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TRIBAL EMPLOYMENT RIGHTS ORDINANCE

Gros Ventre and Assiniboine Tribes of Fort Belknap

SECTION 1. DECLARATION OF POLICY.

The Gros Ventre and Assiniboine Tribes of Fort Belknap declare that it is the public policy of these tribes to provide for the economic security and employment of its members and all Indians living within this Reservation to the maximum extent possible. Economic insecurity and unemployment are serious impediment to the health, morale and welfare of the people of the Gros Ventre and Assiniboine Tribes of Fort Belknap in particular, as well as all Indians in general. Private employment on the Fort Belknap Indian Reservation is an important resource for Indian people. Indian people and members of the Gros Ventre and Assiniboine Tribes of Fort Belknap Indian Reservation, they have unique and special employment rights. Further, they are entitled to the protection of the laws of the Federal Government has adopted to combat employment discrimination on or near Indian reservations.

The regulations found in this ordinance are specifically found to be of an urgent and critically important nature to the health and welfare of the residents of the Fort Belknap Indian Reservation, inasmuch as unemployment and underemployment within the boundaries of the Fort Belknap Indian Reservation have been at or near 75% for over a decade, said level being in excess of the (10) times the national average during this time period. This pervasive unemployment and underemployment has directly contributed to serious social problems and a lower quality of life for TERO those residing on or near the Reservation.

The Gros Ventre and Assiniboine Tribes of Fort Belknap by adopt this ordinance and through the Fort Belknap Community Council, under their inherent, sovereign, and political powers, for the purpose of promulgating rules governing employment on or near the Fort Belknap Indian Reservation and for the purpose of establishing a Tribal Employment Rights Office in order to use and enforce the laws governing employment on or near the Fort Belknap Indian Reservation and protecting the rights of all Indians. It is further the purpose of this Ordinance to increase employment of Gros Ventre and Assiniboine Indians and other Indians on or near the Fort Belknap Indian Reservation, and to eradicate employment discrimination against Indians on or near the Fort Belknap Indian Reservation. Finally, in effecting these purposes, the Fort Belknap Tribal Employment Rights Office is hereby reaffirmed as the Reservation office coordinating the placement of available workers with jobs on or near the Reservation.

SECTION 2. DEFINITIONS.

- A. “Assiniboine” means an enrolled member of the Assiniboine Tribe of the Fort Belknap Indian Reservation, as certified by the official roles of the Tribe, as maintained by the Bureau of Indian Affairs, or the Fort Belknap Indian Community.
- B. “Commercial Enterprise” means any activity of any government, including the Federal State, Tribal, or Local governments (including any activity of the Gros Ventre and Assiniboine Tribes of Fort Belknap) that is not a traditional governmental function as defined by the Internal Revues Code of 1986, or as that Act may be amended.

- C.** “Covered Employer” means any employer performing work within the exterior boundaries of the Fort Belknap Indian Reservation for eight (8) hours or more in any one-week calendar week. Any employer whose principal business activity is farming or ranching shall be a covered employer unless given a specific exemption by the Director. The Fort Belknap Community Council, its sub entities and commercial enterprises shall be covered employers.
- D.** “Covered Entity” means any entity awarding or letting a contract or subcontract to provide supplies, services, labor and materials in which a significant part of the work to be preformed will be preformed on the Fort Belknap Indian Reservation or a significant part of the supplies and materials to be furnished will be furnished to a site on the Fort Belknap Indian Reservation. For this purpose, significant mean more than an incidental or minimal portion of any project but can be less than a majority of the work or materials or supplies on any one project.
- E.** “Director” means the director of the Fort Belknap Tribal Employments Rights Office appointed by the Fort Belknap Community Council or its designated hiring authority.
- F.** “EEOC” shall mean the Equal Employment Opportunity Commission of the United States of America.
- G.** “Employee” means any person employed for wages or other remuneration. No immediate relative within the 2nd degree of consanguinity of the employer or spouses of any such immediate relative shall be included within coverage of this Ordinance if an employer whose principal business activity is farming or ranching employs such person.
- H.** “Employer” means any entity, company, contractor, subcontractor, corporation, or other business entity doing business on the Fort Belknap Reservation that employs, for wages or other remuneration, two (2) or more employees.
- I.** “Entity” means any person, partnership, corporation, joint venture, government, commercial enterprise, or any other natural or artificial person, organization, or association or person or entities. This term is intended to be as broad and as all contract activities within the Tribe’s jurisdiction.
- J.** “Fort Belknap Certified Entity” mean an entity owned, under this Ordinance, by a Gros Ventre or Assiniboine member from Fort Belknap, and certified pursuant to this Ordinance.
- K.** “Fort Belknap Indian” means any person enrolled as a member of the Gros Ventre and/or Assiniboine Tribes of Fort Belknap.
- L.** “Gros Ventre” means an enrolled member of the Gros Ventre Tribe of the Fort Belknap Indian Reservation, as certified by the official roles of the Tribe, as maintained by the Bureau of Indian Affairs, or the Fort Belknap Indian Community.

- M. “Indian” means any enrolled member of a federally recognized Tribe, as evidenced by certification provided by the Bureau of Indian Affairs or the Tribes of such individual.
- N. “Indian Certified Entity” means an entity owned, under this Ordinance, by an Indian, certified pursuant to this Ordinance.
- O. “Local Indian Resident Certified Entity” means an entity owned, under this Ordinance, by a local Indian Resident, and certified pursuant to this Ordinance.
- P. “Local Indian Resident” means any Indian who resides within the exterior boundaries of the Fort Belknap Reservation, provided that the definition may be expanded to include those residing near the Fort Belknap Reservation by a properly adopted regulation of the Council. Any such regulation shall define the term “near” as specifically as may be appropriate under the circumstances. No person shall be a local Indian resident unless they have lived on the Fort Belknap Reservation (or within the areas near the Fort Belknap Reservation as defined in a properly promulgated regulation) for at least six (6) months prior to their person’s employment or certification to which this ordinance shall apply.
- Q. “President” means the President of the Fort Belknap Community Council, as elected by the people of the Gros Ventre and Assiniboine Tribes of Fort Belknap.
- R. “Public Contractor” within the meaning of this Ordinance, includes any person who submits a proposal to or enters into a contract for performing construction work on the Fort Belknap Reservation when the contract cost, value, or price thereof exceeds the sum of \$1,000.00, including subcontractors undertaking to perform work within their field of contracting and within the limits of their class of license covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of \$1,000.00.
- S. “Reservation” shall mean the Fort Belknap Indian Reservation and include all land, Indian and non-Indian, within the exterior boundaries of the Fort Belknap Indian Reservation or trust or other land under jurisdiction of the Gros Ventre and Assiniboine Tribes of Fort Belknap.
- T. “TERO” means the Fort Belknap Tribal Employment Rights Office, as created by this Ordinance.
- U. “TERO Commission” means the Commission set forth in Section 8.

SECTION 3. INDIAN PREFERENCE IN EMPLOYMENT.

- A. **Generally.** All employers or entities doing business within the territorial jurisdiction of the Fort Belknap Community Council, or engaged in any contract with the Fort Belknap Community Council, or its sub agencies or enterprises shall:

1. **Employment Preference.** Give preference in employment, hiring promotion, training, and all other aspects of employment first to qualified Gros Ventres and Assiniboines, as defined herein, second preference to qualified Indians in general, third to qualified descendants of enrolled members of Gros Ventre and Assiniboine Tribes of Fort Belknap, and fourth preference to those qualified individuals married to enrolled members of the Gros Ventre and Assiniboine Tribes of Fort Belknap. Preference in employment shall include specific Fort Belknap affirmative action plans and timetables for all phases of employment to achieve the Tribal goal of employing Gros Ventre and Assiniboines in job classifications, including supervisor and management positions.

2. **Affirmative Action Plan.** Within ninety (90) days after the later of the effective date of this section or the date on which an employer commences business within the territorial jurisdiction of the Fort Belknap Community Council, the employer shall file with TERO a written Fort Belknap affirmative action plan which complies with this Section and other provisions of the Ordinance. At a minimum such plan shall list the type and quantity of work expected, the type of qualifications needed to fulfill those duties needed, some assessment of available work force, the costs associated with training, efforts made to solicit qualified Indian workers, ongoing effort to find qualified Indian workers, the rate of pay considered prevailing wage, the costs/consequences of delaying work to find Indian workers or to train workers, and proposals to maximize Indian preference employment. In any case where a labor organization represents employees of the employer, the plan shall be jointly filed by the employer and labor organization. Any such associated labor organization shall have obligations under this Section equivalent to those of the employer as to employees represented by such organization. Failure to file such a plan within the prescribed time limit, submission of a plan, which does not comply, with the terms of a conforming plan shall constitute a violation of the Ordinance. In the event of a required joint plan by an employer and associated labor organization, only the non-complying party shall be deemed in violation of the Ordinance, as long as the other party has demonstrated a willingness and commitment to comply with the Ordinance.

3. **TERO Assistance.** Subject to the availability of adequate resources, TERO shall provide reasonable guidance and assistance to employers and associated labor organizations in connection with the development and implementation of a Fort Belknap affirmative action plan. The TERO Director shall either approve or disapprove any plan, in whole or in part, as presented. If an approved plan is in place, no charge shall be filed hereunder with respect to alleged unlawful provisions or omissions in the plan, except upon thirty (30) days prior written notice to the employer and any associated labor organization, to enable voluntary correction of any stated deficiencies in such plan. No charge shall be filed against an employer and/or any associated labor organization for submitting a non-conforming plan, except upon thirty (30) days prior notice by TERO identifying deficiencies in the plan which require correction.

