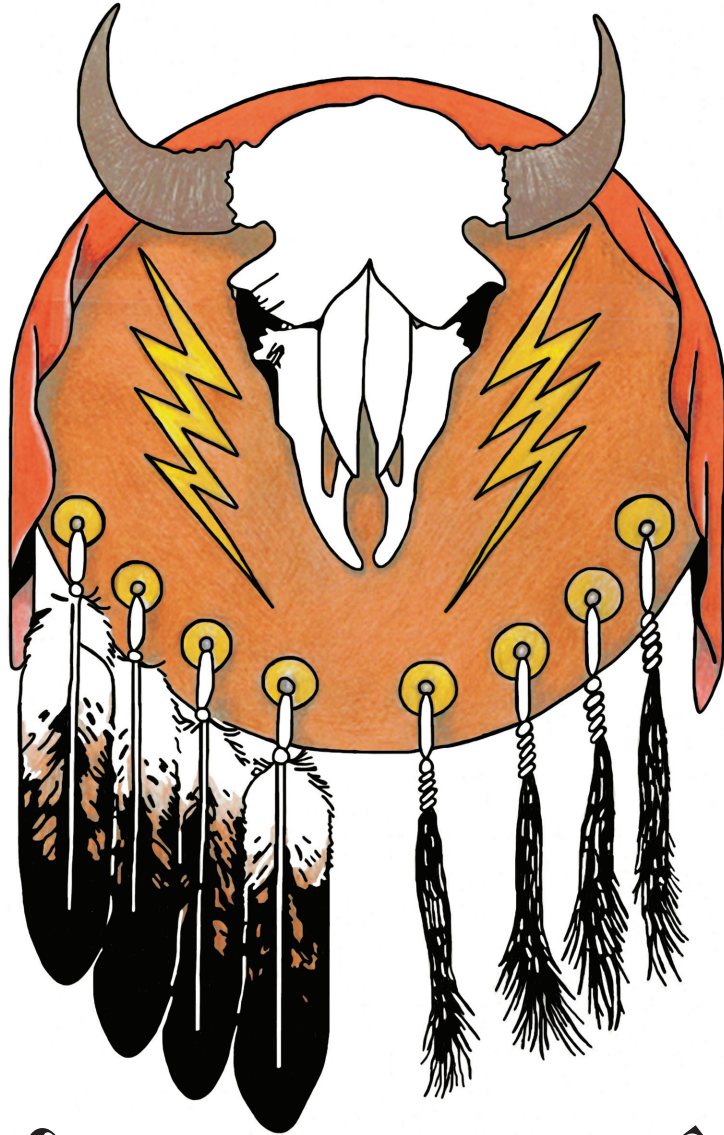


**TRIBAL EMPLOYMENT  
RIGHTS ORDINANCE**



**SPIRIT LAKE TRIBE**



**SPIRIT LAKE LAW AND ORDER CODE**

**TITLE 15. EMPLOYMENT RIGHTS**

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# SPIRIT LAKE LAW AND ORDER CODE

## TITLE 15: EMPLOYMENT RIGHTS

### CHAPTER ONE GENERAL PROVISIONS AND PURPOSE

#### §15-1-101. **Name.**

This title shall be known and cited as the Spirit Lake Tribe Employment Rights Ordinance (TERO).

#### §15-1-102. **Findings.**

The Spirit Lake Tribal Council finds that employment discrimination against Indians persists to some extent on the Reservation despite a large number of Indian and non-Indian owned businesses employing skilled and non-skilled workers inside the Reservation. The Tribal Council further finds that jobs in private employment on or near the Reservation are an important resource to which member of the Spirit Lake Tribe and other Indians living on or near the Reservation have unique employment rights. The Council also finds that it has a duty to guarantee and implement these unique employment rights by creating employment, business, and training opportunities. It is also the Council's responsibility to monitor Indian preference along with collecting from those doing business on the Spirit Lake Reservation a fair fee for that privilege. Thus, the council has enacted and hereby amends an employment rights law which establishes an Employment Rights Program and Employment Rights Commission to achieve its goals and policies.

#### §15-1-103. **Legal Authority.**

The Spirit Lake Tribe possesses the inherent sovereign authority to enact this Tribal Employment Rights Ordinance for the benefit of its members and other Indians on the Spirit Lake Reservation. The Tribe also possesses the inherent sovereign authority to regulate the activities of nonmembers (1) who enter consensual relationships with the Tribe or its members, through commercial dealing contracts, leases, or other arrangements or (2) when a non-Indian's conduct threatens or has some direct effect on the political integrity, economic security, or the health or welfare of the tribe. There also exists substantial legal support for the policy of Indian preference in employment in federal statutory and regulatory law.

§15-1-106. **Scope of Coverage.**

This Ordinance shall apply to all areas within the exterior boundaries of the Spirit Lake Reservation subject to the jurisdiction of the Spirit Lake Tribe. It shall be binding on all employers as defined in §15-2-108. Such employers are covered regardless of whether their headquarters or principle place of business is on or off the Reservation, and regardless of whether they were already engaged in commerce as of the effective date of enactment.

§15-1-107. **Personnel Policy and Procedure Manuals.**

This Ordinance supercedes any and all personnel policy and procedure manuals issued by any employer covered by this ordinance. All employers shall be required to incorporate all terms relevant to their businesses in their respective personnel policy and procedure manuals.

§15-1-108. **Effective Date.**

This Revised Ordinance shall be in full force and effect as of the date of the formal approval and adoption hereof by the Spirit Lake Tribal Council.

§15-1-109. **Severability.**

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

§15-1-110. **Prior laws.**

This Ordinance as hereby amended supercedes any and all prior resolutions and ordinances of the Spirit Lake Tribal Council to the extent of any conflict or inconsistency.

§15-1-111. **Sovereign Immunity.**

The Spirit Lake Tribe, and all its constituent parts, including the Tribal Employment Rights Office, Director and Commission established pursuant to this Ordinance, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe or the United States. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of Spirit Lake Tribe or any of its constituent parts, including but not limited to, the Tribal Employment Rights Office, Director, and Commission, except that after exhaustion of administrative remedies as provided herein, a party aggrieved by a decision of the Commission may appeal to the Spirit Lake Tribal Court as provided herein. Such appeal shall be for injunctive relief only. Nothing in this Ordinance shall be construed as a waiver of sovereign immunity for any claim for damages. Nothing in this Ordinance, and no

enforcement action taken pursuant to it, including the filing of a petition in Tribal Court, shall constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

## **CHAPTER TWO DEFINITIONS**

§15-2-101. Any person may seek clarification as to all TERO requirements and definitions by directing inquiries to the Tribal TERO Commission.

§15-2-102. **Chairperson.**

The term “chairperson” shall mean the Chairperson of the Spirit Lake Tribe Employment Rights Commission.

§15-2-103. **Conflict of Interest.**

The term “conflict of interest” means the existence of a relationship between a public official or fiduciary and a private interest or private party that may cause the public official to disregard her or his official duties or that the relationship may improperly influence the public official’s decision making.

§15-2-104. **Commission.**

The term “Commission” shall mean the Spirit Lake Tribe Employments Rights Commission.

§15-2-105. **Commissioner.**

The term “Commissioner” shall mean a Commissioner of the Spirit Lake Tribe Employment Rights Commission.

