

# INFORMATION HANDOUT

## AGREEMENTS

### HOOPA TRIBE

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS

MEMORANDUM OF UNDERSTANDING (MOU)

ATTACHMENT A - HOOPA TERO PROVISIONS

ATTACHMENT B - TERO HIGHWAY CONSTRUCTION PERMIT (THCP) APPLICATION

### YUOK TRIBE

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS

MEMORANDUM OF UNDERSTANDING (MOU)

ATTACHMENT A - YUOK TERO PROVISIONS

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**MEMORANDUM OF UNDERSTANDING**  
**Tribal Employment Rights Ordinance**

Caltrans contract 01-0A4004

Rehabilitate Bridges

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The Hoopa Valley Tribe (**Tribe**) and the State of California Department of Transportation (**Caltrans**), in order to coordinate and carry out their respective functions and duties regarding Indian Employment Preference on State highway construction projects on lands within the Hoopa Valley Tribe reservation, lands held in trust for the Hoopa Valley Tribe by the BIA or lands under the direct ownership of the Hoopa Valley Tribe (**Tribal Lands**), do hereby enter into this Memorandum of Understanding (**MOU**).

This **MOU** constitutes a guide to the respective intentions, obligations, and policies of the **Tribe** and **Caltrans** in entering into this agreement. It is not intended to be used as a sole basis for authorizing funding, nor is it a legally binding contract upon either party.

Contract 01-0A4004 proposes work on five bridges. This MOU is limited to one bridge:

Contract No. Project ID	Project County-Route-Postmile	Work Description	Bridge Number	Hoopa Tribal Lands	Hoopa IRR Inventory
01-0A4004 0100020280	Hum-96-12.3	Bridge Rehab	#04-0137 Trinity River Bridge	Hum-96-7.80/22.75	Hum-96-0.00/22.75

**I. INDIAN EMPLOYMENT PREFERENCE AND TERO FEE**

**A. Recitals**

1. Section 122 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 23 USC ss. 140(d), recognizes the establishment of Indian Employment Preferences in the Federal Aid Highway Program.
2. The **Tribe** has enacted certain tribal employment rights policies included within the Hoopa Valley Tribe **Tribal Employment Rights Ordinance** establishing a tribal employment rights function and mandating Indian Employment Preferences on State construction projects and in other forms of employment within the Reservation.

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3. The parties hereto recognize that Caltrans shall employ the services of one or more independent contractors in order to accomplish all or some of the activities necessary for State highway construction on **Tribal Lands**.
4. **Caltrans** and the **Tribe** desire to promote Indian employment by
  - a) applying Indian Employment Preferences to the State's contractors for highway work conducted on **Tribal Lands** or on any State highway included in the **Tribe's** Indian Reservation Road (IRR) Inventory when a portion of the project is on Tribal Lands, and
  - b) establishing a mechanism to ensure that the **Tribe** receives TERO Fees for the portion of the project that is on **Tribal Lands**.
5. The parties desire to clarify the rights and obligations of the **Tribe**, **Caltrans**, and prospective bidders and contractors who may perform work on **Tribal Lands** for State highway construction contracts.

**B. Statement Of Intent**

1. **Caltrans** shall inform prospective bidders of the Tribal, State, and Federal laws with respect to Indian Employment Preferences by inserting provisions (Attachment A) in its information to prospective bidders. These provisions shall become part of the State highway construction contract. The provisions shall require
  - a) submittal of TERO Highway Contract Permit (THCP) to Tribe within 5 days after Contract Approval
  - b) a 45-day delayed start to allow for Contractor submittals to and from Tribe and Contractor submittal of completed THCP to Engineer
2. **Caltrans** shall not allow the contractor to begin work until the contractor has obtained, from the **Tribe**, a TERO Highway Contract Permit (Attachment B) from The TERO officer of the **Tribe**.
3. The TERO Officer of the **Tribe** shall work with Caltrans and Caltrans' contractor to process the TCHP in a timely manner and ensure that there is

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no delay in either beginning work or in providing qualified candidates to meet the contractor's personnel needs. The Tribe shall return the completed THCP to the contractor within 30 days of receiving the application.

4. Immediately after Contract Approval, **Caltrans** shall provide the TERO officer of the Tribe with all documentation necessary for the Tribe to properly invoice Caltrans for the TERO fee. The **Tribe** shall invoice **Caltrans** for the TERO Fee, 3% of the award amount, within 15 days after issuing the THCP. Upon receipt of an invoice for the TERO Fee, Caltrans shall forward the invoice to Accounting within 7 days and make prompt payment of the TERO fee to the Tribe.
5. **Caltrans** and the **Tribe** shall make a reasonable effort to conduct joint investigations and share information. Nothing in this **MOU** shall be construed to restrict the authority of the **Tribe**, either to initiate enforcement actions in the Tribal Court or to amend Tribal laws.

**II. TERO PROVISIONS – Pertaining to Contracted State Highway Work**

Listed below are the provisions from the Hoopa Valley Tribe TERO that pertain to State Highway work.

**Hoopa Valley Tribe  
Tribal Employment Rights Ordinance  
Title 13  
Approved: November 23, 2011**

**13.0 SHORT TITLE**

The Short title of this ordinance shall be the Tribal Employment Rights Ordinance, or TERO.

**13.1 EFFECT ON PRIOR ENACTMENTS**

**13.1.1 Repeal.** Resolution 91-71A, as amended March 6, 1995, Ordinance No. 2-80, as amended April 27, 1995, the Rules for Hearing Before the TERO Commission, as Amended June 10, 1998, are hereby repealed and shall be of no further force and effect as stated in Section 13.13.1 of this ordinance; provided, however, that any existing agreements or contracts authorized under these now repealed enactments shall remain in effect until such agreements or contracts

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expire or are terminated; and provided, further, that the TERO Commission established by this Ordinance may terminate any existing Indian preference agreement and issue a permit in conformance with this Ordinance upon notice to the affected party and opportunity for hearing.

13.1.2 N/A

13.1.3 N/A

**13.2 DEFINITIONS**

**13.2.1 "Indian"** means any member of any federally recognized tribe, or any person who furnishes documentary proof that he or she is recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.

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

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

13.2.4 N/A

**13.2.5 "Commission" and "Office"** mean the Tribal Employment Rights Commission and its Office and the Tribal Office of Employment Relations.

**13.2.6 "Council"** means the Hoopa Valley Tribal Council.

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

1. Job Descriptions;
2. Interview Committees;
3. Skills Tests;
4. RFP's and License Requirements;

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5. Other Job Requirements.

**13.3 ESTABLISHMENT OF TERO COMMISSION AND OFFICE**

**13.3.1 Establishment and Purpose of Commission**

(A) The Hoopa Valley Tribal Council does hereby establish the Tribal Employment Rights Commission (TERO Commission) for the purposes of implementing and enforcing the Indian Preference provisions of this Ordinance and disseminating information regarding unlawful employment discrimination by State and private employers subject to Title VII of the Civil Rights Act of 1964 who are operating on or near the Hoopa Valley Indian Reservation.

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

(C) TERO Tax. The TERO Commission shall be allocated sufficient funds as determined by the Hoopa Valley Tribal Council derived from the TERO Tax as described in Section 13.5 of this Ordinance for implementation, conduct, and fulfillment of the TERO Commission's purposes.

**13.3.2 General Powers of the Commission**

(A) Organizational Authority. The Commission may hire immediate TERO staff, obligate funds appropriated by the Council, and secure and obligate funding from Federal, State or other sources to carry out its duties and functions under this Ordinance. The Commission is further authorized and directed to adopt such organizational bylaws as are necessary to enable it to carry out its duties and functions under this Ordinance. The Commission shall report directly to the Council. The

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TERO Commission shall be subject to the Conflict-of-Interest and Nepotism Ordinance of the Hoopa Valley Tribe.

(B) Regulatory Authority.

(1) The Commission shall promulgate rules, regulations, interpretations of law, and guidelines for Indian preference that are necessary to implement this Ordinance. Such rules shall become effective upon Council approval of a resolution adopting said rules. Council approved rules shall be codified in the Revised Code of the Hoopa Valley Tribe, and the Commission shall take other reasonable steps to insure that the general Reservation community is on notice of all Indian preference and applicable employment related laws.