B. Specific Requirements for Gros Ventre and/or Assiniboine Preference.

1. **Minimum Numerical Goals and Timetables for Indian Employment.**

a. Establishing Employment Targets. The Commission will establish the minimum target numbers of preference Indians employers shall employ during any year that he/she/it are located or engaged in work on the Reservation, based on reported job opportunities. Numerical goals shall be set for each craft, skill area, job classification, etc. used by the employer and shall include, but limited to, administrative, supervisory and professional categories. The goals shall be expressed in term of man hours of Indian employment as a percentage of the total man hours of the employer's work force in job classification involved. Numerical goals shall be based upon surveys of the available Indian employers. The goals shall be established for the entire work force.

b. Meeting with TERO/Employers. Each employer shall meet with the Director or the Commission prior to commencing work and shall furnish the TERO with a precise list of the number and kinds of employees he expects to employ. The Commission shall then set specific goals and timetables for the employer after considering any special factors or circumstances the employer wishes to present. The employer shall incorporate the goals into his affirmative action plan. Any employer who fails to provide such written statement will not be permitted to commence work on the reservation.

c. Existing Employers. For an existing employer on the Reservation, once the process set forth in part b. above has been accomplished, the goals shall be a percentage of the new employees expected to be employed during the ensuing year by the employer. The employer shall incorporate the goals into his affirmative action plan for complying with this ordinance and shall agree in writing to meet those goals.

d. Annual Review of Targets. For both new and existing employers, the goals shall be reviewed by the Director/Commission at least annually and shall be

revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans.

e. Monthly Reporting. Each employer shall submit a monthly report to the Director/Commission on a form approved by the Commission, indicating the number of Indians in his work force, how close he is to meeting his goals, all persons hired or fired during the month, the job positions involved, and other information required by the Commission. Each employer shall meet his minimum goals for the employment of Indians.

f. Complaints for Non-Compliance. Whenever the Director has reason to believe that an employer is violating this ordinance by not meeting his goals, he/she may file a complaint and notify the employer of the alleged violation pursuant to the notification processes of complaints set forth in this ordinance. The Director shall bear the initial burden of proving that an employer has failed or is failing to meet his goals. Upon a prima facie showing of such failure, the employer shall then bear the burden of proving that he has met or is meeting his goals or has made a good faith effort to meet his goals. It shall not be an excuse for such failure that the union with which the employer has a collective bargaining agreement providing for referral failed to refer Indians.

2. **Statements of Preference in Advertisements.** All employees shall include and specify a Gros Ventre and/or Assiniboine employment preference policy statement in all job announcements and advertisements and employer policies covered by this Ordinance.
3. **TERO Notices.** All employees shall post in a conspicuous place on its premises for its employees and applicants a Gros Ventre and Assiniboine preference policy notice prepared by TERO.
4. **Seniority Systems.** Any seniority system of an employer shall be subject to this Ordinance and all other labor laws of the Fort Belknap Community Council. Such a seniority system shall not operate to defeat nor prevent the application of the Ordinance; provided, however, that nothing in this Ordinance shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Gros Ventre and/or Assiniboine or non-Gros Ventre and/or non-Assiniboine.
5. **Application of Preferences to Employment.** The Fort Belknap Community Council when contracting with the federal government or one of its entities, state government or one of its entities, other entities or employers, shall include provisions for preference in all phases of employment as provided herein. When contracting with any federal agency, the term local Indian preference may be substituted for Gros Ventre and/or Assiniboine preference for federal purposes; provided that any such voluntary substitution shall not be constructed as an

implicit or express waiver of any provision of the Ordinance nor a concession by the Fort Belknap Community Council that this Ordinance is not fully applicable to the federal contract as a matter of law.

6. **Use of TERO Referrals.** All employees shall utilize Fort Belknap Community Council TERO employment recruitment and referrals; provided, however, that employers do not have the foregoing obligations in the event a Gros Ventre or Assiniboine is selected for the employment opportunity who is current employee of the employer.
7. **Requirements of Advertisement.** All employers shall advertise and announce job vacancies in at least one newspaper and radio station serving the Fort Belknap Community; provided, however, that employers do not have the foregoing obligations in the event a Gros Ventre or Assiniboine is selected for the employment opportunity who is a current employee of the employer.
8. **Discrimination Prohibited.** All employers shall use non-discriminator job qualifications and selection criteria in employment.
9. **Just Cause for Disciplinary Proceedings.** All employers are prohibited from penalizing, disciplining, discharging or taking any adverse action against any Gros Ventre or Assiniboine employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases.
10. **Work Environment.** All employers shall maintain a safe and clean working environment and provide employment conditions, which are free of prejudice, intimidation and harassment.
11. **Training.** Training shall be an integral part of the specific affirmative action plans or activities for Fort Belknap preference in employment.
12. **Cross-Cultural Program Requirements.** An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under this Ordinance. Such program shall primarily focus on the education of non-Gros Ventre or non-Assiniboine employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Gros Ventre and/or Assiniboines and their relationship to the development of employment policies that accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process, which involves the substantial and continuing participation of an employer's Gros Ventre and/or Assiniboine employees, or representative Fort Belknap employees.
13. **Discrimination in Fringe Benefits Prohibited.** No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of any employer, including policies jointly maintained by an employer and

associated labor organization, shall discriminate against Gros Ventre or Assiniboines in terms or coverage as a result of Gros Ventre or Assiniboine cultural or religious traditions or beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate or recognize in coverage such Gros Ventre and/or Assiniboines traditions and beliefs.

- C. Preference Mandatory if Applicant Qualified.** Irrespective of the qualifications of other lower preference non-Gros Ventre and/or non-Assiniboine applicant or candidate, any Gros Ventre and/or Assiniboine applicant or candidate who demonstrates the necessary qualifications for an employment position:
- 1. Generally.** Shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and
 - 2. Reduction in Force.** Shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all non-Gros Vente and/or non-Assiniboines employed in that class of positions are laid-off, provided that any Gros Ventre and/or Assiniboine who is laid-off in compliance with this provision shall have the right to displace a non-Gros Ventre and/or non-Assiniboine in any other employment position with that employer, or, in the case of Tribal employment, department, not otherwise designated as exempt, for which the Gros Ventre and/or Assiniboine demonstrates necessary qualifications.
 - 3. Multiple Qualified Applicants with Preference.** When consideration is among a pool of applicants or candidates who are solely Gros Ventre and/or Assiniboine which meet the necessary qualifications, the Gros Ventre and/or Assiniboine with best qualifications shall be selected or retained, as the case may be.
- D. Written Job Qualifications Required.** All employers shall establish written necessary qualifications for each employment position in their work force, a copy of which shall be provided to applicants or candidates at the time they express an interest in such position, and shall be made available to the TERO upon request.
- E. Job Qualifications and Personnel Requirements.** Every employer is prohibited from using job qualifications criteria or personnel requirements which bar Indians from employment unless such criteria or requirements are required by business necessity. In a controversy concerning job qualifications criteria, the Director shall bear the initial burden of demonstrating that a job qualification criteria or personnel requirement is not required by necessity. Upon prima fascia proof that a job qualification or personnel criteria is not required by business necessity, an employer shall then bear the burden of proving that it is. If the burden is not met, the employer will be required to eliminate the job qualifications criterion or personnel requirement at issue.

- F. Accommodation of Religious Beliefs/Practices.** Every employer shall make a reasonable accommodation to the religious beliefs/practices of Indian workers, within reasonable financial limitations and resources
- G. Consideration of Employment Conditions.** In implementing this section, the Commission shall be guided by principles established in the EEOC Guidelines, particularly 29 CFR parts 1604 through 1607, but the Commission may impose additional requirements beyond those established by the EEOC in order to eliminate employment barriers unique to Indians and the Reservation. If the employer and the Director are unable to agree upon any matter treated in this section, the Director or the employer may initiate the hearing procedure provided in this Ordinance.
- H. Compliance with TERO Ordinance Required.** All covered entities and employers shall comply with this Ordinance, all rules and regulations of the Gros Ventre and Assiniboine Tribes of Fort Belknap relating to it, and all guidelines and orders of the TERO Commission and/or Director.
- I. Preference Where Federal Law Control.** In the event that federal law prevents the granting of a first preference Gros Ventre and/or Assiniboine then, and only then, first preference shall be given to local Indian residents and second and third preference as a otherwise set forth herein.
- J. Core Crew.**
- 1. Generally.** All entities who are awarded a contract in which a significant part of the work to be performed will be performed on the Fort Belknap Reservation, or significant part of the supplies and materials to be furnished will be furnished to a site on the Fort Belknap Reservation, shall be entitled to a Core Crew of not to exceed five percent (5%) of their total employees and ten percent (10%) of their total hours of payroll, which may be exempted from the Indian Preference requirements of this section and the Hiring Hall requirements of Section 14 of this Ordinance.
 - 2. Identification of Core Crew.** Prior to commencing work on the Fort Belknap Indian Reservation, a prospective employer and all subcontractors shall identify regular, permanent (or core) employees. Such employees may be employed on the project whether or not they are Indian.
 - 3. Core Crew Members.** A regular, permanent employee is one who is and has been on the employer's or sub-contractors annual payroll, or is an owner of the firm, as against one who is hired on a project-by-project basis. The fact that an employee had worked for the employer on previous projects shall not alone qualify that employee as a regular, permanent employee. Subcontracting.
 - 4. Negotiation of Core Crew Number.** The Director is authorized to negotiate with the contractor and may grant a larger number as a part of a Core Crew as

exempt, upon the establishment by the contractor, to the Director's satisfaction that the larger number truly represents a Core Crew or specialized personnel essential to the operation of the business, such as a superintendents, foremen and other supervisory or specialized personnel.

SECTION 4. INDIAN PREFERENCE IN CONTRACTING.