§15-2-106. **Core Crew.**

The term “Core Crew” shall mean employees employed for more than one year prior to the date of the compliance plan.

§15-2-107. **Council.**

The term “council” shall mean the Tribal Council of the Spirit Lake Tribe.



§15-2-108. **EEOC.**

The term “EEOC” shall mean the Equal Employment Opportunities Commission of the United States.

§15-2-109. **Employer.**

The term “employer” shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the Reservation, employing two or more persons, and without regard for whether the employer or its owner is Indian or Non-Indian or a member of the Spirit Lake Tribe or not. The term “employer” excludes Tribal, Federal, State, and County governments. Tribally-owned or tribally-chartered private, for profit corporations are employers under this definition. Tribally-owned or tribally-chartered, nonprofit corporations are employers under this definition. Tribally chartered or state chartered non-profit corporations authorized by the Tribe to contract with any federal agency pursuant to P.L. 93-638 or to enter into a grant agreement pursuant to P.L. 100-297 are employers under this definition.

§15-2-110. **Engaged to work on the Reservation.**

An employer is “engaged to work on the Reservation” if during any portion of a business enterprise or specific project, contract or subcontract, he or any of his employees spends a majority of his time performing work within the exterior boundaries of the Reservation on a continuing basis.

§15-2-111. **FEPC.**

The term “FEPC” shall mean the Fair Employment Practices Commission of the United States.

§15-2-112. **Good Cause.**

The term “good cause” means a sufficient ground or reason amounting in law to a legal excuse to take official, reasonable action against a person such as suspension, removal, or termination.

§15-2-113. **Indian.**

The term “Indian” shall mean any person recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.

§15-2-114. **Indian-Owned Business.**

The term “Indian-owned business” shall mean a business entity which has complied with the certification process contained in this ordinance.

§15-2-115. **Located on the Reservation.**

An employer is “located on the Reservation” if during any portion of a business enterprise or specific project contract or subcontract, he maintains a temporary or permanent office a facility within the exterior boundaries of the Reservation.

§15-02-116. **OFCCP.**

The term “OFCCP” shall mean the Office of Federal Contract Compliance Programs of the United States.

§15-2-117. **Reservation.**

The term “Reservation” shall mean the Spirit Lake Reservation.

§15-2-118. **Secretary.**

The term “Secretary” shall mean the Secretary of the Interior or his duly authorized representatives.

§15-2-119. **Tribal Member; Member.**

The term “tribal member” and “member” shall mean any person who is a duly enrolled member of the Tribe, unless the contest clearly indicates otherwise.

§15-2-120. **Tribe.**

The term “tribe” shall mean the Spirit Lake Tribe.

§15-2-121. **Working days.**

For purposes of this Title, the term “working days” means Monday through Friday, excluding all holidays and off days recognized by the Spirit Lake Tribal Council. The Tribal Council or a tribal organization, entity or program may agree in a written contract with a contractor or subcontractor to a variance when deemed necessary by the Tribal Council.

## **CHAPTER THREE**

### **EMPLOYMENT RIGHTS COMMISSION**

#### **§15-3-101. Commission Members.**

The Spirit Lake Tribe Employment Rights Commission shall be comprised of seven tribal members appointed by the Tribal Council. The Chairman of the Commission shall vote only in case of a tie.

#### **§15-3-102. Terms of Office.**

Commissioners shall serve two year staggered terms. Commissioners shall hold office after expiration of their terms of office until their successors are duly appointed and approved.

#### **§15-3-103. Ineligibility; Conflicts of Interest.**

Any Commission member who is also an employee of the Spirit Lake Tribe shall be disqualified from any involvement in decisions affecting the tribal department or entity with which he or she is employed. Commission members shall also be disqualified from involvement in decisions in which he or she has a conflict of interest or appears to have a conflict of interest.

#### **§15-3-104. Removal From Office.**

A Commissioner may be removed from office upon conviction of a crime, or for gross neglect of duty, misfeasance or malfeasance in office, or ineligibility to serve as a Commissioner. Upon receipt of written charges or upon the recommendation of the Commission, the Spirit Lake Tribal Council shall make an initial determination as to whether good cause exists to conduct a hearing. If the Council determines that there is good cause to hold a removal hearing, it shall cause specific written charges to be served upon the Commissioner at least ten (10) working days before the day the hearing is scheduled to be held. The Commissioner shall be given an opportunity to answer the charges at the hearing and may be represented by counsel at his or her own expense. If the Commissioner refuses to appear before the Tribal Council, the Council shall proceed to vote upon his removal. The decision of the Council shall be final.

#### **§15-3-105. Vacancy and Interim Appointment.**

If a Commissioner shall die, resign, be incapacitated, leave the Reservation, be removed from office, or miss three consecutive regular meetings of the Commission, a vacancy on the Commission shall be created automatically, and at its next regular or special meeting the Tribal Council shall appoint an eligible person to fill the vacant position for the remainder of the term of office of the Commissioner whose position he or she is to fill.

§15-3-106. **Chairperson.**

The Chairperson of the Commission shall be appointed by the Commission. The Chairperson shall preside at all meetings of the Commission unless excused by that body. In general, the Chairperson shall perform all duties as prescribed by the Commission from time to time. The Chairperson shall vote on matters before the Commission only in case of a tie.

§15-3-107. **Vice-Chairperson.**

The Vice-Chairperson of the Commission shall be appointed by the Commission. In the absence of the Chairperson or in the event of his or her inability or refusal to act, the Vice-Chairperson shall perform the duties of the Chairperson. The Vice-Chairperson shall be a voting member of the Commission, except when performing the duties of the Chairperson.

§15-3-107. **Secretary.**

The Secretary of the Commission shall be appointed by the Commission. The Secretary shall record, or cause to be recorded, and maintain a full report of all proceedings of each meeting of the Commission and shall in general perform all duties as may be assigned by the Commission. The Secretary shall also cause the minutes of each meeting to be posted outside the TERO office and made available for public inspection.

§15-3-107. **Duties of the Commission.**

The Commission shall administer the Employment Rights Program of the Reservation in accordance with this Title and subject to the approval of the Tribal Council.

§15-3-108. **Powers of the Commission.**

The Commission shall have the power:

- (1) To hire and fire Commission employees and to pay salaries pursuant to a salary schedule established by the Tribal Council.
- (2) To establish rules and regulations governing all activities of the Commission pursuant to Chapter fifteen of this Ordinance.
- (3) To expend funds appropriated by the Tribal Council for the Spirit Lake Tribe Employment Rights Program.
- (4) To obtain funding from Federal, State or other sources to supplement Council appropriations.

