



# HOOPA VALLEY TRIBAL COUNCIL

## Hoopa Valley Tribe

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Chairman Joe Davis

### LEGISLATIVE PROCEDURES ACT ROUTING SHEET

- A. PROPOSAL: The Hoopa Valley Tribal Council would like your comments on the proposed **Title 13, Tribal Employment Rights Ordinance** that is being routed through the Emergency LPA process.
- B. PROPOSED BY: OTA/TERO
- C. COMMENTS ARE BEING REQUESTED BY: All Departments, Entities, and Tribal Membership
- D. NOTE: The proposed Title 13, Tribal Employment Rights Ordinance Amendments was approved to be routed under the Emergency LPA Process on September 7, 2023 and is set for final approval at the Regular Council Meeting scheduled for October 5, 2023. The location for the Public Hearing will be at the Neighborhood Facilities in the Council Chambers.

If you would like to participate in the Public Hearing via Zoom, please see below for the Zoom information.

Meeting ID: 854 1291 1122

Passcode: 930285

Dial In: 1.669.444.9171

For a copy of the routing for the proposed Title 13 Tribal Employment Rights Ordinance, please contact Amber Turner, Executive Secretary at (530) 625-4211, Ext. 393.

E. SEQUENCE OF EVENTS SHOWING DATES FOR THIS ISSUE.

- |                           |                             |
|---------------------------|-----------------------------|
| 1. Initial Routing:       | September 15, 2023          |
| 2. <b>Public Hearing:</b> | <b>October 3, 2023</b>      |
| 3. Deadline for Comments: | October 4, 2023 @ 5:00 p.m. |
| 4. <b>Final Approval:</b> | <b>October 5, 2023</b>      |

This notification is pursuant to TRIBAL ORDINANCE NO. 4-89 LEGISLATIVE PROCEDURES ACT. In accordance with Section 6.4, please route your comments, suggestions and recommended amendments to the Executive Secretary on or before the date indicated above.

*Amber Turner*

Amber Turner, Executive Secretary  
Hoopa Valley Tribal Council

Hoopa Valley Tribe  
Hoopa Valley Indian Reservation

Title 13

TRIBAL EMPLOYMENT RIGHTS ORDINANCE

ORDINANCE NO.

~~Title 13~~

**13.1 TITLE AND SHORT TITLE**

~~The short title of this~~ This Ordinance shall be known as the “Tribal Employment Rights Ordinance”; ~~and may be cited and referred to as or~~  
“TERO” or “Hoopa TERO Ordinance”.

**13.2 STATUTORY AUTHORIZATION; SCOPE; JURISDICTION; FINDINGS; PURPOSE AND INTENT**

**13.1.1 Authority.**

The Hoopa Valley Tribal Council (“Tribal Council”) is the governing body of the Hoopa Valley Tribe (“Tribe”) pursuant to Article V, Section 1 of the Constitution and Bylaws of the Hoopa Valley Tribe, Hoopa Valley Indian Reservation. The Tribal Council is empowered by Article IX, Section 1 (k) and (l) of the Tribe’s Constitution to promulgate and enforce/ ordinances governing the conduct of members and nonmembers of the Tribe and to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians by regulating the conduct of trade. This Ordinance is established pursuant to the Tribe’s sovereign authority to establish its own laws and to control and govern its internal affairs.

**13.1.2 Jurisdiction and Scope.**

- (A) The Tribe’s jurisdiction extends to all lands within the exterior boundaries of the Reservation—as established by Executive Order of June 23, 1876—and to such other lands as may hereafter be acquired by or for the Tribe.
- (B) This Ordinance shall govern and enforce the rights and obligations of the Tribe and the Tribe’s employees as well as non-Tribal Employers or Contractors and its employees while working for or on behalf of the Tribe.
- (C) This Ordinance shall apply to all Employers and Contractors covered by this Ordinance located on or engaged in work within the exterior boundaries of the Hoopa Valley Indian



### Reservation.

- (D) This Ordinance shall apply to any Tribal Project that is on or off the Reservation when the Tribe or any of the Tribe's affiliated Tribal Departments and Entities is a Party to a contract and where Tribal funds are utilized.
- (E) This Ordinance is not intended to interfere with the rights or obligations set forth in Hoopa Valley Tribal Code, Title- 30 Personnel Policies and Procedures or other approved Tribal Entity personnel manual.