A. Preference Required in Non-Construction Contracting and Sub-Contracting.

- 1. Preference Priorities.** All covered entities shall give preference, as provided herein, in non-construction contracting and subcontracting, to entities certified by TERO as a *Gros Ventre and/or Assiniboine Certify Entity, a Local Indian Resident Certify Entity, and Indian Certified Entity, a descendent of a Gros Ventre and/or Assiniboine Certified Entity, a spouse of a Gros Ventre and/or Assiniboine Certified Entity, or a non-Indian Certified Entity*, in this order of preference, provided, the entity is qualified. These preferences shall be followed, unless, because of an overriding federal law, the contractor or subcontractor is prohibited from granting a Gros Ventre and/or Assiniboine preference. In that event, a first preference shall be given to a Local Indian Resident Certified Entity and second preference shall be given to an Indian Certified Entity, and so on down the list. All prime contractors shall similarly comply with this section in the selection of Subcontractors, and shall submit to the TERO office a list of all its subcontractors immediately upon engaging such subcontractors. All subcontractors of said prime contractors shall similarly comply with the provisions of this section.
- 2. Application of TERO.** All covered entities and all entities certified by the TERO shall comply with this Ordinance and all rules and regulations of the Gros Ventre and Assiniboine Tribes of Fort Belknap promulgated in connection with this Ordinance and with all the guidelines and order of the TERO. Wherever allowable under applicable federal guidelines, the Fort Belknap Community Council does hereby informed of this action and the intent of the Council to hereby amend other guidelines and provide notice of these preference and procurement processes.
- 3. Bidding Procedures.** All covered entities who advertise and solicit bids for projects in which a significant portion of the work will be done on or materials will be supplied to a site within the Fort Belknap Reservation shall affirmatively seek bids from Gros Ventre and/or Assiniboine Certified Entities, Local Indian Resident Certified Entities, and Indian Certified Entities. In the event bids are received from both certified entities and non-certified entities, the bid must be awarded to the Gros Vente and/or Assiniboine Certified Entity submitting the lowest qualified bid, provided said bid is not more that the (5%) percent higher than the lowest bid received. If federal law prevents the granting of a preference to a Gros Ventre and/or Assiniboine Certified Entity, than a Local Indian Resident Certified Entity shall accede to the same rights that would otherwise be available

to a Gros Ventre and/or Assiniboine Certified Entity (or Local Indian Resident Certified Entity, if first preference) submits a bid within ten (10%) percent of the lowest bid received, any Fort Belknap Certified Entity (or Local Indian Resident Certified Entity, if a Fort Belknap Certified Entity is not eligible for a first preference) shall be given a reasonable time to modify its bid, and the contract or sub contract shall be awarded to the Fort Belknap Certified Entity (or Local Indian Resident Certified Entity where appropriate) qualified to do the work who is written within ten (10%) percent of the lowest bid received. In the event there is no Fort Belknap Certified Entity or Local Indian Resident Certified Entity submitting a bid with or without modification as provided herein, within ten (10%) percent of the lowest bid received, an Indian Certified Entity shall have the same rights as outlined herein for a Fort Belknap Certified Entity.

B. Indian Contract Preference Requirements in the Letting of Construction Contracts and Sub-Contracts. Each entity letting contracts for construction work on the Fort Belknap Indian Reservation shall comply with the following requirements when letting the prime contract:

1. **List of Contractors.** The entity shall obtain from the Fort Belknap TERO, the source list available contractors and their status with the TERO.
2. **Solicitation of Indian Firms.** The entity shall send summaries of the proposed prime contract to the Indian firms on that list, to determine if any Indian contractor is interested in, and qualified to bid on the proposed contract.
3. **Limits on Bid Process.** If more than one Indian firm expresses an interest in the contract and is qualified to perform it, the entity shall restrict the sealed bidding competition to those Indian firms.
4. **Priorities for Preference Bidders.** The entity letting the prime contract shall award the contract to a qualified preference firm, as such are defined and listed in priority in Section 4 (A) (1), above, submitting the lowest acceptable bid. However, the entity awarding the contract may stipulate that the acceptable bid must not be more than a fixed percentage larger than the entities' projected, or prototype cost for the contract. The fixed percentage shall not be less than that set out in the table provided below:

For prime contracts with a prototype cost between \$0--\$10,000, an Indian bid shall be acceptable, if it is within ten (10%) percent of the prototype cost.

\$100,000-\$250,000	– 1.5 percent
\$250,000-\$750,000	– 1.5 percent
\$750,000-- or more	-- 1.5 percent

5. **Negotiations with a Single Firm.** If only one Indian preference firm, as defined in Section 4 (A) (1), above, expresses interest in, and is qualified to perform the prime contract, the entity letting the contract shall enter negotiations with the Indian firm. A contract shall be let to the Indian firm, so long as it is willing to enter into a contract price that is not more than a fixed percentage greater than the projected or prototype cost of the contract, as set out in the table above. For purposes of these negotiations, the entity letting the contract may keep the project/prototype costs confidential until an agreement has been reached, provided such costs have been established in writing prior to negotiations.
6. **Open Bidding.** If the entity letting the contract determines that no Indian firm is interested or qualified to perform the contract, or negotiations have proven unsuccessful in obtaining a bid within permitted amounts, the entity may call for sealed bid on an open and competitive basis, and award the low bidder, as it so chooses, unless a qualified Indian bidder bids under this process. If a qualified Indian bidder bids under the process he/she shall be awarded the contract, if within the percentages identified above (Section 4 (B) (4)) of the low bidder.
7. **Splitting of Contracts.** An entity letting a contract where it appears that no qualified Indian contractors are interested or qualified, shall review the proposed contract to consider the possibility of dividing the work into components or subcomponents such that a number of Indian contracts would be qualified to perform the work. This process will not be required if it appears that it would add cost to the contract.
8. **Determination of “Qualified” Firms.** The entity letting the contract shall be responsible for making the determination of whether or not an interested firm is qualified to perform the work proposed, provided, if the TERO has already made a decision that a firm is “qualified” in a given area of expertise, that determination shall be controlling, unless the entity has good cause to determine otherwise. No firm shall be qualified to bid unless first properly certified by TERO. Experience ratings with the TERO, certification or non-certification with the TERO, experience with other TEROs experience with the offering entity, experience with other entities, bonding, and related matters are all relevant to this determination. If the Director, in reviewing a determination, concludes that the evidence/circumstances support a determination that a firm was not qualified, no further process will be required. However, if the Director reaches a differing determination, he/she may proceed with the complaint process provided for herein. An entity soliciting bids may request TERO assistance subcontracting determinations of qualification of a preference firm.

C. Indian Preference in Subcontracting.

1. **Target percentages for Subcontracting.** Prior to the letting of any construction contract for work to be performed on the Fort Belknap Indian Reservation, or within any area over which the Fort Belknap Tribes exercise sovereign authority over business activities, the TERO shall establish the percentage of

subcontracting work to be performed by Indian contract. The percentage shall be expressed in terms of total subcontracting dollars to be awarded to Indian firms. The percentage shall be developed by the TERO after considering the nature of the contract, the availability of Indian contractors with the requisite skill to perform the work on the contract and such other factors as may be suggested by the entity letting the contract and accepted by TERO. Before setting the percentage the TERO shall meet with the entity letting the contract to inform it of the percentage it is proposing, and explain how it reached its conclusions. TERO shall provide the entity letting the contract with a copy of the ordinance, a memo setting out the percentage and how it arrived at said percentage, and a list of Indian contractors available to perform subcontract work on the contract. On all contract, the TERO shall require the entity letting the contract to include material in its bid offering material on the proposed percentage of preference contractors on the project, as well as available contractors.

2. **Subcontractor plan as part of Bids.** The entity letting the prime contract shall require every bidder to submit, as part of its bid, a plan describing how it will satisfy the Indian subcontractor utilization percentage established by the TERO. A bid that fails to contain a satisfactory Indian subcontractor utilization plan shall be considered a non-qualifying bid.
3. **Selection of Subcontractors.** The successful prime contractor selected by the entity letting the contract shall be free to select its Subcontractors in whatever manner it so chooses, and to make its own determination on qualifications (subject only to TERO qualifications processes) and reasonableness of price, provided, every subcontractor used must first register and qualify with TERO prior to commencing work. However, a successful contractor who fails to meet the percentage requirements for utilization of Indian Subcontractors shall be required to demonstrate to the TERO that good cause exists for its failure to meet said requirements. If it fails to demonstrate good cause, it shall be subject to sanctions provided for in the complaint process of this Ordinance.
4. **Consideration of Division of Subcontracts.** Prime contracts shall be encouraged to explore the possibility of dividing their subcontracts into components, or sub-components that would enable the maximum number of Indian contractors to qualify, and if not otherwise meeting subcontractor targets, may be required to justify refusal to split contracts, if such action would aid in meeting targets.

D. Utilization of Minority Subcontractors on Federal and Federally Funded Contracts not Otherwise Covered by Preferences.

1. **Preferences for Minority Subcontractors.** For each direct Federal or Federally funded contract to be let for work on the Fort Belknap Indian Reservation not otherwise covered by the Indian subcontract preference requirements set out in this Ordinance, the TERO shall set the percentage of the total value of all

subcontracts, regardless of tier, resulting from the prime contract, that shall be awarded to qualified minority business enterprises. The percentage shall be expressed in terms of the percent total subcontract dollars to go to minority business enterprises. The percentage shall be based on the nature of the contract, the availability of minority business enterprises with the requisite skills to perform the work, and such other factors, as may be suggested by the entity letting the contract. To the extent possible the percentage set by the TERO shall be the same as the percentage set by the Federal agency pursuant to its responsibilities under the Federal Minority Business Enterprise Utilization Program.

2. **Notice of Preference Percentages.** The TERO shall provide the entity letting the contract with a list of available minority business enterprises, which is to be included in the bid offering material, along with the information on the required percentage for the utilization of minority business enterprise, as set by the TERO.
3. **Selection of Subcontractors.** The successful prime contractor selected by the entity letting the contract shall be free to select its Subcontractors in whatever manner it so chooses, and to make its own determination on qualifications (subject only to TERO qualifications processes) and reasonableness of price, provided, every subcontractor used must first register and qualify with TERO prior to commencing work. However, a contractor who fails to meet its percentage, shall demonstrate to the Commission that good cause exists for its failure. If it fails to demonstrate good cause, it shall be subject to sanctions provided for in the complaint process of this Ordinance.

E. Submission of Compliance Plans. Each entity, contractor, or subcontractor intending to engage in business activity on the Reservation, prior to the time it commences work on the Reservation, must submit a contracting, subcontracting, employment, and/or training plan to the TERO.

1. **Contracting and Subcontracting Plans.** Each plan shall indicate all contracts and subcontracts that will be entered into on the Reservation by such entity and the projected dollar amounts thereof. If the entity has already selected a firm to perform any contract of sub contract work, it shall list the name of that firm and indicate whether or not it is a certified firm. If it is not a certified firm, the entity shall further indicate why each certified firm, if any, registered with the TERO that was technically qualified to perform the work was not selected and the name of the contact person at each certified firm with which the entity dealt. No authorization to commence work on the Reservation shall be granted to any firm which submits a plan indicating that less than 100% of all contracts and subcontracts shall be awarded to certified firms unless the entity can demonstrate that for each contract or subcontract it proposes to award to a non-certified firm there was no certified firm that was technically qualified and available to perform the work at a reasonable price. To make such a demonstration the entity must show, at a minimum, that it interviewed all Indian firms listed on the TERO's register in that area of endeavor and that:

- a. There was no certified firm in that area of endeavor; or
 - b. The ones that were available were rejected because they lacked the necessary technical qualifications; or
 - c. Those certified firms that were technically qualified were unreasonable as to price.
2. **Compliance with Plan Mandatory.** In any event, all firms, prior to commencing work, must register and be qualified by the TERO. No entity shall deviate from its plan in a manner that will diminish the percentage of contracting or subcontracting of certified firms without obtaining the prior written approval of the TERO.
 3. **TERO Right of Inspection of Records.** The TERO shall have the right to inspect the records of any entity to ensure compliance with a submitted plan.
 4. **Avoidance of Regulations Prohibited.** No entity shall circumvent the requirements of these regulations by hiring non-Indians and designating them as employees rather than as contractors or subcontractors.

