

Project _____
Date _____
Contract Amount \$ _____

***** COMPLIANCE PLAN *****

NAME OF COMPANY SIGNING THE COMPLIANCE PLAN

CONTRACT AMOUNT \$

ANY CONTRACTOR/SUBCONTRACTOR NOT SUBMITTING AN ACCEPTABLE
COMPLIANCE PLAN MAY BE DENIED THE RIGHT TO COMMENCE OR CONTINUE
BUSINESS WITHIN THE RESERVATION.

Employer Init. _____ Date _____ TERO Init. _____ Date _____

COMPLIANCE PLAN RESPONSIBILITIES

Pursuant to section 2.0: Every employer of two or more employees and every contractor or subcontractor obtaining a contract of \$10,000 or more shall submit an acceptable Compliance Plan on how they will meet their obligations and responsibilities under the Tribal Employment Rights Policy before commencing work on the Reservation.

Section 1, Paragraph 1.1, Coverage and scope:

1. Coverage: It is understood by all parties that the intent of the Tribal Employment Rights Policy is to secure a Local Indian Preference workforce. Therefore all skill or craft job positions, that require the use of manual labor or the use of hand tools, will be filled by qualified Local Indian Preference applicants. No Non-Indian Preference employee will be used on the project, except where cleared through the Tribal Employment Rights Director before start-up operations begin.
 - a. Clearance shall be granted for Non-Indian Preference personnel if:
 1. There isn't any qualified Indian Preference applicant available at time of request.
 2. Key personnel and/or core crew employees will be used on the project as defined here within.
 - b. Opportunities for supervisory personnel shall be filled with qualified Local Indian Preference applicants where practical.
2. Hiring: If qualified and available 100% of the work force shall be Local Indian Preference applicants for the duration of the project.(Attachments #1 and #7)
3. Payroll hours worked: At no time shall the Indian Preference work force hours fall below the percentage of Indian Preference workers on the payroll and/or a minimum of 50%.
4. Training programs: Training Programs will be initiated for craft or skill jobs if the Indian Preference workforce hours, for each craft or skill that falls below the 50% minimum. Wages for Training Position shall not be less than 50% of Journeyman pay or minimum wage laws.
 - a. Bureau of Apprenticeship Training Program requirements shall be applicable where practical.

Paragraph 1.2 Contractors and Subcontractors:

1. All Indian Preference requirements contained in the Policy shall be binding on any and all contractors and subcontractors regardless of tier, and shall be deemed part of all contract or subcontract specifications let and/or signatory documents.
2. The employer agrees to accept the initial and primary responsibility for insuring all contractors and subcontractors comply with these requirements.

Paragraph 1.3 Minimum Numerical Goals and Timetables for Indian Employment:

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1. The employer agrees to hire a minimum percentage or number of Indian Preference employees according to the goals established for each craft, skill, job classification, etc., used by the employer and shall include Administrative, Supervisory and Professional categories. (Attachment #7)
2. These percentage(s) and man-hours shall be reviewed by the Personnel Office annually and shall be revised as necessary to reflect the number of Indian Preference applicants available or changes in the employer hiring plans.
3. The employer agrees to submit a monthly report to the Personnel Office indicating how he/she is meeting the Indian Preference Goals, all persons hired or discharged during the month, the positions involved, and any of the information required by the Office and/or Director.

Paragraph 1.4 Training:

1. Training Programs will be developed and initiated in all various Job Classifications used by the employer where a minimum of 50% Indian Employee Ratio are not used in each building trades craft or skill, but shall include administrative, supervisory and professional categories, where practical.
2. Minimum Local Indian Preference Trainees in each craft or skill shall be maintained through ratios established by the Federal Department of Labor, Bureau of Apprenticeship standards where Federal Laws require Training Programs approved by the Federal Department of Labor for the duration of the project.
3. All apprentice wage rates shall not be less than laborer wage rates used on a project.