- (5) To meet with the TERO Director and Staff members on a monthly basis for the purpose of securing updates relative to the operation of the TERO office.
- (6) To hold formal hearings, issue notices thereof, and subpoena witnesses and documents in accordance with the hearing procedures set forth in this ordinance, in any and all supplementary ordinances, and in any and all rules, regulations and/or guidelines promulgated by the TERO Commission.
- (7) To impose any sanctions and grant any relief as authorized and prescribed by this Ordinance and by any and all supplementary ordinances.
- (8) To require any covered employer to pursue whatever corrective actions are deemed necessary for such employer to come into compliance with the requirements set forth in this ordinance, in any and all supplementary ordinances, and/or in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.
- (9) To impose numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.
- (10) To require employers to establish or participate in such training programs as the Commission deems necessary to increase the pool of Indian eligible for employment on the Reservation.
- (11) To supervise the establishment of a tribal hiring hall, and to require that employers may hire non-Indians are unavailable to fill vacant positions.
- (12) To prohibit employers from using job qualifications, criteria or personnel requirements that bar Indians from employment unless such criteria or requirements are required by business necessity. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the Reservation.
- (13) To enter into agreements with the unions to insure union compliance with this ordinance.
- (14) To require employers to give preference to Tribal and other Indian-Owned businesses in the award of contracts and subcontracts.
- (15) To establish counseling and other programs to assist Indians in preparing for and retaining employment.

- (16) To take such other actions and engage in such other activities as are deemed necessary to achieve the purposes and objectives inherent in the policy of Indian preference in employment and in contracting.

§15-3-109. **Commission Meetings.**

The Commission shall hold at least one (1) regular, open meeting on the same date each month. Notice of the date and time of this meeting shall be prominently posted and publicized. Special meetings may be called by the Chairperson or Vice-Chairperson with the consent of at least two (2) Commissioners. Notice of special meetings shall be personally given to each Commissioner and shall also be publicized. Four Commission members shall constitute a quorum. Decisions of the Commission shall be made by a majority vote. All Commission meetings shall be conducting under the most current edition of Robert's Rules of Order.

§15-3-109. **Director.**

The Director shall have primary responsibility for day-to-day oversight of the operation of the Tribal Employment Rights Office and its employees. He or she shall report directly to the Commission.

§15-3-110. **Powers and Duties of the Director.**

- (1) To prepare line item budgets for the operation of the Spirit Lake TERO Program.
- (2) To supervise expenditures of the Spirit Lake TERO Program.
- (3) To prosecute before the Commission any claims of non-compliance with this Ordinance and the rules, regulations and/or guidelines promulgated by the Spirit Lake TERO Commission.
- (4) To develop and maintain in an updated status, a register setting forth the names and addresses of tribally owned and Indian-owned businesses. The register will also include any identification of the respective areas of work in which such forms are considered qualified.
- (5) To develop and maintain a plan for coordination and distribution of the certification register to all appropriate employers and to potential future employers.
- (6) To develop and maintain a plan for distribution of this Ordinance and for any supplementary ordinances enacted by the Tribal Council or rules, regulations

and/or guidelines established by the Commission, to all covered employers and to all government entities receiving contracts or grants for work to be done at job-sites on the Spirit Lake Reservation.

- (7) To ensure compliance by covered employers with any reporting requirements as prescribed by the Ordinance, rules, regulations, and/or guidelines established by the Commission.
- (8) To negotiate with representatives of any employer to resolve, on an informal voluntary basis, any claims of noncompliance with the compliance plan, requirements set forth in this Ordinance, or rules, regulations, and/or guidelines set forth by the Commission.
- (9) To inspect all non-confidential information contained in books and records maintained by any covered employer to ensure continued compliance with the requirements set forth in this Ordinance, or rules, regulations, and/or guidelines set by the Commission.
- (10) To review all applications for Indian preference certification, conduct all necessary or required investigations in relation to any applicants qualifications, and to submit to the Commission a written analysis and recommendation for disposition of any such application.
- (11) To initiate proceedings for suspension or revocation of Indian preference certification to a firm.
- (12) To secure additional funding from alternative sources.
- (13) To set up and maintain a Tribal hiring hall from which covered employers will select and employ qualified Indians to fill employment positions.
- (14) To enforce the minimum numerical hiring goals and timetables established for each employer for the number of qualified Indians the employer must have employed on its workforce, during any year, by skill area or job classification.
- (15) To prohibit employers from instituting or utilizing job qualification criteria and/or personnel requirements that, in effect, serve as barriers to employment of Indians, unless they can establish that business necessity requires such criteria.
- (16) To negotiate with labor unions to ensure union compliance with the requirements set forth in this Ordinance, and rules, regulations and/or guidelines established by the Commission.

- (17) To collect all TERO fees in a timely manner, pursuant to this Ordinance and rules and regulations that may be adopted by the Commission.
- (18) To assign, where appropriate, any of the above duties to compliance officers and/or other TERO staff.
- (19) To perform all other duties as assigned by the Commission.

§15-3-110. **Finances.**

The finances and financial reports of the TERO Office shall be under the direct supervision of the Director and Tribal Finance Department. The Director shall report on financial activities of the Tribal Employment Rights Office and provide any information requested by the Commission. The Director shall prepare for Commission approval annual budgets and modifications thereto, proposals, and other documents needed for the operations of the Office. All funds from employer fees and other sources, collected by the Commission, although under the management control of the Commission, shall be tribal funds subject to the final control and disposition by the Council, except that any funds subject to federal law shall be administered in accordance with that law.

## **CHAPTER FOUR EMPLOYMENT RIGHTS PROGRAM**

§15-4-101. **Indian Preference Required.**

All covered employers, for all positions involving employment within the Spirit Lake Reservation, shall give preference to qualified Indians in the order of priority set forth in §15-4-102, in all hiring, promotion, training, layoffs, and all other aspects of employment. Such employers shall comply with all other applicable rules, regulations, guidelines, and orders of the TERO Commission.

§15-4-102. **Priority of Employment Preferences.**

(1) Except as provided for in subsection (2) of this section, employment preference shall be given in the following order:

- (a) Enrolled member of the Spirit Lake Tribe
- (b) Indian enrolled in a federally recognized tribe supporting enrolled member of the Spirit Lake Tribe
- (c) Local Indian



- (d) Other minority
- (e) Non-Indian living within the exterior boundaries of the Spirit Lake Reservation
- (f) Non-Indian

(2) In any instance in which applicable federal law or regulations prohibit a preference based upon membership in a particular Tribe, the employment preference provided for in this Chapter shall be given in the following order: first preference to local Indians, second preference to other Indians; and third to all other applicants.

**§15-4-103. Minimum Numerical Goals and Timetables for Indian Employment.**

Minimum numerical goals and timetables for employment of Indians shall be established for every employer covered by this Ordinance and included in each employer's compliance plan pursuant to Chapter Twelve. The numerical goals shall be established by the Director pursuant to the following provisions and guidelines.

(1) The Director will establish the minimum number of Indians each employer must employ on their work force during any year that they or any of their employees is located or engaged in work on the Reservation. Numerical goals shall be set for each craft, skill area, job classification, etc., used by the employer and shall include but not be limited to, administrators, supervisory and professional categories. The goals shall be expressed in terms of man-hours of Indian employment as a percentage of the total man-hours worked by the employer's work force in the job classification involved. Numerical goals shall be based upon surveys of the available Indian manpower pool and of projected employment opportunities.

(2) For a few employers, the goals shall be established for the entire work force. The employer shall meet with the Director as long as before he actually begins work as possible and shall furnish the Director with a precise list of the number and kinds of employees he expects to employ. The Director shall then set specific goals and timetables for the employer after considering any special factors or circumstances the employer wishes to present. The employer shall incorporate the goals into his compliance plan and shall agree in writing to meet those goals. Any employer who fails to provide such a written statements will not be permitted to commence work on the Reservation.