SECTION 5. CRITERIA AND PROCEDURES FOR CERTIFYING FIRMS AS PREFERENCE ELIGIBLE.

A. General Guidelines.

1. **Preference Strictly Controlled.** Pursuant to the sovereign authority of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation, the Fort Belknap Community Council has imposed Indian contract preference as one tool for promoting the economic development of the Reservation. When used properly, Indian preference in contracting can assist in the development of Indian businesses and thereby assist the Tribes and their members to achieve economic self-sufficiency. However, if the preference is abused, it will undermine this development and discredit the preference tool. Because of this, it is the policy of the Council to require that an applicant for Indian contract preference certification provide rigorous proof that it is a legitimate Indian-owned and controlled firm. The guidelines set forth in this Part A are intended as general guidance, and where they differ from those found in Part B, below, the specific rules found in Part B shall control.
2. **General Evaluation Techniques.** In evaluating an applicant, a number of specific criteria will apply. These criteria are set out in Part B, the criteria part of this Section. However, experience has shown that persons interested in abusing the Indian preference program are able to structure firms to get around most specific criteria, the TERO will evaluate a firm under the following general criterion: applying sound management principles, would the firm have been

structured in the manner it is, and would the Indian owners have been given the amount of ownership and control they have been given, if there were no Indian preference in existence? If the TERO determines that it has good reason to believe that the firm has been structured (managerially or financially) in order to enable the firm to qualify for Indian preference certification, the firm will be denied such certification. This action will take place, even if it meets the specific criteria, set forth below, unless the firm is able to demonstrate beyond a reasonable doubt that it was not structured to manipulate the Indian preference criteria.

- 3. Scrutiny of Indian Ownership of Business.** The specific criteria also require that the ownership, control and management arrangements of a firm make sense from a sound business perspective. The Indian owners must own and control 51% or more of the firm. One primary consideration in applying this criterion will be what the Indian owner(s) actually brought to the firm to justify giving them a share, were Indian preference not a consideration. E.G: Indian owner paid for his/her 51% share through promissory note to the non-Indian owners. In the ordinary course of business, such a transaction would not occur unless the new owner brought something of value, such as managerial or technical expertise, capital and equipment, or marketing opportunities. (The ability to qualify for Indian preference is not considered such a marketing opportunity.) Therefore, such an arrangement would be denied Indian preference certification unless some other sound business reason for the arrangement could be demonstrated. Where an Indian can demonstrate that he or she was unable to provide good value for his or his 51% share because the usual sources of capital were closed off to him or her because her or she was an Indian, that person shall be required to demonstrate that he or she extended his/her capital-raising ability as far as possible—such that he or she is “at risk” in a significant way—e.g. , mortgaged a house or vehicle.
- 4. Scrutiny of Indian Participation in Firm Management.** The Indian owner(s) must be directly involved in the firm’s management. While it is not required that the Indian owner(s) be the Chief Operating Officer of the firm, at least one of the Indian owners will have to be involved in the day-to-day operations of the firm on a full-time basis and in a senior level position. The Indian person(s) in this position must have the experience or expertise in the area of business the firm is engaged in (or in management generally) to make the senior level role a legitimate one. The Indian owner(s) must also have sufficient knowledge about the firm to be accountable for the firm’s activities.
- 5. Certification Denied if Indian Not Involved in Firm Management.** Certification will not be granted to a firm where one or more of the Indian owners are not involved in the day-to-day operations of the firm in the manner described above. There is virtually no benefit to the Indian community from such passive ownership, other than profits to the owners. It could take several years for a firm to show a profit, if one in fact materializes. Yet during the time he non-Indian managers can benefit at the expense of the Indian community. The limited

benefits to the Indian owner(s) do not justify this risk.

6. **Exceptions to Management Participation Rule.** One of two exceptions to this Management Participation rule is that certification will be granted to 100% Indian-owned firms where the manager of the business is a non-Indian spouse of preference Indian. No effort will be made to distinguish between the values contributed by a non-Indian spouse in this limited instance. The family's contribution will be treated as an undivided unit. The second exception is for a "public corporation" defined as one that is owned by ten (10) or more persons, 70% of which is Indian-owned, and where the Chief Executive Officer is an Indian.
 7. **Rationale for Policies.** Such rigorous criteria, giving substantial discretion to the reviewing body, are necessary and appropriate for the Indian contract preference program. Neither the Tribe nor the Indian community benefits from the establishment of "bogus" Indian firms, which the certification of such firms undercuts the credibility of the Tribe's Indian preference program. An Indian firm or individual that is unable, on its own, to qualify as the prime contractor on a large project has other options open to it besides participating in the development of a bogus firm. For example, he or she can seek work at the subcontractor or employee level and benefit from the Tribe's requirement that preference be given to Indian subcontractors and employees.
 8. **Certification Procedures.** The procedural requirements for certification provide that the staff of the Tribal Employment Rights Office (TERO), which shall request additional information it believes appropriate, shall review applications. The Director will then make the decision for certification. The Director shall review the application and findings, interview the principals of the firm, if appropriate, request additional information as appropriate, and then make a determination on whether certification should be granted. The firm will have a right of appeal to the Commission, which shall reverse the decision only if it finds that the decision was arbitrary or capricious.
 9. **Probationary Certification and Review Procedures.** A firm shall first receive a probationary certification, to be made final at the end of one (1) year; or a longer period where the Director believes such is necessary. The TERO shall have the right, at any time, either on their own initiative or upon the filing of a complaint by any party, to conduct an investigation of a firm to determine if its certification should be suspended or withdrawn. The TERO and the Commission shall require new applications from firms that had been certified that had been certified by the Tribe prior to the adoption of these criteria. If it is determined that a firm does not qualify under the new criteria. If it fails to do so by the end of that period, its certification shall be withdrawn.
- B. Criteria for Indian Preference Certification.** To receive certification as a firm eligible for preference, an applicant must satisfy the criteria set out in this part.

1. **Ownership.** The firm or joint venture must be 51% or more Indian-owned, the applicant must demonstrate the following:
 - a. **Formal Ownership Required.** That an Indian or Indians of the designated preference level own(s) 51% or more of the partnership, corporation, or other arrangements for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:
 - (1) **Financial Ownership**—i.e., the Indian(s) owns 51% or more if the assets and equipment, will receive 51% or more of the firm's assets upon dissolution, and will receive 51% or more of the profits; and
 - (2) **Control** i.e., the Indian(s) 51% or more ownership provides him or her with a majority of voting rights or other decision of the firm are to be made by a majority vote except.
 - b. **Value.** The Indian owner(s) provided real value for his or her 51% or more ownership by providing capital, equipment, real property, or similar assets commensurate with the value of his or her ownership share. It will not be considered "real value" if the Indian(s) purchases his or her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) possesses such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian preference program in existence. Where the Indian participant can demonstrate that he or she could not pay good value for his or her 51% or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian, that person may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.
 - c. **Profit.** The Indian owner(s) will receive 51% or more of all profits. If there is any provision that give the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to

circumvent the requirement that Indian owners receive 51% or more of the profits.

2. **Management Control.** One or more of the Indian owners must be substantially involved, as a senior level official the day-to-day management of the firm as his or her primary employment activity. The Indian owner does not have to be the “Chief Executive Officer”. However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm’s activities to be accountable to the Tribe for the firm’s activities. This provision may be waived when:
 - (1) the firm is 100% Indian-owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation, and the majority of employees are Indian; or
 - (2) the firm is modeled on a publicly-held corporation such that it is owned by ten (10) or more persons, is at least 70% Indian owned, the Chief Executive Officer and the highest-salaried employee in the firm is/are Indian, and a majority of the employees are Indian.

3. **Integrity of Structures.** There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the TERO will consider the factors set out below. The TERO shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and in questionable cases shall deny certification.
 - a. **History of the Firm.** Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non-Indian owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Indian firm.

 - b. **Employees.** Whether the key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is a reason to believe the non-Indian firm is controlling the applicant.

Whether Indians are employed in all or most of the positions for which qualified Indian are available. A high percentage of non-Indians employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

ensure that firm's activities to ensure that the firm is operating in the matter described in its application. During the probationary period, the TERO and the Commission shall have the right to request and receive such information and documents, as they deem appropriate.

4. **Final Certification.** At the end of the probationary period the Director, after receiving recommendations from the TERO staff; shall:
 - a. Grant full certification;
 - b. Continue the probationary period for up to six (6) months; or
 - c. Withdraw certification.

5. **Withdrawal of Certificate.** From the information provided in reports required herein, on the basis a written grievance filed by any other firm or person, or on its own initiative, the Director may initiate proceedings to withdraw or suspension, the Director shall prepare a complaint and process the matter under the complaint procedure herein set forth for handling of complaint. After the hearing, the Commission may:
 - a. Withdraw Certification;
 - b. Suspend Certification;
 - c. Put the firm on probation; and/or
 - d. Order that corrective action be taken within a fixed period. A firm that has had its certification withdrawn may not reapply for a period of one year.

6. **Firms Certified Prior to the Adoption of These Criteria.** Each firm holding Indian preference certification from the Tribe prior to the effective date of the Regulations shall submit an application required under these criteria to the TERO within thirty calendar (30) days after the effective date of these Amendments. If the Director determines the firm qualifies under these criteria, it shall, within twenty-one calendar (21) days of receipt of the application, make such decision, and shall issue a new certificate. If the Director has reason to believe the firm does not qualify, he shall prepare a complaint and follow the complaint process as is outlined in subpart 5 above. The Commission, after providing the firm an opportunity for a hearing after receipt of the Director's complaint shall:
 - a. Grant the firm a new certificate; or
 - b. Determine that the firm is not in compliance. If the commission determines that the firm is not in compliance, it shall provide reasons therefore. The firm shall then have fifteen (15) calendar days from the date of the decision to demonstrate to the Commission that it has made such changes as are necessary to come into compliance. If at the end of the fifteen (15) day period the firm has failed to come into compliance, its certification shall be withdrawn. A copy of the withdrawal notice shall be sent to the firm.

