

The Spokane Tribe of Indians does hereby enact the following:

SPOKANE TRIBAL EMPLOYMENT RIGHTS ORDINANCE

SECTION 1.0 NAME

This Ordinance shall be known as the "Spokane Tribal Employment Rights Ordinance".

1.1 PURPOSE

The purpose of this Ordinance is to assist in and require the fair employment of Indians on or near the Spokane Indian Reservation and to prevent discrimination against Indians in the employment practices of Reservation employers through the creation of the Tribal Employment Rights Commission and the establishment of rules, regulations and policies governing its responsibility and authority to insure Reservation-wide compliance with this Ordinance.

SECTION 2.0 DEFINITION OF IMPORTANT TERMS AND WORDS

2.1 AGENT(S)

Any employee or individual authorized to act on behalf of the Commission.

2.2 BUSINESS FOR PROFIT

Shall mean any business enterprise or operation which is not considered a non-profit or not-for-profit organization by the IRS.

2.3 CHAIRPERSON

Shall mean the Chairperson of the Spokane Tribal Employment Rights Commission

2.4 COMISSION

Shall mean the Spokane Tribal Employment Rights Commission.

2.5 COMMISSIONER

Shall mean a Commissioner of the Spokane Tribal Employment Rights Commission.

2.6 CORE CREW

Shall mean key personnel required by the employer who are regular, permanent employees and are in a supervisory or other key position; only the first and thereafter every seventh employee may be employed as key personnel and/or core crew by an employer.

- 2.7 COUNCIL
Shall mean the Business Council of the Spokane Tribe of Indians.
- 2.8 DIRECT FEDERAL CONTRACTS
A direct Federal Contract is a contract let by the Federal agency directly to a prime contractor.
- 2.9 DIRECTOR
Shall mean the Director of the Spokane Tribal Employment Rights Program.
- 2.10 EEOC
Shall mean the Equal Employment Opportunity Commission of the United States.
- 2.11 EMPLOYER
Shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the Spokane Reservation. However, the Spokane Tribe, the State of Washington and the Federal Government along with any subdivision are excluded from the definition of employer and not subject to the Tribal Employment Rights Ordinance.
- 2.12 ENGAGED IN WORK ON THE RESERVATION
An employer is "engaged in work on the Reservation" if during any portion of conducting business for a business enterprise or working on a specific project, contract or subcontract, he or any of his employees spend a majority of his (their) time performing work within the exterior boundaries of the Reservation on a continuing basis.
- 2.13 FEDERALLY FUNDED CONTRACTS
A Federally funded contract is one in which the Federal Government has contracted or granted funds to an entity which, in turn, lets the prime contract.
- 2.14 FOR THE BENEFIT OF INDIANS
Work to be performed under a Federal or Federally funded contract is for the benefit of Indians if the benefits provided to Indians are in addition to or incidental to any benefits which might occur to the general public.
- 2.15 HRC
Shall mean the Human Rights Commission of the State of Washington.
- 2.16 INDIAN

Shall mean any person recognized as an Indian by the United States pursuant to its trust responsibilities to American Indians.

2.17 INDIAN CONTRACTOR OR SUBCONTRACTOR

Contractor or Sub-Contractor that is 51% or more Indian owned and controlled.

2.18 INDIAN OWNED BUSINESS

Shall mean a business entity of which at least 51% is actively owned, operated and managed by Indians.

2.19 INDIAN PREFERENCE APPLICANT

Shall mean any person recognized as one of the following in the stated order, except any order may be followed on Federal and State projects:

- a) Enrolled member of the Spokane Tribe of Indians.
- b) Child or an enrolled member of the Spokane Tribe of Indians.
- c) Spouse of an enrolled member of the Spokane Tribe of Indians.
- d) Enrolled member of a recognize tribe of Indians.

2.20 LOCAL INDIAN OR LOCAL INDIAN OWNED BUSINESS

Is any Indian Preference applicant or Indian owned business having social and economic ties to the Spokane Tribe of Indians with primary place of residence or business on the Spokane Reservation which is owned by a Spokane Tribal member living on or near the Reservation.

2.21 LOCATED NEAR THE RESERVATION

Near shall mean any employer located within daily commuting distance of the Reservation.

2.22 LOCATED ON THE RESERVATION

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

2.23 OFCCP

Shall mean the Office of Federal Contract Compliance Programs of the United States.

2.24 PRIME CONTRACTOR

A prime contractor is the prime construction, forestry or mining contractor responsible for construction or mining projects.

2.25 RESERVATION

Shall mean the Spokane Indian Reservation, Washington and includes all land, Indian and non-Indian, within the exterior boundaries of the Spokane Indian Reservation and any trust lands under jurisdiction of the Spokane Tribe, wherever they are located.

2.26 SECRETARY

Shall mean the Secretary of the Interior or his duly authorized representatives.

2.27 SUBCONTRACT

A subcontract is any contract let by a prime contractor to its subcontractors for supplies or work on prime contracts regardless of tier.

2.28 TRIBAL MEMBER

Shall mean any person who is a duly enrolled member of the Spokane Tribe of Indians.

2.29 TRIBE

Shall mean the Spokane Tribe of Indians.

SECTION 3.0 SPOKANE TRIBAL EMPLOYMENT RIGHTS COMMISSION

3.1 APPOINTMENT

The Spokane Tribal Employment Rights Commission shall be comprised of five members and two alternates appointed by the Spokane Tribal Business Council.