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

(3) N/A

(4) The Commission may ( N/A ) issue permits to such contractors according to rules and procedures to be developed, which shall include procedures for revocation of such permits.

(5) The Commission is further authorized and directed to investigate complaints regarding any violation of the provisions of this Ordinance or any other tribal law the Commission is authorized to enforce; the Commission may also investigate possible violations of this Ordinance if there is reasonable cause to believe a violation of this Ordinance has occurred or is occurring. Neither the Commission or any of its employees shall have the authority to investigate or assist any Hoopa Tribal employee in pursuing any employment related claim not within its authority under this Ordinance.

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(C) Adjudicatory Authority

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

(D) Cooperative Agreements with Other Governments

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

**13.3.3 Composition of the Commission**

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

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

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

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

**13.3.4 Powers of the TERO Director**

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

**13.4 INDIAN EMPLOYMENT PREFERENCE POLICY AND PROCEDURES**

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

**13.4.1 Applicability**

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

**13.4.2 Covered Positions**

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

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**13.4.3 Qualified Indians; Employment Criteria**

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

**13.4.4 Eligible Indians**

(A) (...N/A...)

(...N/A...) Tribe shall extend Indian preferences according to the requirement of said federal laws and regulations.

(B) Private Employers Not Contracting with the Hoopa Valley Tribe: Private employers not contracting with the Hoopa Valley Tribe and doing business within the exterior boundaries of the Hoopa Valley Indian Reservation shall not be subject to the priority requirements of Section 13.4.4(A), but shall extend a preference to qualified Indians residing on or near the exterior boundaries of the Hoopa Valley Indian Reservation.  
(...N/A...)

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

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

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**13.5 ESTABLISHMENT OF TERO TAX AND FEES**

(...N/A...) The tax shall be equivalent to three percent (3%) of the total gross value of any contract performed within the Reservation or of the total annual gross revenues (...N/A...) The proceeds of the tax shall be used in implementing this Ordinance. The Hoopa Valley Tribal Council shall authorize the appropriate amounts of the TERO Tax to be utilized by the TERO Commission according to proof of budgetary needs provided by the department. The TERO tax shall be governed under guidelines approved by the Tribal Fiscal Department. (...N/A...). The Hoopa Valley Tribal Council when it determines to be in the interests of the Hoopa Valley Tribe, reserves the right to waive TERO Taxes and Fees for any contract or contracts, and further, may approve a waiver schedule consistent with the objectives of this Ordinance, that is implemented directly by the TERO Office and that establishes tax adjustments to not less than one percent (1%).

**13.6 SPECIAL REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS**

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

13.6.1 N/A

13.6.2 N/A

13.6.3 N/A

13.6.4 N/A

13.6.5 N/A

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**13.7 JOB CATEGORIES**

**13.7.1 Identification of Key Employees; Hiring Requirements**

(A) Contractors/employers shall be required to hire and maintain as many TERO / Native American preference employees as apply for and are qualified for each craft or skill.

(B) Notwithstanding subsection A, above, Contractors/employers may hire key employees to fill not more than 25% of the workforce.

(1) Prior to commencing work on the Hoopa Valley Indian Reservation the prospective employer, contractor and sub-contractors shall identify key, regular and permanent employees. The TERO Office and contractor/employer in possession of past employment records documenting employment of past supervisors or foreman shall coordinate on certifying eligibility for treatment of employees as a key employee.

(2) A key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. A key employee has been on the employers' or contractors' annual payroll for a period of one year continuously in a supervisory capacity, or is an owner of the firm. An employee who is hired on a project-by-project basis shall not be considered a key employee.

**13.7.2 Lay-Offs**

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

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**13.7.3 Existing Contracts, Employers**

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

**13.7.4 Reporting Requirements**

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

**13.8 IMPLEMENTATION**

In implementing the requirements of this Ordinance, the Commission may:

**13.8.1 Numerical Hiring Goals**

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

**13.8.2 N/A**

**13.8.3 Attend and monitor all job interviews as a non-voting participant.**

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

**13.8.5 Enter into agreements, subject to approval by the Hoopa Tribal Council, with unions and other employers to insure compliance with this Ordinance.**

**13.8.6 N/A**

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

**13.8.8** Issue Permits

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

**13.9 ENFORCEMENT BY TERO COMMISSION**

In implementing this Ordinance the Commission shall have the following powers of enforcement:

**13.9.1** Investigation, Monitoring

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

**13.9.2** Issue Notices of Non-Compliance and Compliance Orders

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

**13.9.3** Citations, Subpoenas, and Penalties

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

**13.9.4** Hearings

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

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**13.9.5 File and Defend Cases in Tribal Court**

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

**13.10 TRIBAL COURT**

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

**13.11 LEGAL REPRESENTATION**

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

**13.12 PRINCIPLES OF CONSTRUCTION; SEVERABILITY;  
SOVEREIGN IMMUNITY PRESERVED**

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

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

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

**13.13 EFFECT OF AMENDMENTS ON PRIOR TERO  
LEGISLATURE AND PENDING CASES**

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

**13.13.2** All current employee grievances that are not related to termination where the TERO Commission has not issued a final decision shall be dismissed. An employee termination case that has been appealed to the TERO Commission prior to the date of the Tribal Council transferring employee termination grievances to Tribal Court shall be heard by the TERO Commission. However, all employee termination cases regardless of whether they are pending before the TERO Commission or before the Tribal Court shall be subject to the requirements of 1 H.V.T.C. § 1.1.04(F) AS IT RELATEES TO THE Hoopa Valley Tribe's limited waiver of sovereign immunity.

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This **MOU** may be amended by written agreement of the parties, or terminated by either party upon reasonable written notice. In the event of termination, unless otherwise mutually agreed by the parties, the provisions of this **MOU** will remain in force with respect to any contract covered hereunder which has already been awarded or for which contractor performance has already commenced.

The parties hereto have agreed to the objectives, principles, and recitations cited in this document and have further approved this **MOU** for signature by their duly authorized representatives.

for the Hoopa Valley Tribe

By:   
LEONARD MASTEN Jr.  
Chairman

Date: 12-5-2011

for the CALIFORNIA DEPARTMENT OF TRANSPORTATION

By:   
CHARLES C. FIELDER  
District Director, District 1

Date: November 29, 2011

**ATTACHMENT A**

**Project-Specific Special Provisions For Hoopa TERO 2011-04 MOU**

SPECIAL NOTICE:

- This project includes Tribal Employment Rights Ordinance (TERO) requirements. See Section 4, "Beginning of Work, Time of Completion and Liquidated Damages," of these special provisions for TERO submittals required before starting work.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION, AND LIQUIDATED DAMAGES:

Use a minimum 45-day delayed start after contract approval.

Submit a TERO Highway Construction Permit (THCP) Application, shown in "Supplemental Project Information" of the special provisions, to the Hoopa Tribe within 5 days after contract approval. Submit a copy of the THCP application to the Engineer at the same time. Submit a completed THCP to the Engineer within 10 days after receipt from the Hoopa Tribe.

Do not start work at the job site until the Engineer approves your submittal for:

Completed TERO Highway Construction Permit (THCP) from the Hoopa Tribe.

5-1. SUPPLEMENTAL PROJECT INFORMATION

The Department makes the following supplemental project information available:

**Supplemental Project Information**

Means	Description
Included in the Information Handout	Hoopa Tribe TERO Requirements Information Handout

INFORMATION HANDOUT

Hoopa Tribe TERO Requirements Information Handout contains:

1. Signed one-time MOU between the Hoopa Tribe and the State.
2. Attachment A project special provisions.
3. Attachment B TERO Highway Construction Permit Application (THCP).

