



TE-MOAK TRIBE OF WESTERN SHOSHONE

ORDINANCE OF THE GOVERNING BODY OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

AMENDMENT NO. 1

NO. 14-ORD-TM-01

Be it enacted by the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada that in accordance with Article 4 Section 3 (n) and also in accordance with Article 4 Section 12 (c) and (f) of the Constitution of the Te-Moak Tribe, approved May 13, 1938, as amended on August 26, 1982, as organized under the Indian Re-organization Act of June 18, 1935, (49 Stat. 378), that this ordinance to be known as the “Te-Moak Tribal Employment Rights Ordinance, or TERO” shall be effective upon passage.

TE-MOAK TRIBAL EMPLOYMENT RIGHTS ORDINANCE

Section 1.0 **Name**

This ordinance shall be known as the “Te-Moak Tribal Employment Rights Ordinance”. The short name shall be the “Tribal Employment Rights Ordinance”, or “TERO”.

Section 2.0 **Declaration of Policy**

As a guide to the interpretation and application of this ordinance, the public policy of the Te-Moak Council is declared as follows:

Like land, water, and minerals, jobs, subcontracts, leases and contracts on or near the Te-Moak are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique employment rights, subcontract and contract rights and the Te-Moak Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. Indians are also entitled to the protection of the laws that the Federal Government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of those laws. The Te-Moak Council believes that it is important to establish an employment rights program and office in order to optimize the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians.

10-1-2 **Definitions**

- (a) “Employee” means any person employed for remuneration.
- (b) “Employer” means any person, partnership, corporation, or other entity that employs, for wages, two or more employees.
- (c) “Covered Employer” means any employer employing two or more employees who during any 20 day period spend, cumulatively, 16 or more hours performing work within the Te-Moak Tribal land and territories.

- (d) "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure this Ordinance's jurisdiction, and the term shall be interpreted by the commission and the courts.
- (e) "Council" means the Te-Moak Tribal Council.
- (f) "Commission" means the Te-Moak Tribal Employment Rights Commission established by this Ordinance.
- (g) "Commercial Enterprise" means any activity by the Te-Moak Tribal Council or of the federal or state governments that is not a traditional government function as defined by the Internal Revenue Service.
- (h) "Indian Contractor" shall mean a firm which qualifies for Indian contract preference certification under the Bureau of Indian Affairs or the Te-Moak Tribal Employment Rights Commission.
- (i) "Indian" means any member of a federally-recognized Tribe, Band or Nation.
- (j) "Enrolled tribal member" means any enrolled member of the Te-Moak Tribe under the Constitution of the Te-Moak Tribe of Western Shoshone.
- (k) "Director" means the director of the Te-Moak Tribal Employment Rights Office.
- (l) "TERO" means the Tribal Employment Right Office.
- (m) "Covered Employer" means any employer employing two or more employees who during any 10 consecutive day period, spend cumulative 16 or more hours performing work within Te-Moak Tribal Lands.

10-1-3 Indian Preference in Employment

All covered employers, for all employment occurring within the lands and territory of the Te-Moak Tribe shall give preference to Indians meeting threshold requirements of the job with the first preference to enrolled tribal members, in all hiring, promotion, training, layoffs and all other aspects of employment. Such employers shall comply with this ordinance and the rules, regulations, guidelines, and orders duly and lawfully adopted pursuant to which set forth specific obligations of employers in regard to Indian preference. This ordinance shall not apply to direct employment of the Te-Moak Tribe by the federal, state, or other governments or their subdivisions; provided it shall apply to all contractors or guarantees of such governments and to all proprietary or commercial enterprises operated by such governments.

10-1-4 Indian Preference in Contracting

All entities awarding contracts or subcontracts for supplies, services, labor and/or materials in an amount of \$5,000 or more where the majority of the work on the contract or subcontract will occur within the lands and territories of the Te-Moak Tribe, shall give preference in contracting and subcontracting to qualified entities that are certified by the commission as 60% or more Indian owned and controlled. These requirements shall not apply to the award of contracts awarded directly by the Te-Moak Tribal Council, or by the federal or state government or their subdivisions. These requirements shall apply to all subcontracts awarded by a tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines and orders of the commission which set forth the specific obligations of entities in regards to Indian preference in contracting and subcontracting. The commission by regulation shall establish a system for certifying firms as Indian preference eligible.

10-1-5 Unions

Any covered employer who has a collective bargaining agreement with one or more union(s) stating that the union shall comply with Indian preference laws, and with this Ordinance and rules, regulations and guidelines of the Te-Moak Tribe. Such agreement shall be subject to the approval of the Director.

10-1-6 Commission; Members; Compensation; Quorum

- (a) There is a created Te-Moak Tribal Employment Right Commission.
- (b) The commission shall be composed of four (4) appointed members *selected by* the duly elected Te-Moak Tribal Council, and one (1) alternate member. The Commission shall designate one of such commissioners as Commission Chairman; Commissioners shall serve for a two (2) year term.
- (c) For carrying out their duties members of the commission shall be entitled to receive upon presentation of proper vouchers, such as mileage and per diem are in affect for members of the Te-Moak Tribal Council. Such payments shall be limited by a budget approved by the Council.
- (d) Three (3) Commissioners shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

10-1-7 Powers of the Commission

The Commission has the full power, jurisdiction, and authority to:

- (a) To carry out the provisions of this Ordinance, and purpose regulations pursuant to Constitution of the Te-Moak Tribe of Western Shoshone, and submit the proposals to the Te-Moak Tribal Council for their action.