Paragraph 1.5 Job Qualifications and Personnel Requirements:

1. Each Employer is prohibited from using Job Qualifications criteria or personnel requirements which bar Indian Preference from employment, unless such criteria or requirements are required and listed in the directory of Occupation Titles under Bona fide Occupational Qualifications (BFOQ) and are required by business necessity.
 - a. Each Employer will complete an Employment Request form for all personnel used on the project. Only Bona Fide Occupational Qualifications (BFOQ) will be recognized by the Personnel Office as qualifications for business necessity required by the employer.
 - b. Employers who employ more than two employees may designate key personnel who are regular permanent employees in a supervisory or other key position(s). But only the first and thereafter every seventh employee will be employed as key personnel or core crew by an employer (attachment #1). All other positions shall be filled with qualified Indian Preference applicants. If qualified Indian Preference applicants cannot be obtained then Indian Preference Training Requirements may be initiated along with a clearance for Non-Indian Preference Personnel.
 - c. At no time shall core crew and/or key personnel displace Indian Preference Employee(s) and /or potential Indian Preference Employee(s) by performing

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- work outside their normal classification.
- d. The following are examples of, but are not conclusive, Bona fide Occupational Qualifications.
 - 1. Minimal Qualification Standards; (as listed in the directory or Occupational Titles)
 - 2. Bonding requirements; (when handling cash)
 - 3. Passing drug test; (when requiring by all personnel)
 - 4. Criminal Records; (when for Law Enforcement or handling cash)
 - 5. Physical Requirements; (for business Necessity)
 - 6. Past Employment Discharges; (pertaining to any illegal or fraudulent Act in employment)
 - e. It is understood that the employer shall retain the right of determining whether an applicant and/or employee meet minimum qualifications and the Burden of Proof shall fall on the complainant if challenged by any party.

Paragraph 1.6 Layoff and/or Terminations:

- 1. Required Indian Preference ratios to core crew personnel (1 to 6) or percentages will be maintained throughout the length of projects.
- 2. No Indian Preference employee shall be terminated or receive a Layoff without good cause. Good cause termination shall be defined as: failure to adequately perform the job, failure to follow orders, any illegal or fraudulent act pertaining to employment or any act which puts the employer or the employees in an unsafe position or positions.
- 3. All layoffs of Indian Preference Employees shall be in a reasonable and fare fashion.
- 4. Layoffs shall occur when there is not adequate work or when the employer has a cash flow shortage necessitating a reduction in the work force.
- 5. All layoffs shall be in same order of hiring in reference to core crew and the Local Indian Preference workforce.

Paragraph 1.7 Promotion: Preferential consideration for promotional opportunities shall be given to Local Indian Preference Employees.

Paragraph 1.8 Summer Students: Preferential consideration for Local Indian Preference students shall be given by the employer for summer employment where practical.

Paragraph 1.9 Indian Preference Requirements in Awarding Prime Contracts and Subcontractors:

- 1. Employers shall give preference in the award or contracts to tribally and "Locally Indian-Owned" businesses. For the purpose of identification a tribal registration number is required. The following information will be required from each owner claiming Local Indian Preference or other Indian-Owned business.

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- a. Name of the recognized tribe
- b. Enrollment number of Indian-Ownng and managing business
- c. Tribal Agency address and phone number
- d. Present Local Address
- e. Statements and/or Documentation on Local Indian Preference business who have social and economic ties to the Bad River Band of the Lake Superior Tribe of Chippewa Indians.
- f. Type of business structure and percentage of Indian Ownership.

Paragraph 1.10: Any business or Indian Owned business may bid as Prime Contractor, supplier, or subcontractors, but may not submit bids for a subcontract or supplier if bidding on the prime contract.

Section 2, Paragraph 2.1 Compliance Plans: All employers with two or more employees and all employers obtaining a contract of \$10,000 or more shall abide by this Hiring and Employment Compliance Plan.

1. Such plan shall strive to achieve a 100% Local Indian Employment goal in each job classification.
2. When key personnel and/or core crew are being used by an employer, all other job opportunities shall be filled by qualified Local Indian Preference applicants. If other applicants are cleared for employment because qualified Indian Preference applicants were not available, then, the cleared employee shall accept the position offered under a "Limited Term Agreement" with the understanding of training a Local Indian Preference applicant to replace this individual, where practical.
3. Each employer shall submit a workforce report (attachment #1). This report shall meet workforce goals (attachment #7) with approval of the TERO Director before start-up.

Paragraph 2.2 Revision of Compliance Plans; Monthly Reports: This section will be used as a monitoring report to assure full compliance to the Compliance Plan and/or Ordinance.