3.2 TERMS OF OFFICE

The members of the Commission shall be appointed for a term of three years. To ensure continuity, the Tribal Council shall appoint two members plus two alternates for a three-year term, two members for a two-year term and one for a one-year term. The Council shall fill each vacancy by appointing a new member or reinstating the member whose term is expiring. An alternate shall replace any member who is removed or for some other reason cannot fulfill his term. An alternate shall also sit in place of any member of the commission absent whose presence is required to create a quorum.

3.3 REMOVAL FROM OFFICE

A Commissioner may be removed by the Tribal Council only for good cause shown after notice and hearing by the Council.

3.4 VACANCY AND INTERIM APPOINTMENT

If a Commissioner shall die, resign, be incapacitated or be removed from office, a vacancy on the Commission shall be created automatically, and the unexpired term shall be filled by the Alternate and in **such a** case where 2 or more vacancies are created, Council members shall be appointed to serve the unexpired terms.

3.5 CHAIRPERSON

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

3.6 DUTIES OF THE COMMISSION

The Commission or its authorized representatives shall administer the Employment Rights Program of the Spokane Tribe of Indians in accordance with this Ordinance and shall adopt by-laws under which it shall operate internally.

3.7 POWERS OF THE COMMISSION

The Commission or its authorized representatives shall have the power:

- a) To make recommendations to the Tribal Council when hiring and firing Commission employees and to pay salaries pursuant to a salary schedule established by the Council.
- b) To establish rules and regulations governing all activities of the Commission and the Director consistent with this Ordinance and as approved by the Tribal Council.
- c) To make recommendations to the Tribal Council on amendments to the Ordinance after public participation and comments are reviewed by the Commission in accordance with the procedures established by the Commission.
- d) To expend funds appropriated by the Council for the Spokane Tribal Employment Rights Program and funds collected from employers as provided herein.
- e) To obtain funding from Federal, State or other sources to supplement Council appropriations.
- f) To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.
- g) To require employers to establish or participate in job training programs as the Commission or the Director deems

necessary to increase the pool of Indians eligible for employment on the Reservation.

- h) To establish and administer the Tribal Hiring Hall and require employers to use the Hiring Hall.
- i) To prohibit employers from using job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are bona fide and necessary occupational qualifications for employment. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the Reservation.
- j) To enter into agreements with the unions to insure union compliance with this Ordinance.
- k) To require employers to give preference to Tribal and other Indian-owned businesses in the award of contracts and subcontracts.
- l) To establish counseling programs to assist Indians in obtaining and retaining employment.
- m) To hold hearings and to subpoena witnesses and documents in accordance with this Ordinance.
- n) To require employers to submit reports and take all action deemed necessary by the Commission or the Director for fair and vigorous implementation of this Ordinance.
- o) To enter into cooperative agreements with Federal Employment Rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation as well as to enter into agreements with the Council for the same purposes.
- p) To take such other actions consistent with this Ordinance as are necessary to achieve the purpose and objectives of the Spokane Employment Rights Program established in this Ordinance.
- q) The Commission including any of its agents, employees or delegates, shall retain all rights and privileges of Sovereign Immunity of the Spokane Tribe of Indians.

3.8 DIRECTIVE TO THE COMMISSION

- a) In establishing and maintaining the numerical goals provided for in Paragraph (g) and the requirements for training programs as provided for in the first sentence of Section 4, Paragraph 4.4, The Commission, the Director and staff, whenever practical, shall consult with the affected employers so as to consider their input and recommendations.
- b) The Commission may hold such formal and informal meetings, and regulate the times and procedures thereof as it may deem necessary in order to carry out effectively its duties and powers under this Ordinance.
- c) The Commission shall attempt whenever possible to administer this Ordinance and execute its powers hereunder by a consensus approach. If a consensus cannot be achieved, the affirmative vote of at least three Commissioners shall be required to render effective any decision or action of the Commission, and the Chairperson shall be entitled to vote on any decision or action.
- d) All written agreements or plans, directives, orders, complaints, and appeals which the Commission is authorized or required to issue or file hereunder shall bear the signature of at least two Commissioners.

3.9 APPOINTMENT AND REMOVAL OF EMPLOYMENT RIGHTS DIRECTOR

The Council shall appoint the Director to serve on a full-time basis as the staff director for the Commission. The Director may be removed by the Council for good cause shown after notice and hearing by the Council. The Council may consider Commission recommendations concerning appointment and removal of the Director.

3.10 DUTIES AND POWERS OF THE DIRECTOR

- a) Subject to the supervision and direction of the Commission, the Director shall exercise all those duties and powers under this Ordinance which may be delegated to the Director by the Commission, provided, however that any decision which the Commission is authorized or required to make hereunder, including the issuance or filing of the written materials listed in Section 3.8 hereof, shall not be so delegated. Routine or administrative correspondence not involving any decision making powers of the Commission may be delegated by it to the Director.
- b) As soon as practicable after their appointment, the initial Commissioners shall define by rule or regulation the specific powers and duties hereunder which the Director shall exercise. Pending the appointment of the initial

Commissioners, the Council may act as it deems necessary to exercise the duties and powers conferred by this Ordinance upon the Commission, including delegation of interim authority by the Council to the Director.

