TRIBAL COUNCIL TERO ACT 5-1

AN ACT RELATING TO TRIBAL EMPLOYMENT RIGHTS

BE IT ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL

SECTION 1.0 - CODIFICATION

This Chapter shall be known as the Snoqualmie Tribal Employment Rights Ordinance ("TERO") and shall be codified as Title 5, Chapter 1 of the Snoqualmie Tribal Code.

SECTION 2.0 - STATUTORY AUTHORIZATION

Reserved.

SECTION 3.0 - PURPOSE AND SCOPE

A. Purpose

The Snoqualmie Tribal Council finds that employment discrimination against Indians persists on ancestral lands of the Snoqualmie people despite a large number of Indian and non-Indian owned businesses employing skilled and non-skilled workers. The Tribal Council further finds that jobs in businesses and other economic opportunities on traditional tribal lands and reservation lands are important resources to which Indians have unique preferential rights. Therefore, to implement the unique employment rights of Indians, the Snoqualmie Tribal Council establishes a Tribal Employment Rights Commission and TERO Program to achieve its goals and policies towards exercising the unique employment rights of Indians.

B. Scope

The Snoqualmie Tribal Council authorizes the appointed TERO Manager to impose up to 100% Indian hiring goals and timetables specifying the number of Indians the employer shall hire by craft and skill level. The purpose is:

1. To declare Tribal laws and rules for governing preference in certain employment, contracting, subcontracting and business opportunities within Tribal jurisdiction.

2. To assist with compliance under this Act and enforce the laws governing Indian employment preference and contracting preference.

3. To disseminate information regarding unlawful employment discrimination by state, county, city, and private Employers subject to Title VII of the Civil Rights Act of 1964 who are operating on the Snoqualmie Indian Reservation.

4. It is of crucial importance to create employment and training opportunities for Tribal Members and for other Indians, and to eliminate employment discrimination against Indian people. An integral part of attaining this goal is constituted by the structuring of employment and training opportunities to provide for the hiring of Indians who are qualified and for the training of Indians in those areas in which there is not a sufficient number of qualified Indians to meet the employment opportunities.

C. Notification

The TERO Office shall make good faith efforts to educate all Employees, Employers, contractors, and the public to whom these laws apply on TERO and employment, hiring, and preference laws. All contracting agencies and entities are required to notify subcontractors of their obligations under this Act. Failure to receive notification or ignorance of the law is not a defense in any enforcement action under this Act.

D. Authority

The Snoqualmie Indian Tribe enacts this Act in accordance with the authority granted to it by the Snoqualmie Indian Tribe Constitution and its inherent sovereign power.

E. Applicability

1. This Act does not apply to any direct employment by the Snoqualmie Tribal Government, Snoqualmie Casino, or any Snoqualmie Tribal LLC.

2. Unless clearly and expressly prohibited by federal law or Tribal law, this Act applies to all other "Employers," as defined under this Act, that are engaged in work on the Reservation.

3. All persons, entities, agencies, contractors, and businesses under the jurisdiction of this Act shall comply with all applicable Tribal law and policies, except as provided in this Act.

SECTION 4.0 – EFFECTIVE DATE

This Act shall not be in effect before the Tribe's TERO Office is fully operational and the Hiring Hall has been established and is operational. Once the TERO Office is operational, the TERO Commission shall submit the relevant rules, regulations, and/or guidelines necessary to carry out the provisions of this Act to the Tribal Council for ratification. Upon ratification by Tribal Council Resolution of the relevant rules, regulations, and/or guidelines, this Act shall become effective.

SECTION 5.0 – DEFINITIONS

"Tribal Council" means the governing body of the Snoqualmie Indian Tribe.

"Chairperson" means the Chairperson of the Snoqualmie Tribal Employment Rights Commission, appointed by a majority vote of the Commissioners.

"Commission" means the Snoqualmie Tribal Employment Rights Commission.

"Commissioner" means a member of the Snoqualmie Tribal Employment Rights Commission who is appointed by the Snoqualmie Tribal Council.

"Construction" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair, remodel or improvement of buildings, structures, roads, or other changes or improvements

to real property, including facilities providing utility services. It includes dredging, shoring, drilling, blasting, excavating, and clearing required for construction. It includes the supervision, inspection, and other onsite functions incidental to the actual construction. It includes manufacturing or furnishing of materials, articles, supplies, or equipment on the construction site. It includes transportation of materials and supplies to the construction site. Construction does not include preliminary planning, engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the construction. Construction does not include manufacturing or furnishing of materials other than on-site, or servicing and maintenance work.

"Construction Employer" means any contractor or subcontractor that is a party to a Construction Contract.

"Contract" and "Subcontract" are intended to be interpreted broadly and shall apply to all contracts, whether written or oral, including but not limited to contracts for Construction, supplies, materials, services, and equipment unless otherwise exempted under this Title.

"Council" means the Snoqualmie Tribal Council.

"EEOC" means the United States Equal Employment Opportunity Commission.

"Employee" means a person who works for an Employer for payment or other compensation. For the purposes of this Act, an Employee is not an independent contractor. Also referred to herein as "Worker."

"Employer" means any person or entity with three or more Employees who, during any 30-day period, spend 80 or more hours performing work on the Snoqualmie Reservation. Direct employment by the Snoqualmie Tribe, Snoqualmie Casino, or any Tribal LLC are specifically excluded from the definition of "Employer."

"Entity" means any person, partnership, corporation, joint venture, governmental enterprise, or any other natural or artificial person or organization. The term "Entity" is intended to be as broad and encompassing as possible to ensure coverage over all employment and contract activities within the Reservation and the term shall be so interpreted by the Commission and the courts.

"Facility" means any permanent or temporary structure located on the Reservation which is owned, leased, operated, or used by an Employer or any of the Employer's Employees, including any Construction job site located on the Reservation.

"Indian" means any person who is a member of a federally recognized Indian tribe.

"Local Business" means any business located within 25 miles of the Snoqualmie Indian Reservation.

"Local Indian" means any member of a federally recognized tribe who has been residing on or within twenty-five miles of the Reservation for at least six months prior to the date of hire.

"Minimum Wage" means the lowest wage that the Construction Employer can pay any Employee, which shall not be less than Snoqualmie Classification and Wage Rates or, when not represented, the federal minimum wage or prevailing wage rate recognized in the Davis-Bacon Act of 1931.

"Native American Owned Business" or "NAOB" mean an Entity which is at least 51 percent owned, operated, and managed by one or more Indians, and that has been certified by TERO as a NAOB.

"OFCCP" means the Office of Federal Contract Compliance Programs within the United States Department of Labor.