### 13.1.3 Findings.

- (A) Indians have unique employment rights that are entitled to protection under Federal laws including but not limited to the Indian Civil Rights Act of 1968; Title VII of the Civil Rights Act; Public Law 93-638, and Indian Self-Determination Act. These established Federal laws prohibit the Tribe from enacting or enforcing laws that violate certain individual rights similar to the rights guaranteed under the Bill of Rights of the United States Constitution; combat employment discrimination on or near the Reservation; allow for Indian and Tribal member preference in employment, training, and contracting or subcontracting on all contracts negotiated on behalf of the Tribe; among other protections. This Ordinance is consistent with, and supplemental, to Federal law and Tribal law prohibiting employment discrimination against Indians, and providing employment and contract preference to individual Indians and Indian-owned enterprises or Indian firm.
- (B) The Tribal Council desires to promote employment opportunities for Indians and business opportunities for Indian firms and Contractors, and to provide direction, management, and business standards for the Hoopa Valley Indian Reservation ("Reservation"). As part of the solutions for developing a sound and progressive socio-economic environment for the Hoopa Valley Tribe and community, the Tribal Council has determined that access to employment opportunities is a critical part of a comprehensive approach. The work force of the Tribe must be provided an opportunity to gain employment on or off the Reservation, and the promotion of Indian preference must in aligned with Federal laws and Congressional enactments providing Indians with these unique employment rights.

13.1.4 Purpose and Intent. The purpose of this Ordinance is to develop the work force of the Tribal members and Indian people as well as promote the unique employment rights of the Tribal members and other Indians within the jurisdiction of the Tribe. Furthermore, the purpose of this Ordinance is as follows:

- (a) Assist with compliance and enforce the laws governing employment preference and contracting preference that is intended to afford Tribal members and Indian preference in employment, contracting and subcontracting, and training;
- (b) Prevent employment related discrimination against Indians;
- (c) Assist with the training of a work force;
- (d) Provide a fair, enforceable, and effective system for contracting and subcontracting; and
- (e) Due process for all individuals affected by this Ordinance.

## **13.3 EFFECT ON PRIOR ENACTMENTS**



13.2.1 The Tribal Council has complied with the required procedures under the Tribe's Legislative Procedures Act for all the amendments contained herein.

~~13.21.21~~ Repeal. —Resolution 91-71A, as amended March 6, 1995, Ordinance No. 2-80, as amended April 27, 1995, the Rules for Hearing Before the TERO ~~Commission~~Office, as Amended June 10, 1998, are hereby repealed and shall be of no further force and effect as stated in ~~Section 13.13.1~~ of this Ordinance; ~~provided~~PROVIDED, however, that any existing agreements or contracts authorized under these now repealed enactments shall remain in effect until such agreements or contracts expire or are terminated; and provided, ~~further, that the TERO Commission established by this Ordinance may terminate any existing Indian preference agreement and issue a permit in conformance with this Ordinance upon notice to the affected party and opportunity for hearing.~~

~~Certification of Indian Firms. The TERO Commission is authorized to certify that an enterprise meets the definition of an Indian firm set forth in Section 13.2.4 for purposes of Indian preference, and for documentation of minority small business contract eligibility or claimed exemptions from state taxation and wage performance bond requirements; provided, however, that certification as provided herein shall not oblige the Commission to advocate the claims of private individuals and entities before any agency of another government.~~

13.2.3. Fair Operating Standards and Dispute Resolution Procedures for Reservation Timber Sales Preserved Pending Approval of Administrative Rules. TERO procedures established for Reservation timber sales under the former MOU between Hoopa Forest Industries and the Bureau of Indian Affairs, and consisting of (1) Exhibit A to TERO Amendment No. 7, May 21, 1987, Fair Operating Standards and Procedures, and (2) the Report of Timber Sale Contract/MOU Work Group, April 15, 1987, including in particular the Contractor- Subcontractor Dispute Procedure, are hereby preserved to the extent that they do not conflict with the substantive provisions of this Ordinance; ~~provided~~PROVIDED that the TERO ~~Commission~~Office, established by this Ordinance, shall review, revise, and subject to Council approval, reissue these procedures as administrative rules not later than 60 days after the effective date of this Ordinance.

## 13.4 DEFINITIONS

13.3.1 **"Indian"** means any member of any federally recognized tribe, or any person who furnishes documentary proof that he or she is recognized as an Indian by the United States

13.3.2 \_



13.3.3 pursuant to its trust responsibility to American Indians.

13.3.4 **"Hoopa Reservation" or "Reservation"** means the Hoopa Valley Indian Reservation as defined under Article III of the Constitution and Bylaws of the Hoopa Valley Tribe.

13.3.5 **"On the Reservation"** means an Employer or Contractor is located within the exterior boundaries of the Reservation and if during any portion of a contract, it maintains a temporary or permanent office, facility, or work within the exterior boundaries of the Reservation.