SECTION 4.0 SPOKANE EMPLOYMENT RIGHTS PROGRAM

4.1 COVERAGE AND SCOPE

- a) All employers are required to give preference to local Indians in hiring, promotion, training and all other aspects of employment, contracting or subcontracting, must comply with this ordinance and the Rules, Regulations and orders of the Commission. The foregoing shall apply to all facilities of an employer including a subcontractor located or engaged in work on the Reservation.
- b) The foregoing requirements shall apply only to an employer located or engaged in work while on the Reservation. When an employer has previously agreed in a contract, lease or other document to give preference to Indians, this Ordinance and authorized Commission Rules, Regulations, and directives shall define the specific minimum obligations of the employer pursuant to such written agreement.

4.2 CONTRACTORS AND SUBCONTRACTORS

The Indian Preference requirements contained in this Ordinance shall be binding on all contractors and sub-contractors of employers, regardless of tier, and shall be deemed part of all contract and sub-contract specifications. The employer shall have the initial and primary responsibility for insuring all contractors and sub-contractors comply with these requirements. The employer as well as any of his contractors or sub-contractors shall be subject to penalties provided herein for any violation of this Ordinance if the contractor or sub-contractor fails to comply

4.3 MINIMUM NUMERICAL GOALS AND TIMETABLES FOR INDIAN EMPLOYEMENT

- a) The Commission or the Director may establish the minimum number of Indians each employer must employ on his work force during any year that he or any of his employees are engaged in work on the Reservation. Numerical goals may be set for each craft, skill, job classification, etc., used by the employer and shall include, but not be limited to administrative 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.

- b) For both new and existing employers, the goal shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in number of Indians available or changes in employer hiring plans.
- c) Each employer shall submit a monthly report to the Director indicating the number of Indians in his work force, how close he is to meeting his goals, all persons hired or fired during the last month, the job positions involved, and other information required by the Commission.

4.4 TRAINING

Employers may be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. The Commission shall set the ratio of Indian trainees to fully qualified workers after consultation with the Director and employers.

4.5 TRAINING ADMINISTRATIVE FEE

Every building trade's employer that is a prime contractor on the Reservation of \$10,000.00 or more shall pay a training fee of 3% (three percent) of the total contract dollar amount. This revenue shall be used for Journeyman upgrade training and/or Apprenticeship Trainee.

4.6 JOB QUALIFICATION AND PERSONNEL REQUIREMENTS

Employers are prohibited from using job qualification criteria or personnel requirements which bar Indians from employment unless such criteria or requirements are required by business necessity and are bona fide occupational qualifications for employment as listed in the Dictionary of Occupational Titles established by the Commission, or unless they are unemployable for other valid reasons.

- a) Employers who employ more than two employees may designate key personnel who are regular, permanent employees in a supervisory or other key position. Only the first and thereafter every seventh employee may be employed as key personnel and core crew by an employer.
- b) At no time shall core crew and/or key personnel displace Indian Preference Employee(s) and/or potential Indian Preference Employee(s) by performing work outside their normal classification.

4.7 TRIBAL HIRING HALL

The Commission will cause to be established and administer a Tribal Hiring Hall to assist the Commission and employers in placing Indians in job positions. An employer may recruit and hire workers from whatever process he chooses, as long as he

complies with this Ordinance, and the Federal Equal opportunity Act, in hiring practices, Indian job preference regulations and agreements pertaining to his operation.

4.8 COUNSEILNG AND SUPPORT PROGRAMS

The Commission shall cause to be established counseling and other support programs to assist Indians to obtain and retain employment:

- a) Every employer shall be required to cooperate with the Commission or the Director regarding such counseling and support programs.
- b) Every employer must provide opportunity to any employee to enter any such program for counseling prior to termination unless the employee was terminated for good cause as defined herein.
- c) The Commission is authorized to develop a Local Indian Business Support Program to promote, facilitate and encourage the success of local Indian owned Businesses. It is authorized to develop and set criteria allowing for the reimbursement of certain administrative fees to said businesses with contracts of \$200,000 or less. The Commission shall develop and adhere to specific standards providing for equal treatment of those seeking such reimbursements.

4.9 LAYOFFS AND/OR TERMINATIONS

- a) In making any layoffs and reductions in force, all employers shall maintain required ratios of Indian Preference Employees. Furthermore, no Employer shall terminate or layoff any Indian Preference person who is employed pursuant to this Ordinance without good cause for such termination. Good cause for 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 other employees in an unsafe position in the course of employment."
- b) The employer in determining layoffs shall apply the layoffs in a reasonable and fair fashion. Furthermore layoffs should only occur when there is not adequate work to keep all employees on the job or when the employer has a cash flow shortage necessitating reduction in the work force.

4.10 PROMOTION

Every employer shall in accordance with required ratios give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities.

4.11 SUMMER STUDENTS

Employers shall give Indian students preferential consideration for summer student employment. The Employer shall make every effort to promote after-school, summer and vacation employment for Indian students.

4.12 INDIAN PREFERENCE REQUIREMENTS IN AWARDING PRIME CONTRACTS AND SUB-CONTRACTS

a) Employers shall give preference in the award of contracts to tribally owned and "Local Indian-owned" businesses. These rules and regulations apply to all construction, forestry and mining that will take place on or near the Spokane Indian Reservation. A contract or sub-contract taking place "on or near the Spokane Indian Reservation" means 50% of the unfinished products or by-products comes from within Reservation boundaries. The Indian contract preference requirements set out herein shall apply to:

- i. All contracts and sub-contracts which are not Direct Federal or Federally funded contracts; and
- ii. All sub-contracts or Direct Federal contracts which are for the benefit of Indians and which are covered by Section 7(b) of the Indian Self Determination Act, P.L. 93-638, 25 U.S.C. 45(e) (b).