"Prevailing Wage" means the lowest wage that a Construction Employer can pay any Employee by trade or craft. A Prevailing Wage need not limit or put a cap on all Employees in a particular craft or trade.

"Religious Belief" shall be defined according to the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996.

"Reservation" means all lands and waters within the exterior boundaries of the Snoqualmie Indian Reservation or within the jurisdiction of the Snoqualmie Tribe, wherever it is located, excluding off-reservation fee land.

"Responsive Bidder" means a party who submits a bid which meets the requisite specifications of the party inviting the bid.

"Secretary" means the Secretary of the Interior or his/her duly authorized representative.

"Snoqualmie-Owned Business" means an Entity which is at least 51 percent owned, operated, and managed by one or more members of the Snoqualmie Indian Tribe and has been certified by TERO as a Snoqualmie-Owned Business.

"Snoqualmie Tribal LLC" means any limited liability company organized under and governed by the laws of the Tribe.

"Supporting a Snoqualmie Indian Tribal Family" means providing ongoing, consistent financial assistance to a Snoqualmie Tribal household. To qualify under this definition, one or more Tribal Members for whom the assistance is provided must provide the TERO Office with adequate documentation of the support.

"TERO Manager" means the person retained and/or appointed by the Snoqualmie Tribal Council to manage the TERO Office and staff and coordinate with the Commission.

"TERO Office" means the Tribal Employment Rights Office and the staff who work therein.

"TERO Representative" means the person hired by the TERO Manager to carry out the daily enforcement of this Act.

"TERO Worker" means either an Indian candidate for employment or an Indian Employee who is to be awarded preference pursuant to this Act.

"Tribal Member" means any person who is an enrolled member of the Snoqualmie Indian Tribe.

"Tribal Project" means any work entered into by an Employer pursuant to an agreement with the Tribe.

"Tribe" means the Snoqualmie Indian Tribe, unless the context clearly indicates otherwise.

SECTION 6.0 - SNOQUALMIE TERO COMMISSION AND STAFF

A. The Snoqualmie TERO Commission shall be comprised of three (3) members and two (2) alternates appointed by the Snoqualmie Tribal Council. The Commissioners shall hold office for staggered three-year terms established by vote of the Tribal Council.

B. Until such time as Commissioners are appointed by the Tribal Council, the Snoqualmie Tribal Council shall function as the Tribal Employment Rights Commission. While the Tribal Council is functioning as the Commission, Commissioners shall hold office for one, two, or three years with each Commissioner's term to be the same as the Council Member's office term. Tribal Council Members may only serve as Commissioners while also serving as Tribal Council Members.

C. The terms of office for the Alternates shall be for three years each. The Alternates shall be simultaneously appointed.

D. While the Tribal Council functions as the Commission, removal of a Commissioner shall only occur by following the removal process set forth in the Tribe's Constitution and Bylaws. If the Commissioners are appointed, a Commissioner may be removed for cause. Whether adequate cause exists shall be determined in the sole discretion of the Tribal Council. In the event of a vacancy, one of the two Alternates shall serve as an Interim Commissioner until a permanent Commissioner is appointed by Tribal Council to serve for the remainder of the vacated term.

E. The Chairperson of the Commission shall be elected by vote of the Commissioners and shall have the authority to call a TERO Commission meeting. Three Commissioners, including the Chairperson, shall constitute a voting quorum to transact business. The Commission and the TERO Office shall administer the Tribe's TERO Program in accordance with this Act, the Commission Charter, and the Bylaws of the Snoqualmie Indian Tribe.

F. Powers of the Commission:

1. The Commission shall, in its discretion, have the power to:
    a. Establish, adopt, amend, and rescind rules, regulations, and guidelines necessary to carry out the provisions of this Act, subject to ratification by the Snoqualmie Tribal Council. Ratification shall be by resolution of the Snoqualmie Tribal Council. The Commission shall provide the public with a reasonable opportunity and period for comment before promulgating any final regulations.

b. Research and provide recommendations on prevailing wages to the Snoqualmie Tribal Council for approval.

c. Approve a "special account" for funds generated from the TERO fees, to be used for the TERO Program, unless otherwise authorized by the Snoqualmie Tribal Council.

d. Establish and impose numerical hiring goals and timetables that specify the minimum number of Indians an Employer, Construction Employer, or other entity must hire, by craft or skill level.

e. Require Employers to establish or participate in such applicable and reasonable training programs as the Commission determines necessary to increase the pool of Indians eligible and qualified for employment on the Reservation.

f. Establish and administer the Tribal Hiring Hall and require Employers to use the Hiring Hall.

g. Prohibit 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 required by business necessity.

h. Enter into agreements with unions to ensure union compliance with this Act.

i. Oversee and enforce the application of preference to Snoqualmie Tribal-Owned Businesses and other Native American Owned Businesses in the awarding of contracts and subcontracts.

j. Develop administrative rules to implement the certification of Native American Owned Businesses which shall include provisions and procedures for revocation of such certifications.

k. Establish counseling programs to assist Indians in obtaining and retaining employment.

l. Hold hearings and subpoena witnesses and documents in accordance with this Act.

m. Require Employers to submit reports, including but not limited to certified payroll reports, timekeeping reports, and hiring number reports to ensure compliance with this Act.

n. Review and enforce Employers' Compliance Plans indicating how they will comply with this Act before beginning work on the Reservation.

o. Take any action consistent with this Act for the fair and vigorous implementation of the Act.

2. The Commission may delegate to the TERO Manager authority under this Section as is

necessary or convenient to facilitate the efficient administration of this Title, except the Commission shall not delegate its power or duty to:

a. Adopt, amend, and rescind rules, regulations, or guidelines.

b. Conduct hearings or impose sanctions pursuant to this Act.

3. The TERO Commission shall have no authority or jurisdiction to hear or adjudicate complaints brought by Snoqualmie Tribal Employees that are not specifically authorized under this Act. The TERO Commission shall circulate simple and fair rules to govern its authority to issue compliance orders and impose civil penalties in the form of fines.

G. Powers of the TERO Manager:

1. The Tribe shall retain a TERO Manager as soon as is practicable after this Act becomes effective. The TERO Manager and TERO staff shall be employees subject to the Tribe's personnel policies. The TERO Manager and staff shall be administratively organized in accordance with the organizational chart as approved by the Snoqualmie Tribal Council. Only the TERO Manager shall have the authority to interact with the Commission.