- (b) Hold administrative hearings and issue findings and orders pursuant to Constitution of the Te-Moak Tribe of Western Shoshone and applicable Tribal and/or Band ordinances.
- (c) To hear appeals from the actions of the Director.

10-1-8 Director; Qualifications; Staff; Duties

- (a) The Te-Moak Tribal Council shall have the exclusive authority to appoint, direct, suspend or remove the Director of the **TERO** Program, pursuant to a resolution or pursuant to the policies and procedure of the Te-Moak Tribal Council.
- (b) The Director shall have such administrative ability, education and training as the Council determines.
- (c) The Director shall have the authority to hire staff, to expend funds appropriated by the Te-Moak Tribal Council and to obtain and expend funding from federal, state, or other sources to carry out the purposes of this Ordinance, subject to approved by the Te-Moak Tribal Council.
- (d) The Director shall propose, recommend, draft and administer the policies, authorities by this Ordinance and by the Commission.

10-1-9 Authority of Director

The Director shall have the authority to carry out the day- to- day operations of the **TERO**, to enforce this Ordinance, to employ and supervise staff for the **TERO** pursuant to any of the Band's plan of operations, and such other authority as is convenient or necessary to the efficient administration of this Ordinance to:

- (a) Assist the Commission to propose, adopt, amend, and rescission of rules, regulations, or guidelines.
- (b) To assess sanctions pursuant to Section 10-1-15 and represent the **TERO** at hearings and appeals before the Commission, the Te-Moak Tribal Council and any court or other adjudicatory body.

10-1-10 Intergovernmental Relations

The Commission acting by regulation not inconsistent with this Ordinance is authorized to enter into cooperative relationships with federal employment rights agencies, such as Equal Employment Opportunity Commission (EEOC) AND THE Office of Federal Contract Compliance Program (OFCCP) in order to eliminate discrimination against Indians on and off the Te-Moak Tribal lands.

10-1-11 Employment Rights Fee

An employment rights fee, to pay for the operation of the Commission and the Tribal Employment Rights Office's services, is imposed as follows:

- (a) Every covered employer with a construction contract in the sum of \$5,000 or more shall pay a onetime fee of 2% of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on the Te-Moak Tribal lands. However, where good cause is shown, the Director, with the approval of the Commission, may authorize a construction contractor to pay said fee in installments over the course of the contract.
- (b) Every covered employer other than construction contractors, with two (2) or more employees working on the Te-Moak Tribe shall pay a quarterly fee of 2% of his employee's quarterly payroll which shall be paid within 30 days after the end of the quarter. This fee shall not apply to educational, health, governmental, or nonprofit employers; however, it shall apply to all contracts awarded by educational, health, governmental or nonprofit employers to non-educational, non-health, non-governmental, or for profit employers.
- (c) The Director shall be responsible for collecting said fees pursuant to any rules and regulations adopted by the Te-Moak Tribal Council. Said fees shall be paid to the finance department of the Te-Moak Tribe, and shall be credited to the **TERO** Administration line item in the general fund of the Te-Moak Tribe.

10-1-12 Complaints

Any person or group of persons, or organization including any employee of the TERO that believes any covered employer or entity, has violated any requirements imposed by this Ordinance or regulation adopted under it may file a complaint with the **TERO**. The complaint shall be in writing, shall be signed under oath by the Complaint and shall provide such information as is necessary to enable the Director to carry out an investigation. The Director will investigate every complaint filed. If upon investigation the Director has reason to believe a violation of this Ordinance or regulations adopted under it has occurred, and the **TERO** has jurisdiction over the complaint, the Director shall proceed pursuant to the provisions of Section 10-1-15. Within 20 days after receipt of the complaint, and on a regularly basis thereafter, the Director shall provide the complaining party with a written report on the status of the complaint.

10-1-13 Investigation

The Director, or any field officer-employed by the Director or the Commission deems necessary to determine whether any covered entity has violated any provision of this Ordinance or any rules, regulations, and guidelines hereunder. The Director or a field compliance officer may enter, during business hours, the place of business employment of any employer for the purpose of such reports as the Director deems necessary to monitor compliance with the requirements of this Ordinance or any rule of under hereunder.

10-1-14 Power to Require Testimony & Production of Records

For the purpose of investigations or hearings which, in the opinion of the Commission, are necessary and proper for the enforcement of this Ordinance, the Commission may administer oaths or affirmation, subpoena witnesses, take evidence and require, by citation, the production of books, papers, contracts, agreements, or other documents, records, or information which the Commission deems relevant or material to the inquiry.

10-1-15 Enforcement

- (a) When after conducting an investigation, initiated by a complaint pursuant to Section 10-1-12 or self- initiated investigation pursuant to Section 10-1-13, the Director has reason to believe a violation of this Ordinance or regulations issued pursuant to it has occurred, the Director shall notify the covered employer or entity in writing, specifying the alleged violations. The Director may withhold the name(s) of the complaining party only if there is clear and convincing reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If no informal settlement is reached, the Director shall issue a formal Notice of Noncompliance, which shall also advise the covered employer to entity of all rights to appeal the Notice.

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

I, the undersigned clarify that the Tribal Council of the Te-Moak Tribal of Western Shoshone Indians of Nevada is composed of 9 members of whom 9 constituting a quorum were present at a duly held meeting on February, 13, 2014, and that this Ordinance was duly adopted at such meeting by a vote of 8 FOR, 0 AGAINST, and 0 ABSENTIONS, pursuant to Article 4, Section 3 (n) and Article 4, Section 20 (a) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.



**Davis Gonzales, Tribal Chairman
Te-Moak Tribe of Western Shoshone**

ATTEST:

**Recording Secretary
Te-Moak Tribe of Western Shoshone**