In granting such preference, the following order shall be adhered to:

- i. Local Indian-owned Businesses.
 - ii. Other Indian-owned Businesses.
- b) Any Business or Indian-owned Business may bid as a supplier, prime contractor or subcontractor on the Reservation, but shall not submit bids for a sub-contract or to be supplier if bidding on the prime contract and shall sign a non-collusive statement for each contract.
- c) The Tribal employment Rights Office shall maintain a list of tribally-owned, locally Indian-owned and Indian-owned businesses which shall be supplied to the employers for their use. On all contracts of \$75,000 or over, employers shall provide an approved INDIAN CONTRACTING UTILIZATION PLAN which

shall conform to the Indian Preference Contracting/sub-contracting rules and regulations contained in this Ordinance and must provide documentation to:

- i. How Indian and local Indian Preference Bids were solicited; and
 - ii. Who was awarded the contract; and
 - iii. Why each contractor was awarded said contract.
- d) On all contracts \$75,000 or over, no employer may commence work on the Spokane Reservation until it has submitted a Commission-approved INDIAN CONTRACTING UTILIZATION PLAN setting forth how the employer intends to meet the requirements when awarding prime contracts and sub-contracts.
- e) Employers on or near the Spokane Reservation shall comply with these requirements when awarding prime contracts and sub-contracts.
- i. If the entity asking for bids has reason to believe that two or more qualified local Indian firms will bid, then the Invitation for bids shall be restricted to qualified local Indian-owned enterprises and Indian Organization.
 - ii. If there are less than two local Indian bidders then, the Invitation for Bids shall be open competition to Indian and non-Indian firms alike.
- f) In the case of (i) above, the Lowest Qualified Local Indian Preference bidder shall be awarded the Contract or Sub-contract, if within budgetary limits of the project or within the fixed percentage as outlined below. In the case of (ii) above, the Lowest Indian bidder shall be awarded if:
- i. The lowest responsible Indian Preference bidder is within budgetary limits established for the specific project or component of the project, and;
 - ii. The lowest responsible Indian Preference bidder is not more than a fixed percentage higher than the total bid price of the lowest responsive bid from any qualified bidder. The fixed percentage is determined as follows:

<u>When the lowest responsive bid is</u> <u>At LEAST</u>	<u>but LESS than</u>	<u>PERCENTAGE OF BID OR</u> <u>DOLLAR AMOUNT, WHICH</u> <u>EVER IS LOWEST</u>
\$000,000	\$100,000	10% or \$ 9,000.
\$100,000	\$200,000	9% or \$16,000.
\$200,000	\$300,000	8% or \$21,000.
\$300,000	\$400,000	7% or \$24,000.
\$400,000	\$500,000	6% or \$25,000.
\$500,000	\$1 million	5% or \$40,000.
\$1 million	\$2 million	4% or \$60,000.
\$2 million	\$4 million	3% or \$80,000.
\$4 million	\$7 million	2% or \$105,000.
\$7 million or more responsive responsive		1% of lowest bid, w/no \$ amt

g) Any contractor or sub-contractor failing to provide an Indian Contracting Utilization Plan shall be deemed a violation of this Ordinance and subject to the sanctions as provided for in Section 7.

4.13 BURDEN OR PROOF

In any hearing before the Commission where the issue is employer compliance with any of the requirements or provisions of the foregoing subsections of Section 4, the burden of proof shall be on the employer to show compliance within said subsection.

SECTION 5.0 COMPLIANCE PLANS

Every employer of two or more employees and every contractor or sub-contractor obtaining a contract or subcontract of \$10,000 or more dollars on the Reservation shall establish and abide by a hiring and employment Compliance Plan approved by the Director. Such plan shall set forth how the employer will meet the goal of 100% Indian employment in each job classification and other obligations set out herein. Final

approval of the commission shall be obtained by the Director within 30 days of his initial approval.

No employer as identified above may commence work unless it has submitted a Commission-approved Compliance Plan setting forth how the employer intends to meet the Compliance Provision hereunder.

5.1 COMPLIANCE PLAN FOR NEW EMPLOYERS

- a) Employers who shall locate or engage in work on-Reservation after the effective date of this Ordinance, Compliance plans shall establish hiring and employment goals for the entire work force of that employer.
- b) Each new employer shall meet with the Director as soon as possible prior to actually beginning work and shall furnish the Director with a precise list of the number and kinds of employees he expects to employ. They shall conclude a Compliance Plan after considering any special factors or circumstances the employer wishes to present.
- c) Every plan shall establish the goal of 100% Indian employment in each job classification if:
 - i. Qualified Indians are reasonably available when the Plan is adopted to fill all job positions anticipated by the new employer in the job classification; or
 - ii. Qualified Indians can reasonably be expected to become available from training programs or other sources to fill all such positions during the one year period of the Plan.
- d) If qualified Indians are not available, then Plans may provide for goals of less than 100% Indian employment in affected job classifications.

5.2 COMPLIANCE PLANS FOR EXISTING EMPLOYERS

- a) Employers who have located or engaged in work on-Reservation prior to the effective date of this Ordinance, Compliance Plans shall establish hiring and employment goals for new employment goals for new employees expected to be employed during the one-year period of any Plan.
- b) After due notice, each existing employer shall meet with the Director, as required, and shall furnish a reasonably specific list of the number and kinds of new employees he expects to employ in the ensuing year. The Director and the employer shall conclude a Compliance Plan after considering

any special factors or circumstances the employer wishes to present.