2. The TERO Manager shall carry out the day-to-day administrative operations to enforce this Act, including but not limited to the following:

a. Implementing and enforcing the provisions of this Act.

b. Administering the TERO Office budget, which includes expending funds appropriated for the TERO Office by the Snoqualmie Tribal Council and seeking funding from federal, state, or other sources to supplement the appropriations, subject to Council approval.

c. Hiring staff pursuant to the Tribe's personnel policies.

d. Recommending to the Commission regulations, amendments, and agreements which further the objectives of this Act.

e. Developing, implementing, and enforcing TERO policies and procedures, subject to approval by the Commission and ratification by Council.

f. Coordinating and providing reports for Commission meetings.

g. Investigating and processing complaints alleging violations of this Act to provide due process.

h. Negotiating with Employers regarding workforce requirements and TERO tax payment schedule.

i. Educating Construction Employers regarding Minimum Wage and Prevailing Wage requirements.

j. Providing education and training opportunities to eliminate barriers to employment and enhance employment opportunities for Indians and Local Indians.

k. Requiring that Employers operating a business within the jurisdiction of the Snoqualmie Tribe establish or participate in such job-related training programs and progressive recruitment in apprenticeship and journeyman level programs as deemed necessary to increase the pool of Indians eligible for employment on the Snoqualmie Reservation.

l. Submitting a work plan for approval by the Commission on an annual basis.

m. Certifying that an Entity meets the definition of a Native American Owned Business for purposes of Indian preference and for documentation of minority small business contract eligibility or claimed exemptions from state taxation and wage performance bond requirements; provided however, that certification as provided herein shall not obligate the Commission or the TERO Manager to advocate the claims of private individuals and entities before any agency of another government.

n. Entering into agreements with unions and others to ensure union compliance with this Act and a continued and progressive recruitment in apprenticeship and journeyman level programs.

o. Requiring Employers to give preference to Snoqualmie-Owned Businesses and other Native American Owned Businesses in the award of Contracts and Subcontracts.

p. Establishing referral services with counseling programs to assist referred Employees with obtaining employment.

q. Entering into cooperative agreements with Federal employment rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation.

r. The TERO Manager shall represent the TERO Office at TERO meetings, Commission hearings, and with Council.

SECTION 7.0- SNOQUALMIE TRIBAL EMPLOYMENT RIGHTS PROGRAM

A. Indian Preference

1. All Employers and any Entity which maintains a Facility shall give preference to qualified Indians in all hiring, promotion, training, layoffs, contracting or subcontracting and all other aspects of employment, whether part-time or full-time. Such Employers shall comply with this Act and the rules, regulations, guidelines and orders of the Commission, TERO Manager, or delegated staff. These requirements shall not apply to any direct employment by federal, state, or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

2. Employers shall offer employment for a given position to any qualified candidate entitled to preference before extending an offer to any other candidate who is not entitled to preference and who is similarly or equally qualified for the position. This does not require Employers to hire, promote, or transfer a candidate entitled to preference over a substantially more qualified, non-preferential candidate; however, in these cases the hiring manager must provide written justification to Human Resources outlining the reasoning for the decision.

3. This shall apply to all contractors and subcontractors of Employers, regardless of tier, and shall be deemed a part of all Contract or Subcontract specifications. The Employer shall be subject to the penalties set forth herein for violation of this Act if the contractor or subcontractor fails to comply with any of the provisions of this Act.

4. Employers shall give preference in the awarding of Contracts or Subcontracts to Native American Owned Businesses, provided that Snoqualmie-Owned Businesses shall be given preference over other NAOBs. The Tribal Employment Rights Office shall maintain a list of NAOBs and Snoqualmie-Owned Businesses and shall supply the list to Employers.

5. Whenever an Employer or union would be required by any provision of this Act to give Indian preference in hiring or contracting, such preference shall be given to the following persons in the following enumerated order:

    a. For Contracts and employment not using federal funds:
        i. Member of the Snoqualmie Indian Tribe.
        ii. Spouse of a Tribal Member/Parent of a Tribal member child/Biological child born to an enrolled Snoqualmie Tribal member/Current legal guardian of a Tribal member dependent child (with a proper letter of temporary or permanent legal guardianship from a court)/Person that has a Supporting a Snoqualmie Indian Tribal family approval on file.
        iii. Other Indians, including Alaska Natives, Hawai'ian Natives and members of Canadian First Nations.

    b. For contracts using federal funds:
        i. Local Indians.
        ii. Other Indians.

6. In all layoffs or reductions in workforce, Employers shall maintain the required ratio of Indian Employees, as previously determined by the Commission.

7. Employers shall give Indians preferential consideration in all promotion opportunities and shall encourage Indian Employees to seek such promotion opportunities.

8. Employers shall give Indian students preferential consideration for summer or after-school student employment.
9. The TERO Commission shall have the authority to disqualify a candidate for employment who is otherwise to be accorded preference if, in the sole discretion of the Commission, the candidate would not be suitable for the position.

B. Advertisement and Publication

1. All employment opportunities subject to this Act, including newly created jobs, will be advertised by the TERO Office prior to or concurrent with advertising in other publications or to the general public. The advertisement will include base pay and will be posted for a minimum of five business days for hourly positions, and ten business days for salaried positions.

2. The Commission shall require all bid announcements, requests for proposals and requests for qualifications issued by any Tribal, Federal, State, or other Entity subject to this Act to contain a statement that the successful bidder must comply with this Act, and the Commission or TERO Manager shall send a copy of this Act to every Employer.

3. Employers may be required to obtain a Tribal business license. The TERO Manager shall advise an Employer if a business license is required.

C. Compliance Plan

1. No Employer may commence work on the Reservation until the Employer has submitted a Compliance Plan, approved by the Commission or the TERO Manager, setting forth how the Employer intends to meet the Employer's obligations under this Act. Contractors engaged in work without an approved Compliance Plan will be required to stop work until an acceptable plan for implementing their obligations has been submitted to TERO and has been approved.

2. An Employer shall submit a proposed Compliance Plan to the TERO Department at least 72 hours prior to commencing work on the Reservation. The TERO Manager shall approve or renegotiate the Compliance Plan within two business days after submission. If the Employer believes that the TERO Manager is arbitrarily withholding approval of the Compliance Plan, then the Employer may appeal to the Tribe's Chief Operations Officer.

3. An Employer that commences work without an approved Compliance Plan shall be subject to a stop work order issued by TERO. The stop work order will be lifted upon submission and approval of a Compliance Plan; however, failure to submit a Compliance Plan within 72 hours of the issuance of the stop work order may also subject the Employer to penalties as provided in this Act.

4. If an Employer has failed to comply with the requirements of this section, neither the TERO Office nor the Tribe shall be liable for any losses incurred when the Employer is not permitted to begin work.