13.3.6 **"Near the Reservation"** means employment/jobs within 60 miles of the exterior boundaries of the Reservation.

13.3.7 **"Employer" or "Contractor"** means any person, company, contractor, subcontractor or entity located or engaging in commercial or employment activity within the exterior boundaries of the Hoopa Valley Indian Reservation, and which employs two or more persons.

13.3.8 **"Indian Firm"** means a firm or business certified by the TERO ~~Commission-Office~~ as eligible for Indian preference in contracting and subcontracting; provided that Indians hold at least 51% ownership interest in such firm or business and exercise majority management control.

13.3.9 **"Indian Preference"** means a preference for enrolled Indians in all aspects of employment, including but not limited to, hiring, training, promotions, layoffs, contracting, and subcontracting for work on or near the Reservation. Qualified available Indians will receive an Indian preference in accordance with this Ordinance and negotiated agreements.

13.3.10 **"Commission" and "TERO Office" or "TERO Department"** means the Tribal Employment Rights ~~Commission and its~~ Office and the Tribal Office of Employment Relations.

13.3.11 **"Council" or "Tribal Council"** -means the Hoopa Valley Tribal -Council.

13.3.12 **"Tribal Court"** means the Hoopa Valley Tribal Court.

13.3.13 **"Minimum Threshold"** means a minimum level that any job applicant shall be required to meet prior to Indian Preference being applied to that job applicant. Criteria to establish a minimum threshold may be established by but are not limited to the following:

- 13.3.13.A Job Descriptions;
- 13.3.13.B Interview Committees;
- 13.3.13.C Skills Tests;
- 13.3.13.D RFP's and License Requirements;
- 13.3.13.E Other Job Requirements.

#### 13.4 ESTABLISHMENT OF ~~TERO TRIBAL EMPLOYMENT RIGHTS (TERO) COMMISSION AND OFFICE~~

13.4.1 Establishment and Purpose of ~~Commission~~the TERO Office

(A) ~~Establishment and Purpose.~~ The Hoopa Valley Tribal Council does hereby

establish the Tribal Employment Rights ~~Commission-Office~~ (referred to as the "TERO ~~Commission~~Office" or "TERO Department") for the purposes of implementing and enforcing the Indian Preference provisions of this Ordinance and disseminating information regarding unlawful employment discrimination by State and private employers subject to Title VII of the Civil Rights Act of 1964 who are operating on or near the Hoopa Valley Indian Reservation.

- (B) TANF; Training by TERO- ~~Office~~Commission. The TERO ~~Commission-Office~~ is hereby authorized to provide basic life/work skills training consistent with the needs of the community and implementation of the Tribal, Sstate, or Ffederal TANF program; to establish a Tribal Employment Rights training center; to enter into agreements with labor unions or other persons or entities to provide work skills training and education opportunities; and to generally provide employment training to members of the Tribe and residents of the Hoopa Valley Indian Reservation
- (C) n



- (D) through means deemed appropriate by the Tribal Council.
- (E) TERO Tax. The TERO ~~Commission-Office~~ shall be allocated sufficient funds as determined by the Hoopa Valley Tribal Council derived from the TERO Tax as described ~~in Section 13.5 herein of this Ordinance~~ for implementation, conduct, and fulfillment of the TERO ~~Commission's-Office's~~ purposes.
- (F)
- (G) Certification of Indian Firms. The TERO Office is authorized to certify that an enterprise meets the definition of an Indian firm set forth herein for purposes of Indian preference, and for documentation of minority small business contract eligibility or claimed exemptions from state taxation and wage performance bond requirements; PROVIDED, however, that certification as provided herein shall not oblige the TERO Office to advocate the claims of private individuals and entities before any agency of another government.

#### 13.4.2 TERO DIRECTOR

The TERO Director of the Tribal Employment Rights Office shall be responsible for administering the provisions of this Ordinance and provide direction, leadership, and oversight of the TERO Office.

#### 13.4.3 ~~General Powers of the Commission~~ GENERAL POWERS OF THE TERO DIRECTOR

##### (A) Organizational Authority.

- (1) The ~~Commission-TERO Director~~ may hire immediate TERO staff, obligate funds appropriated by the Council, and secure and obligate funding from Federal, State or other sources to carry out its duties and functions under this Ordinance. The ~~Commission-TERO Director~~ is further authorized and directed to adopt such organizational bylaws as are necessary to enable it to carry out its duties and functions under this Ordinance. The ~~Commission-TERO Director~~ shall report directly to the Council. The TERO ~~Commission-Director~~ shall be subject to the Conflict-of-Interest and Nepotism Ordinance of the Hoopa Valley Tribe.
- (2) The Director shall be the investigating agent for the TERO Office responsible for investigating, researching, reporting and documenting any relevant information required by the TERO Office. The Director shall report directly to the Tribal Council.