- c) Compliance Plans for existing employers shall establish the goal of 100% Indian employment for new hiring in each job classification if qualified Indians can reasonably be expected to become available to fill such new positions during the duration of the Plan. If qualified Indians are not thus available, then Plans may provide for goals of less than 100% Indian employment in affected job classifications.

5.3 REVISION OF COMPLIANCE PLANS; MONTHLY EMPLOYER REPORTS

a) Each employer who has agreed to a Compliance Plan shall submit a monthly report to the Director, or other report as otherwise directed by the Commission, on a form provided indicating:

- i. The number of Indians in his work force;
- ii. How close he is to meeting his goals;
- iii. The number of persons hired or terminated during the month and affected job positions; and
- iv. Any other information specified by the Commission and reasonably necessary in monitoring the employer's efforts to abide by the Compliance Plan.

b) The Director shall meet at least annually with each new and existing employer to review the goals of every Compliance Plan. Any Plan may be revised at any time, after meetings between the Director and employer, when necessary to reflect changes in the number of qualified Indians available or changes in employer hiring practices.

5.4 FINAL APPROVAL OF COMPLIANCE PLANS

Each Compliance Plan or revision thereof shall be approved in writing by at least two members of the Commission prior to said Plan being effective.

5.5 NON-COMPLIANCE OR VIOLATIONS

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

5.6 COMPLIANCE BY UNIONS

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

a) Contents of Union Agreements

Every union agreement with an employer must be filed with the Director and must provide:

i. Indian Preference

The union will give preference to Indians in job referrals regardless of which union referral list they are on.

ii. Cooperation with the Commission

The union will cooperate with the Director in all aspects and assist in the compliance and enforcement of this ordinance and related regulations and agreements.

iii. Registration

The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.

iv. Training Programs

The union will establish journeyman upgrade and advance apprenticeship programs.

v. Temporary Work Permits

The union will grant temporary work permits to Indians who do not wish to join the union.

b) Memorandum of Agreement

The Director will provide a memorandum of agreement for use by all unions who have collective bargaining agreements with any employer.

c) Recognition of Unions

Nothing herein or any activity by the Commission or the Director authorized hereby shall constitute official Tribal recognition of any union or Tribal endorsement of any union activities on the Reservation.

d) Burden of Proof

In any hearing before the Commission where the issue is compliance by an employer with any of the requirements and provisions of the foregoing subsections of Section 5, the burden of proof shall be on the employer rather than on the employee or other complainant to show compliance with said provisions.

SECTION 6.0 COMPLAINTS AND HEARINGS

6.1 NOTICE

If a hearing is requested by the Commission, the Director, an individual, an employer, or a union pursuant to this section, the Commission shall cause a written notice of hearing to be served upon all concerned parties stating the nature of the hearing and the evidence to be presented. The notice shall advise such parties of the violation, their required presence or the presence of a representative on their behalf, their right to be present at the hearing, to present testimony of witnesses or other evidence, and to be advised by counsel at their own expense.

6.2 COMPLAINTS

a) Complaints Regarding Violations

Any individual, employer, entity or organization that believes any covered employer or its agents has violated or is in violation of this Ordinance or any Rules or Regulations issued pursuant to it may file a complaint with the Director, a Commissioner, or the Commission's authorized agent. The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation. The Director shall investigate every complaint filed. If upon investigation, he has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of Section 7. Within 20 days after receipt of the complaint, and on a regular basis thereafter, the Director shall provide the complaining party with a written report on the status of the complaint.

b) Time and Place of Filing Complaints

Complaints filed under subsection (a) above shall be filed by the charging party with the Commission or its authorized agent within seven working days after the alleged unlawful violation(s) occurred or seven working days after the charging party learned of the alleged unlawful violation(s), but no complaint shall be accepted after 180 days from the date of alleged violation or occurrence. The complaint 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 10 days thereafter.

c) Complaints Regarding Administrative Acts of TERO Director

Any individual employer, employee or other party may challenge any action of the Commission or the Director by filing a written complaint with the Director, the Commission, or its authorized agent within 5 days from said action and

requesting a hearing no later than 10 days from the date said complaint was filed

d) Service of Complaints

Service may be made by registered mail or hand delivery with receipt.

6.3 INVESTIGATIONS

On its own initiative or pursuant to a complaint, the Commission or Director shall make such public or private investigation within the Spokane Reservation as the Director or the Commission deems appropriate and necessary to determine whether any provision of this Ordinance or any rules, regulations or orders hereunder have been violated.

a) The Director or his duly authorized delegate may enter, during business hours, the place of business or employment of any employer he deems necessary to monitor compliance with the requirements of this Ordinance or any Rule or orders hereunder.

b) The Director or his delegate shall bear and show official identification adequate to identify them as the authorized agents of the Commission to make such investigation.

6.4 HEARING PROCEDURE

Hearing shall be governed by the following rules of procedure:

a) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.

b) The Commission may have the advice and assistance of counsel provided by the Tribe.

c) The chairperson of the Commission, or the Vice-Chairperson, shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.

d) The hearing may be adjourned, postponed and continued at the discretion of the Commission.

e) At the final close of the hearing, the Commission may take immediate action or take the matter under advisement.

f) The Commission shall notify all parties in writing 30 days after the hearing of its decision in the matter.