7. **Changes in Status and Annual Reports.** Each certified firm shall report to the TERO, in writing, any changes in its ownership or control status within sixty (60) days after such changes have occurred. Each certified firm, on the anniversary of its receipt of its certification, shall update the information provided in its initial application on an Annual Report form provided by the TERO. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

SECTION 6. CRITERIA AND PROCEDURES FOR CERTIFYING FIRM A AS QUALIFIED TO CONDUCT BUSINESS.

- A. **Unlawful to Engage in Public Contracting Business Without License.** It shall be unlawful for any person or combination of persons to engage in the business or act in the capacity of public contractor as herein defined within the Fort Belknap Reservation without having a license therefore as provided in this section.
- B. **Certain Small Contracts Exempt.** Nothing shall require any contractor to pay a license fee on any public contract project of a value less than \$1,000.00.
- C. **Bids to Show Bidder is Licensed.** All bids and proposals for the construction of any contract project subject to the provisions of this Ordinance shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he or she is the holder of a license in the class within which the value of the project shall fall as herein provided.
- D. **Licensing Process.**
 1. **Application For Certification** A firm seeking certification as a licensed, qualified contractor or sub-contractor shall submit a completed application to the TERO on a form provided by the TERO. Such form shall be an application under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor, the value and character of contract work completed an for whom performed during the five (5) years prior to the filing of such application; a complete financial statement on such forms and disclosing such information as shall be required by the TERO. Such application shall also contain such other information as may be adopted by the TERO and which will assist the TERO in determining the applicant's fitness to act in the capacity of a public contractor as defined in this Ordinance. Such application shall also contain a statement that the applicant desires the issuance of a license under terms of this Ordinance and shall specify the field of contracting for which a license is applied. TERO staff will be available to assist a firm to fill out the application. An application shall be submitted in each area of contracting where certification is desired.

2. **Processing of Application.** Within five (5) working days after receipt of a completed application, the Director shall review the application, request such additional information as he/she believes appropriate (computation of the five (5) day period shall be stayed during the time any request for additional information is outstanding), conduct such investigations as he/she deems appropriate, and issue an analysis and decision to the applicant. Notice of the analysis and decision shall be sent by certified mail. When it is so require, the TERO Director may extend the processing period by an additional five (5) working days, by sending notification of the extension to the applicant by certified mail.
3. **Appeal of Director's Decision.** An applicant may, within ten (10) working days of receipt of the Director's decision, request review of the Director's decision by the Commission, by filing a Notice of Appeal, in writing, with the TERO. To be timely, an appeal must be received in the TERO within ten (10) day of the date the decision is received by the applicant. A three (3)-person panel made up of Commissioners shall conduct such a hearing within ten (10) working days of the time an appeal is received in the TERO. Mailing a notice of the hearing to the applicant, and posting notice of the hearing time at the Tribal Office, local post offices, and the TERO's office at least five (5) calendar days prior to the hearing shall provide notice. The Commissioners hearing the appeal shall issue a decision on the matter in writing within ten (10) working days of the hearing, or at the end of such time, it shall be construed that the decision of the Director is affirmed, and further appeal times shall begin to run.
4. **Certification.** A new applicant found to be qualified for certification should be issued a one (1) year certificate. During the first year of certification the TERO staff and the Commission shall monitor the firm's activities to ensure that the firm is operating in the matter described in its application. During this period, the Director and the Commission shall have the right to request and receive such information and documents, as they deem appropriate.
5. **Probationary Certification.** At the end of the application time period, as set forth in part 2 of this section, if the Director has been unable to verify past history to his/her satisfaction, the applicant is a beginning firm, or questions have arisen but it appears that the applicant warrants a chance, and the Director is unaware of significant cause to deny certification, the Director may issue a probationary or questioned certification, noting the concerns on the certification, and informing the entity awarding a contract of the questions. An entity letting a contract may, if it so chooses, makes its own determination on the qualification of a contractor in this status. However, in no event shall an entity be utilized that has not received certification from the TERO. This certification shall be for a term of six (6) months, during which time the TERO shall monitor and review the performance of the firm, and at the end of such period, or sooner, if determined appropriate.

- a. Grant full Certification;
 - b. Continue the probationary period for an additional six (6) months; or
 - c. Withdraw Certification.

- 6. **Denial of Certification.** The Director shall be authorized to deny certification to a firm seeking qualifications in a contracting field for good cause. Good Cause may include, but is not limited to: 1. A history of non-compliance with TERO requirements on this or any other reservation; 2. Non-performance or failure to complete a project once awarded; 3. A history of significant litigation before compliance with TERO or performance was secured; 4. Refusal of certification and /or exclusion from another Reservation; 5. Fraud and dishonesty in representation made to the TERO; and/or 6. Denial of Certification at Fort Belknap within one (1) year of application.

- 7. **Withdrawal of Certification.** From the information provided in reports required herein, on the basis of a written grievance filed by any other firm or person, or on its own initiative, the Director may initiate proceedings to withdraw or suspend the certification of any firm. If circumstances arise warranting withdrawal or suspension, the Director shall prepare a complaint and process the matter under the complaint procedure herein set forth for handling of complaints. After the hearing the Commission may:
 - a. Withdraw certification;
 - b. Suspend certification;
 - c. Put the firm on probation; and/or
 - d. Order the corrective action to be taken within a fixed period. A firm that has had its certification withdrawn may not reapply for a period of one (1) year.

- 8. **Firms Certified Prior to the Adoption of these Criteria.** Each firm holding certification in a contracting area from the Tribe prior to the effective date of these Regulations shall submit an application required under these criteria to the TERO within thirty (30) calendar days after the effective date of these Amendments. If the Director determines the firm qualifies under these new criteria, it shall, within twenty-one (21) calendar days of receipt of the application, make such decision, and shall issue a new certificate. If the Director has reason to believe the firm does not qualify, he shall prepare a complaint and follow the complaint process as is outlined in subpart 5 above. The Commission, after providing the firm an opportunity for a hearing after receipt of the Director's complaint shall:
 - a. Grant the firm a new certificate; or
 - b. Determine that the firm is not in compliance. If the commission determines that the firm is not in compliance, it shall provide reasons therefore. The firm shall then have fifteen (15) calendar days from the date of the decision to demonstrate to the Commission that it has made

such changes as are necessary to come into compliance. If at the end of the fifteen (15) day period the firm has failed to come into compliance, its certification shall be withdrawn. A copy of the withdrawal notice shall be sent to the firm.

9. **Change in Status.** Each certified firm shall report to the TERO, in writing, any change in its ownership or control status within sixty (60) days after such changes have occurred. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

E. Investigation of Applicant-Issuance of License. It shall be the duty of the Director to investigate and determine the applicant's fitness to act in the capacity of public contractor as defined in this Ordinance, and no license shall be issued to such applicant until the expiration of five (5) working days from and after the filing of such application. The certification so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within the Reservation, subject of the limitations of such license, for one (1) year from the date of issuance.

F. Renewal-Waiting Period After Cancellation.

1. **Renewal Application.** Any license issued under the provisions of this Ordinance may be renewed for each successive year by obtaining from the TERO a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the TERO an application therefore, stating the field of contracting applied for and containing at least the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the TERO on or before twenty (20) days next proceeding the expiration date of the current license.
2. **Renewal Fees.** At the time of filing the application for a certificate of renewal, the applicant shall pay to the TERO a license fee in the amount of the license fee for the original license, provided that if any applicant for a certificate of renewal shall apply for a renewal under a different field or class from the license theretofore issued to him or her, such new license shall be issued only upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.
3. **Director to Review Renewals.** All certificates of renewal wherein the applicant does not apply for a change in the field or class of license shall be issued by the Director, after review to determine whether circumstances are consistent with those previously determined, prior to the anniversary date of the original license, provided the renewal application is timely filed.
4. **Revoked Licensee Not Eligible For One Year.** After revocation of a license, such licensee shall not be eligible for relicensing for a period of one (1) year.

G. Complaints Against Licensee.

- 1. Complaints.** Any person or organization may file a duly verified complaint with the TERO charging that the licensee is guilty of one or more of the following acts of omissions:
 - a. Abandonment of any contract without legal excuse;
 - b. Diversion of funds or property received under express agreement for a prosecution or completion of a specific contract under this Ordinance or for a specified purpose in the prosecution or completion or any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;
 - c. The doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;
 - d. The making of any false statement in any application for a license renewal thereof; and/or
 - e. The failure to comply with the provisions of this Ordinance requiring preferential treatment of Indians in any employment opportunity arising from the activity authorized by a license issued under this Ordinance.

- 2. Processing of Complaints.** The Director shall be responsible for investigating complaints received. If necessary to pursue formal action, the Director shall utilize the processes for complaints set forth in this Ordinance.

H. Records. The TERO shall maintain at Fort Belknap Agency, open to public inspection during office hours, a complete indexed record of all applications filed and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of \$5.00. Such certified copy shall be received in all Courts and elsewhere as prima facie evidence of the facts stated therein. Information contained in applications, which is asserted to be confidential, shall not be released for public review, unless a hearing or court reviews.

I. Orientation: Before any contractor, business person, and/or vendor is to begin business operations on the reservation, he/she and core crew members must attend a standard mandatory Fort Belknap TERO two (2) hour orientation. The orientation will be composed of two sessions: One session consisting of familiarization of ordinance and another session consisting of cultural awareness, tribal laws, and events relating the Fort Belknap Indian Reservation. A certified certificate will be issued to the above person(s) upon satisfactorily completion of orientation. No contractor, business person, and/or vendor shall be permitted to conduct operations until certified. Fort Belknap Tribal Enrolled Members shall be exempt.

SECTION 7. UNIONS.

A. Requirement for Agreements. All covered employers who have a collective bargaining agreement with one or more unions shall obtain a written agreement from any such union

or unions, providing that the union shall comply with all Indian preference laws, including this Ordinance, all rules and regulations promulgated pursuant to it, and all guidelines and orders of the TERO and providing further, that no Indian shall be required to pay any union dues, initiation fees, or other monies as a condition of employment or during employment on any job to be performed, in whole or in part, on the Fort Belknap Reservation. All such agreements shall be subject to the approval of the Director. Until such agreement is filed with the TERO, the employer may not commence work on the Reservation.