**ATTACHMENT B**

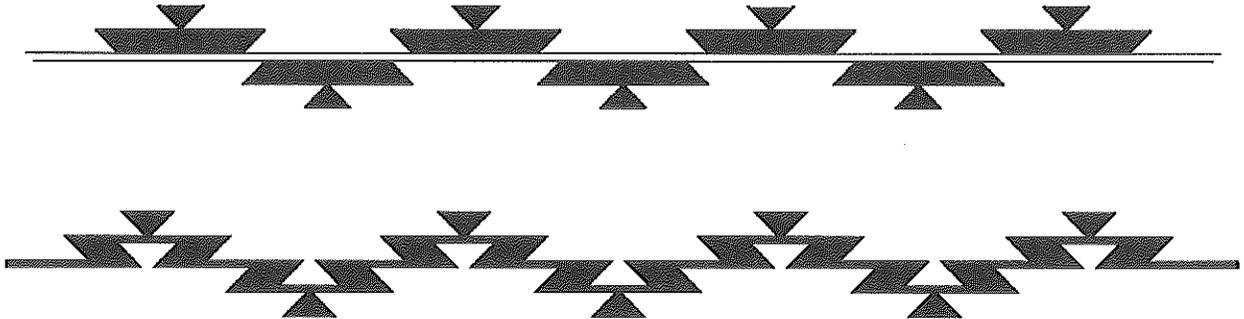
**Part 1**

**TERO Highway Construction Permit (THCP)**

**HOOPA TRIBE**

**TRIBAL EMPLOYMENT RIGHTS OFFICE**

**MEMORANDUM ON COMPLYING WITH TRIBAL AND FEDERAL EMPLOYMENT LAWS**



The Tribal Employment Rights Office (TERO), on the Hoopa Indian Reservation, has been implemented to assist employers, contractors, and/or subcontractors towards meeting the required rules and regulations of the Hoopa Tribal Council, and the employment laws of the U.S. Government.

**TERO HIGHWAY CONSTRUCTION PERMIT APPLICATION (THCP)**

1. State Contractor (Employer) shall file a Hoopa TERO Labor Force Projection Form with the TERO office for themselves and all subcontractors (Employer) listed on State contract bid form within five (5) days after contract approval.

2. If available, qualified Indians must be hired in preference to non-Indians. Employer shall neither recruit nor hire any non-Indians for any covered position until the Hoopa TERO has provided written notice that no qualified Indians are available to fill such covered position. Covered positions are defined in the Hoopa TERO Policy. Each waiver issued is only for that particular position/task and the employee cannot be transferred to another position once that job is done.

3. The Hoopa TERO maintains a Indian Skills-Bank to assist Employers to meet the Indian Preference requirements of the TERO Policy of the Hoopa Tribe. Please note: "Core Crew" is key employees of the firm who have worked continuously for the firm

for many seasons and who were not recently hired for this particular project. (Possessing records of past employment as proof as a supervisor or foreman).

PLEASE RETURN COMPLETED LABOR FORCE PROJECTION FORMS TO:

Penny Cordova, TERO Officer

Hoopla Tribe

PO Box 1467

Hoopla, CA 95546

(530) 625-4227

(530) 625-4313 (Fax)

ATTACHMENT B

Part 2

TERO Highway Construction Permit (THCP)

HOOPA TRIBE  
TRIBAL EMPLOYMENT RIGHTS OFFICE  
LABOR FORCE PROJECTION FORM



Prime employer and all subcontractors are required to submit the following information to the TERO:

Employer/Supplier Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, and Zip Code: \_\_\_\_\_

Phone Number \_\_\_\_\_

Cell # \_\_\_\_\_

Contact: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Amount of Contract: \_\_\_\_\_ \$ \_\_\_\_\_

Contracting With: \_\_\_\_\_

THIS IS AN AGREEMENT BETWEEN *THE HOOPA TRIBE* AND EMPLOYER FOR CONDUCTING EMPLOYMENT ACTIVITY WITHIN THE EXTERIOR BOUNDARIES OF THE HOOPA INDIAN RESERVATION AND *HOOPA TRIBAL "Lands"*.

**EMPLOYER** hereby agrees to comply with the requirements and procedures for the recruitment of viable Indian applicants through TERO.

TERO shall receive notice, in the form of copies of bid forms by awarded prime Employer seeking bids of all sub-contract work to be conducted on the Hoopa Indian Reservation. Notice shall be made reasonably in advance of contract approval, but not later than five (5) days after approval.

The above named employer understands that they are required to comply with the portions of the Hoopa Tribal Councils TERO Ordinance (adopted October 22, 2003) listed in the Hoopa Tribe/Caltrans TERO MOU (dated 2/18/2011).

**COMPLIANCE INSPECTIONS:** The TERO Officer or other designated staff shall make periodic or site visitations for assurance to all involved parties that employment rules are adhered to.

**MAINTAINING EMPLOYMENT RECORDS:** Employer shall maintain accurate employment records on all employees and all applicants for employment; regardless of length and category or employment, hired, fired, or laid-off. The files shall reflect: name, address and employment category for which applicant performed or applied to perform. If applicant was contacted but not hired, hired and fired, all data should reflect action taken by that firm. Such informational records shall be made available to the TERO Officer, upon reasonable notice.

**ASSISTANCE:** If an Employer deems that an Indian employee's performance is such that he or she is jeopardizing and endangering job loss, suspension, or termination, Employer may contact TERO to provide assistance toward resolving of that issue.

**EMPLOYMENT POLICIES AND PROCEDURES:** It is further understood that Employer recognizes that its operations are taking place within a unique cultural setting on the Hoopa Indian Reservation. Accordingly, all firms in conjunction with the TERO Officer should consider seriously Tribal Holidays and ceremonial customs; and to accommodate those Indian employees requesting certain leave of absences for religious purposes.

***\*This form must be completed and filed with the TERO. Attach additional sheets if necessary.***

Briefly describe the basic tasks and types of work to be performed:

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Please list types of skills and categories which will be required towards performing said contract:

1.	7.
2.	8.
3.	9.
4.	10.
5.	11.
6.	12.

Indian Preference shall be accorded at every Tier Level. Please list the names and positions of your Core Crew. (Key staff). (Core Crew members are the vitally needed Supervisors that you depend on every day). All other persons needed on this job will go through the TERO Skills Bank.

NAME	JOB TITLE
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	

**Note:**

*(Please utilize as many sheets as necessary for explaining your on-site employment related projection)*

**MEMORANDUM OF UNDERSTANDING**  
**Tribal Employment Rights Ordinance**

Caltrans contract 01-0A4004

Rehabilitate Bridges

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The Yurok Tribe (**Tribe**) and the State of California Department of Transportation (**Caltrans**), in order to coordinate and carry out their respective functions and duties regarding Indian Employment Preference on State highway construction projects on lands within the Yurok Tribe reservation, lands held in trust for the Yurok Tribe by the BIA or lands under the direct ownership of the Yurok Tribe (**Tribal Lands**), do hereby enter into this Memorandum of Understanding (**MOU**).

This **MOU** constitutes a guide to the respective intentions, obligations, and policies of the **Tribe** and **Caltrans** in entering into this agreement. It is not intended to be used as a sole basis for authorizing funding, nor is it a legally binding contract upon either party.

Contract 01-0A4004 proposes work on five bridges. This MOU is limited to one bridge:

Contract No. Project ID	Project County-Route- Postmile	Work Description	Bridge Number	Yurok Tribal Lands	Yurok IRR Inventory
01-0A4004 0100020280	Hum-96-23.0	Bridge Rehab	#04-0144  Klamath River Bridge	Hum-96- 22.75/25.1	same

**I. INDIAN EMPLOYMENT PREFERENCE AND TERO FEE**

**A. Recitals**

1. Section 122 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 23 USC ss. 140(d), recognizes the establishment of Indian Employment Preferences in the Federal Aid Highway Program.
2. The **Tribe** has enacted certain tribal employment rights policies included within the Yurok Tribe **Tribal Employment Rights Ordinance** establishing a tribal employment rights function and mandating Indian Employment Preferences on State construction projects and in other forms of employment within the Reservation.

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3. The parties hereto recognize that Caltrans shall employ the services of one or more independent contractors in order to accomplish all or some of the activities necessary for State highway construction on **Tribal Lands**.
4. **Caltrans** and the **Tribe** desire to promote Indian employment by
  - a) applying Indian Employment Preferences to the State's contractors for highway work conducted on **Tribal Lands** or on any State highway included in the **Tribe's** Indian Reservation Road (IRR) Inventory when a portion of the project is on Tribal Lands, and
  - b) establishing a mechanism to ensure that the **Tribe** receives TERO Fees for the portion of the project that is on **Tribal Lands**.
5. The parties desire to clarify the rights and obligations of the **Tribe**, **Caltrans**, and prospective bidders and contractors who may perform work on **Tribal Lands** for State highway construction contracts.