- g) If any party fails to appear for a hearing then it may be ruled as forfeiture by default.

6.5 POWER TO REQUIRE TESTIMONY AND PRODUCTION OF RECORDS

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

6.6 PRE-HEARING PROCEDURES

a) Review of TERO Files

The Respondent (the employer or entity against whom a charge has been filed) shall have the right to review the case file of the Director by scheduling an appointment with him for that purpose during regular working hours at any point after receiving notice of a hearing. The Director shall remove any portion of the file to protect what is deemed confidential.

b) List of Witnesses

Ten days prior to the hearing (or as soon as possible if the hearing is to be held within 10 days after notice), the Respondent and the Director shall submit to the Commission Chairperson a list of witnesses each intends to call at the hearing, the approximate length of their testimony, and the general substance of said testimony. It shall indicate any witnesses that must be subpoenaed. The Commission shall then cause necessary subpoenas to be issued.

c) Expert Witnesses

Any party who intends to present testimony of an expert on their behalf shall within 15 days of hearing provide the Commission and the opposing party the name, qualifications, and the substance of said expert testimony. Failure to do so shall disqualify such testimony from hearing.

d) Pre-hearing Interview of Witnesses

The Respondent and the Director shall have the right to interview the witnesses of the other party prior to hearing. The director's witnesses shall be interviewed in the presence of the Director or his delegate. The Respondent's witness shall be interviewed under such reasonable conditions as are established by the Respondent. Either party may appeal to the Chairperson of the Commission if cooperation is not

forthcoming on this matter. The Chairperson is empowered to require such steps as are necessary to resolve the problem.

e) Production of Documents and Things

The Parties shall provide each other with a list of documents, papers and tangible evidence intended to be introduced at hearing, including a statement regarding the substance and relevance of each. Said documents, papers and tangible evidence shall be made available to one another forthwith, no later than 10 days prior to the hearing or within two days if the hearing date is noticed less than 10 days before the hearing. Failure to produce such list and the documents listed within the time prescribed may render said documents inadmissible at hearing on motion of opposing party in the Commission discretion.

f) Postponements

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

6.7 CONDUCT OF THE HEARING

a) Presiding Official

As presiding official, the Chairperson or a designated Commissioner of the Tribal Employment Rights Commission will control the proceedings. He or she will take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Parties will abide by the presiding official's rulings. The presiding official has the authority to:

- i. Administer oaths or affirmations;
- ii. Regulate the course of the hearing;
- iii. Rule on offers of proof;
- iv. Limit the number of witnesses when testimony would be unduly repetitious; and
- v. Exclude any person from the hearing for conduct or misbehavior that obstructs the hearing.

b) Director

The director may represent the Tribal Employment Rights Commission on all charges filed by it, even if the charge was initiated by a complaint filed by a private individual.

- c) Respondent
The Respondent shall be present for the entire hearing and he or his representative (other than an attorney) shall represent him during the proceeding.
- d) Attorneys
Either party may have an attorney present as an advisor. However, the attorney may not make any presentations, cross-examine witnesses or address the Commission.
- e) Recording of the Hearing
All hearings shall be recorded in full and the Commission shall retain the tape(s) for no less than one year after the hearing. The Respondent shall also be permitted to tape the hearing upon request.
- f) Prohibition Against Reprisals
All parties shall have a right to testify on their own behalf, without fear of reprisal.
- g) Starting Time
The hearing shall be opened promptly at the time specified by the Commission.
- h) Opening Statements
Both parties will be afforded the opportunity to present opening statements with respect to what they intend to prove at the hearing.
- i) Order of Proceeding
The complainant or his representative will present his case first.
- j) Examination and Cross Examination of Witnesses
Both parties may subpoena and examine friendly and hostile witnesses. Both parties may examine and cross examine witnesses. However, no harassment or efforts to intimidate witnesses shall be permitted. The commission members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.
- k) Irrelevant Testimony
Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Commission shall prohibit any testimony that it deems clearly irrelevant in order to keep control of the hearing.

1) Written Testimony

Evidence or exhibits may be presented. Written testimony will be admitted into evidence during the hearing only when a witness cannot appear in person. When a party wishes to use the written testimony of a witness who cannot appear, the party must submit, in advance of the hearing, a written explanation for the nonappearance of the witness to the Tribal Employment Rights Commission. If the Commission is satisfied with the explanation, the party will obtain the testimony by means of deposition. When, for reasons satisfactory to the Tribal Employment Rights Commission, a deposition cannot be used, an affidavit or a sworn statement from the witness may be used. A signed but unsworn, statement will not be admitted in evidence.

m) Closing Statement

Closing statements for each party will be permitted. The Complainant shall proceed first.

n) Audience

The hearing shall be open to the public. However, the Commission may remove any person who disrupts the hearing or behaves in an inappropriate manner.

6.8 THE DECISION

The decision shall be in writing and issued within 30 days after the hearing. The decision shall consist of the following parts, in the following order.

- a) The facts as found to be true by the Commission;
- b) The finding of violation or no violation on each charge along with the legal and factual basis for the finding;
- c) The orders and or sanctions imposed, if any;
- d) Information on rights to appeal;
- e) Information on the authority of the Commission to act if the party fails to comply with its orders or fails to appeal; and
- f) The injunctive or bonding requirements, if any, that the Commission will seek from the court pending the completion of the appeal if an appeal is filed.