5. The approved Compliance Plan shall constitute a binding agreement, the terms of which shall be fully enforced by the TERO Office. Failure to obtain or adhere to the terms of an approved Compliance Plan or supplying false information to TERO shall subject the noncomplying party to monetary penalties up to $500.00 per violation per day.

D. Implementation of Contracting and Subcontracting Preference:

There shall be a contracting and subcontracting preference of Indian-owned businesses on the Reservation, applied as follows:

1. Snoqualmie Tribe-Owned Businesses.
2. Other Native American-Owned Businesses.
3. Local businesses.

There shall be Competitive bid award with preference in the award of the contracts and subcontracts that are let under a competitive bidding or proposal process (e.g., conventional bid construction contracts, material supply contracts) shall be provided as follows:

1. If the agency or contractor has restricted bidding or limited competition to only qualified NAOB firms, then the bid award shall be made to the NAOB firm with the lowest responsive and responsible bid.

2. If only one qualified NAOB submits a responsive bid or proposal, the agency or contractor shall proceed as follows:
    a. Accept the one responsive bid or proposal should the agency determine the one NAOB responsive bid or proposal is at an unusually favorable price; or
    b. Negotiate a reasonable price with the single qualified NAOB should the agency determine that the delays caused by re-advertising the work would subject the project to higher costs; or
    c. Reject all bids and re-advertise for bids or proposals. The agency will determine whether to restrict or limit competition to NAOB's. If bidding is not restricted to NAOB's then the agency or contractor shall comply with the requirements in subsection 3 of this section.

3. If the agency or contractor has not restricted bidding or limited competition to only qualified NAOB firms , then the award shall be made to the certified, qualified NAOB with the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are being taken and no more than "X" higher than the bid prices of the lowest responsive bid from any qualified non-NAOB bidder. "X" is determined as follows: When the lowest responsive bid is:

	X = lesser of
Less than $100,000	10% of that bid, or a maximum of $9,000
At least $100,000 but less than $200,000	9% of that bid, or a maximum of $16,000
At least $200,000 but less than $300,000	8% of that bid, or a maximum of $21,500
At least $300,000 but less than $400,000	7% of that bid, or a maximum of $25,000
At least $400,000 but less than $500,000	6% of that bid, or a maximum of $27,000
At least $500,000 but less than $1 million	5% of that bid, or a maximum of $45,000
At least $1 million but less than $2 million	4% of that bid, or a maximum of $72,000
At least $2 million but less than $4 million	3% of that bid, or a maximum of $108,000
At least $4 million but less than $7 million	2% of that bid, or a maximum of $126,000
$7 million or more	1.5% of the lowest bid, with no dollar limit

If a certified, qualified NAOB firm does not submit a responsive bid within the stated range of the total bid price of the lowest non-NAOB responsive bid, award shall be made to the non-NAOB bidder with the lowest responsive bid price.

E. Contracting and Subcontracting:

The preference requirements contained in this Act shall be binding on all contractors and subcontractors, regardless of tier, and shall be deemed a part of all resulting subcontract specifications. The Employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements.

F. Certification:

1. An applicant seeking to qualify for preference in contracting and/or subcontracting shall submit proof of the applicant's Indian ownership which shall include, but not be limited to:

    a. Certification by a federally recognized Indian tribe or the U.S. Bureau of Indian Affairs (BIA) that the applicant is a member of a federally recognized Indian tribe, therefore eligible to receive preference. The Tribe shall accept an original certification (not a copy) of a federally recognized tribal government or the United States BIA stating that an individual is a tribal member. Note: If claiming 51% Indian ownership, the company needs to provide a detailed report on the non-Indian partner of the company.

    b. The company name, address and telephone number.

    c. Proof of degree of Indian ownership in the company.

    d. Incorporation documents, joint venture agreements, or partnership agreements, which shall include documentation to identify the Indian ownership of the company, and proof thereof.

    e. Copies of insurance coverage and bonding capabilities.

    f. Organizational Chart, including key personnel, identifying whether they are Indian or non-Indian.

    g. Evidence (including but not limited to stock ownership, structure, management, control, financing and salary or profit-sharing arrangements of the enterprise) that the applicant enterprise or organization is at least 51% Indian-owned and that 51% of all profits will flow to the Indian owner(s) during all portions of the contract or subcontract term.

2. A firm seeking assistance through the TERO Program to comply with contracting or subcontracting preference under this Act shall submit evidence sufficient to demonstrate to the satisfaction of the TERO Manager and/or the contractor, as appropriate, that the applicant has the technical, administrative, and financial capability, and/or the necessary license(s) and bond ability to perform contract work of the size and type involved, and within the time provided, under the proposed contract or subcontract.

3. The TERO Manager is entitled to establish technical, administrative, and financial qualifications for potential bidders so long as those qualifications are in writing and are reasonable qualifications that are necessary to the project or purpose of the contract or are standard in the industry.

G. Joint Ventures:

No Indian/non-Indian joint venture shall be provided a preference under this Act in contracting or subcontracting unless the Indian person or firm of the joint venture can successfully demonstrate that it has the capability to manage all the work on the project on its own and has entered into the joint venture because the non-Indian firm provides only limited backup capability such as bonding, specialized expertise, or capital.

H. Denied Certification Appeal:

A firm denied certification by the TERO Office may appeal the denial within 20 days to the TERO Commission.

I. Contracting and Subcontracting Compliance Plan:

1. A required contracting and subcontracting Compliance Plan shall indicate all contracts and subcontracts that will be entered into, and the projected dollar amounts thereof. If the entity has already selected a contractor or subcontractor to perform any contract or subcontract work, it shall list the name of the contractor(s) or subcontractor(s) and indicate whether or not the contractor or subcontractor is certified as Indian Preference eligible by the TERO Office. The entity shall further indicate why each certified contractor or subcontractor, if any, registered with the TERO, that was technically qualified to perform the work was not selected.
2. The Compliance Plan shall also indicate how the entity intends to comply with the contracting and subcontracting provisions of this Act when awarding all contracts and subcontracts not yet awarded at the time the plan is submitted.

J. Tribal Hiring Hall:

The TERO Manager shall establish and administer a Tribal Hiring Hall to assist Employers in placing TERO Workers in job positions. An Employer is not required to use the Tribal Hiring Hall, and may recruit and hire workers from whatever sources are available to them to achieve the same Indian preference hiring goals. However, the Employer may not employ a non-Indian until the Employer has given the TERO Office 72 hours to locate and refer a qualified local or non-local Indian, except where the TERO Office has, in advance, deemed a position “urgent” to fill due to high turnover or other similar factors, in which case the 72-hour time period will not apply.