**B. Statement Of Intent**

1. **Caltrans** shall inform prospective bidders of the Tribal, State, and Federal laws with respect to Indian Employment Preferences by inserting provisions (Attachment A) in its information to prospective bidders. These provisions shall become part of the State highway construction contract. The provisions shall require
  - a) submittal of TERO Highway Contract Permit (THCP) to Tribe within 5 days after Contract Approval
  - b) a 45-day delayed start to allow for Contractor submittals to and from Tribe and Contractor submittal of completed THCP to Engineer
2. **Caltrans** shall not allow the contractor to begin work until the contractor has obtained, from the **Tribe**, a TERO Highway Contract Permit (Attachment B) from The TERO officer of the **Tribe**.

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3. The TERO Officer of the **Tribe** shall work with Caltrans and Caltrans' contractor to process the TCHP in a timely manner and ensure that there is no delay in either beginning work or in providing qualified candidates to meet the contractor's personnel needs. The Tribe shall return the completed THCP to the contractor within 30 days of receiving the application.
4. Immediately after Contract Approval, **Caltrans** shall provide the TERO officer of the Tribe with all documentation necessary for the Tribe to properly invoice Caltrans for the TERO fee. The **Tribe** shall invoice **Caltrans** for the TERO Fee, 3% of the award amount, within 15 days after issuing the THCP. Upon receipt of an invoice for the TERO Fee, Caltrans shall forward the invoice to Accounting within 7 days and make prompt payment of the TERO fee to the Tribe.
5. **Caltrans** and the **Tribe** shall make a reasonable effort to conduct joint investigations and share information. Nothing in this **MOU** shall be construed to restrict the authority of the **Tribe**, either to initiate enforcement actions in the Tribal Court or to amend Tribal laws.

**II. TERO PROVISIONS – Pertaining to Contracted State Highway Work**

**Yurok Tribe  
Tribal Employment Right Ordinance  
Approved: October 22, 2003  
Amended: June 9, 2005**

**SUBJECT:** Establishment of the Yurok Tribal Employment Rights Office (TERO) and adoption of standards and procedural guidelines for application of Yurok and Indian Preference in Employment.

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**SECTION 1.0 SHORT TITLE**

The short title of this ordinance shall be the "Yurok Tribal Employment Rights Office Ordinance," or Yurok TERO Ordinance.

**1.1 AUTHORITY**

This Ordinance is established by the Yurok Tribal Council pursuant to the authority delegated to the Tribal Council by Article IV, Section 5(a) of the Constitution of the Yurok Tribe.

**1.2 JURISDICTION**

The jurisdiction of the Yurok Tribe to enforce the TERO ordinance shall extend to (. . . N/A . . .) the area within the exterior boundaries of the "reservation" as defined in Article I, sections 1 through 3 of the Constitution of the Yurok Tribe. Additionally, the Tribe retains jurisdiction to enforce provisions of the TERO ordinance for all projects initiated or taken over by the Yurok Indian Housing Authority, whether on, or off, the Yurok reservation.

**1.3 STATEMENT OF PURPOSE**

The Yurok Tribal Council operates under a constitutional mandate to protect the sovereignty

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of the Yurok Tribe and to provide for the cultural, social, and economic well being of current and future Yurok tribal members. In fulfillment of its duty to guarantee the unique employment rights of all Yurok tribal members and other Indians within its jurisdiction, the Yurok Tribal Council hereby creates a Tribal Employment Rights Office, (TERO) and establishes standards and procedural guidelines to assure 1) equal and effective application of this Ordinance; and 2) due process for all individuals affected by the application of its requirements.

**1.4 CONSISTENCY WITH FEDERAL LAWS**

Indians have unique and special employment rights, and are entitled to the protection of laws established by the federal government to combat employment discrimination on or near Indian reservations, including the following:

- 1.4.1 Title VII of the civil Rights Act, including Section 703(i), which makes Indian preference in employment permissible.
- 1.4.2 Executive Order 11246 of the Federal Office of Contract Compliance, which exempts from the general requirements policies extending preference in employment for Indians living on or near an Indian Reservation, and which further prohibits discrimination among Indians as a group on the basis of religion, sex, or tribal affiliation. E.O. 11246 applies only to employers working under federal contracts.
- 1.4.3 The Indian Self-Determination Act, Section 7(b) of Public Law 93-638 which provides for Indian Preference in employment and training, and contracting or subcontracting on all contracts negotiated or let on behalf of an Indian Tribe.
- 1.4.4 The Indian Civil Rights Act of 1968 (ICRA) which prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights similar to those individual rights guaranteed under the Bill of Rights of the United States Constitution.

**SECTION 2. DEFINITIONS**

- 2.1 "CHAIRPERSON" means the Chairperson of the Yurok Tribal Council.
- 2.2 "COMMERCE" means the exchange or provision of goods, services

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- and/or property, or the offer of same, without reference to the locality where transaction is conducted or consummated.
- 2.3 **"COMMUTE"** means the distance in miles, one way, customary for the occupation and region.
- 2.4 **"CORE EMPLOYEE"** means an employee who performs an essential job function and has been identified as an employee who is vital to the success of the endeavor. (Core Employees should be identified in coordination with the TERO Office and employer possesses records of past employment as a supervisor or foreman).
- 2.5 **"TRIBAL COUNCIL" or "COUNCIL"** means the Yurok Tribal Council.
- 2.6 **"COVERED EMPLOYER"** means any person, company, contractor, subcontractor *or* entity located *or* engaging in commercial or employment activity on the Yurok Indian Reservation, and which employs two or *more* persons, including the Yurok Tribe, regardless of where the activity occurs.
- 2.7 **"EMPLOYEE"** means any non-supervisory employee in a non-managerial position working on the Yurok Indian Reservation or its contiguous lands.
- 2.8 **"EXECUTIVE DIRECTOR"** means the administrative officer designated by the Tribal Council as such.
- 2.9 **"Grandfathering"** means providing an exception to a restriction that allows all those already doing something to continue, even though it may be otherwise prevented by the restriction.
- 2.10 **"INDIAN"** means an enrolled member of any federally recognized Indian tribe.
- 2.11 N/A
- 2.12 **"INDIAN PREFERENCE"** means the policy of extending preference in employment or training opportunities to Yurok Tribal Members and other Indians, regardless of tribal affiliation, over non-Indians: (. . . N/A . . .)

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- 2.13 **"LOCATED ON OR NEAR THE YUROK RESERVATION"** means located within what a reasonable, prudent person would construe as the normal commuting distance from a location off the reservation to the exterior boundaries of the Yurok Indian Reservation as defined in Article I, Sections 1 through 3 of the Constitution of the Yurok Tribe.
- 2.14 **"NOTICE"** means that notification required to be given by the Yurok TERO Officer, the appointed tribal judge, the Tribal Council sitting as the interim final appeal body, or the Tribal Court acting as the body of final appeal regarding TERO related activities.
- 2.15 **"PERSON"** means both natural persons and artificial persons including, but not limited to, corporations, trusts, partnerships, unions, agents, societies, and sole proprietorships.
- 2.16 **"QUALIFIED INDIAN"** means an Indian who meets the requirements for a position as determined by the job requirements, the minimum qualifications statements for the position, and, for internal tribal hiring only, the final interview process. No employer may utilize any employment criteria not legitimately-related to the performance of the position.
- 2.17 N/A
- 2.18 **"SECRETARY"** means the Secretary of the United States Department of the Interior, or his/her duly-authorized and designated representative.
- 2.19 **"TERO OFFICER"** means the administrative officer employed by the Tribe to oversee and ensure compliance with the TERO Ordinance. The TERO Officer shall have the authority, for good cause shown, to impose sanctions and to issue stop work orders for reasons of non-compliance.
- 2.20 **"TRIBE"** means the federally recognized Yurok Tribe of the Yurok Reservation, operating under the authority of the Yurok Constitution.
- 2.21 **"UNION" or "LABOR UNION"** means any organization, of any kind, or any agency of employee representation committee or plan, associated or organized for the purposes of collective bargaining for the benefit of employees and that exists for the purpose, in whole or part, of dealing with employers concerning grievances, working conditions, or terms of employment.