##### (B) Regulatory Authority.

- (1) The ~~Commission-TERO Director~~ shall promulgate rules, regulations, interpretations of law, and guidelines for Indian preference that are necessary to implement this Ordinance. Such rules shall become effective upon Council approval of a resolution adopting said rules. Council approved rules shall be codified in the Revised Code of the Hoopa Valley Tribe, and the ~~Commission-TERO Director~~ shall

take other reasonable steps to ~~insure~~ensure that the general Reservation community is on notice of all Indian preference and applicable employment related laws.

(2) The ~~Commission-TERO Director~~ shall maintain an Indian Skills Bank as a means of providing qualified Indian employees to employers, contractors, and subcontractors. The ~~Commission-TERO Director~~ shall actively recruit Indians for listing in the Skills Bank. The ~~Commission-TERO Director~~ shall also actively recruit and certify Indian firms as eligible for Indian Preference in contracting and sub-contracting.

(3) The ~~Commission-TERO Director~~ is authorized to certify Indian firms, located on, near, -or off the Reservation, for purposes of Indian preference, minority small business contract eligibility, exemption from state taxation and wage performance bond requirements, and other purposes. The ~~Commission-TERO Director~~ shall develop administrative rules to implement this authority, which shall include provisions and procedures for revocation of such certifications.

(4) The ~~Commission-TERO Director~~ may register near and off-reservation contractors and sub-contractors, approve Indian Preference Plans, and issue permits to such contractors according to rules and procedures to be developed, which shall include procedures for revocation of such permits.

(5) The ~~Commission-TERO Director~~ is further authorized and directed to investigate -complaints regarding any violation of the provisions of this Ordinance or any other tribal law the -

(6)



- (7) ~~Commission-TERO Director~~ is authorized to enforce; the ~~Commission-TERO Director~~ may also investigate possible violations of this Ordinance if there is reasonable cause to believe a violation of this Ordinance has occurred or is occurring. Neither the ~~Commission-TERO Director~~, or any of its employees, shall have the authority to investigate or assist any Hoopa Tribal employee in pursuing any employment related claim not within its authority under this Ordinance.

(C) **13.4.4 POWERS AND AUTHORITIES OF TRIBAL COUNCIL**~~Adjudicatory Authority~~

~~The Commission may hold hearings on and determine any matter under its authority, including but not limited to hearings necessary to the issuance, modification, and revocation of any permit, license, certification, or assessment authorized hereunder, as well as any adjudicatory hearing regarding violations of the provisions of this Ordinance. The Commission shall have no authority or jurisdiction to hear or adjudicate complaints brought by Hoopa Valley Tribal employees that are not specifically authorized under this Ordinance. The Commission shall promulgate simple and fair rules to govern its adjudications, and is authorized to issue compliance orders and impose civil penalties in the form of fines.~~

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~~Besides the responsibilities and powers of the Tribal Council described in the Constitution and Bylaw of the Tribe, the Tribal Council shall have the authority to (i) review and approve TERO policies; (ii) develop amendments of this Ordinance; (iii) receive and resolve complaints concerning TERO that are not resolved by the TERO Director; (iv) review and determine requests for waivers under this Ordinance; and any other responsibility or power described herein.~~

**13.4.5 COOPERATIVE AGREEMENTS WITH OTHER GOVERNMENTS**~~Cooperative Agreements with Other Governments~~

The ~~Commission-TERO Director~~ may negotiate, and upon Council approval, enter into cooperative agreements with agencies of state and ~~F~~federal government in order to implement the intent of this Ordinance and eliminate unlawful discrimination against Indians.

**13.4.4 Composition of the Commission**

(A) ~~The Commission shall be composed of three (3) members in good standing in the community. Two (2) members of the Commission shall be appointed by the Council in October of even numbered years, each for a term of two (2) years; and one (1) members shall be appointed in odd numbered years, each initially for a term of one (1) year, thereafter being appointed in October of odd numbered years each for a term of two (2) years. Any member may be removed by the Council at any time for cause, subject to notice and opportunity for a hearing before Council. The Council's decision shall be final. All terms of office shall commence on October 1 of the year position becomes vacant.~~

(B) ~~Decisions of the TERO Commission shall be made by a majority vote. A quorum shall consist of any two of the three Commission members.~~