(3) For an existing employer on the Reservation, the goals shall be a percentage of the new employees expected to be employed during the ensuing year by the employer. The employer shall incorporate the goals into his compliance plan and shall agree in writing to meet those goals.

(4) For both new and existing employers, the goals shall be reviewed by the Director at least annually and shall be revised as necessary to reflect changes in the number of Indians

available or changes in employer hiring plans. Each employer shall submit a monthly report to the TERO Office on a form provided by the Office, indicating the number of Indians in his workforce, how close he is to meeting his goals, all persons hired or fired during the month, the job positions involved, and other information required by the Commission.

(5) Each employer shall meet his minimum goals for the employment of Indians. Whenever the Director has reason to believe that an employer is violating this Section by not meeting their goals, the Director may initiate an investigation and notify the employer of the alleged violation pursuant to Chapter Seven of this Title. Should the matter come to a hearing before the Commission the Director shall bear the initial burden of proving that an employer has failed or is failing to meet his goals. Upon receipt of prima facie proof of such failure, the employer shall then bear the burden of proving that they have met or is meeting their goals or has made a good faith effort to meet the goals. It shall not be an excuse for such failure that the union with which the employer has a collective bargaining agreement providing for exclusive referral failed to refer Indians.

#### §15-4-104. **Training.**

Every employer may be required by the Commission to participate in training programs to assist Indian to become qualified in the various job classifications used by the employer. Every employer shall employ the maximum number of Indian trainees or apprentices possible. The ratios of Indian trainees to fully qualified workers shall be set by the Director after consultation with the employer. For construction projects the number of Indian trainees shall be no less than the minimum ratios established by the Department of Labor. Every employer with a collective bargaining agreement with a union shall be required to obtain agreement from the union to establish an advanced journeyman upgrade and apprenticeship program.

#### §15-4-105. **Qualifications and Personnel Requirements.**

Every employer is prohibited from using job qualifications criteria or personnel requirements which bar Indians from employment unless such criteria or requirements are required by business necessity. In any action challenging such job criteria or personnel requirements, the burden shall be on the Director or his delegate to demonstrate that a criterion or personnel requirement is a barrier to Indian employment. Upon prima facie proof that a job qualification or personnel requirement is not required by business necessity, the employer shall then bear the burden of proving that it is. If the burden is not met, the employer will be required to eliminate the job qualification criterion or personnel requirements at issue. Every employer shall make a reasonable accommodation to the religious beliefs of Indian workers. In implementing these requirements the Director or his delegates shall be guided by the principles established by the Equal Employment Opportunity Commission Guidelines in order to eliminate employment barriers unique to Indians and the Reservation.

§15-4-106. **Tribal Skills Bank.**

(1) The Commission shall establish a tribal skills bank to assist the Director and employers in placing Indians in job positions. An employer may recruit and hire workers from whatever sources are available to them by whatever process they choose, provided that they may not hire a non-Indian until he has given the TERO office a reasonable time to locate a qualified Indian and the Director or his delegate has certified that a qualified Indian is unavailable to fill the vacant job position.

(2) For purposes of this Title, “reasonable time” shall be defined as follows: for construction jobs, the Director shall be given 48 hours to locate and an additional 12 hours to refer a qualified Indian; for all other kinds of employment, the Director shall have 5 working days to locate and refer a qualified Indian. The Director may grant a waiver of these time periods upon a showing by the employer that such time periods impose an undue burden upon them. An employer subject to a collective bargaining agreement with the union shall be exempt from this procedure if the union agrees to place on its referral list all names supplied to it by the Commission. However, if any union fails to meet its obligation to refer Indians to an employer, the Commission may require the employer to accept Indian referrals from sources other than the union.

§15-4-107. **Counseling and Support Programs.**

The Commission, in conjunction with other tribal and federal offices, will establish counseling, training, and other support programs to assist Indians to retain employment. Such programs shall be established pursuant to Chapter 15. Every employer shall be required to cooperate with the Commission regarding such programs.

§15-4-108. **Lay-Offs.**

In all lay-offs and reductions in force, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed unless the termination is pursuant to a prior approved lay-off plan. The non-Indian must first be terminated if the Indian passes the threshold qualifications for the job classification. If an employer lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classification are employed elsewhere on the job site.

§15-4-109. **Promotions.**

Employers shall comply with the preference priorities set forth in §15-4-102 in considering employees for all promotion opportunities and shall encourage Indians to seek such opportunities. For every supervisory position filled by a non-Indian, the employer shall file a report with the Commission stating what efforts were made to inform Indian workers about the position, what Indians applied, if any, and the reasons why each Indian was not hired for the position.

§15-4-110. **Summer Students.**

Employers shall make every effort to promote after-school, weekend, and vacation employment for Indian youth. Employers shall give preference in the hiring of student help in accordance with the preference priorities set forth in §15-4-102.

§15-4-111. **Recognition of Freedom of Religion.**

Every employer shall respect and make reasonable accommodations for the religious beliefs, traditions, and practices of Indian employees and owners of Indian firms certified under this Ordinance.

§15-4-112. **Indian Preference in Contracting and Subcontracting.**

All entities awarding contracts, subcontracts, grants or subgrants for supplies, services, labor, and materials, or any other related contracting purpose where the majority of the work on the contract will occur within the exterior boundaries of the Spirit Lake Reservation shall give preference to tribally-owned and Indian-owned business which shall be supplied to Employers for their use. Employers shall not be required to take extraordinary measures to identify or locate tribally-owned or certified Indian-owned businesses.

§15-4-113. **Indian Preference Certification.**

When used properly, Indian preference in contracting can assist in the development of Indian businesses and thereby assist the Tribe and its members to achieve economic self-sufficiency. However, if the preference is abused, it will undermine this development and discredit the preference tool. Because of this, it is the policy of the Tribe to require that an applicant for Indian contract preference certification provided rigorous proof that it is a legitimate Indian owned and controlled firm. The following criteria may be used as a basis in evaluating a firm, however, the Director is not limited by the following in determining whether a firm should be granted certification. If the Director determines that there is good reason to believe that the firm has been structured managerially or financially in a manner that is

convoluted or inconsistent with sound business practice in order to enable the firm to qualify for Indian preference certification, the firm will be denied such certification even if it meets the specific criteria, unless the firm is able to demonstrate beyond a reasonable doubt that it was not structured to manipulate the Indian preference criteria.

(1) **Requirements.** To obtain certification as an Indian-owned business, a firm must demonstrate the following:

(A) **Ownership.** The firm must be 51% or more Indian-owned. The applicant must demonstrate the following:

(i) **Formal Ownership.** That an Indian or Indians own(s) 51% or more of the firm. Such ownership must be embodied in the firm's organic documents, such as its stock or partnership agreement.

(ii) **Value.** The Indian owner(s) provided real value for their 51% or more ownership by providing capital, equipment, real property, or similar assets commensurate with his or her ownership share.

(iii) **Profits.** The Indian owner(s) must receive 51% or more of all profits.

(B) **Management Control.** The firm must be under significant Indian management control. The firm must be able to demonstrate that:

(i) One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his or her primary occupation.