- B. Contents of Union Agreements.** Every union agreement with an employer or filed with the TERO must provide:
- 1. Indian Preference.** The union will give absolute preference to Indians in job referrals regardless of which union referral list they are on.
 - 2. Cooperation with TERO.** The union will cooperate with the TERO in all respects.
 - 3. Registration.** The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.
 - 4. Training Programs.** The union will establish a journeyman upgrade and advanced apprenticeship program.
 - 5. “Blanketing-In” Indian.** The union will “blanket-in” all Indians who qualify for journeyman status and wish to join the union.
 - 6. Temporary Work Permit.** The union will grant temporary work permits to Indians who do not wish to join the union.
- C. Model Union Agreement.** The TERO will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.
- D. Recognition of Unions.** Nothing herein nor any activity by the TERO authorized hereby shall constitute official tribal recognition of a union or tribal endorsement of any union activities on the Reservation, or otherwise inhibit the right of individuals to work on the Fort Belknap Indian Reservation, subject only to the guidelines provided in this Ordinance.

SECTION 8. TERO COMMISSION.

- A. Creation and Makeup of Commission.** There is hereby created a Fort Belknap Tribal Employment Rights Commission which shall be composed of six (6) members appointed by the Fort Belknap Community Council, at least one of which, unless otherwise determined by the Council, shall be a Council member, for purpose of keeping the Council informed of TERO actions.

- B. Term of Commissioners.** Each commissioner shall be appointed for a term of two (2) years, or until his or her successor is appointed and qualified, provided however, that appointments to the first Commission shall be for terms that will allow for staggered terms with the terms of no more than two (2) Commissioners expiring in any one (1) year. Those Commissioners serving at the time of the amendments adopted in 1994 shall continue through their appointed terms.
- C. Removal of Cause.** The Fort Belknap Community Council for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause may remove the Commissioners.
- D. Organization of Commission.** Upon their appointment, the Commission shall meet and elect officers from among the Commission members and shall immediately adopt/amend a Plan of Operation which shall include rules and regulations governing the operation of the TERO Commission, within the general powers set forth below. Such Plan of Operations shall conform to any Plan of Operations then in place, as approved by the Tribal Council. (e.g., what constitutes a quorum, how a vacancy will be filled, authorized payment of services and costs for attending meetings and others matters properly handled by the Commission.

SECTION 9. POWERS OF THE COMMISSION.

The Commission has full power, jurisdiction and authority to:

- A. Develop Rules and Regulations.** Consult with the TERO Director and staff in order to formulate, draft and submit for proper approval, rules and regulations considered necessary to carry out the purposes of this Ordinance.
- B. Recommendations on Implementation of Ordinance.** Consult with and make recommendations to the TERO Director on the implementation of this Ordinance.
- C. Hearing Officers/Advisors.** Serve as advisors and/or as hearings officers, either individually, or as a group, as requested by the TERO Director, or as provided by this Ordinance.

SECTION 10. FORT BELKNAP TRIBAL EMPLOYMENT RIGHTS OFFICE.

- A. TERO Established.** There is hereby reaffirmed and created a Fort Belknap Tribal Employment Right Office as an independent office of the Gros Ventre and Assiniboine Tribes of Fort Belknap, reporting directly to the Tribal Council. The Fort Belknap Tribal Council shall appoint the Director of the office.
- B. Authority Delegated to Director.** The Director shall have the authority to participate in the hiring of staff under the Tribal government personnel procedures, expend funds appropriated by the Tribal Council, obtain and expend funding from federal, state and

other sources, and supervise the enforcement of this Ordinance and any rules, regulations, guidelines or orders promulgated pursuant thereto.

SECTION 11. POWERS OF THE DIRECTOR.

The Director shall have the full power and authority to:

- A. **Certify Contractors.** Determine certification of Fort Belknap Certified Entities, Local Indian Resident Certified Entities, and Indian Certified Entities as hereinafter provided.
- B. **Enforce Ordinance.** Enforce all of the provisions of this Ordinance as well as any regulation, rule, guideline and order promulgated related thereto, and to guarantee full compliance with this Ordinance and any such rule, regulation, guideline or order.
- C. **Impose Penalties/Sanctions.** Impose any penalty, sanction, or fine as provided in this Ordinance, including termination of an employer's/entities' operation within the Fort Belknap Reservation and/or the denial of the right to conduct any further business on the Fort Belknap Reservation.
- D. **Issue Permits.** Grant permits to entities and employees authorizing them to do business and work on the Fort Belknap Reservation and to collect a fee for said permits.
- E. **Revoke Certification.** Revoke the certification of a Fort Belknap Certified Entity, a Local Indian Resident Certified Entity, and an Indian Certified Entity, as provided in this Ordinance.
- F. **Revoke Permits.** Revoke a permit granted to any entity or employee a provided in this Ordinance.
- G. **Establish Counseling/Support Programs.** Establish programs in conjunction with other tribal and federal offices to provide counseling and support to Gros Ventre and Assiniboine employees first, and to other Indian employee second, to assist them in retaining employment. The Director may require that any employee participate in and/or cooperate with such support and counseling programs, as a condition to receiving TERO assistance.
- H. **Formulate Guidelines and Orders.** Formulate, adopt, amend and rescind guidelines and orders reasonably necessary to carry out the provisions of this Ordinance.

- I. Review Core Crew Requests.** Provided for a reasonable number of employees of each covered employer to be exempt as a part of the core crew consistent with the provisions of this Ordinance.
- J. Establish Employee Target/Goals.** Impose pursuant to a properly adopted rule, regulation, guideline, or order, numerical hiring goals and timetables that specify the number of Gros Ventre and Assiniboine Indians or other Indians a covered employer must hire by craft and skill level.
- K. Establish Training Requirements.** Provide a rule regulation, guideline or order that covered employers to be required to establish or participate in such training programs as the Director determines appropriate in order to increase the pool of qualified Gros Ventre and Assiniboine Indians and other qualified Indians on the Fort Belknap Reservation.
- L. Establish Hiring Hall, Skills Bank Apprenticeship Programs.** Establish and maintain a Fort Belknap Hiring Hall, Skills Bank, and Apprenticeship program.
- M. Monitor Employers for Compliance.** Prohibit covered employers from using qualifications criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. To the extent appropriate, rules, regulations, guidelines or orders may be promulgated to implement this requirement, and the Director shall use EEOC guidelines, to the extent they are appropriate.
- N. Enter Union Agreements.** Enter into agreements with Unions to insure union compliance with this Ordinance.
- O. Contract with Government Entities.** Contract with federal and/or state entities, with the approval of the Tribal President, for the provisions of additional services, funding and job procurement consistent with the purpose of this Ordinance.
- P. Other Action.** Take any other action necessary to achieve the purposes and objectives of this Ordinance.

SECTION 12. EMPLOYER'S PERMIT.

- A. Employer's Permit.** The Director shall issue an employer's permit to all entities in good standing upon the payment of a fee as set forth in this Ordinance. An entity which is not in good standing with any Indian Tribe, with a contracts association or other professional association to which it has belonged, with any labor union with which it has had a collective bargaining agreement, or is found to be inactive or in current violation of federal or tribal law may be refused an employer's permit.
- B. Permits Required.** All covered employers must hold an employer's permit before they are eligible to do any work or engage in any business activity within the boundaries of the Fort Belknap Reservation. Any entity which fails to obtain an employer's permit, or

whose employer's permit has been revoked, shall be denied the right to conduct any further business or work on the Fort Belknap Reservation. The Director shall have the right to enforce the terms of this section in Tribal Court by means of an injunction or other appropriate remedy.

- C. **Refusal to Issue Permit.** The Director is authorized to refuse to issue an employer's permit or to revoke such a permit for any entity he finds to have seriously or repeatedly violated the terms of this Ordinance or any rules, regulations, guideline or orders adopted pursuant thereto, or has had problems of such a nature on an Indian Reservation within the last three (3) years.

SECTION 13. WORK PERMITS.

- A. **Issuance of Permits.** The Director shall issue work permits to all persons in good standing seeking employment with a covered employer, after payment of the fees required herein. Any person, other than a Fort Belknap Tribal member who has failed to obtain a work permit or whose work permit has been revoked, shall be denied the right to seek and obtain employment on the Fort Belknap Reservation. Upon the adoption of guidelines or rules to govern the process, the Director may waive the fee for those demonstrating an inability to pay or other appropriate reason.

- B. **Vendor Permit.** This permit is for the purpose of enforcing & monitoring the immigration, admission and exclusion of all non-resident, non-tribal member vendor businesses, entering and conducting business activities within the exterior boundaries of the Fort Belknap Indian Reservation.

The Fort Belknap Tribal Employment Rights Office (TERO) is responsible for the administering of the immigration Vendor Permit System.

Unless waived by the Tribal Council or mandated by MOA or MOU, the vendor business license shall be administered by the TERO Director. Each Vendor is required to obtain a vendor license by first filling out a vendor license application. The application process shall be subject to relevant fees and licensing requirements of the Fort Belknap Assiniboine and Gros Ventre Tribal Employment Right Ordinance. Each vendor is required to have their employees included on the vendor permit application.

The TERO Director and/or designated TERO staff shall issue and register vendor permits to an eligible vendor. Upon approval of registration, each vendor will be required to purchase and receive a vendor permit. Failure to comply with this provision and/or failure to register will result in penalties and fines and/or revocation of the vendor permit. The issuance of a vendor permit does not guarantee employment to the recipient and a vendor permit may be withdrawn for cause as determined by the TERO office. A TERO card is not required for a vendor permit.

Fees:

Permit: \$50.00 Per Event
Failing to register: \$100.00 fine
\$50.00 for each day worked without registration.

All key regular employees of vendors.

To a person employed by a covered vendor where the person is employed on the Fort Belknap Indian Reservation in a permanent or temporary position and he/she began his/her employment before the effective date to this Ordinance. To such persons that the TERO office determines are entitled to a vendor permit. Vendor permits may be withdrawn for cause as determined by the TERO office.

Denial/Revocation of Permit. *The Director is authorized to deny a work permit to any person who has repeatedly fail and/or refused to comply with this Ordinance and/or applicable rules, regulations, guidelines or orders adopted pursuant thereto. The Director is authorized to revoke a work permit for any employee he or finds to have seriously or repeatedly violated the terms of this Ordinance or any rules, regulations, guidelines or orders adopted pursuant thereto.*

SECTION 14. TRIBAL HIRING HALL.