(C) ~~Any Commission member shall be disqualified from any involvement in decisions affecting the tribal department or entity with which he or she is employed or volunteers their time to that department.~~

(D) ~~The Commission shall have authority to designate a panel of alternates who may serve in place of a disqualified Commissioner, as required to proceed with any hearing or review provided for in this Ordinance.~~

13.4.5 Powers of the TERO Director

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~~The TERO Director shall have those powers delegated by the Commission as it deems necessary to carry out this Ordinance. The Director shall be the investigating agent for the Commission responsible for investigating, researching, reporting and documenting any relevant information required by the Commission. The Director shall report directly to the Commission.~~

### 13.5 INDIAN EMPLOYMENT PREFERENCE POLICY AND PROCEDURES

All employers shall extend a preference to qualified Indians, as provided herein, in all aspects of employment, including but not limited to recruitment, hiring, promotion, lateral transfers, retentions, training, contracting, and subcontracting. No employer may recruit, hire, or otherwise employ any non-Indian for any employment position covered by this Ordinance; unless and until the TERO ~~Commission Office~~ has furnished written notice to such employer that no qualified Indians are available for such position.

#### 13.5.1 Applicability

Unless clearly and expressly prohibited by federal and other tribal laws or Council action, this Ordinance shall apply to all employers, including but not limited to: The Council and all its programs, departments, and chartered entities or enterprises; private employers and independent contractors and subcontractors, including those performing work for the Council, the State of California, or the United States.

#### 13.5.2 Covered Positions

The Indian Employment Preference Policy of this section shall apply to each and every job classification, skill area, or craft recognized or utilized by an employer, including administrative, supervisory, and professional classifications.

#### 13.5.3 Qualified Indians; Employment Criteria

An Indian shall be qualified for employment in a position if he or she meets the minimum threshold requirements for such position, and such Indian shall be accorded the preferences to which he or she is entitled under this Ordinance. No employer may utilize any employment criterion that is not legitimately related to the performance of the position.

#### 13.5.4 Eligible Indians

(A) Hoopa Valley Tribe and its Entities and private employers contracting with the Tribe. The Hoopa Valley Tribe and its programs, departments, chartered entities and enterprises, and private employers contracting with the Tribe, shall extend a preference to qualified Indians according to the following priorities:

(I) Enrolled members of the Hoopa Valley Tribe;

(2)

(2) Indian spouses of enrolled members of the Hoopa Valley Tribe;

(3)



- (3) Indians residing within the exterior boundaries of the Hoopa Valley Indian Reservation; ~~and -~~
- (4)
- (5) Indians not residing within the exterior boundaries of the Hoopa Valley Indian Reservation.

If this section conflicts with any applicable federal laws or regulations, the Hoopa Valley Tribe and its programs, departments and chartered entities and enterprises, and private employers contracting with the Tribe shall extend Indian preferences according to the requirement of said federal laws and regulations.

(B) Private Employers Not Contracting with the Hoopa Valley Tribe: Private employers not contracting with the Hoopa Valley Tribe and doing business within the exterior boundaries of the Hoopa Valley Indian Reservation shall not be subject to the priority requirements of Section 13.54.4(A), but shall extend a preference to qualified Indians residing on or near the exterior boundaries of the Hoopa Valley Indian Reservation. Private employers operating under contracts with the Hoopa Valley Tribe shall be required to provide Indian Preference according to the requirements of ~~§-13.54.4(A)~~.

**13.5.5 Notice of Employee Rights.** All employers subject to this Ordinance shall prominently display a notice to all employees and applicants for employment of their rights under this Ordinance.

**13.5.6 Employer Retaliation Prohibited.** It shall be violation of this Ordinance for any employer to take any adverse personnel or hiring action, or to retaliate in any way, against any person who attempts to enforce the requirements under this Ordinance. Employers found by the ~~Commission~~TERO Office, pursuant to an adjudicatory hearing, to have engaged in retaliation shall be subject to appropriate sanctions to be imposed by the ~~Commission~~TERO Office. The ~~Commission~~TERO Office may in its discretion either hold a hearing or file action in Tribal Court to review an allegation of unlawful retaliation. The Tribal Court is authorized to issue temporary injunctions for enforcement of this provision to prevent unlawful conduct.