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**2.22 "YUROK RESERVATION"** means all lands within the exterior boundaries of the Yurok Reservation; and any lands outside the exterior boundaries of the Yurok Reservation subsequently acquired, or put into trust, for the Tribe.

**2.23** N/A

**SECTION 3.0 ROLE OF YUROK TRIBAL COUNCIL**

**3.1 Authority.** Through the sovereign powers vested in the Yurok Tribal Council through the Constitution of the Yurok Tribe, the Council shall be responsible for designating such officers, agents, and employees as it deems necessary to assist in fulfilling Yurok Tribal TERO obligations, duties, and responsibilities. The Tribal Council will oversee TERO implementation; and shall either sit as the TERO Hearing body, or identify the composition of a hearing body

**3.2 Council Expenses.** The Yurok Tribal Council shall not receive compensation of any kind for fulfilling its TERO related duties, obligations, and responsibilities.

**3.3 Duties of the Council.** Within the scope of overseeing the Yurok TERO, the Council is authorized to prevent any person, whether an individual or an entity, from engaging in any unlawful Indian preference in employment practices as set forth in the Yurok Tribe's TERO Ordinance.

**3.4 Powers of the Council.** As the oversight body for TERO, the Council has jurisdiction and authority to:

**3.4.1** Formulate, adopt, amend and rescind rules, regulations and guidelines reasonably necessary to implement the provisions of this ordinance

**3.4.2** To conduct hearings or appoint alternate hearing bodies and to subpoena witnesses and documents in accordance with this ordinance

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- 3.4.3 Prohibit covered employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment, unless the employer can demonstrate that such criteria or requirements are an essential business necessity, and receives written approval from the TERO Officer that such qualifications are essential.
- 3.4.4 Engage in discussion, and enter into agreements, with unions to ensure compliance with this ordinance. Such agreements shall in no way constitute recognition or endorsement of any union or union-related activity, including formation thereof.
- 3.4.5 Require employers to submit reports and take all actions deemed necessary for the fair and vigorous implementation of this Ordinance.

**3.5 Delegation of Authority.** The Tribal Council shall delegate such authority to the TERO administrative officer (hereinafter "TERO Officer") as is convenient or necessary for the efficient administration of this ordinance, except that the Council will not delegate its powers or duties to:

- 3.5.1 Adopt, amend or rescind rules, regulations or guidelines; or
- 3.5.2 Conduct hearings or impose sanctions outside the scope of Section 12 of this Ordinance; or
- 3.5.3 Appropriate funds and/or approve budgets; or
- 3.5.4 Waive the collection of TERO taxes.

**SECTION 4. THE YUOK TRIBAL EMPLOYMENT RIGHTS OFFICE**

**4.1 Establishment of Office and Hiring of TERO Officer(s)**

The Yurok Tribal Council hereby establishes the Yurok Tribal Employment Rights Office (hereinafter TERO Office). The TERO Office is vested with the authority to implement the provision of this Ordinance. The Yurok Tribe Executive Director shall both hire the TERO Officer(s), and serve as his/her/their direct supervisor.

**4.2 Coverage.** All employers are required to give preference to Indians in hiring, promotion, training, temporary reductions in work force and all other aspects of employment, (. . . N/A . . .), and must comply with this Ordinance and the rules, regulations and orders of the Tribal Council.

**4.3 Duties of the TERO Administrative Officer**

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The TERO Officer shall be charged with the overseeing the implementation and enforcement of this Ordinance, as well as day-to-day operations of the TERO office. The TERO Officer's duties include, but are not limited to, ensuring that Indian preference in employment is fully implemented by covered employers; and preventing any person from engaging in any unlawful practice that would interfere with application and/or enforcement of the provisions of this Ordinance.

**4.4 TERO Officer Authority**

The TERO Officer shall administer the policies and rules promulgated and adopted by the Tribal Council, and hold the powers and authorities prescribed by Council, including, but not limited to:

- 4.4.1 The authority to expend funds appropriated or obtained from various sources to carry out requirements of this Ordinance.
- 4.4.2 The authority to impose numerical hiring goals and timetables on an employer specifying the minimum numbers of qualified Tribal members and qualified Indians to be hired by occupation, craft, or skill level.
- 4.4.3 N/A
- 4.4.4 The duty to create and maintain a Tribal skills bank for all eligible Tribal members and other Indians residing in the administrative area covered by this Ordinance.
- 4.4.5 The ability to restrict or prevent the hiring of (. . . N/A . . .) non-Indians until the TERO Officer certifies that qualified Tribal members or qualified Indians, as appropriate, are not available to fill the position in question.
- 4.4.6 N/A.
- 4.4.7 The ability to facilitate support programs to assist eligible Yurok Tribal members, the Yurok Tribal community and other Indians in obtaining and keeping employment.
- 4.4.8 The duty to recommend amendments or changes to the rules and regulations adopted by Council, or other actions necessary to achieve the purpose and objectives of the Yurok TERO established by this Ordinance.
- 4.4.9 The duty to locate training opportunities and programs designed to teach Yurok Tribal Members and other Indians skills and qualifications needed to obtain

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employment.

- 4.4.10** The TERO Officer shall have the authority to issue stop work orders and mandatory compliance orders when necessary either to achieve the goals of this Ordinance, or to compel compliance therewith. When necessary, the TERO Officer is also authorized to request assistance from the Yurok Tribe Office of Public Safety in enforcing any stop work order where circumstances in existence at the time of inspection reasonably warrant such intervention. The standard for whether assistance by Public Safety Officers is warranted is that of the reasonable person under the same or similar circumstances.

## **SECTION 5. APPLICABILITY AND COVERAGE**

### **5.1 Applicability**

Unless specifically prohibited by federal or Yurok Tribal law, *this* Ordinance shall apply to all employers, including but not *limited* to: the Tribal Council, (*its* programs, departments, entities, or enterprises); private employers; and independent contractors and subcontractors, including those performing work for the Council, the State of California, or the United States.

All employers shall extend an employment preference to qualified Indians, as provided in Section 5.4, in all aspects of employment, including but not limited to recruitment, hiring, promotion, lateral transfers, retentions, training, (. . . N/A . . .). No employer may recruit, hire, or otherwise employ any non-Indian for any employment position covered by this Ordinance, unless and until the TERO Officer has furnished written notice to such employer that no qualified Indians are available for such position.

### **5.2 Covered Positions**

The Yurok Tribe Indian Employment Preference Policy Section 5.4 shall apply to every job classification, skill area, or craft recognized or utilized by an employer, including administrative, supervisory, and professional classifications.

### **5.3 Qualified Indians and Employment Criteria**

An Indian shall be deemed qualified for employment in a position if he/she meets the minimum requirements for such position. Any qualified Indian shall be afforded the preference to which he/she is entitled under Section 5.4 of this Ordinance. No

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employer may utilize any employment criteria that is not legitimately related to the performance of the position; and that has not been approved by the Yurok TERO Officer.

**5.4 Eligible Indians**

(. . . N/A . . .) (A)ll enrolled members of federally-recognized Indian tribes, whether Yurok Tribal members or not, are eligible for employment equally.

**SECTION 6. IMPLEMENTATION OF SPECIFIC INDIAN PREFERENCE REQUIREMENTS**

**6.1 Employers, Contractors, and Subcontractors**

The requirements set forth in this Ordinance are binding on all employers, contractors, and subcontractors and will be considered a part of all resulting subcontract specifications. The employer bears the primary responsibility for compliance with the requirements of this Ordinance, and for ensuring that all contractors and subcontractors similarly comply.

All employers, contractors, and subcontractors shall be subject to the penalties provided herein for non-compliance with the terms and requirements of this Ordinance. All employers, contractors and subcontractors shall include in their contracts clauses acknowledging the equal opportunity and Indian preference requirements contained in this Ordinance.