The Director shall establish and administer a tribal hiring hall to assist the TERO and employers in placing Indians in positions. An employer may recruit and hire workers from whatever sources are available to him and by whatever process he chooses, provided that he may not hire an employer of lesser preference than Gros Ventre and/or Assiniboine until he has given the TERO a reasonable time to locate a qualified preference Indian and the tribal hiring hall has certified that a qualified Indian is unavailable to fill the vacant position. For purposes of this Section “reasonable time” shall be defined as follows: For construction jobs, the TERO shall be given 48 hours to locate and an additional 12 hours to refer a qualified preference Indian; for all other kinds of employment, the TERO shall have five (5) working days to locate and refer a qualified Indian. The Director may grant a waiver of these periods upon a showing by the employer that such time periods impose an undue burden upon him. If any non-Indian worker is found to be employed in a job in violation of this Section, the employer shall be required by the Commission to remove the employee summarily and shall be subject to the penalties provided in this Ordinance.

SECTION 15. UNION FEES AND BENEFITS.

- A. Right to Work/Organize.** The right of persons to work shall not be denied or abridged of account of membership or non-membership any labor union or labor organization. Further, the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.
- B. Prevailing Wage.** All covered employers shall establish wages and salaries for all non-union workers based on prevailing union scale within the area of the Fort Belknap Indian Reservation.

- C. **Agreements.** Any future agreement between TERO, the Tribe, and employers or unions must incorporate by reference the language of the TERO Ordinance and the amendments thereto. Such agreements shall be submitted to the Tribal President for final signature and approval.
- D. **Union Dues/Fees.** No employee shall be required to pay union dues and/or union fees as a condition of obtaining or maintaining employment within the Fort Belknap Reservation.
- E. **Benefits Paid.** Any employee (as defined in this Ordinance) who is an Indian (as defined in this Ordinance) shall have the right to receive any health insurance or pension benefits (sometimes referred to as fringe benefits) paid to them directly at the time they receive their regular paycheck. Any Employer who fails or refuses to comply with this provision shall be guilty of a violation of this Ordinance.

SECTION 16. COMPLIANCE PLAN AND REPORTING.

- A. **Compliance Plans.** Any entity awarded a contract or subcontract for which a significant part of the work to be performed is to be performed on the Fort Belknap Reservation or the supplies and materials to be furnished will be furnished to a site on the Fort Belknap Reservation shall present to the TERO office commencing any work or delivery on the project a COMPLIANCE PLAN which shall include 1) a list of all subcontractors, 2) a list of all employees, 3) a list of all superintendents, foremen, or other supervisors, 4) a list of all suppliers, 5) the number of employees expected to be used in each craft or skill group, and 6) the location of work to be done by each employee.
- B. **Payroll Reporting.** The payroll records of all contractors and subcontractors, no matter how many employees they have, and the payroll records of all other employees having two or more employees shall be submitting to the TERO office each week. Any employer required to submit a certified payroll pursuant to the Tribal law, federal law (Davis Bacon Act) or state law (Little Davis Bacon Act) shall submit a copy of this certified payroll record to the TERO office.

SECTION 17. INTERGOVERNMENTAL RELATIONSHIPS.

The Fort Belknap TERO, acting through the Director, is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, and with state employment rights agencies, such as the Human Rights Commission, in order to eliminate discrimination against Indians on and off the Fort Belknap Reservation, as well as to develop training programs for Indians. The Director is specifically authorized to establish a Tribal Fair Employment Practice Commission which shall have the authority to enter into a formal relationship with EEOC as provided for in Section 706 of Title VII of the 1964 Civil Rights Acts, provided any agreement to enter into any such relationship shall first be submitted to the Fort Belknap Tribal President for approval. The TERO Director may impose additional requirements beyond those established by EEOC, in order to address employment barriers that are unique to Fort Belknap Indians and local Indians.

SECTION 18. ENFORCEMENT.

- A. Investigation of Issues/Complaints.** The Director, or any person designated by him, may make any investigation within or without the exterior boundaries of the Fort Belknap Reservation as he deems necessary to determine whether any covered employer, covered entity, other entity, or employee has violated any provisions of this ordinance or any rule, regulation, guideline, or order adopted pursuant thereto, or as he deems necessary to aid in enforcing this ordinance or any rule, regulation, guideline, or order adopted pursuant thereto. The Director or his authorized agent or agents may enter the place of business or employment of any covered employer, covered entity, or other entity if necessary to conduct such investigations.
- B. Processing Of Complaints.** In considering complaints for review by the Commission, wherever possible, the Director shall handle the matter prior to formal presentation of a complaint for adjunction. Upon filing of a complaint, the Commission shall docket the complaint, and set up a hearing to review the complaint on its merits. A three (3)-person panel made up of Commissioners shall conduct such a hearing within twenty (20) working days of the time a complaint is received in the TERO. Mailing a notice to the defending firm, and posting notice of the hearing time at the Tribal Office, local post offices, and the TERO's office, at least five (5) calendar days prior to the hearing shall provide notice. Depending upon the complexity of a matter, the Commission may give notice that the Rules of Civil Procedure, including applicable Rules of Evidence of the Fort Belknap Tribal Code will be used to handle the processing of the matter. The Director shall be responsible for presenting a complaint, together with evidence and witnesses in support thereof.
- C. Selection of Commission Hearing Officers.** To conduct each hearing, three (3) Commissioners, selected at random on a rotating basis, shall be empanelled to review and hear evidence on a complaint. If one (1) or more Commissioners have a conflict of interest because of family relationship, prejudicial knowledge of a complaint, or other good reason, submitted by affidavit, said Commissioners shall be excused and another Commissioner appointed at random. The panel selected shall make the decision of whether a conflict exists. Should there be insufficient numbers of Commissioners to empanel a hearing board, the remaining members may select a judge of the Tribal Court, a judge of the Tribal Appeals Court or an Election Judge to assist in hearing a matter. A conflict of interest shall be presented if a selected Hearing Officer is a brother, sister, mother, father, son, daughter, grandmother, grandfather, granddaughter, grandson, uncle, aunt, or first cousin, by blood or marriage to an interested party.
- D. Authority of Hearing Officer.** The Commission members hearing a complaint may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, contracts, agreements, records, documents, or any other information which they deem relevant or material to any inquiry necessary for the enforcement of this Ordinance or any other rules, regulations, guidelines, or orders promulgated pursuant to it. The Commission shall develop rules and regulations or make orders and guidelines for carrying out the effect of this provision without improperly interfering with the rights of the persons or entities affected.

- E. Failure of Individuals to Appear.** The Commission shall give written notice, either in person or by certified mail with a return receipt requested, to any party covered by this Ordinance who has refused to obey a subpoena or citation issued by the Commission or whom the Commission has reasonable cause to believe is in violation of any provisions of this ordinance or of any rule, regulation, guideline, or order adopted pursuant to it along with the Commission's proposed action. Any such person shall have the right to appear before the Commission to explain why the proposed actions should not be taken
- F. Decisions To Be In Writing.** All decisions and Orders of the Commission shall be reduced to writing with appropriate factual findings. All such decisions and Orders must be served upon all parties to a complaint either by certified mail or in person.
- G. Standard Of Evidence.** Any matter to be proven must be proven to the satisfaction of the Commission by a preponderance of the evidence.
- H. Enforcement Involving Tribal Entities.**
- 1. Employees—Tribal Government.** For purposes of enforcing TERO guidelines and rules, as set forth in this Ordinance, when a Tribal Government Program is involved, the Tribal Government Personnel Policies and Procedure Manual shall be the exclusive process and means available for review. An individual may request the assistance of the TERO Director in the drafting of appeal documents or complaints.
 - 2. Employees—Tribal Enterprises.** For purposes of enforcing TERO guidelines and rules, as set forth in this Ordinance, when a Tribal Enterprise Business is involved, the exclusive means for reviewing action involving a Project Manager's employment shall be before the Tribal Council or governing Board of that enterprise. The processes set forth in this Ordinance shall be available for review of action concerning the employment of all other employees of Tribal Enterprises.
 - 3. Employees—Fort Belknap Indian Housing Authority/Fort Belknap Industries, Inc.** For purposes of enforcing TERO guidelines and rules, as set forth in this Ordinance, when the Fort Belknap Indian Housing Authority and/or the For Belknap Industries, Inc., are involved, the processes set forth in this Ordinance shall be available for review of action concerning the employment of all employees.
 - 4. Contracting – All Tribal Enterprises and Programs.** For purposes of enforcing TERO guidelines and rules, as set forth in this Ordinance, when any Tribal enterprise or program is involved in contracting for services, the processes set forth in this Ordinance shall be available for review of action, provided, a meeting with the Council shall be required before the processing of a complaints against a Council enterprise or program.

SECTION 19. PENALTIES.

The Commission may, after the notice and opportunity to appear set forth in the previous paragraph, impose sanctions and fines for failure to comply with any of the terms and conditions of this Ordinance or any of the rules and regulations, guidelines or order promulgated pursuant to it, provided that in no event shall the fine exceed \$5,000.00 for each violation. Each day in which a violation continues shall constitute a separate violation. All individuals who are subject of a complaint shall be subject to penalties for such violation, including, but not limited to:

- A. Denial of right to commence or continue business inside the Reservation.**
- B. Suspension of all operations inside the Reservation.**
- C. A payment of back pays and damages to compensate an injured party.**
- D. An order to summarily remove employees hired in violation of this Ordinance or rules, regulations and orders of the Director or Commission.**
- E. Imposition of monetary civil penalties.**
- F. Prohibition from engaging in any future operations on the Reservation.**
- G. An order requiring employment, promotion and training of Indians inferred in the violation.**
- H. An order requiring changes in procedures and policies necessary to eliminate the violation**
- J. An order making any other provision deemed by the Commission necessary to alleviate, eliminate or compensate for any violation, including may revocation of permits; seizure of property, forfeiture of contracts, and other penalties designed to impact upon the violators business and encourage future compliance.**

SECTION 20. APPEAL.

- A. Right to Appeal.** Any person aggrieved by an adverse ruling or decision of the Commission shall have the right to appeal that ruling or decision to the Fort Belknap Indian Community Tribal Court upon filing of an appropriate Notice of Appeal and the posting of a bond sufficient to guarantee performance of the Order of the TERO Commission, should the appeal fail.
- B. Time to Appeal.** Notice of Appeal of the Commission's ruling or decision must be filed with the Tribal Court as an original action within thirty (3) calendar days of the receipt or actual notice of the final action of the Commission. A \$25.00 filing fee must accompany all Notices of Appeal in order to be considered validly filed.
- C. Appeal able Order.** Only final orders of the Commission may be appealed to the Fort Belknap Tribal Court for review. Intermediate Orders or actions may be takes up for

review only if accepted by the Tribal Court as ripe for review, and only if an appropriate bond is posted to guarantee performance at the TERO level.

