance and all rules, regulations, and decisions of the Commission.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

45-16.03 Copies of Ordinance. Copies of this Ordinance are available for Indian Preference Applicant/Employees upon written request to the Director.

Legislative History: Adopted 2/20/19, Resolu. 2019-165.

### **Section 45-17 Effective Date**

45-17.01 Effective Date. This Ordinance shall be effective from the date of its approval by the Council via tribal resolution.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-18 Rules and Regulations**

45-18.01 Rules and Regulations. Consistent with the requirements of this Ordinance, the Commission may from time to time adopt detailed rules, regulations, policies and guidelines consistent with and necessary for full implementation of this Ordinance.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.

### **Section 45-19 Severability**

45-19.01 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, shall not be affected.

Legislative History: Codified and Amended 2/20/19, Resolu. 2019-165.