K. Counseling and Support Programs:

The TERO Manager will coordinate with other programs and agencies for counseling and other support programs to assist TERO Workers with obtaining and retaining employment. Every employer shall be required to cooperate with the TERO Manager regarding such counseling and

support programs.

L. Job Qualifications, Personnel Requirements, and Religious Accommodations:

An Employer may not use any job qualification criteria or personnel requirements which serve as barriers to the employment of Indians which are not required by business necessity. If the employer fails to meet his burden, it will be required to eliminate the criterion or personnel requirements at issue. Employers shall also make reasonable accommodation for the religious beliefs and cultural traditions of Indian workers. In implementing these requirements, the Commission shall be guided by the principles established by the EEOC Guidelines, particularly 29 CPR Parts 1604-1607, as amended. However, the Commission reserves the right to go outside the scope of the EEOC principles to address employment barriers that are unique to Indians.

M. Lay-Offs:

For lay-offs and reductions in force, no Indian Worker shall be terminated if a non-Indian Worker in the same job classification is still employed; the non-Indian Worker must first be terminated if the Indian possesses the qualifications for the job classification. If an Employer lays off workers by crews, all Indian Workers shall be transferred to crews to be retained so long as non-Indians in the same job classifications are employed elsewhere on the job site.

N. 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 Manager stating what efforts were made to inform Indian workers about the position; what Indians, if any, applied for the position; and the reasons why each Indian was not hired for that position.

O. Summer Students:

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

SECTION 8.0 - EXCEPTIONS

A. Exceptions: The following exceptions apply to the requirements set forth herein:

1. The Commission shall have the ability to negotiate numerical hiring goals and timetables and incorporate such goals and timetables into the respective Compliance Plan.

2. Employers who need immediate temporary employees shall contact the Hiring Hall to determine if workers entitled to Indian Preference are available. If no such TERO Workers are immediately available, then the enterprise may hire from another source.

3. The process for resolving complaints shall be described in the Compliance Plan for each enterprise and shall include an alternative dispute process. Complainants must follow

the procedures as set forth in the Compliance Plan(s).

4. Companies that contract with the Bureau of Indian Affairs, the Snoqualmie Indian Tribe, and/or a Tribal enterprise for the purpose of extracting resources from trust or Tribally-owned restricted fee land (e.g., timber) are exempt from paying the TERO Tax.

5. Construction projects that will be completed in five business days or fewer are exempt from the requirements of this Act, regardless of the number of Employees or the cost of the Contract.

B. Permanent and Key Employees:

1. Prior to commencing work on the Reservation, an Employer shall identify "Key Employees" and "Core Crew."
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. An Employee who is hired on a project-by-project basis may be considered a key Employee so long as they are in a top supervisory position or perform a critical function. Key employees may be employed on the project whether or not they are Indians.

3. A Core Crew member is one who is and has been on the Employer's 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 Core Crew. The fact that an employee had worked for the Employer on previous projects shall not on its own qualify that employee as Core Crew; however, exceptions for superintendents and other key personnel who are not core crew may be granted by the TERO Manager on a case-by-case basis. Up to three Core Crew members may be identified for a project and need not be Indian.

4. The TERO Office will review Core Crew and Key Employees on a case-by-case basis to ensure no actions were taken to circumvent the requirements of this section. Any Employer filling vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract to take place on the Reservation shall set forth evidence acceptable to the TERO Manager that its actions were not intended to circumvent the requirements of this Act.

C. Emergency Hire Provision:

1. In rare circumstances where an employee is needed to fill a vacancy during off business hours when the TERO Office is unavailable, the Employer is permitted to hire employees as necessary to meet the emergency need for a maximum of three days or until the TERO Office can be notified of the circumstances and can approve the individuals or dispatch other TERO Workers.

2. Emergency hires will be limited by the TERO Manager and will be allowed on a case-by- case basis. Any abuse concerning this provision will result in sanctions as provided in this Act.

SECTION 9.0 - TERO TAXES

The TERO Manager shall assess on Employers a TERO tax to provide revenue for operation of the TERO Program as follows:

A. Taxes:

With respect to each project/contract or subcontract of $25,000 USD or more otherwise subject to the provisions of this Act, the Employer shall pay a one-time tax of 2% of the total project/contract costs, including but not limited to equipment, labor, materials and operations and any increase of the contract, project, or subcontract amount. If the Employer initially enters into a contract, project, or subcontract of less than $25,000 USD but subsequently increases costs resulting in the total contract, project or subcontract equaling or exceeding $25,000 USD, the tax shall apply to the total amount including increases. The prime contractor is principally responsible for payment of the tax as the Employer.

B. TERO Tax Payment:

1. The TERO tax provided for in this Act shall be paid by the Employer prior to commencing work on the Reservation. However, where good cause is shown, the TERO Manager may authorize the Employer to pay the tax in installments over the course of the contract.

2. The checks shall be made payable to "Snoqualmie Tribe/TERO Program" and addressed to:

   Finance Department Supervisor
   The Snoqualmie Tribe
   P.O. Box 969
   Snoqualmie, Washington 98065

C. Delinquent Fees:

Except as otherwise provided here in Section 8, if an Employer fails to pay the tax by the day it begins work, interest shall begin accruing on that date at a rate of 10% per annum, compounded daily. Further, as soon as possible following the day on which the Employer commences work, the TERO Manager shall send notice to the Employer by certified mail, informing the Employer that the payment is overdue and of the consequences that will result if the fee is not paid immediately.

D. Non-Payment of Taxes:

1. If the tax is not paid by the fifteenth day after the Employer commences work, the TERO Manager shall file a formal charge of non-compliance and shall schedule a Commission hearing be held within five days or as soon thereafter as the Commission can meet and shall provide formal notice to the Employer of the scheduled hearing.

2. At the hearing, to be held regardless of the Employer's attendance, the Commission

shall determine whether the Employer has failed to comply. If the Commission finds there has been non-compliance, it shall:

a. Impose penalties of up to 10% of the amount due; and

b. Petition the Tribal Council to enforce the decision of the Commission through confiscation proceedings as provided in this Act. Where the TERO Manager or Commission has reasonable cause to believe that an Employer will flee the jurisdiction before the procedures set out above can be completed, they may apply any of the procedures provided for in this Act, notwithstanding the above procedures. The Employer shall be made a party to any court proceedings involving claims against the Employer.