**6.2 Goals and Timetables for Indian Employment**

The TERO Officer will consult with individual employers engaged in commerce on, or near, the Yurok Reservation to establish the minimum number of qualified Tribal members and qualified Indians to be employed by each employer. Goals will be established for all job classifications and skill areas, and will include administrative, supervisory, and professional categories. The goals set will be expressed as:

- 6.2.1** Project hours of Tribal Members and Indian employment as a percentage of the total project hours worked by the regular work force for each specific job classification, skill level, or category.
- 6.2.2** Numerical goals based on surveys of the available Tribal member and Indian labor forces and projections of employment opportunities for each specific job classification, skill level, or category.

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**6.3 Training** N/A.

**6.4 Tribal Skills Bank and Referral Process**

The TERO Officer shall, in cooperation with other tribal departments, establish and administer a data bank of Yurok Tribal members and other Indians seeking employment. This data bank shall be called the Tribal skills bank, and shall list all available workers, their respective skills and qualifications, and include documentation of training or other special qualifications and/or needs.

No employer may hire non-tribal members until a reasonable time for referral, as defined in this subsection, has elapsed or the TERO Office has certified, in writing, that no qualified (. . . N/A . . .) Indians are available to fill particular job openings.

"Reasonable time for referral" for purposes of this Ordinance means:

(a) For construction jobs: the TERO Officer will locate and refer qualified Tribal members within 72 hours of the date and time of receiving the initial notice of available opening from the employer.

(b) N/A

The TERO Officer may agree to waive or modify these requirements if there is a clear indication that the time limits would impose an undue burden on the project.

N/A

Employers found to be in violation of this Subsection will be subject to the penalties defined in Section 12 of this Ordinance and may further be required to remove any employees so hired.

**6.5** N/A

**6.6** N/A

**6.7** N/A

**6.8** N/A

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**6.9 N/A**

**6.10 Layoffs or Reductions in Workforce**

**6.10.1 N/A**

**6.10.2 Termination of Indians**

No worker who is an Indian will be terminated due to a reduction in workforce if a non-Indian worker in the same job classification is still employed. If an employer lays off workers by crews, all qualified Indians must be transferred to other crews to be retained as long as non-Indians in the same job classification are employed elsewhere on the job site.

**6.11 Consideration for Promotion**

Every employer shall give Indians preferential consideration for all promotion opportunities, and shall encourage Indians to seek such opportunities. For every supervisory position filled by a non-Indian, the employer shall file a report with the TERO Office expressly indicating:

- (a) What efforts were made to inform Indian workers about the position; and
- (b) How many Indians applied for the position; and
- (c) The reason(s) why each Indian was not hired for the position.

**6.12 N/A.**

**SECTION 7. N/A**

**SECTION 8. THE YUROK TRIBAL EMPLOYMENT RIGHTS FEE**

**8.1 N/A**

**8.2 Fee Schedule**

**8.2.1** ( . . . N/A . . . ) a one-time fee of three-percent (3%) of the total gross amount of the contract, where the total contract amount is at least two thousand dollars U. S. (\$2,000.00 U. S. ) .

**8.2.2 N/A.**

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**8.3 Duties of TERO Officer/Method of Payment**

The TERO Officer shall be responsible for collecting all TERO fees from covered employers.

8.3.1 The TERO fee shall be paid to the Yurok Tribe; and shall be credited to the account of the Yurok Tribe TERO for use in implementing this Ordinance; and shall be governed by guidelines approved by the Yurok Tribal Council.

8.3.2 N/A

8.3.3 The Yurok Tribe Fiscal Department shall be exempt from any TERO Fees.

8.3.4 N/A

8.3.5 N/A

**SECTION 9. N/A**

9.2 N/A

**SECTION 10. DUE PROCESS AND HEARINGS**

**10.1 Right to Hearings**

An individual, employer, union, or the TERO Officer may request a hearing pursuant to either allegation(s) of a violation of this Ordinance; or that any rule, regulation, or order of the TERO Officer is believed to be erroneous or illegal.

**10.2 Notice of Hearing**

Whenever a hearing is requested by the TERO Officer, an individual, an employer, or a union, written notice thereof must be provided to all involved parties.

10.2.1 Said notice shall include:

- (a) The names
- (b) Names of whenever party or of all parties to an action; and those not yet party to an action, known; or whose identity as a potential parties would be discovered through the exercise of due diligence; and

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- (c) The nature of the hearing; and
- (d) An express statement that the party or parties named have the right to be present at the hearing; and
- (e) An express statement that anyone named in the notice has the right to present testimony of witnesses or other evidence; and
- (f) An express statement that anyone named in the notice has the right to representation by counsel at their own expense; and
- (g) An express statement that the TERO Officer may be represented by General Counsel for the Yurok Tribe.

**10.2.2** Notice shall be published in at least two newspapers of appropriate circulation. If the whereabouts of any party or parties is unknown, then:

- (a) Notice shall be posted in a public place within the Yurok Reservation for not less than ten (10) working days; and
- (b) Notice shall be kept on file in the tribal offices located in Eureka, Weitchpec, and Klamath, available upon request; and
- (c) Notice shall also be posted in the Eureka, Weitchpec, and Klamath tribal offices and therefore, available for public inspection.

**10.3 TERO Office Complaint Procedure**

The TERO Officer may file a complaint on the basis of noncompliance with the requirements of this Ordinance by an employer, contractor, subcontractor, or union.

The TERO Officer may first attempt to resolve the matter informally, but if that is not possible or futile, the TERO Officer may request a hearing pursuant to subsection 10.1 of this Ordinance.

**10.4 Individual Complaint Procedure**

**10.4.1** An individual may file a complaint with the TERO Office regarding any alleged violation on the part of an employer, contractor, subcontractor, or union. To substantiate a verbally-delivered complaint, the TERO Officer must request that the complainant submit the complaint in writing.

**10.4.2** Upon receipt of a written complaint, the TERO Officer has an affirmative duty to investigate the allegations. Both the party or parties named as violators and the complainant will receive written notice stating that an investigation *will* be conducted and setting forth with specificity the factual basis for the complaint.

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- 10.4.3** Once the investigation is complete, the TERO Officer will issue a written finding either sustaining or not sustaining the alleged violation(s). If the allegations are not sustained, the complaint shall be dismissed and written notice provided to all involved parties within ten (10) business days of the date of the finding. If the allegations are sustained, the TERO Officer shall issue written notice within ten (10) business days of the date of the finding to all involved parties.
- 10.4.4** If an allegation of a TERO violation is sustained, the TERO Officer will then request to meet informally with both the complainant and TERO violator in an attempt to resolve the issue. The request for a meeting can be made either in writing or telephonically. If telephonic, a log shall be kept at the Yurok TERO containing the date, time, and content of the conversation.
- 10.4.5** If the matter cannot be resolved informally, either the parties or TERO Officer may request a hearing pursuant to Subsection 10.1.
- 10.4.6** Any employer, contractor, subcontractor, or union that takes retaliatory action against a Yurok tribal member or other Indian employee who has utilized this complaint procedure, or who asserts any rights under this Ordinance, will be subject to the penalties provided in section 12 of this Ordinance.

**10.5 Complaint by an Employer or Union**

- 10.5.1** Any employer or union may file a complaint with the Yurok Tribal Council alleging that a provision of this Ordinance, or any rule, regulation, or order of the TERO Office is illegal, erroneous, and/or erroneously applied.
- 10.5.2** Any such complaint must be in writing, and addressed to both the Tribal Council and TERO Officer. The complaint must specify, in detail, the basis for the complaint.
- 10.5.3** Upon receipt of the complaint, the Tribal Council, or its designee, shall schedule a hearing on the merits. To prevail at the hearing, the employer or union must establish prove their allegations by a preponderance of the evidence. Following the hearing, the Council must rule whether the allegation(s) is/are sustained or not sustained. The finding shall be forwarded within ten (10) business days of the date of the decision to all involved parties, along with notice of the right to appeal the decision of the Council to

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the Yurok Tribal Court.

**10.6 Investigations**

The TERO Officer and/or any field compliance officer designated by the Council may conduct such private or public investigations within the jurisdiction of this Ordinance, to determine the facts or the instances of alleged violations of this Ordinance. The TERO Officer and/or field compliance officer may enter the place of business or employment of any employer to conduct such investigations during regular business hours.