(ii) A joint venture must demonstrate that the Indian firm is the controlling partner in the joint venture.

(iii) The person holding the license or accreditation must exercise control.

(2) **Certification Procedures.** A business seeking certification as a business eligible for Indian preference shall submit a completed application to the TERO Director on a form approved by the TERO Commission. The application will be subject to the following procedure:

(A) The Director shall review the application, request such additional information as he or she believes appropriate, make a determination to approve or

disapprove, and make a recommendation to the Commission on whether or not the firm should be granted certification.

(B) An application granted certification shall be issued a one-year probationary certificate. During that period, the TERO office staff shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. At the end of the probationary period the Commission, after receiving recommendations from the Director, shall either: grant full certification; continue the probationary period for up to 6 months; or deny certification.

(3) **Withdrawal or Suspension of Certification.** From the information provided in reports required by this Ordinance and any rules, regulations, and guidelines of the Commission, on the basis of a written grievance filed by any other person or firm, or on its own initiative, the Director may initiate procedures to withdraw or suspend the certification of any firm. The Director shall prepare an analysis and recommend disposition for the Commission and shall send the firm notice, by registered mail, that its certification is being examined, along with the grounds therefore. The Commission shall then set a date for a hearing, which shall be held within fifteen (15) working days after it receives the analysis and recommended disposition from the Director. At the hearing, the Director shall present the cases for suspension or withdraw and the hearing shall be conducted in the manner prescribed by Chapter 8. After the hearing the Commission may: withdraw certification, suspend certification for up to one year, put the firm on probation, and/or order that corrective action be taken within a fixed period.

A firm that has had its certification withdrawn may not reapply for a period of up to one year. Decisions of the Commission regarding certification shall be final.

(4) **Change in Status and Annual Reports.** Each certified firm shall report to the TERO Office, in writing, any changes in its ownership or control status within thirty (30) days after such changes have occurred. Each certified firm, on the anniversary of its receipt of permanent certification shall update the information provided in its' initial application on an Annual report form provided by the office. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

§15-4-113. **Materials Preference.**

When purchasing materials used in actual construction on the Spirit Lake Reservation, including rock, sand, gravel, etc., an employer, contractor or subcontractor must give preference to Tribal members or to the Tribe whenever feasible. The TERO office shall assist employers, contractors, and subcontracted in locating possible sites from which the materials may be taken. No employer, contractor or subcontractor shall be required to purchase materials for more than fair market value.

## **CHAPTER FIVE EMPLOYMENT RIGHTS FEES**

### **§15-5-101. Assessment of Fees.**

The Commission may assess employers an employment rights fee and/or non-resident individual work permits to provide revenue for operation of the Commission as provided in this Chapter.

### **§15-5-102. Contractors and Subcontractors.**

Every contractor and subcontractor with a contract of \$5,000.00 or more shall pay a one-time fee of 2% of the total amount of the contract. This fee shall be remitted to the TERO office prior to commencement of work on the Reservation. Where good cause is shown to the satisfaction of the TERO Director, the contractor may be allowed to pay the fee in installments. The amount of fees and date upon which they are due shall be included in each contractor or subcontractor's compliance plan.

### **§15-5-103. Other Employers.**

Every employer, other than a contractor or subcontractor, with 2 or more employees or annual gross sales of \$5,000.00 or more shall pay an annual fee of 2% of the employer's annual payroll. The amount of fees and the date upon which they shall be due shall be included in each employer's compliance plan. Educational, health and non-profit employers are exempt from payment of this fee.

### **§15-5-104. Work Permits.**

All non-resident employers and their employees, operating within the exterior boundaries of the Spirit Lake Reservation shall be required to purchase a TERO work permit. The fee for the work permit shall be \$100.00 for six (6) months. This fee shall not apply to educational, health, governmental or non-profit employees.

### **§15-5-105. Tribal Members.**



Fees assessed against tribal members shall be assessed pursuant to Section 5 of Article VI of the Tribal Constitution.

**§15-5-106. Accounting and Rebates.**

All fees collected under this title shall be paid to the Spirit Lake Tribe and shall be placed in a special account in accordance with the financial management system of the tribe. These fees shall be utilized by the TERO office in accordance with the budgets approved by the TERO Commission and the Tribal Council.

**§15-5-107. Collection of Fees.**

If a contractor, subcontractor, or employer fails to pay the required fees by the required date as set out in his or her compliance plan, interest shall begin accruing on that date at the rate of 18% per annum, compounded daily. Further, as soon as possible following the day on which the payment becomes overdue, the Director shall send a notice to the delinquent party by certified mail, informing him or her that the payment is overdue and of the consequences that will result if the fee is not paid immediately.

If the fee is not paid within ten (10) working days after the date the overdue notice is mailed, the Director shall file a formal charge of non-compliance, and schedule a Commission hearing. The hearing shall take place no sooner than five (5) working days after the notice is sent the delinquent party.

At the hearing, to be held whether or not the delinquent party attends, the Commission shall determine whether the party has failed to comply. If it finds non-compliance, it may subject the non-complying party to one or more of the penalties listed in Chapter Eight. The fees collected from the contractor pursuant to this section shall be increased in accordance with any increase in the contract amount as follows:

Contractors shall be liable for the payment of fees on each contract amount increase to the same extent they are liable for payment of the fee on the original contract amount. Fee payment attributable to contract amount increases are due and shall be paid on the date the contractor is notified of the allowance of such increase. Interest on unpaid fees due under this subsection shall be computed in the same manner as interest on unpaid fees attributable to the original contract amount under subsection (1) of this section.



## CHAPTER SIX COMPLIANCE BY UNIONS

### §15-6-101. **Union Agreement Required.**

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Title and the rules, regulations and orders of the Commission. Until such agreement is filed with the Commission, the employer may not commence work on the Reservation.

### §15-6-102. **Contents of Union Agreements.**

Every union agreement with an employer or filed with the Commission must provide:

- (1) **Indian preference.** The union will give absolute preference to Indians in accordance with the preference order listed in §15-4-102 in job referrals regardless of which union referral list they are on.
- (2) **Cooperation with Commission.** The union will cooperate with the Commission in all respects.
- (3) **Registration.** The union will establish a mechanism allowing Indians to register for job referral by telephone or mail.
- (4) **Training Programs.** The union will establish a journeyman upgrade and advanced apprenticeship program.
- (5) **“Blanketing-in” Indians.** The union will “blanket-in” all Indians who qualify for journeyman status and wish to join the union.
- (6) **Temporary Work Permits.** The union will grant temporary work permits to Indians who do not wish to join the union.

### §15-6-103. **Model Union Agreement.**

The Commission will provide a model union agreement for us by all unions who have collective bargaining agreements with any employer.

§15-6-104. **Recognition of Unions.**

Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities of the Reservation. No union activities shall take place without prior approval of the Spirit Lake Tribal Council.

§15-6-105. **No Grant of Jurisdiction.**

Nothing in this Title is a grant of jurisdiction to any other agency or government; specifically the National Labor Relations Board and the Federal Office of Contract Compliance.

§15-6-106. **Union Restriction.**

No union may represent any workers of an Indian-owned business or enter into any collective bargaining agreement with an Indian-owned business without the prior approval of the Spirit Lake Tribal Council.