## 13.6 ESTABLISHMENT OF TERO TAX AND FEES

There is hereby established a TERO tax to be paid to the Hoopa Valley Tribal Council by each ~~P~~prime ~~C~~ontractor; and by each ~~E~~mployer operating within the exterior boundaries of the Hoopa Reservation; whose total contract or annual gross revenues is \$1,000.00 or more. The tax shall be equivalent to three percent (3%) of the total gross value of any contract performed within the Reservation or of the total annual gross revenues. The TERO tax may be paid in incremental payments, subject to the prior written approval of the Tribal Council. The proceeds of the tax shall be used in implementing this Ordinance. The Hoopa Valley Tribal Council shall authorize the appropriate amounts of the TERO Tax to be utilized by the TERO ~~Commission~~Office according to proof of budgetary needs provided by the department. The TERO tax shall be governed under guidelines approved by the Tribal Fiscal Department. A ~~C~~ontractor or ~~E~~mployer failing to pay the TERO Tax shall be subject to sanctions imposed by the ~~Commission~~TERO Office. The

Hoopa Valley Tribal Council when it determines to be in the interests of the Hoopa Valley Tribe, reserves the right to waive TERO Taxes and Fees for any contract or contracts, and further, may approve a waiver schedule consistent with the objectives of this Ordinance, that is implemented directly by the TERO Office and that establishes tax adjustments to not less than one percent (1%).

Contract Term. In the event that an Employer or Contractor intends and desires to engage in a consensual contractual relationship with the Tribe or any of the Tribe's affiliated Tribal Departments and Entities, for Tribal projects on, near, or off Reservation, any contract or agreement shall incorporate a TERO fee term and the Employer or Contractor must provide explicit consent to the inclusion of the TERO fee term within the contract. This TERO fee term shall be equivalent to three percent (3%) of the total gross value under the contract or of the total annual gross revenues. The TERO fee may be paid in incremental payments subject to the prior written approval of the Hoopa Valley Tribal Council, and shall be paid directly to the Hoopa Valley Tribal Council. The Hoopa Valley Tribal Council, in its sole discretion, reserves the right to waive the TERO fee term to not less than one percent (1%) within this contract.

### **13.7 SPECIAL REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS**

The requirements of this Section apply to all employers engaging in commercial or employment activities within the Reservation pursuant to public or private contract. If this section's contracting requirements conflict with applicable federal law or regulations, the applicable federal laws or regulations shall supersede this section.

#### **13.7.1 Certification by ~~Commission~~TERO Office**

Any contractor or subcontractor claiming eligibility for Indian preference under this title shall submit documentation acceptable to the ~~Commission~~TERO Office, pursuant to its authority ~~under-~~Section 13.3.2 (8)(3)described herein, that is an Indian firm as defined ~~in Section 13.2.4~~herein.

#### **13.7.2 Indian Preference Plan**

Each contractor shall include in its bid an Indian Preference plan for the master contract and any subcontracts. The plan shall indicate the name of the proposed subcontractor, whether it is an Indian-owned firm and if not, information on the good faith steps taken to identify Indian firms for the subcontract. A contractor may not refuse to employ an Indian subcontractor for the reason of price so long as the Indian firm's price is within five percent (5%) of the lowest bid, calculated by multiplying the lowest bid by 105%. A contractor may not refuse to employ an Indian subcontractor for the reason that a non-Indian firm is more qualified so long as the Indian firm satisfies the threshold requirements for technical qualifications.

#### **13.7.3 Failure to Submit Indian Preference Plan**

An apparent successful bidder who fails to submit an Indian preference plan prior to award of the contract shall be considered a non-responsive bidder for the purpose of awarding the contract.

#### **13.7.4 Amendments to Plan**

If awarded the bid, the contractor may not deviate from the plan or add or delete any existing new subcontracts or subcontractors without the written consent of the Contracting Officer or his



designee and notice to the ~~Commission~~TERO Office. Any amendments to the Indian Preference Plan must be in writing and approved prior to the date of implementation.

#### **13.7.5 Bid Shopping Prohibited**

A contractor is prohibited from engaging in bid shopping as a means of avoiding its Indian subcontract preference obligations. Bid shopping is defined as any practice which a

bidder or contractor informs a prospective subcontractor that it will receive a subcontract only if it offers a price lower than that proposed by another firm.

### **13.8 JOB CATEGORIES**

Employers or subcontractors employed by a primary contractor under one or more contracts totaling at least \$10,000 shall not participate in more than one area of the overall project for which such employer or subcontractor is employed. A superintendent or any person in a similar capacity employed by the primary contractor shall not be employed in any other aspect of said project.