Investigations can include, but are not limited to: taking statements of workers on site or at the Yurok Tribal headquarters, whether by hand or recording device; taking photographs or video recordings of work areas and workers on any given site; requesting certified payroll records, proof of liability and workmen's compensation insurance, and any other regularly-kept business records relating to employee attendance and activity; making more than one site visit per day; taking statements, whether by hand or via a recording device, of community members having information about an employer's practices that formed the basis of a written complaint; and interviewing record-keeping staff of any respective employer.

**10.7 Hearing Procedures**

The following procedures will apply all hearings:

**10.7.1** All parties may present testimony of witnesses and other evidence; and may be represented by counsel at their own expense.

**10.7.2** The Tribal Council or TERO Officer, may receive advice and assistance from the Yurok Tribe's in-house legal counsel. Outside counsel, when deemed necessary by the Council, may also be consulted.

**10.7.3** The hearing shall be governed by the rules of practice and procedure adopted by the Council. The Council shall not be bound by technical rules of evidence while conducting hearings, and no informality in any proceeding, including the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the Council.

**10.7.4** Depending on the type of hearing, the following person(s) may preside: The Chair or Vice Chair of the Tribal Council or a hearing officer appointed by

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the Tribal Council.

**10.7.5** Any finding sustaining an allegation of violation by any party defendant must be supported by a preponderance of the evidence.

**10.7.6** At the close of the hearing, the Council may take immediate action or take the matter under advisement and render a decision on a later date. If rendering of a decision is postponed, all parties shall be so notified, on the record, prior to adjourning the hearing session. If possible, a date by which a final decision will be rendered shall also be provided to all parties.

**10.7.7** Any decision by a hearing officer, or hearing body, must be issued in writing, and submitted no more than thirty (30) days after the date of the conclusion of the hearing. It shall be served on all parties via certified mail, return-receipt requested, or in person. If service is accomplished in person, proof of receipt shall be achieved by having the recipient place their signature in a logbook bearing a brief description of the document(s) received. The logbook shall be kept at the Tribal headquarters in Klamath, California.

**10.7.8** Official transcripts shall be made of every hearing conducted. Said transcript(s) shall be made available to any party wishing to appeal the decision of the Tribal Council or its designee for a fee of two-hundred-fifty-five dollars U.S. (\$250.00 U.S.). From time-to-time, this fee shall be adjusted without prior notice to account for increased market costs and inflation. Should the Yurok Tribal Council contract transcription services outside the Tribal facility, the rate shall be the market rate for that particular service provider. In the event the appellant is the TERO Officer and/or his/her designee, the fee for the transcript shall be waived unless the transcript is provided by a contract transcription services provider.

**10.8 Appeals**

**10.8.1** Accurate records of all testimony, evidence, and other matters material to the issue on appeal presented at evidentiary hearings conducted by the Council or its designee.

**10.8.2** Any final order of the Tribal Council may be appealed to the Yurok Tribal Court. On appeal, the case will be tried de novo.

**10.8.3** The Notice of Appeal must:

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- (a) Be filed, in writing, at the TERO Office within fifteen (15) days after the date of entry of the final order.
- (b) Identify the order and set forth the grounds upon which the request for a reversal or modification is sought.

**10.8.4** Compliance with any order, which is the subject of a timely appeal, will be held in abeyance pending a decision on the matter by the Tribal Court. If an order under appeal is modified or set aside by the Tribal Court, the decision of the Tribal Court will be sent via certified mail, return-receipt requested, to all parties. Any amendments to this Ordinance ordered as a result of an appeal to the Tribal Court will be sent via certified mail, return-receipt requested, to employers, federal and state agencies, and other interested parties; and will be posted in public places on the Yurok Reservation.

### **10.9 Confidentiality**

**10.9.1** All information collected pursuant to an investigation authorized under this Ordinance shall be kept confidential. Portions of hearings that involve the use or disclosure of confidential documents such as employee records shall be closed to the public, and files containing such confidential information shall be sealed. Such confidential information may only be obtained pursuant to a Tribal Court order following a hearing on an affidavit proving the necessity of disclosure.

**10.9.2** Any person whose confidential information is sought shall be given sufficient notice in advance of disclosing such confidential information, so that the person may object to the disclosure.

## **SECTION 11. TERO COMPLIANCE**

As of the effective date of this Ordinance, no new covered employer may commence work on the Yurok Indian Reservation without consulting with the Tribe through its TERO Office, and filing an acceptable (. . . N/A. . .) TERO Pre-Award Labor Force Projection Form.

## **SECTION 12. REPORTING AND ON-SITE INSPECTIONS**

Each employer, as part of their compliance activity, shall submit monthly reports to the TERO Office, on a form provided by the TERO Officer, indicating the number of employees -including a separate tally of Indians -on its workforce; monthly hires and terminations

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and/or lay-offs; and other information as may be identified on the form.  
An employer who fails to submit monthly reports shall be subject to sanctions.

The TERO Officer will have the authority to make on-site inspections during regular working hours in order to monitor compliance with this Ordinance, and any other rules, regulations, and/or order of the TERO Officer or Council. The TERO Officer or designated field compliance investigator has the right to inspect and copy all relevant records of any employer, signatory union, contractor, or subcontractor, to interview or speak to workers and otherwise conduct investigations on the job site. All information collected will be kept confidential unless or until disclosure is required during a hearing or appeal as provided in section 10.7.

**SECTION 13. PENALTIES FOR VIOLATIONS**

Any employer, contractor, subcontractor, or union who violates this Ordinance or the rules, regulations, or orders promulgated by the TERO Officer or Council will be subject to the following penalties for such violation:

- (a) N/A
- (b) Payment of any back pay and damages to compensate any injured party.
- (c) Removal of any employees hired in violation of this Ordinance or the rules, regulations, and orders pertaining thereto.
- (d) An order requiring the employment, promotion, (. . . N/A . . .) of qualified Tribal members, and other Indians who suffered economic injury as a direct result of the violation.
- (e) Imposition of monetary civil penalties and fines.
- (f) An order mandating changes in procedure or policies necessary to eliminate or correct the violation.
- (g) An order mandating any other provision deemed necessary by the TERO Officer, the Council, or the Tribal Court to alleviate, eliminate, or compensate for any violation.

The maximum penalty that may be imposed is \$500.00 for each occurrence. Every day during which a violation exists shall be deemed a separate occurrence.

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**SECTION 14. ORDERS OF THE YUROK TRIBAL POLICE**

The Yurok Tribe Office of Public Safety is expressly authorized and directed to enforce any cease and desist or related order issued by the TERO Officer, in-house legal department, or Council only when such order is supported by either a judicial decree, or order, from the Yurok Tribal Court. The Tribal police will not be civilly liable for enforcing such Tribal Court orders or judicial decrees, provided that the order or decree bears the signature of a judge of the Tribal Court.

**SECTION 15. PUBLICATION OF ORDINANCE**

The Council will notify all Covered Employers regarding the adoption of this Ordinance and their obligation to comply. All bid announcements issued by any tribal, federal, state, or other public or private entity shall contain a statement that the successful bidder will be required to comply with this Ordinance and all rules, regulations, and orders of the TERO Office and Tribal Council within its jurisdiction. Council will send copies of this Ordinance to every employer operating on, or near, the Yurok Reservation or its contiguous lands, as defined in this Ordinance; and to every covered employer within thirty (30) days of the effective date of this Ordinance.

**SECTION 16. SEVERABILITY**

If any provision of this Ordinance, or its application to any person or circumstances, is held invalid by a court of appropriate jurisdiction, the remainder of the Ordinance or application of the provision to other persons or circumstances, shall not be affected thereby.

**SECTION 17. EFFECTIVE DATE**

This Ordinance shall be effective and enforceable from the date of its approval and adoption by the Yurok Tribal Council.