1. Reports: Employer reports shall be submitted on a daily, weekly, or monthly basis to the TERO Director.
2. By mutual consent of both the employer and the Director, compliance plans may be revised or amended to address problem areas of concern.

Paragraph 2.3 Final approval of Compliance Plans: All Compliance Plans shall obtain Final Approval from the TERO Director within thirty days of start-up operations. Tentative approval may be obtained from the TERO Director for start-up purposes.

Paragraph 2.4 Non-Compliance or Violations: If the employer fails or refuses to comply with the compliance plan requirements here in or with the terms of its compliance plan as written, such non-compliance shall be deemed a violation of the ordinance and subject to sanctions provided for in section 4

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of the policy.

Paragraph 2.5 Compliance by Unions:

1. Each employer who is signatory to a Union must file a written Memorandum of Agreement stating the Union will comply with the ordinance, its rules, and regulations. No employer may commence work operations until said memorandum of agreement is signed by said Union (s) and employer.
2. Memorandum of Agreement: The Employer may develop their own memorandum of agreement with their signatory unions, but are required to include procedures for indenturing Local Indian Preference Applicants into the union and/or issuing temporary work permit. Also, the agreement must address a direct referral process, training program, indenturement and a cooperative statement from the union on related TERO requirements.

Section 3, Paragraph 3.1 Complaints and Hearings: Notice: On all hearings requested the Director shall issue all proper written notices to all parties stating the nature of hearing and proper procedures to be used. This notice shall advise such parties of the violation, their required presence, their right to present testimony of witnesses or other evidence, and their right to be advised by council at their own expense.

Paragraph 3.2 Complaints Regarding Violations: Any Individual, Employer, or Organization that believes any covered employer or its agents has violated or is in violation of the Policy or any Rules, Regulations, or Orders issued to it may file a complaint in writing to the Director.

1. The Director shall investigate each and every complaint.
2. If upon investigation there is reason to believe a violation has occurred the Director shall proceed pursuant to section 4 (Enforcement and penalties for violations.)
3. Within 20 days after the receipt of the complaint the Director shall provide the complaining party a written report and the status of the complaint.
4. All complaints shall include the date, place, and circumstances of the alleged unlawful violation(s) and shall be served upon the person(s) against whom the charge(s) are made within ten days.
5. Service may be made by registered mail or hand delivery with receipt.

Paragraph 3.3 Investigations: On its own initiative or pursuant to a complaint, the Director shall make such public or private investigation as the Director deems appropriate and necessary to determine whether any provision of the Ordinance or any rules, regulations, or orders have been violated.

Paragraph 3.4 Power to Require Testimony and Production of Records: The Director, or any designee may subpoena witnesses, take evidence and require the production of books, papers, contracts,

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agreements, or other documents, records or information which the Director deems relevant in any investigation.

Paragraph 3.5 Finality of the Decision-Appeal:

1. The decision of the Director shall be effective immediately and final when the time frame for filing a notice of appeal has expired, twenty days. The appeal shall be taken by an aggrieved party to the Bad River Tribal Court as provided in section 5.0.
2. The Decision is final and shall be in writing and served by registered mail no later than thirty days after the close of the hearing. Should the party fail to comply immediately the Director shall receive an injunction for relief from Tribal Court, pending the party's appeal or expiration of the time for appeal.

Section 4, Paragraph 4.1 Enforcement and Penalties for Violations: The Director shall monitor and enforce the policy and any rules and regulations, as follows:

1. Informal Settlement: If the Director has reason to believe a violation has occurred the Director shall issue a written notice of violation to the alleged violator and they shall attempt to achieve informal settlement. If no settlement can reasonably be made, the employer shall be issued a formal citation and notice of non-compliance.
2. Formal Citation and Notice of Non-compliance: The Formal Citation shall set out the nature of the alleged violation and specific steps that must be initiated to come into compliance. The violator shall be provided no more than five days to comply or to submit a written request for a hearing before the Director on the matter. This time may be shortened if irreparable harm will occur should the violation continue.
4. Bonding Monetary Schedules, (The employer shall comply with the Bonding Monetary Schedule.)
3. If a violator refuses to comply and has not submitted a written request for a hearing, within the five day time frame, pursuant to section 4.1.2, the Director may seek to impose one or more penalties as outlined in 4.2 penalties. If no settlement can be obtained the Director, after being fully advised on the matter, may issue an order imposing such penalties it deems necessary under section 4.3 penalties.