#### **13.8.1 Identification of Key Employees; Hiring Requirements**

- (A) Contractors/employers shall be required to hire and maintain as many TERO / Native American preference employees as apply for and are qualified for each craft or skill.
- (B) Notwithstanding subsection A, above, Contractors/employers may hire key employees to fill not more than 25% of the workforce.
  - (1) Prior to commencing work on the Hoopa Valley Indian Reservation the prospective employer, contractor and sub-contractors shall identify key, regular and permanent employees. The TERO Office and contractor/employer in possession of past employment records documenting employment of past supervisors or foreman shall coordinate on certifying eligibility for treatment of employees as a key employee.
  - (2) A key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. A key employee has been on the employers' or contractors' annual payroll for a period of one year continuously in a supervisory capacity, or is an owner of the firm. An employee who is hired on a project-by-project basis shall not be considered a key employee.

#### **13.8.2 Lay-Offs**

No Indian Worker shall be laid off as long as a non-Indian worker in the same craft is still employed, not as long as the Indian meets threshold qualifications for the job, unless such non- Indian has been employed for more than 90 days longer than such Indian. If the contractor lays off by crews, qualified Indians shall be transferred to any crew that will be retained, as long as there are non-Indians in the same craft employed elsewhere on the Reservation under the same contract.

#### **13.8.3 Existing Contracts, Employers**

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Any existing contracts or other work presently operating under an agreement with the Tribal Employment Rights Office will continue under the same written guidelines and rules. Each employer shall provide to the ~~Commission-TERO Office~~ a list of employees and their Indian affiliation, if any, as part of the implementation of this Ordinance.

#### 13.8.4 Reporting Requirements

Each employer shall submit monthly reports to the ~~Commission-TERO Office~~ on a form provided indicating the number of employees, including a separate tally of Indians, it has on its work force, monthly hires and fires, and other information as may be identified on the form. An employer who fails to submit monthly reports shall be subject to sanctions provided under this Ordinance.

### 13.9 IMPLEMENTATION

In implementing the requirements of this Ordinance, the ~~Commission-TERO Office~~ may:

#### 13.9.1 Numerical Hiring Goals

Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire.

#### 13.9.2 Training Programs

Require employers to establish or participate in such training programs as the ~~Commission-TERO Office~~ determines necessary in order to increase the pool of qualified Indians on the Hoopa Reservation. Such training programs must have prior approval from the Contracting Officer and should preferably be included in the bid package. If training programs are not included in the bid package, the ~~Commission-TERO Office~~ shall give due consideration to the increase in cost, if any, for performing the program.

#### 13.9.3 Attend and monitor all job interviews as a non-voting participant.

#### 13.9.4 Prohibit an employer from establishing extraneous qualification criteria or other requirements that serve as barriers to Indian employment.

#### 13.9.5 Enter into agreements, subject to approval by the Hoopa Tribal Council, with unions and other employers to ~~insure~~ensure compliance with this Ordinance.

#### 13.9.6 Require employers to give preference in the award of contracts and subcontracts to Indian-owned firms and businesses.

#### 13.9.7 Establish programs to provide counseling and support to Indian Workers to assist them to retain employment. Employers may be required to participate in and/or cooperate with such

support and counseling programs.

#### 13.9.8 Issue Permits

Issue permits for implementation and provisions of this Ordinance and other agreements entered into under the authority of this Ordinance.

### **13.10 ENFORCEMENT BY TERO ~~COMMISSION~~OFFICE**

In implementing this Ordinance the ~~Commission~~-TERO Office shall have the following powers of enforcement:

#### 13.10.1 Investigation, Monitoring

To investigate and monitor complaints, concern, and inquiries regarding Indian preference.

#### 13.10.2 Issue Notices of Non-Compliance and Compliance Orders

To issue notices of non-compliance orders with the Indian preference provisions of this Ordinance and other applicable provisions of this Ordinance.

#### 13.10.3 Citations, Subpoenas, and Penalties

To issue citations and subpoenas to employers regarding violations of the Indian preference provisions of this Ordinance, and to impose such civil penalties, including fines, as may be reasonably necessary to remedy the consequences of a violation of the Indian preference provisions this Ordinance or to deter future violations.

#### 13.10.4 Hearings

To hold such hearings as may be necessary to resolve complaints enforce the provisions of this Ordinance, and hear concerns regarding issues pursuant to the ~~Commission's~~-TERO Office's authority under this Ordinance.

#### 13.10.5 File and Defend Cases in Tribal Court

To bring or defend a complaint or other pleading in Tribal Court for enforcement of the Indian preference provisions of this Ordinance, against any employer within the exterior boundaries of the Hoopa Reservation.