D. Stays Pending Appeal. In the absence of a stipulation by the parties approved by the Commission, a stay of execution of the decision from which the appeal is taken shall only be granted upon a written application of the appellant to the Commission and an opportunity for response by appellee. The application for a stay shall be filed within the period prescribed for appeal in subsection B. hereof. No stay shall be issued unless the appellant presents a clear and convincing showing that each of the following requirements has been satisfied:

- a. Appellant is likely to prevail on the merits of the appeal;
- b. Appellant will be irreparable harmed in the absence of a stay;
- c. Appellee and interested persons will not be substantially harmed by a stay;
- d. The public interest will be served by a stay; and
- e. An appeal bond or other security, in the amount and upon the terms prescribed by subsection E. below, has been filed with and approved by the Director; provided that no appeal bond shall be required of the TERO, the Fort Belknap Community Council or any governmental agency or enterprise of the Council.

E. Bonds On Appeal.

1. **Bonds to Cover Awards and Interest.** The total amount of all monetary awards made in the Commission's decision, together with such interest thereon as may be prescribed in the Commission's decision.
2. **Bond to Cover Costs and Attorney Fee.** Costs of appeal and attorney's fee incurred by appellee in defending the appeal and which may be awarded to appellee by the court on appeal.
3. **Bond to Cover Damages Because of Delay.** Damages sustained by appellee or other recipients of a Director's award of delay in satisfaction of the Director's decision caused by the appeal; and
4. **Other Bond Requirements.**
 - a. Such other amount of liability reasonably required to be secured to protect the interests of the appellee or other award recipients.
 - b. The bond shall provide that the surety submits to the jurisdiction of the TERO and the courts of the Fort Belknap Indian Community, and irrevocably appoints the Director as the surety's agent upon whom any paper affecting the surety's liability on the bond may be served. The

surety's liability may be enforced on motion of the appellee filed with the Commission, with copies thereof served on the surety and appellant.

- c. In lieu of posting an appeal bond, appellant may, with the approval of the Commission, post a cash bond and undertaking in the amount and upon the terms that are required above with respect to an appeal bond.
- d. No appeal bond or cash bond and undertaking, nor the liabilities of the surety or appellant there under, shall be exonerated or released until all amounts and liabilities prescribed therein have been paid and satisfied.

F. Scope of Appellate Review. On appeal, the Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. The decisions of the Commission shall be presumed correct, unless the record on appeal clearly demonstrates otherwise. The court may affirm the decision of the Commission or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- 1. The administrative findings, inferences, conclusions or decisions are:
 - a. In violation of statutory provisions;
 - b. In excess of the authority of the Commission;
 - c. Made upon unlawful procedure in violation of due process;
 - d. Affected by an error in the determined of applicable law;
 - e. Clearly erroneous in view of the evidence found in the record on appeal;
 - f. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion on the part of the Commission.

G. Additional Evidence of Appeal. The court shall not receive additional evidence upon appeal, unless it is determined that the additional evidence is material, and there were good reasons for failure to present such evidence at the hearing afforded appellant before the Director.

SECTION 21. ENFORCEMENT IN COURT.

A. Enforcement in Tribal Court. The Director shall have the right and authority to seek an injunction or other appropriate relief in Fort Belknap Tribal Court, and the Fort Belknap Tribal Court is authorized to issue an injunction or other appropriate relief to assist the Director in enforcing any provisions of this Ordinance or any rule, regulation, guideline, or order promulgated Subcontracting pursuant to it, including, but not limited to, the revocation of any entity's employer's permit, the revocation of a work permit, the revocation of a certification, or the enforcement of any order as a result of said revocation, including the right to enjoin an entity from operating or conducting business

on the Fort Belknap Reservation whose employer's permit has been revoked, who has been denied an employer's permit or who has otherwise seriously or repeatedly violated this Ordinance or any rules, regulations, guidelines, or orders promulgated pursuant to it.

- B. Costs Awarded If Enforcement Action Required.** In the event it becomes necessary for the Director to seek a court injunction or other appropriate relief in the Fort Belknap Tribal Court and the Director is successful in obtaining such relief, the Director is entitled to the award of all costs incurred in pursuing such relief in Fort Belknap Tribal Court, including a reasonable attorney fee, from the Defendant.

SECTION 22. FEES.

- A. Fees Generally.** The Director shall collect the following fees for the purpose of raising sufficient revenue for the operation of the TERO office and the enforcement of this ordinance and any rules, regulations, guidelines, or orders promulgated pursuant to it:

Use of Fees. All fees collected under this section shall be paid to the Tribal Government and shall be placed in a special account to be used to meet the operating costs to the TERO office. The TERO office shall be responsible for collecting said fees, and the TERO Commission is authorized to propose such rules and regulations or make such guidelines and orders as are necessary to ensure a fair and timely fee collection process. An Employer or contractor who fails to pay the required fee shall be subject to the sanctions provided for in Section 18.

- 1. Contracting Fee:** Every contractor or subcontractor with one or more contracts totaling \$1,000.00 or more, a significant part of which is to be work or business conducted within the territorial boundaries of the Fort Belknap Reservation, shall pay a one-time project fee of 4% of the total amount of the contract. The fee may be paid in installments over the length of the contract, if allowed by the Director or Commission.
- 2. Employer Right To Do Business Fee:** Every employer doing business within the boundaries of the Fort Belknap Indian Reservation shall be required to pay an annual business license fee of \$200.00 per year to the Fort Belknap TERO prior to commencing work on the Reservation. Annual fees are due on the anniversary date of certification.
- 3. Employer Fee:** Every covered employer other than contractors shall pay an annual employment fee of 2% of the annual payroll of the employer. This employment fee is limited to the payroll of those employees performing service or other activities, which are received on the Fort Belknap Reservation. This employment fee shall not apply to educational, health, governmental, or nonprofit employers, provided, however, a cooperation association shall not be considered a nonprofit employer.
- 4. Qualifications Fee:** A contractor or subcontractor seeking to be certified as "qualified" under this Ordinance must pay the following annual fees when applying to become a "qualified" contractor or subcontractor. A fee shall be required in each substantive area with

“other” qualifying an applicant in only on substantive area, and “General Contractor” qualifying an applicant in all areas normally falling within such title. Annual fees are due on the anniversary date of certification.

General Contractor (Housing)	\$500.00		
General Contractor (Commercial Building)	\$500.00		
Carpentry	\$100.00	Plumbing	\$100.00
Carpet/Flooring	\$100.00	Painting	\$100.00
Concrete/	\$100.00	Road Const.	\$100.00
Masonry	\$100.00	Drywall	\$100.00
Roofing	\$100.00	Electrical	\$100.00
Sawyers	\$100.00	Electrical	\$100.00
Well-drilling	\$100.00	Heating	\$100.00
Air Conditioning	\$100.00	Other	\$100.0

5. Registration Fees: Every non-member of any Federally Recognized Tribe working on the Reservation shall be responsible for paying a four-year fee of \$200.00 to register to work on the Reservation to which shall be paid the same upon renewal of registration ID Card every four years. Every enrolled member of any Federally Recognized Tribe, providing proof, who is working on the Reservation shall be responsible for paying a four year fee of \$20.00 to register to work on the Reservation to which shall be paid the same upon renewal of registration. Upon registration, each individual shall receive a picture I.D., and shall be responsible for carrying such card on this person, while at work. Such card shall be presumptive proof that the barrier is duly registered with TERO and eligible for TERO services. Because all enrolled Fort Belknap Tribal members are automatically entitled to preference and work on this Reservation, there shall be no charge for the card, or penalty for failure to carry the card. However, a fee of \$10.00 will be charged for renewal or replacement of card for processing fees.

Any non-members failing to register shall be subject to a fine of \$500.00 upon discovery, and a \$200.00 fine per day for each day worked without registration. A non-member failing to carry and present, upon demand, an I.D. card, but who is actually registered, shall be subject to a \$50.00 fine per event.

6. Vendor Fee: Any businesses established as vendors for sales to last no more than one (1) week, shall pay a vendor fee of \$50.00 each time of solicitation. A vendor registration form must be filled out and approved by the director before any business can be conducted.

Upon approval, a vendor license shall be issued. The license shall be issued for only that specific vending event. Fort Belknap Tribal Enrolled Members shall be exempt.

Change Orders: *Any change orders of any contracts shall be subject to tax fees. Non reporting of change orders shall result in fines.*

SECTION 23. REPORTING AND ON-SITE INSPECTION.

Employers shall submit reports and other information requested by the TERO. The TERO shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Ordinance and rules, regulations and orders of the Director or Commission. The TERO shall have the right to inspect and copy all relevant records of any employer and shall have a right to speak to workers and conduct an investigation on the job site. All information collected by the TERO shall be kept confidential unless disclosure is required during a hearing or appeal.

SECTION 24. PUBLICATION OF ORDINANCE.

The TERO shall notify all employers of this Ordinance and their obligation to comply. All bid announcements issued by any tribal, Federal, state or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Ordinance all rules, regulations, and orders of the Commission. All tribal agencies responsible for issuing business permits for reservation activities or otherwise engaged in activities involving contract with prospective employers on their obligations under this Ordinance and rules, regulations and orders of the Commission. The Commission shall send a copy of this Ordinance to every employer operation on the Reservation and any amendments or revisions thereto. Provided, it is the responsibility of entities doing business on the Reservation to comply with Tribal law, and it shall not be a defense to a complaint or other enforcement efforts that the TERO failed to contact or inform an entity or individual.

SECTION 25. AGRICULTURAL LEASES.

The Bureau of Indian Affairs will be requested to put a notice in all leases of trust land owned by the Gros Ventre and Assiniboine Tribes of Fort Belknap or Gros Ventre and Assiniboine individual Allottees that all persons will be required to comply fully with this ordinance.

SECTION 26. SOVEREIGN IMMUNITY.

The Tribal Government of the Fort Belknap Indian Community by enacting this Ordinance does not waive the sovereign immunity or consent to suit of the Tribal Governmental or corporate entity of the Fort Belknap Indian Community.

SECTION 27. SEVERABILITY.

Should any portion of this Ordinance be declared unenforceable by a Court having jurisdiction of the implementation of this ordinance for any reason, such action shall not affect the validity and enforceability of the remaining provisions of the ordinance.