6.9 THE RECORD

The Commission shall include in the record copies of all documents and descriptions of information used in arriving at the decision

and shall maintain and store said record for a period of one year from the date of the decision.

6.10 FINALITY OF THE DECISION - APPEAL

Decisions of the Commission shall be effective immediately and final when the time for filing a Notice of Appeal has expired. Appeal may be taken by an aggrieved party, to the Spokane Tribal Court as provided in Section 8.0.

The Commission's decision is final and shall be in writing. It shall be served on the charged party by registered mail or in person no later than 30 days after the close of the hearing. Should the party fail to comply immediately with the Commission's orders, the Commission shall request the Tribal Court, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this Ordinance, pending the party's appeal or expiration of the time for appeal.

SECTION 7.0 ENFORCEMENT AND PENALTIES FOR VIOLATIONS

7.1 ENFORCEMENT AND PENALTIES FOR VIOLATIONS

The Director is authorized to police and enforce this Ordinance and the Rules and Regulations of the Commission. He may issue citations to violators and initiate investigations for the purpose of settling disputed violations or formally enforcing this Ordinance and the Rules and Regulations of the Commission as follows:

a) Informal Settlement

If upon investigation initiated by the filing of a complaint pursuant to Section 6.2 hereof or on his own initiative, the Director has reason to believe a violation has occurred; the Director shall issue written notice of violation to the alleged violator. The Director and the employer shall seek to achieve an informal settlement of the alleged violation immediately. If no settlement can reasonably be made, he shall issue a formal Citation and Notice of Non-Compliance.

b) Formal Citation and Notice of Non-Compliance

The formal Citation and Notice of Non-Compliance shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. The violator shall be provided no more than five days to comply with said Notice of Non-Compliance or request in writing a hearing before the Commission on the matter. This time may be shortened in the Director's discretion should he feel irreparable harm will occur should the violation continue.

If the violator refuses to comply with requirements within the time imposed by the Director and has not requested a hearing before the Commission on the matter pursuant to Section 6.2(c) the Director may seek to impose one or more penalties below upon said violator. After being fully advised on the matter, the Commission may issue an order imposing such penalties it deems necessary.

Said order shall constitute a final decision of the Commission and can be appealed only pursuant to Section 8.0 below.

7.2 ENFORCEMENT

Any employer, contractor, sub-contractor or union who is found in violation of this Ordinance or Rules, Regulations or Orders of the Commission or the Director shall be subject to the following penalties for such violations:

7.3 PENALTIES

- a) Denial of right to commence or continue business inside the Reservation.
- b) Suspension of operations inside the Reservation.
- c) Payment of back pay and damages to compensate any injured party.
- d) An order to summarily remove employees hired in violation of this Ordinance or rules, regulations or orders of the Commission or the Director.
- e) Imposition of monetary civil penalties.
- f) Prohibition from engaging in future operations on the reservation.
- g) An order requiring changes in procedures and policies necessary to eliminate the violation(s).
- h) An order requiring employment, promotion and training of Indians injured by the violation.
- i) An order making any other provision deemed by the Commission necessary to alleviate, eliminate, and compensate for any violation(s).
- j) Imposition of a one-time 10% penalty fee on all amounts due on monetary judgments ordered by the Commission if not paid by the employer within 30 days of the initial judgment. If

said judgments are to paid within 60 days of the initial billing, the employer will be assessed a one-time 30% penalty fee in addition to the 10% referred to above. After 60 days, interest will accrue at the rate of 1% per month on any unpaid balance.

- k) If enforcement and collection action becomes necessary for any Commission order, the Respondent shall pay all attorney fees and costs incurred in such proceeding.

The maximum penalty which may be imposed is \$5000.00 for each violation. Each day during which a violation exists shall constitute a separate violation.

SECTION 8.0 APPEALS

8.1 RIGHT TO APPEAL

Any party to a hearing shall have the right to appeal any decision of the Commission to the Spokane Tribal Court by filing a Notice of Appeal with the said Court within 20 days of the Final Decision of the Commission.

8.2 SCOPE OF REVIEW

The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious, unsupported by the weight of the evidence or in excess of the authority of the commission.

8.3 METHOD OF APPEAL

The appeal shall be taken by serving a written Notice of Appeal with the Tribal Court, with a copy to the Director within 20 days after the date of the entry of the order. The Notice of Appeal shall:

- a) Set forth the order from which appeal is taken;
- b) Specify the grounds upon which reversal or modification or order is sought; and
- c) Be signed by appellant.

8.4 ABATEMENT OF ORDER ON APPEAL

Except as provided below, the order of the Commission shall not abate pending the outcome of the appeal in Tribal Court. If the order of the Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations or conditions to be contained therein.

8.5 BOND ON 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 that the Commission previously assessed against the party or some other amount to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Court.

8.6 SECURITY FOR COMPLIANCE

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

SECTION 9.0 CONFISCATION AND SALE

9.1 PURPOSE OF PROCEDURE

- a) If a party as has failed to pay monetary damages imposed on it or failed to otherwise comply with an order of the Commission within 21 days after its decision and no appeal has been filed, the Commission may petition the court to order the Tribal police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.
- b) Said petition shall be accompanied by a list of property belonging to the party which the Commission ahs reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Tribal police to confiscate and hold said property. The Tribal police shall deliver in person or by certified mail a notice to the party informing it of the confiscation and of it right to redeem said property by complying with the order outstanding against it.
- c) If, 30 days after confiscation, the party has not come into compliance, the Court shall order the police to sell said property, the proceeds of which shall be used to pay any outstanding fees and damages and to pay any costs incurred by the Court and police in the confiscation and sale.