## **CHAPTER SEVEN PROCEDURES**

§15-7-101. **Compliance.**

This Chapter shall apply to all complaints filed with TERO after the date of adoption of this amended ordinance. The rules contained herein shall be strictly interpreted and applied. Failure to comply can be grounds for dismissal.

§15-7-102. **Complaint Procedure.**

(1) Any person who believes that a violation of an employer's Compliance Plan, or the rules, regulations and/or guidelines promulgated by the Spirit Lake TERO Commission, or this ordinance has occurred may file a complaint with the TERO Director after first exhausting all other administrative remedies available to them. The complaint shall be in writing and shall provide such information as is necessary to carry out an investigation.

(2) Any person, employer or entity who believes that any provision of this Title, any action taken by a TERO officer or employee under this Title, or any rule, regulation or order of the Commission is illegal or erroneous, may file a written complaint with the Director specifying the alleged illegality or error, or with the Commission if the complaint concerns the Director.

§15-7-103. **Investigations; General.**

On his own initiative or pursuant to complaint, the Director or any field compliance officer designated by the Director shall make such public or private investigations as he deems necessary to determine whether any covered employer or other entity has violated any provision of this Ordinance, or any rule, regulation, guideline, or order hereunder. The Director may enter, during business hours or as otherwise authorized pursuant to Chapter 13 of this title, the place of business or employment of any entity for the purpose of such investigations, and may require the employer or entity to submit such reports as he deems necessary to monitor compliance with the requirement of this Ordinance or any rule, regulation, guideline, or order hereunder.

**§15-7-104. Investigations of Complaints.**

Upon receipt of a written complaint, the Director shall conduct an investigation of the matters alleged in the complaint and, if necessary, serve written notice of the violation to the person or entity named in the complaint. The investigation shall be undertaken and completed within five (5) working days. If the Director finds there is probable cause to believe the allegation(s) is well-founded, the Director shall first attempt to achieve a voluntary, informal solution to the matter through negotiation between parties.

If no solution is reached within ten (10) working days after receipt of the complaint, the Director shall issue a written report which shall include the results of the investigations, the Director's findings, and his or her recommended decision. This report shall be provided to each of the parties along with a copy of these rules.

**§15-7-105. Request for Hearings.**

Each party shall have three (3) working days after receipt of the Director's report to request a hearing before the Commission. If neither party requests a hearing within that time, the Director's findings and decision shall become final. Upon receipt of a request, the Commission shall set a hearing date that occurs within fifteen (15) working days from its receipt of the request for a hearing.

**§15-7-106. Serving Notice of a Hearing.**

The Spirit Lake TERO Commission shall serve written notice of the hearing, including the date, time and location to:

- (1) The person or entity against whom the allegation has been made;
- (2) The complainant;
- (3) The Spirit Lake TERO Director;

- (4) Any other identified interested person(s).

§15-7-106. **Contents of the Notice of Hearing.**

The notice of a hearing shall advise each party of:

- (1) The nature of the hearing;
- (2) The right to be present and participate in the hearing;
- (3) The right to present witness testimony and documentary evidence, and the right to cross-examine witnesses;
- (4) The right to be represented by counsel at his or her own expense;
- (5) The right to make an audio tape, video tape, or stenographic record of the hearing at his or her own expense.
- (6) The right of the complainant to request assistance at the hearing be provided to him or her by the Spirit Lake TERO Program Staff.

§15-7-107. **Conflict of Interest.**

If at any hearing before the Spirit Lake TERO Commission, the Commission determines that an actual or potential conflict of interest exists between any member of the Commission and a hearing participant, the conflict shall disqualify such member or members of the Commission from participation in such hearings.

§15-7-108. **Rules of Procedure.**

The Commission on its own initiative or at the request of any person notified of a Commission hearing, may call identified witnesses to appear, and subpoena documents and/or records necessary for the hearing. The following Rules of Procedure shall be followed at all hearings conducted by the Commission:

- (1) Each notified party shall have the right to be present and participate in the hearing;
- (2) Each notified party shall have the right to present relevant sworn testimony and documentary evidence;

- (3) Each notified party shall have the right to call witnesses on his or her own behalf and to cross-examine witnesses called by other hearing participants;
- (4) Each notified party shall have the right to be represented by counsel at his or her own expense.
- (5) The Chairman shall preside over the proceedings;
- (6) Formal rules of evidence need not be observed, but the Commission shall act to ascertain the facts in a reasonable and orderly fashion. Any evidence submitted to the Commission for consideration shall exclude hearsay, innuendo, and personal attacks.
- (7) The Commission shall record the hearing by utilizing a reliable audio or video tape recorder, or by stenographic record. Any party may make an audio tape, videotape or a stenographic record of the hearing at his or her own expense.
- (8) The proceedings may be recessed and continued by majority vote of the Commission, should it deem such an action advisable or necessary.

At the conclusion of the proceedings the Commission shall take the matter under advisement and issue its decision and order no later than five (5) working days from the conclusion of the hearing. Should the Commission determine that the person or entity against whom charges were brought failed to comply with any requirements set forth in this Ordinance, and/or any rule, regulation or guideline promulgated by the Spirit Lake TERO Commission, the Commission may impose one or more of the sanctions set forth in Chapter Eight of this title, and may order that such person take corrective action to remedy any harm caused by the non-compliance issue.

§15-7-109. **Decisions.**

The decision shall be in writing and mailed to the parties by certified mail, return receipt requested. If the Commission requires a transcript to assist it in making a decision, the hearing will be deemed closed upon its receipt. The decision shall consist of the following parts, in the following order:

- (1) The procedural and substantive issues presented;
- (2) The findings and basis for the findings;
- (3) The orders and/or sanctions imposed, if any;

- (4) Information on the right to appeal.
- (5) Information on the authority of the Commission to act if the party fails to comply with its orders or fails to appeal; and
- (6) The injunctive or bonding requirements, if any, that the Commission will seek from the Tribal Court pending the completion of the appeal, if an appeal is filed, or the running of the time for appeal if no appeal is filed.

**§15-7-110. Employer Cooperation.**

Any employer who fails to cooperate with an investigation conducted pursuant to this chapter shall be subject to the penalties listed Chapter Eight of this title. Non-cooperation includes but is not limited to non-responsiveness, refusal to provide requested documents or failing to provide them in a timely manner, failure to negotiate in good-faith when attempting to reach an informal settlement of the matter under investigation; failing to cooperate with a hearing before the TERO Commission, or violating the provisions of Chapter Thirteen.

**§15-7-111. Penalization of Employees.**

If an employer fires, lays off, or penalizes in any manner any Indian employee who files a complaint with the Director pursuant to §15-7-101 or exercises any right provided herein, the penalizing action shall be cause for a separate complaint by the employee and the employer may be subject to one or more of the penalties listed in Chapter Eight.

## **CHAPTER EIGHT PENALTIES FOR VIOLATION**

**§15-8-101. Penalties for Violation.**

Any employer, contractor, subcontractor or union who violates this Title, or rules, regulations or orders of the Commission shall be subject to penalties for such violations, including, but not limited to:

- (1) Denial of right to commence or continue business inside the Reservation.
- (2) Suspension of all operations inside the Reservation.
- (3) Payment of back pay and damages to compensate any injured party.