Paragraph 4.2 Enforcement: Any Employer, Contractor, Subcontractor, or Union who is found in violation of the Ordinance, its Rules, or regulations, or Orders of Director shall be subject to penalties outlined in section 4.3 penalties.

Paragraph 4.3 Penalties: Each day in which a violation exists shall constitute a separate violation with a maximum imposed penalty of \$5,000 for each violation.

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Section 5, Paragraph 5.1. Appeals: Right to Appeal: Any party to a hearing shall have the right to appeal any decision of the Director to Bad River Tribal Court by filing a notice of appeal within twenty days of the final decision of the Director. Said notice must be in writing and filed in Tribal Court.

Paragraph 5.2 Scope of Review: The Tribal Court shall uphold the decision to the Director unless it is demonstrated that said decision is Arbitrary, Capricious, Unsupported by the weight of the evidence or in excess of Authority of the Director.

Paragraph 5.3 Method of Appeal: Upon serving a written notice of appeal with the Tribal Court, with a copy to the Director, as specified within the twenty day time frame, the notice of appeal shall; (a) set forth the order from which appeal is taken and (b) specify the grounds on which reversal or modification or order is sought; and (c) be signed by applicant.

Paragraph 5.4 Abatement of Order on Appeal: All orders of the Director shall not be abated pending the outcome of the appeal in Tribal Court, except where the court shall by its mandate specifically direct the Director as to further action in the matter, including making and entering a pay order or orders in connection therewith and the limitations or conditions to be contained therein

Paragraph 5.5 Bond of Appeal: The Director 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 to assure compliance with sanctions or remedial actions if the order is upheld in the court.

Section 6 Reporting and On-Site Inspections: Employers shall submit reports and other information requested by the Director. The Director and his/her representative shall have the right to make on-site inspections, investigations, and monitor any employer's compliance with the ordinance and rules, regulations and orders. This may include the right to inspect and copy all relevant records of any employer, signatory union, or subcontractor with the right to speak with workers and conduct investigations on job sites. As a Government entity of the Bad River Tribe, this may include information gathered under the privacy act if pertinent to the investigation

Section 7 Equal Employment Opportunities: No employer shall discriminate against any Indian Preference Employee or applicant for employment because of color, religion, sex, national origin, or age, and must assure Equal Opportunity, excluding allowable Indian Preference Opportunities available through Tribal or Federal Laws.

Section 8, Paragraph 8.1 Wage and Hour Standards: Equal Pay: Every employer shall be required to provide equal pay to Indian Preference Employees performing work similar or comparable to other employees.

Paragraph 8.2 Rate of Pay: The employer will comply with all applicable Federal, State, Local, or Tribal Laws concerning wages, hours and fringes.

Paragraph 8.3 Federal, State, and Local Agencies: The Director may use, Federal, State, local or Tribal agencies in resolving issues concerning wages, hours, and fringes applicable to said Agencies.

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Section 9 Severability: If any provision of the policy or this compliance plan, or its application to any person or circumstances is held invalid, the remainder of the application or the provision to other person(s) or circumstances is not affected.

Section 10 Paragraph 10.1 Employment Administrative Fee: The Director shall assess employers an Employment Administrative Fee to provide revenue for the operation of the Tribal Employment Rights Office as follows:

Paragraph 10.2 Contracts: Every prime contractor obtaining a contract of \$10,000.00 or more shall pay an Employment Administrative Fee equal to 1.5% of the total amount of each contract on the Reservation.

Paragraph 10.3 Other Employers: Every other employer, other than a Contractor, with 20 or more employees shall pay an Employment Administrative Fee of 1.5% of the Employers annual payroll. This Fee shall be paid in quarterly installments and shall not be required of Educational, Health, or Nonprofit Employers.

Paragraph 10.3 Accounting: Employment Administrative Fees shall be paid to the Bad River Band of the Lake Superior Tribe of Chippewa Indians and placed in an Account for use by the Tribal Employment Rights Office. The Tribal Employment Rights Office is authorized to establish such rules and regulations as are necessary to assure fair and timely fee collection processes. Any employer or contractor who fails to pay the required Employment Administrative Fee shall be subject to sanctions provided for in Section 4 of this Ordinance.

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