E. Payment Plan:

1. The TERO Manager in his/her discretion, may, upon receipt of a written request, authorize an Employer to pay the required tax in installments over the course of the project or contract, when:

   a. the total annual tax exceeds $10,000.00; or

   b. the Employer demonstrates hardship or other good cause.

2. The Employer shall pay interest, at 10% per annum, compounded daily, on all amounts paid after the day the agreed upon in this payment plan. The TERO Manager is authorized and within their discretion to terminate any alternative payment installments under this subsection and to declare such taxes immediately due and payable on the day following the date on which any installment payment is not timely made if the Employer shows a pattern of behavior that would not be conducive to continue this alternative arrangement.

F. Increase of Taxes:

1. The tax collected from the Employer pursuant to this section shall be increased in accordance with any increase in the contract amount as follows:

   a. The Employer shall be liable for the payment of taxes on each contract amount increase to the same extent the Employer is liable for payment of the fee on the original contract amount.

   b. Tax payments attributable to contract amount of the increases are due and shall be paid on the date the Employer is notified of the allowance of such increase.

   c. Interest on unpaid fees due shall be computed in the same manner as interest on unpaid fees that are attributable to the original contract amount.

G. Authority to Waive Tax or Negotiate Flat Fee

1. The TERO Manager may, with the authority of the TERO Commission, waive the

TERO tax or negotiate with the Employer a flat fee in lieu of the TERO tax set forth in this section.

SECTION 10.0 - REPORTS AND MONITORING

A. Inspections

1. Employers shall submit their certified payrolls and any other information requested by the TERO Manager.

2. The TERO Manager shall have the right to make on-site inspections during regular working hours in order to monitor any Employer's compliance with this Act and rules, regulations and orders of the TERO Commission. The TERO Manager shall have the right to speak to workers and investigate the job site.

3. All information collected by the TERO Manager shall be kept confidential unless disclosure is required during a hearing or appeal as provided in Sections 8, 9, 10, and 11.

B. Investigations

1. The TERO staff shall have full investigative authority as deemed necessary to determine whether a violation has occurred or to aid in prescribing rules, regulations, and guidelines hereunder. TERO staff may enter, during business hours, the place of business or job site of any Construction Employer for the purpose of such investigations. For all other Employers, TERO staff shall provide at least 24 hours' notice of its intent to enter the place of business, what allegation(s) it intends to investigate, and what documents it wishes to review.

2. All reported incidents shall be investigated under the following guidelines:
   a. All information shall be kept confidential to the fullest extent possible, unless disclosure is required for further investigation, or during a hearing or appeal. However, TERO shall not allow the goal of confidentiality to be a deterrent to an effective investigation.

   b. If an Employer refuses to permit TERO staff from entering onto business premises during business hours or from reasonably inspecting or copying documents, the TERO Manager may recommend to the Commission that it find a violation of this Act and accordingly impose a fine.

   c. If the TERO Manager is forced to seek enforcement of a Commission subpoena in Tribal Court, the Court may order, in addition to the penalties authorized by this Act, award attorney's fees and costs against the party found in violation of the Commission subpoena.

3. An Employer may not be held liable for acts of its Employees if the Employer establishes that it took immediate and appropriate corrective action. TERO prohibits retaliation against any person who participates in the investigation or complaint process.

SECTION 11.0 – WORKFORCE

A. Hiring Requirements.

1. In accordance with the Compliance Plan, each Employer shall negotiate TERO preference hiring goals to maximize preference for positions outlined in the Compliance Plan.

2. Employers shall not create unnecessary or excessive job skill requirements.
3. Employers shall apply Indian preference at all times when filling vacant positions so long as the worker is qualified for the position. Construction Employers may be required to replace a non-TERO Worker who is not a Key Employee or Core Crew with a qualified TERO Worker if one becomes available.

4. The TERO Office reserves the right to negotiate up to 100 percent TERO hiring goals, specifying the number of TERO Workers the Employer shall hire by craft and skill level.

5. Construction Employers must contact TERO for employee dispatch 72 hours prior to commencing work to negotiate the workforce and to find qualified workers. If no TERO Workers are available, the Construction Employer may recruit from other resources. After receiving adequate justification, TERO will review and decide on a case-by-case basis either to approve or deny any exception from this requirement.

6. TERO is authorized to order removal of an Employee and/or issue sanctions if any non-TERO Workers are employed but not listed on the Employer's approved Compliance Plan. In deciding whether the non-TERO Worker should be removed, the TERO Office shall consider whether any qualified Indians applied.

7. Apprenticeship programs and/or positions may be considered in meeting employment preference goals.

8. All Construction Employers shall compensate their Employees at a rate not less than the approved Snoqualmie Classification and Wage Rates specified for their trade or the prevailing wage scale per Contract requirements. If the company is signatory to a Construction trade union, the current union pay scale with fringe benefits of that trade will be paid, in cash, unless otherwise specified through any other Compliance Plan or Contract; provided, that it is not less than the Snoqualmie Classification and Wage Rates.

9. The TERO Office will work with the Employer to provide referrals for TERO Workers for counseling and other support services to assist in retaining employment when determined necessary.

10. TERO Workers shall not be laid off where non-TERO Workers are still working. If the Employer lays off employees by crews, classifications, or other categories, qualified TERO Workers shall be transferred to crews or positions that will be retained. This section does not apply to Key Employees or Core Crew.

B. Training/ Training Special Provisions

1. Employers may be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by the Employer.

2. The ratio of Indian trainees to fully qualified workers shall be set by the Commission after consultation with the Employer.
3. Employers with collective bargaining agreements may use apprenticeship programs, so long as they obtain agreement from the unions to apply Indian preference to project apprentices and to make available apprenticeship positions for Indian preference applicants.

4. All training opportunities or Training Special Provisions requirements must be identified prior to the commencement of work activity on any project. Training opportunities shall be filled through the same process described the previous section regarding hiring, and through coordination with the TERO Employment and Training Program component to locate individual(s) who may already be in an apprenticeship program for which the opportunity will exist.

C. Tribal Minimum or Prevailing Wage

1. The TERO Manager may promulgate a Tribal Minimum Wage or Prevailing Wage as provided in this Section which shall only apply to Construction Employers. A Tribal Minimum or Prevailing Wage established under this subsection shall be included in a Construction Employer's Compliance Plan.

D. Compliance by Unions

1. Any Employer that has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws contained in this Act, and the rules, regulations and guidelines or order of the Commission. Until such agreement is filed with the Commission, Employers shall not commence work on the Reservation. The agreement shall be subject to the approval of the Commission or the TERO Manager.