- (4) An order to summarily remove employees hired in violation of this Title or rules, regulations, and orders of the Commission.
- (5) Imposition of monetary civil penalties.
- (6) Prohibition from engaging in any future operations on the Reservation.
- (7) An order requiring employment, promotion and training of Indians injured by the violation.
- (8) An order requiring changes in procedures and policies necessary to eliminate the violations.
- (9) An order making any other provision deemed by the Commission necessary to eliminate or compensate for any violation.

The maximum civil penalty which may be imposed is \$500.00 for each violation. Each day during which a violation exists shall constitute a separate violation.

## **CHAPTER NINE APPEALS**

### **§15-9-101. Appeals.**

The Tribal Court of the Spirit Lake Tribe shall have jurisdiction over appeals taken from the decisions and orders issued by the Commission pursuant to Chapter Seven. An appeal to the Tribal Court may be taken from any final order of the Commission by any part adversely affected thereby. The Tribal Court shall uphold the decision of the Commission unless it finds that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission. The appeal shall be taken by filing a written notice of appeal with the Tribal Court, serving a copy on the Director within twenty (20) days after the date of the entry of the order. The notice of appeal shall:

- (1) Provide the Commission's decision and order which is the subject of the appeal;
- (2) Specify the grounds justifying reversal or modification of the order; and
- (3) Be signed by the appellant.

The order of the Commission shall abate pending the determination of the Tribal Court. However, the Commission may petition, and for good cause shown, the Court may order the

party requesting a hearing to post a bond sufficient to cover monetary damages that the Commission assessed against the party or 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. If the order of the Commission is reversed or modified, the Court shall specifically direct the Commission to comply with such reversal or modification. The Court's order on appeal shall be final, or if no appeal is filed within twenty (20) days from the date of party's receipt of the Commission's order, the Commission's order shall be final. The Commission may petition the court and the court may grant such orders as are necessary and appropriate to enforce the orders of the Commission, and the sanctions imposed by it.

## **CHAPTER TEN ATTACHMENT, CONFISCATION AND SALE**

### **§15-10-101. Attachment, Confiscation and Sale.**

(1) If at any stage in the enforcement process, the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages or Employment and Contracting Rights fees that are owed by that party pursuant to any outstanding order of the Commission or Court, or which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Tribal Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected person.

(2) Grounds upon which the Commission may petition the Tribal Court to attach and hold property include, but are not limited to, the following:

(a) The entity has refused or failed to post a bond after being so ordered to do as provided herein, or

(b) The Commission has good reason to believe that entity will remove itself or its property from the Reservation before the Commission can complete its effort to require the entity to post a bond; or

(c) The entity has demonstrated, through its behavior, an intent to disregard the requirements and orders of the Director, Commission or Court.

(3) If, twenty-one (21) days after the date on which respondent received a copy of the decision by the Commission pursuant to Section 15-7-105, no appeal has been filed, or thirty



(30) days after a decision by the Court on an appeal taken pursuant to Chapter 9 from a decision by the Commission, the respondent has failed to pay monetary damages imposed upon it or has otherwise failed to comply with an order of the Commission or the court, the Commission may petition the Court to order an official or employee of TERO, accompanied by a law enforcement officer of the Tribe or Bureau of Indian Affairs, to confiscate, and hold for such sale, such property of that respondent as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance. The petition shall be accompanied by a list of property belonging to that respondent which the Commission has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the value of the monetary damages at issue.

(4) If the Court finds the petition to be valid, it shall order an official or employee of the TERO office, accompanied by a law enforcement officer of the Tribe or Bureau of Indian Affairs, to confiscate and hold such property or as much as is then available. The official or employee of the TERO office shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem the confiscated property by coming into compliance with the order outstanding against it. If, 30 days after confiscation, the party has not come into compliance, the property shall be sold with the proceeds to be used to pay a outstanding monetary damages imposed against the party by the Commission or the Court, and all costs incurred by the Court, TERO Office, and police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

## **CHAPTER ELEVEN PUBLICATION OF TITLE**

### **§15-11-101. Publication of Title.**

- (1) The Director shall notify all employers of this Title and their obligation to comply. All bid announcements issued by any Tribal, Federal, State or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Title and all rules, regulations and orders of the Commission.
- (2) All tribal agencies responsible for issuing business permits for Reservation activities or otherwise engaged in activities involving contact with prospective employers on the Reservation shall be responsible for advising such prospective employers of their obligations under this Title and rules, regulations, and orders of the Commission.
- (3) The Director shall send a copy of this revised Title to every employer operating on the Reservation and any amendments or revisions thereto.

## **CHAPTER TWELVE OBLIGATIONS OF EMPLOYERS**

### **§15-12-101. Compliance with Tribal Law.**

Covered employers shall comply with applicable Tribal law, this Ordinance, and the rules, regulations, guidelines, and orders of the Commission. Employers that violate this Ordinance or any such rule, regulation, guideline, or order may be subject to sanctions imposed by the Commission pursuant to Chapter Eight. Any employer who intends to award contracts, subcontracts, grants or subgrants for supplies, services, labor, and materials, or any other related contracting purpose where the majority of the work on the contract will occur within the exterior boundaries of the Spirit Lake Reservation shall inform the TERO Office of such intent so the Director can monitor the process for compliance with this Ordinance.

### **§15-12-102. Compliance Plan.**

(1) An employer who intends to do business within the exterior boundaries of the Spirit Lake Reservation shall not commence the conduct of such business until the employer receives and signs a Compliance Plan that establishes the employer's obligations under this Ordinance, other applicable Tribal laws, and any and all rules, regulations, and/or guidelines of the TERO Commission. The employer shall also be given a copy of this Ordinance. The Compliance Plan shall be signed after consultation with the TERO Director and before commencement of the conduct contemplated by the employer.

(2) No employer may commence work unless a Compliance Plan has been submitted to and approved by the TERO Director. No Compliance Plan shall exceed the given length of a contract, or a one year period of time. Any applicable TERO fees, along with the dates they should be remitted shall be included in the Compliance Plan. All Compliance Plans shall allow for reporting and on-site inspections by TERO. Contractors or sub-contractors who shall engage in work on the Reservation must obtain an approved Compliance Plan.

(3) An employer shall meet with the TERO Director each time a contract is awarded, and prior to the commencement of work. The employer shall identify its core crew, and submit a precise list of the numbers and trades or skills of local hires expected to be employed. The employer must meet the numerical hiring goals established by the Commission, unless the Director determines that special circumstances permit a departure from the numerical hiring goals. The Director may consider special factors or circumstances of the covered employer including determination of the core crew before approving or rejecting a proposed Compliance Plan.

(4) Each employer shall submit reports to the Director as required by Chapter Thirteen.

(5) The Director shall meet with each employer as often as necessary to review the goals of the Compliance Plan. Any Plan may be revised at any time when necessary to reflect changes in the number of qualified Indians available or changes in employer hiring practices.

(6) The Director shall approve each Compliance Plan or revision prior to said Plan being effective.

(7) If any employer fails to or refuses to comply with the Compliance Plan requirements herein or with the terms of its Compliance Plan as approved, such non-compliance shall be deemed a violation of this Ordinance and be subject to sanctions provided for in Chapter Eight of this Ordinance.