- d) Any sale made pursuant hereto shall be made in a commercially reasonable manner.

SECTION 11.0 COMMISSION FUNDS/FEE WAIVERS

- a) All fees collected pursuant to this Chapter shall be deposited into the Tribe's General Fund.
- b) The Tribe reserves the right to waive any fees required under this Chapter for contracts under which the Tribe is a party.

SECTION 12.0 EMPLOYMENT ADMINISTRATIVE FEE

The Director shall assess employers on Employment Administrative Fee to provide revenue for the operation of the Tribal Employment Rights Office as follows:

12.1 CONTRACTS

Every prime contractor obtaining a contract of \$10,000.00 or more shall pay an employment Administrative Fee equal to 2% (two percent) of the total amount of each contract on the Reservation.

12.2 OTHER EMPLOYERS

Every employer, other than the contractor with 20 or more employees shall pay an Employment Administrative fee of 2% (two percent) of the Employers annual Payroll. This fee shall be paid in quarterly installments and shall not be required of Education, Health, or Nonprofit Employers.

12.3 ACCOUNTING

Employment Administrative Fees shall be paid to the Spokane Tribe of Indians and placed in a Special 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 process. Any employer or contractor who fails to pay the required Employment Administrative Fee shall be subject to sanctions provided for in Section 7 of this Ordinance.

SECTION 13.0 EQUAL EMPLOYMENT OPPORTUNITES

No employer shall discriminate against any Indian Preference employee of applicant for employment because of color, religious, sex, national origin or age and must assure advertisements include equal opportunity for access.

SECTION 14.0 WAGE AND HOUR STANDARDS

14.1 EQUAL PAY

Every employer shall be required to provide equal pay to Indian Preference Employees performing work similar or comparable to other employees.

14.2 RATE OF PAY

Every employer shall be required to pay whichever rate of pay is highest when Federal, State, or Tribal wage, rates and guidelines are used.

14.3 FEDERAL, STATE, AND LOCAL AGENCIES

The Commission or the Director may use Federal, State, or Tribal agencies in resolving a discrepancy concerning wages and hours worked.

Any employer who is in violation to the above paragraphs shall be subject to the penalties outlined in Section 7.

SECTION 15.0 HEALTH, WELFARE, AND PENSION FUND BENEFITS

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

a) The deduction is not otherwise prohibited by law;

b) It is either:

- i. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and

such consent is not a condition either for obtaining or for the continuation of employment, or

ii. Provided for in a bona fide collective bargaining agreement between the contractor or sub-contractor and representatives of its employees;

c) No profit or other benefit is otherwise obtained directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise;

d) The deduction shall serve the convenience and best interest of the employee.

SECTION 16.0 SAFETY, HEALTH AND ENVIRONMENTAL PROTECTION

Contracts of \$75,000 or greater, and any project or contract work the Commission determines may have an impact on the environment, shall provide a written plan with the Director providing for the protection of health and environment of employees and other persons and prevent damage to property, materials, equipment and the physical environment of the Spokane Indian Reservation. Any employer contractor who fails to provide such plan or failure to follow or carry out such plan shall be deemed a violation of this Ordinance and is subject to penalties outlined in Section 7.

SECTION 17.0 RETALIATION OR REPRISAL

Any harassment, discrimination or threat against any person or business which has filed a charge, opposed any unlawful employment practice, or testified, assisted or participated in any manner in an investigation, proceeding or hearing involving an unlawful employment practice is a violation of the Spokane Employment Rights Ordinance and said violation shall be subject to the penalties outlined in Section 7.

SECTION 18.0 QUALIFIED PRIME CONTRACTORS, SUBCONTRACTORS OR SPECIALTY CONTRACTOR LICENSES

All prime contractors, qualified subcontractors or specialty contractors in the building trades must acquire a Spokane Tribal Contractors license to operate within the boundaries of the Spokane Reservation. The applicant is required to provide proof of an operational record with a minimum of two successful consecutive years of contracting or subcontracting in a specified component or field or the applicant must provide proof that they are journeymen employees of a subcontracting firm and worked as a journeymen for a minimum of five years in a specified trade before a license may be issued. A fee of \$100.00* (One hundred Dollars) will be charged for said license. (*Subject to change without notice)

The application must be renewed on a yearly basis, expiring one year from the day said license was purchased, and failure to renew or obtain a Spokane Tribal Contractor License shall be a violation of this Ordinance and is subject to sanctions outlined in Section 7

SECTION 19.0 PUBLICATION OF ORDINANCE

The Commission or the Director shall post a public notice for all amendments to this Ordinance. It shall be the employers' obligation to make a written request for a copy of said Ordinance or amendments. 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 Ordinance and all rules, regulations and orders of the Commission.

19.1 LICENSING AND BUSINESS PERMITS

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 Ordinance and all rules, regulations and orders of the Commission.

Copies of the Ordinance are available for Tribal members from the TERO Office upon written request.

SECTION 20.0 EFFECTIVE DATE

This Ordinance shall be effective from the date of its approval by the Spokane Tribal Business Council.

SECTION 21.0 RULES AND REGULATIONS

The Commission may from time to time adopt detailed rules, regulations, policies and guidelines consistent with and necessary for full implementation of this Ordinance.

SECTION 22.0 SEVERABILITY

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