### **13.11 TRIBAL COURT**

Appeals of decisions of the TERO ~~Office~~Commission may be filed under the rules of the Tribal

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Court. The Tribal Court is hereby authorized to hear and dispose of appeals from final decisions from TERO ~~Commission-Office~~ hearings. Any appeal from a final decision of the TERO ~~Commission-Office~~ must be filed within twenty (20) calendar days after the date of receipt of the TERO ~~Commission's Office's~~ decision. Any decisions not appealed within the required time frame shall become final and the Tribal Court shall have no jurisdiction to hear the appeal.

### **13.12 LEGAL REPRESENTATION**

In carrying out its responsibilities under this Title, the ~~TERO OfficeCommission~~ shall consult a legal counsel of its choosing subject to the approval of the Council. Any legal counsel chosen must be admitted in good standing to practice law in the state of California and the Hoopa Valley Tribal Court bar.

### **3.13 PRINCIPLES OF CONSTRUCTION; SEVERABILITY; SOVEREIGN IMMUNITY PRESERVED**

13.13.1 This Ordinance is remedial legislation intended to rectify the long-standing problem of severe under-employment of Hoopa tribal members and other Indians living in the Reservation community. Accordingly, it is to be construed liberally to achieve its purposes. Doubtful issues are to be resolved in favor of a right of any party to obtain administrative review.

13.13.2 If any part of this Ordinance is found to be invalid for any reason, it is the intent of the Council that the remaining provisions remain in force to the maximum extent possible, and that they continue to be construed according to the provisions of this Section.

13.13.3 Nothing in this Ordinance is to be construed as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, nor as consent by the Tribe to bring an action against the Tribe, its officers, or any of its departments or entities.

### **13.14 EFFECT OF AMENDMENTS ON PRIOR TERO LEGISLATURE AND PENDING CASES**

13.14.1 Prior TERO enactments or Rules: Resolution 91-71A, as amended March 6, 1995, Ordinance No. 2-80, as amended April 27, 1995 are repealed and shall have no further force and effect. The Rules for Hearings Before the TERO ~~CommissionOffice~~, as amended June 10, 1998 shall be permitted to be used where they are consistent with the language of this statute by providing uniform rules for hearings when they are authorized under this ordinance. Under no circumstances shall those present rules be considered authority for the TERO ~~Commission-Office~~ to hear employment related grievances other than which is authorized under this statute. The TERO ~~Commission-Office~~ under the authority granted by ~~§ 13.3.2(C)~~ herein shall draft new Rules Before Hearings to effect the most recent amendments to this Ordinance.

13.14.2 All current employee grievances that are not related to termination where the TERO ~~Commission-Office~~ has not issued a final decision shall be dismissed. An employee termination  
case

that has been appealed to the TERO ~~Commission-Office~~ prior to the date of the Tribal Council transferring employee termination grievances to Tribal Court shall be heard by the TERO ~~Commission-Office~~. However, all employee termination cases regardless of whether they are pending before the TERO ~~Commission-Office~~ or before the Tribal Court shall be subject to the requirements of ~~1~~

H.V.T.C. Title 1 § 1.1.04(F) AS IT RELATEES TO THE Hoopa Valley Tribe's limited waiver of sovereign immunity.

### 13.15 AMENDMENTS

This Ordinance may be amended according to the Hoopa Valley Legislative Procedures Act.

### 13.16 EFFECTIVE DATE

This Ordinance shall take effect and be enforced immediately from and after its approval by the Hoopa Valley Tribal Council.

## CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which \_\_\_\_\_ were present, constituting a quorum, at a regular meeting thereof, duly and regularly called, noticed, convened and held this \_\_\_\_\_ this day of September, 2023; and that this resolution was adopted by a vote of \_\_\_\_\_ FOR and \_\_\_\_\_ AGAINST and \_\_\_\_\_ ABSTAIN, and that said resolution has not been rescinded or amended in any way.

Dated this \_\_\_\_\_ day of September 2023.

\_\_\_\_\_  
Joe Davis, Chairman

\_\_\_\_\_  
Hoopa Valley Tribal Council

ATTEST:

\_\_\_\_\_  
Amber Turner, Executive Secretary

\_\_\_\_\_  
Hoopa Valley Tribal Council

## CERTIFICATION

~~I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify: that the Hoopa Valley Tribal Council is composed of eight members, of which eight (8) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held this 1-21 day of May, 2012; that this Ordinance was adopted at said meeting by a vote of seven (7) FOR and none (0) AGAINST; and that since its adoptions this Ordinance has not been altered, rescinded, or amended in any way.~~



~~DATED THIS 17TH DAY OF MAY, 2012.~~



, CHAIRMAN

~~HOOPA VALLEY TRIBAL COUNCIL~~

ATTEST:

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~~, EXECUTIVE SECRETARY~~

~~o PAVLEY TRIBAL COUNCIL~~