(8) In any hearing before the Commission where the issue is the covered employer's conduct under a Compliance Plan, the burden of proof is on the employer.

## **CHAPTER THIRTEEN REPORTING AND ON-SITE INSPECTION**

### **§15-13-101. Reporting Requirements.**

Each employer shall submit to the TERO Office, in a timely manner, such information (including documentation) as the TERO Director or the Commission should request, and/or submit requisite reports on forms provided by the TERO office; provided, however that an employer may refuse to submit any information or documentation which it can demonstrate (beyond a reasonable doubt) must remain confidential for valid business purposes.

### **§15-13-102. Confidentiality.**

All written material, relating to any employer, including Certified Indian Contractors, maintained on file in the TERO Office shall remain strictly confidential. TERO Commissioners, the TERO Director and all TERO staff shall comply with this confidentiality requirement by not relating in either verbal or written form any confidential information to any person not authorized to have access to it under this Ordinance. This confidential information shall include, but is not limited to, Indian preference certification applications and accompanying documentation, financial records, tax records, information, corporate and other business organic documents, resumes, and financial institution documents. No person other than the TERO director, commission and authorized TERO employees shall have access to this confidential information, except an authorized representative or agent of an employer who shall have the limited right to access all information pertaining to such for the purpose of review and/or

photocopying such information at the TERO Office. No file or written information shall be removed from the TERO Office by any employer or representative.

§15-13-103. **On-site Inspections.**

The TERO Director, authorized TERO employees, and members of the TERO Commission shall have the right to conduct periodic on-site inspections at any time during the actual operation of the business of any employer, in order to monitor compliance by the employer with the requirements set forth in this ordinance, the Compliance Plan, applicable Tribal law, any and all rules, regulations, guidelines, and/or Orders of the TERO Commission. During an on-site inspection, such TERO personnel and officials shall have the right to speak with any contractor, subcontractor, or employee working on the site, so long as such conversation does not unduly interfere with the operation of the business. In addition, such TERO personnel and officials shall have the right to inspect and photocopy any and all information, documentation, records and other written material which are not deemed by the TERO Commission to be confidential for valid business purposes. All such information shall remain confidential.

## **CHAPTER FOURTEEN HARASSMENT**

§15-14-101. **Harassment.**

No person, including any representative or agent of a covered employer, contractor, subcontractor, employee or certified Indian-owned firm, will attempt to or, in fact, harass, intimidate, or retaliate against any member of the Spirit Lake TERO staff or any member of the Spirit Lake TERO Commission. Should such conduct continue after receipt of a written warning by the Spirit Lake TERO Commission, the Commission shall set a date for a formal hearing. Such hearings shall be conducted according to the Rules of Procedure prescribed by and set forth in Chapter Seven of this Ordinance. Should the Spirit Lake TERO Commission determine that such person did violate the prohibition against harassment, intimidation or retaliation, the Commission may impose any combination of the sanctions set forth in Chapter Eight of this ordinance.

## **CHAPTER FIFTEEN REGULATIONS**

§15-15-101. **Regulations.**

(1) The Commission shall promulgate and enforce such written rules, regulations and guidelines as are necessary to carry out the provisions of this Ordinance and the orderly

performance of the Commissions' duties, including but not limited to rules and regulations relating to:

- (A) Internal operational procedures of the Tribal Employment and Contracting Rights Commission, Office, Director, and staff;
- (B) Interpretation and application of this Ordinance so as to fully and fairly carry out its provisions;
- (C) The filing of any reports required by, or necessary to implement, this Ordinance; and;
- (D) The conduct of inspections, investigations, hearings, enforcement actions, and other authorized activities of the Commission, pursuant to the provisions of this Ordinance.
- (E) The operation of any special training or counseling program as provided for in §15-4-108.

(2) All regulations intended to carry out the provisions set forth in this Ordinance issued by the Spirit Lake TERO Commission following the effective date of this Ordinance shall be subject to review and comments by interested persons residing on or near Spirit Lake Reservation. In issuing any such regulations, the Spirit Lake TERO Commission will recognize and comply with the following minimum procedures:

- (A) Proposed regulations shall be publicized by posting in prominent places outside the TERO office and Offices of the Tribal Council, and if time allows, shall be published in the Tribal newspaper, and written comments will be solicited. The date and time the Commission intends to hear comments on the proposed regulation shall be included.
- (B) All interested persons may submit written comments to the Spirit Lake TERO office, within fifteen (15) days from the date of publication.
- (C) The Commission shall review and discuss any written comments submitted. The Commission, upon its final review of the proposed rules and regulations, and along with any changes made therein based on any written comments, shall formally approve and adopt the same, at which time such rules and regulations shall become effective.

SPIRIT LAKE TRIBE  
RESOLUTION NO. A05-99-079

WHEREAS, the Spirit Lake Tribe of Indians is a federally recognized Indian tribe acting under a revised Constitution dated May 5, 1960, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and as subsequently amended which amendments were approved by the Commissioner, Bureau of Indian Affairs; and August 19, 1996; and

WHEREAS, the Constitution of the Spirit Lake Tribe generally authorizes and empowers the Spirit Lake Tribal Council to engage in activities and pass legislation on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

WHEREAS, on January 5, 1979, the Spirit Lake Tribal Council did enact, by Resolution Number A05-79-020, a Tribal Employment Rights Ordinance to protect and promote employment opportunities for Tribal members and other Indians living on or near the Spirit Lake Reservation, and to collect fees from employers doing business on the Reservation to support employment training programs; and

WHEREAS, it is necessary to re-visit all legislation from time to time and revise laws as necessary in response to changing times and conditions and the attached, revised Tribal Employment Rights Ordinance will better enable the Spirit Lake TERO Commission to carry out its duties and fulfill the goals of the Tribal Employment Rights Program; and

NOW THEREFORE BE IT RESOLVED, that the Spirit Lake Tribal Council re-affirms its commitment to promote employment and training opportunities for Tribal members and other Indians living on or near the Spirit Lake Reservation by all means possible; and

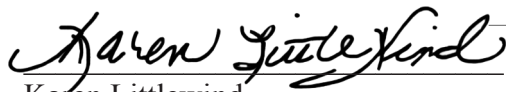
BE IT FURTHER RESOLVED, that the Spirit Lake Tribal Council adopts, in its entirety, the attached amended Tribal Employment Rights Ordinance, and in so doing approves and ratifies all prior actions taken by the TERO Board of Commissioners which are consistent with the revised Ordinance; and

BE IT FURTHER RESOLVED, that the attached revised Tribal Employment Rights Ordinance shall be in effect immediately upon passage of this resolution and shall be incorporated into the Spirit Lake Law and Order Code. All prior resolutions and ordinances of the Spirit Lake Tribal Council are rescinded to the extent of any conflict or inconsistency.

SPIRIT LAKE TRIBE  
RESOLUTION A05-99-079  
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CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members of whom six (6) were present, constituting a quorum for a Regular Meeting duly called and convened on this 10th day of May, 1999, and approved this resolution by an affirmative vote of four (4) in favor, none (0) opposed, and none (0) absent. (The Secretary-Treasurer does not vote and the Chairman votes only in case of a tie.)



Karen Littlewind  
Secretary-Treasurer



Myra Pearson  
Tribal Chairperson