**SECTION 18. SOVEREIGN IMMUNITY**

Nothing in the enactment, contents, administration, or enforcement of this Ordinance is intended to, nor shall, waive the sovereign immunity from unconsented suit of the Yurok Tribe, its officers, officials, employees, or agents acting within the course and scope of their official duties or authority, including, but not limited, to the following:

- (a) Taking legal action against any person to enforce or otherwise further the purposes of this Ordinance;
- (b) Defending legal action taken by another person to invalidate all or a portion of this Ordinance, or any actions taken under the authority of this Ordinance, for any failure to act

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under this Ordinance; or

(0) Acting to enforce any penalties or sanctions under this Ordinance.

**SECTION 19. EXCLUSIVITY OF REMEDY**

The procedures, remedies, and forums set forth in this Ordinance are the sole and exclusive procedures, remedies, and forums for addressing any grievances, claims, or causes of action brought by any person pursuant to this Ordinance. The Tribe specifically does not consent to any grievances, claims, or causes of action other than those set forth in this Ordinance. By enacting this Ordinance, the Tribe is not creating any private causes of action.

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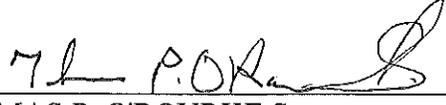
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This **MOU** may be amended by written agreement of the parties, or terminated by either party upon reasonable written notice. In the event of termination, unless otherwise mutually agreed by the parties, the provisions of this **MOU** will remain in force with respect to any contract covered hereunder which has already been awarded or for which contractor performance has already commenced.

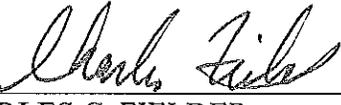
The parties hereto have agreed to the objectives, principles, and recitations cited in this document and have further approved this **MOU** for signature by their duly authorized representatives.

for the Yurok Tribe

By:   
THOMAS P. O'ROURKE Sr.  
Chairman

Date: 12-08-11

for the CALIFORNIA DEPARTMENT OF TRANSPORTATION

By:   
CHARLES C. FIELDER  
District Director, District 1

Date: 12/14/2011

**ATTACHMENT A**

**Project-Specific Special Provisions For Yurok TERO 2011-06 MOU**

SPECIAL NOTICE:

- This project includes Tribal Employment Rights Ordinance (TERO) requirements. See Section 4, "Beginning of Work, Time of Completion and Liquidated Damages," of these special provisions for TERO submittals required before starting work.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION, AND LIQUIDATED DAMAGES:

Use a minimum 45-day delayed start after contract approval.

Submit a TERO Highway Construction Permit (THCP) Application, shown in "Supplemental Project Information" of the special provisions, to the Yurok Tribe within 5 days after contract approval. Submit a copy of the THCP application to the Engineer at the same time. Submit a completed THCP to the Engineer within 10 days after receipt from the Yurok Tribe.

Do not start work at the job site until the Engineer approves your submittal for:

Completed TERO Highway Construction Permit (THCP) from the Yurok Tribe.

5-1. SUPPLEMENTAL PROJECT INFORMATION

The Department makes the following supplemental project information available:

**Supplemental Project Information**

Means	Description
Included in the Information Handout	Yurok Tribe TERO Requirements Information Handout

INFORMATION HANDOUT

Yurok Tribe TERO Requirements Information Handout contains:

1. Signed one-time MOU between the Yurok Tribe and the State.
2. Attachment A project special provisions.
3. Attachment B TERO Highway Construction Permit Application (THCP).

**ATTACHMENT B**

**Part 1**

**TERO Highway Construction Permit (THCP)**

**YUROK TRIBE**

**TRIBAL EMPLOYMENT RIGHTS OFFICE**

**MEMORANDUM ON COMPLYING WITH TRIBAL AND FEDERAL EMPLOYMENT LAWS**



The Tribal Employment Rights Office (TERO), on the Yurok Indian Reservation, has been implemented to assist employers, contractors, and/or subcontractors towards meeting the required rules and regulations of the Yurok Tribal Council, and the employment laws of the U.S. Government.

**TERO HIGHWAY CONSTRUCTION PERMIT APPLICATION (THCP)**

1. State Contractor (Employer) shall file a Yurok TERO Labor Force Projection Form with the TERO office for themselves and all subcontractors (Employer) listed on State contract bid form within five (5) days after contract approval.

2. If available, qualified Indians must be hired in preference to non-Indians. Employer shall neither recruit nor hire any non-Indians for any covered position until the Yurok TERO has provided written notice that no qualified Indians are available to fill such covered position. Covered positions are defined in the Yurok TERO Policy. Each waiver issued is only for that particular position/task and the employee cannot be transferred to another position once that job is done.

3. The Yurok TERO maintains a Indian Skills-Bank to assist Employers to meet the Indian Preference requirements of the TERO Policy of the Yurok Tribe. Please note: "Core Crew" is key employees of the firm who have worked continuously for the firm for many seasons and who were not recently hired for this particular project. (Possessing records of past employment as proof as a supervisor or foreman).

PLEASE RETURN COMPLETED LABOR FORCE PROJECTION FORMS TO:

Marion Fry, TERO Officer

Yurok Tribe

190 Klamath Blvd.

Klamath, CA 95548

(707) 482-1350

**ATTACHMENT B**

**Part 2**

**TERO Highway Construction Permit (THCP)**

**YUROK TRIBE  
TRIBAL EMPLOYMENT RIGHTS OFFICE  
LABOR FORCE PROJECTION FORM**



**Prime employer and all subcontractors are required to submit the following information to the TERO:**

Employer/Supplier Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, and Zip Code: \_\_\_\_\_

Phone Number \_\_\_\_\_

Cell # \_\_\_\_\_

Contact: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Amount of Contract: \_\_\_\_\_ \$

Contracting With: \_\_\_\_\_

THIS IS AN AGREEMENT BETWEEN *THE YUROK TRIBE* AND EMPLOYER FOR CONDUCTING EMPLOYMENT ACTIVITY WITHIN THE EXTERIOR BOUNDARIES OF THE YUROK INDIAN RESERVATION AND YUROK TRIBAL "Lands".

**EMPLOYER** hereby agrees to comply with the requirements and procedures for the recruitment of viable Indian applicants through TERO.

TERO shall receive notice, in the form of copies of bid forms by awarded prime Employer seeking bids of all sub-contract work to be conducted on the Yurok Indian Reservation. Notice shall be made reasonably in advance of contract approval, but not later than five (5) days after approval.

The above named employer understands that they are required to comply with the portions of the Yurok Tribal Councils TERO Ordinance (adopted October 22, 2003) listed in the Yurok Tribe/Caltrans TERO MOU (dated 2/18/2011).

**COMPLIANCE INSPECTIONS:** The TERO Officer or other designated staff shall make periodic or site visitations for assurance to all involved parties that employment rules are adhered to.

**MAINTAINING EMPLOYMENT RECORDS:** Employer shall maintain accurate employment records on all employees and all applicants for employment; regardless of length and category or employment, hired, fired, or laid-off. The files shall reflect: name, address and employment category for which applicant performed or applied to perform. If applicant was contacted but not hired, hired and fired, all data should reflect action taken by that firm. Such informational records shall be made available to the TERO Officer, upon reasonable notice.

**ASSISTANCE:** If an Employer deems that an Indian employee's performance is such that he or she is jeopardizing and endangering job loss, suspension, or termination, Employer may contact TERO to provide assistance toward resolving of that issue.

**EMPLOYMENT POLICIES AND PROCEDURES:** It is further understood that Employer recognizes that its operations are taking place within a unique cultural setting on the Yurok Indian Reservation. Accordingly, all firms in conjunction with the TERO Officer should consider seriously Tribal Holidays and ceremonial customs; and to accommodate those Indian employees requesting certain leave of absences for religious purposes.

***\*This form must be completed and filed with the TERO. Attach additional sheets if necessary.***

Briefly describe the basic tasks and types of work to be performed:

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Please list types of skills and categories which will be required towards performing said contract:

1.	7.
2.	8.
3.	9.
4.	10.
5.	11.
6.	12.

Indian Preference shall be accorded at every Tier Level. Please list the names and positions of your Core Crew. (Key staff). (Core Crew members are the vitally needed Supervisors that you depend on every day). All other persons needed on this job will go through the TERO Skills Bank.

NAME	JOB TITLE
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	

**Note:**

*(Please utilize as many sheets as necessary for explaining your on-site employment related projection)*