2. The contents of the agreement shall provide the following:

   a. An agreement that the union will cooperate with the Commission and the TERO Manager and assist in the compliance and enforcement of this Act.

   b. An agreement that the union will establish a mechanism to allow Indians to register for job referral lists by telephone, email, or mail.

   c. An agreement that the union will give preference to Indians irrespective of the union's own use of internal job referral lists.

   d. An agreement that the union will establish journeyman and apprenticeship programs for Indians and that all hours worked will be credited to the apprenticeship.

e. An agreement that the union will grant temporary work permits to Indians who do not wish to join the union and that any union dues will be waived with respect to those Indians.

f. The Commission will provide a model union agreement for use by all unions that have a collective bargaining agreement with the Employer.

g. Nothing herein shall constitute official Tribal recognition or endorsement of any union or union activity.

E. Certification of Native American Owned Business (NAOB)

1. An applicant seeking to be certified as a Snoqualmie Tribe-Owned Business or other Native American Owned Business by TERO for preference in contracting shall submit a complete certification application to the TERO Manager pursuant to the regulations set forth by the TERO Commission. The Commission reserves the right to exempt certain requirements if deemed not necessary for the type of service provided. Upon certification, a NAOB can request the TERO Office's assistance in registering as a Minority Business Enterprise with the State of Washington.

2. A NAOB shall report any changes of ownership or control status within 30 calendar days after such change has occurred. If at any time Indian ownership drops below 51 percent, the TERO Manager reserves the right to decertify the business. The Manager shall review the status of all NAOBs annually.

3. Denial of NAOB certification by the TERO Manager may be appealed to the Commission. The written appeal must be received by the Commission within 14 business days of the denial notice. The Commission's decision is final and cannot be further appealed. A business that has been denied certification may not reapply for at least 30 days, and then only if the business has remedied the reason(s) why it was denied certification.

4. A NAOB is subject to decertification if the business engages in prohibited activities or has changed its ownership or control so that it no longer meets the requirements for certification. Failure to notify the TERO Manager of changes in ownership, control, or operations shall also be grounds for decertification.

5. The Commission may review and recommend corrective action or training for a NAOB with a multiple nonperformance contract issue or multiple violations of this Act. If the NAOB refuses or does not comply with the Commission directive, it may be decertified.

SECTION 12.0 - HEARINGS

A. Notice:

1. If a hearing is requested by the TERO Manager, an individual, an Employer, or union

pursuant to this Section, written notice of the hearing by certified mail shall be provided to all parties involved no fewer than thirty (30) days before the hearing.

2. The notice shall contain a brief statement of the reason for the hearing and shall be designed to reasonably attempt to notify all concerned parties of the nature of the hearing and the evidence to be presented.

3. The notice shall also advise the parties of their right to be present at the hearing, to present testimony of witnesses and other evidence, to be represented by counsel at their own expense, and that the TERO Manager may be represented by counsel for the Tribe.

B. TERO Manager Complaint Procedure:

1. Complaint Initiated by Employees Covered by this Act:

   a. Any Employee or group of Employees covered by this Act who has or have cause to believe that an Employer has violated or failed to comply with the preference requirements imposed by this Act and/or by the regulations issued by the Commission, or have cause to believe they have been discriminated against by an Employer because they are Indian may file a complaint with the TERO Office.

   b. A complaint shall be filed within 60 calendar days after the alleged violation(s) or discrimination occurred and shall be in writing and contain the date, place and circumstances of the alleged violation(s) or discrimination. The Employee is encouraged to attempt to resolve the matter with the Employer prior to filing a complaint.

   c. If the alleged discrimination has resulted in termination of the Employee(s), the Employee(s) may file the complaint concurrently with the Employer's grievance process.

   d. If the alleged discrimination has resulted in disciplinary action other than termination, the Employee(s) shall exhaust the Employer's disciplinary appeal process prior to filing a complaint.

   e. Upon receipt of a complaint, the TERO Manager shall conduct a preliminary review to determine if the TERO Office has jurisdiction over the complaint.

   f. If the TERO Manager decides that the complaint does not allege a violation of this Act, the complaint shall be immediately dismissed, and/or referred to the proper department or agency.

   g. If the TERO Manager determines that the complaint alleges a violation of this Act, the complaint shall be served by the TERO Manager on the alleged violator(s) personally or by certified mail within five business days after the complaint is filed.

   h. The alleged violator(s) shall provide a response to the TERO Manager within five business days of receipt of the complaint. If the violator fails to respond, then the

TERO Manager may immediately proceed with an investigation of the complaint as provided in this Section.

i. The TERO Manager shall attempt to remedy the issue through mediation with both parties within 10 business days of receipt of the alleged violator's response. If the parties are unable to resolve the dispute through mediation, the TERO Manager shall initiate a formal investigation, to be completed within 15 business days of the close of mediation.

   i. Upon a finding that the alleged violation(s) did not occur, the TERO Manager shall so inform the complainant and the alleged violator(s) in writing within three business days of completion of the investigation.

   ii. Upon a finding that the alleged violation(s) did occur, the TERO Manager shall issue a formal notice of non-compliance within five business days of completion of the investigation.

j. The formal notice shall set out the nature of the violation(s), and the steps that must be taken to be in compliance, as well as advise the Employer of the right to request a hearing. The Employer shall have five business days from the date of receipt of the formal notice either to comply or to request a hearing. If the TERO Manager or Commission has reason to believe irreparable harm will occur during that period, then the TERO Manager or Commission may require that compliance occur within fewer than five days. If the Employer or Entity fails or refuses to comply and does not request a hearing, the Commission may proceed with disciplinary measures.

k. If the Employer requests a hearing and the TERO Manager has good cause to believe that there is a danger that the Employer will remove itself or its property from the jurisdiction of the Tribe prior to the hearing, the TERO Manager may, in his or her discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the Employer at the hearing. If the Employer fails or refuses to post said bond, the Commission may proceed. The TERO Manager may also petition the Snoqualmie Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

2. Complaint Initiated by Manager or Commission:

   a. The TERO Manager or Commission shall have the authority to initiate a TERO complaint when there is reason to believe that an Employer has committed the following:

      i. Failure to comply with the preference requirements of this Act.

      ii. Discrimination against Employees based upon their status as an Indian or as a person given preference for other reasons, as defined by this Act.

      iii. Violation of the terms of an approved Compliance Plan.

iv. Failure to use the Hiring Hall as required.

b. The Commission or TERO Manager shall notify the Employer of the complaint in writing and provide a written informal settlement offer. If an informal settlement is not achieved within 20 business days from the date the Employer was notified of the violation(s), a formal notice of non-compliance shall be issued.

c. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance, as well as advise the Employer of the right to request a hearing. The Employer shall have five business days from the date of receipt of the formal notice, either to comply or to request a hearing. If the TERO Manager or Commission has reason to believe irreparable harm will occur during that period, the TERO Manager or the Commission may require that compliance occur within fewer than five days. If the Employer fails or refuses to comply and does not request a hearing, the Commission may nonetheless proceed with review, investigation, and determination of compliance or non-compliance.

d. If the Employer requests a hearing and the TERO Manager has good cause to believe that there is a danger that the Employer will remove itself or its property from the jurisdiction of the Tribe prior to the hearing, the TERO Manager may, in his or her discretion, require the Employer to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the Employer at the hearing. If the Employer fails or refuses to post said bond, the Commission may nonetheless proceed with review, investigation, and determination of compliance or non-compliance. The Manager may also petition the Snoqualmie Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

3. Any Employer or union that believes any requirements imposed by this Act or rules, regulations, or orders issued pursuant to it are illegal or erroneous may file a complaint with the Commission. The complaint shall be filed within 60 calendar days after the alleged error or illegality occurred and shall be in writing and contain the date, place and circumstances of the alleged error or illegality. The Commission or the TERO Manager will attempt to achieve an informal settlement of the complaint. The terms of the settlement shall be in writing. If a settlement cannot be achieved within 20 business days after the complaint is filed, the complainant may request a hearing on the complaint.

SECTION 13.0- JUDICIAL PROCEDURES

A. Hearings

1. A request for a hearing must be in writing and filed with the Commission. A hearing shall be held within 45 calendar days from the date the request for a hearing is filed. Hearings shall be governed by the following rules and procedures:

a. The parties shall be notified by certified mail of the date, time, and place of the hearing and the reason for the hearing.

b. The Chairperson or Vice-Chairperson shall preside at the hearing and shall administer oaths and the Commission shall ascertain the facts in a reasonable and orderly fashion.

c. The Commission may request the advice or assistance of legal counsel for the Tribe.

d. The parties may present testimony of witnesses and other evidence and may be represented by legal counsel at their own expense.

e. If any party retains legal counsel, they must give a 14-day notice to the TERO Office of their intent to have legal representation. At that time, TERO will request that counsel for the Tribe represent the TERO Office's interests at the hearing until completion of the matter.

f. The hearing may be continued, adjourned, or postponed at the discretion of the presiding officer.

g. The technical rules of evidence shall not apply at the hearing.

h. All hearings shall be audio recorded.

i. In any hearing, the burden of proof shall be on the party requesting the hearing. Such burden of proof shall be by a preponderance of the evidence that the TERO Office was incorrect in finding a violation of this Act or the regulations adopted under it, or that any proposed penalty, sanction, award, or required action ordered by the TERO Office is incorrect or unwarranted.

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

k. Within 30 calendar days after the close of the hearing, the Commission shall notify the parties of its decision and shall enter written findings of fact and conclusions of law.

l. The Commission shall adopt any other rules of practice or procedure to govern the conduct of a hearing and such rules shall not require public comment before adoption.

SECTION 14.0 - SANCTIONS FOR VIOLATION

A. Penalties

1. If, after a hearing, the Commission determines that the violation(s) alleged in the complaint occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested and the Commission or Manager determines that any Employer, union, contractor, or subcontractor has committed a violation as described, the violator(s) will be subject to penalties for such violation(s), including but not limited to the following:

a. Denial of the right to commence or continue business on the Reservation or on

Tribal projects off the Reservation.

b. Suspension of operations on the Reservation.

c. Termination of operations on the Reservation.

d. A prohibition on future operations on the Reservation.

e. An award of back pay and/or damages to any injured party.

f. An order that Employees hired in violation of this Act, rules, regulations or order of the Commission be summarily removed.

g. For Employers operating pursuant to a Contract, the imposition of a monetary penalty per violation and per day, based on the amount of the Contract as follows:

   i. Less than or equal to $10,000: $100

   ii. More than $10,000 but less than or equal to $50,000: $250

   iii. More than $50,000: $500

h. For all other Employers, the imposition of a monetary penalty in an amount not to exceed $500.00 per day for each violation.

i. An order to change procedures or policies to eliminate the violation(s).

j. An order to require the employment, promotion and training of Indians and other Employees covered by the Title injured by the violation(s).

k. An order to take any such other action as is necessary to ensure compliance with this Act or to remedy any harm caused by a violation of this Title or deemed by the Commission necessary to alleviate, eliminate and compensate for any violation(s).

l. Denial of certification.

   i. Each day a violation exists shall constitute a separate violation.

   ii. If an Employer refuses to comply with an order or decision issued by the Commission, the TERO Manager may petition the Snoqualmie Tribal Court for an injunction, enforcement order or any other relief. The Tribal Court shall have jurisdiction over proceedings brought by the TERO Manager to enforce TERO orders, and may assess attorney fees and costs, and such other sanctions in addition to those contained in the order, that the Court deems just and reasonable.

   iii. Monetary penalties shall be paid within 30 calendar days of the Commission's decision to impose such penalties. Interest will accrue on any past due penalty at a rate of 10% per annum. Employers are responsible for paying their own monetary penalties, and monetary penalties shall not be passed on to the contracting agency through change order and/or invoice. Failure to pay a penalty

or an attempt to pass the penalty on to the contracting agency will result in further sanctions at the Commission's discretion.

SECTION 15.0 -APPEALS

A. Appeals

1. Any party that is dissatisfied or aggrieved by a final decision of the TERO Commission may file an appeal to the Snoqualmie Tribal Court. The appeal shall be taken by filing a written notice of appeal with the Tribal Court and attaching the TERO Commission decision that is being appealed. The appeal must be filed no later than 20 business days after the Commission's decision is issued. The notice of appeal shall:

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

2. All appeals to Tribal Court shall be decided based on the record of the Commission hearing or decision. Upon filing of an appeal, the Commission shall transfer the Commission hearing or decision record to the Tribal Court. The appellant shall pay the costs of copying the Commission record. The appellant shall have the burden of proof on appeal.

3. The jurisdiction of the Tribal Court in appeals of Commission decisions shall be limited to:

    a. affirming the Commission's decision; or
    b. reversing the Commission's decision.

4. There shall be no further appeal from a decision of the Snoqualmie Tribal Court.

5. All appeals are governed by applicable Tribal Court procedures.

B. Recusal of Commission Members

1. No member of the Commission shall have contact with a complainant, witness or other interested party regarding the specifics of an appeal prior to a Commission hearing. If a Commissioner is approached by a party, witness or any other interested person outside the formal hearing process, it shall be the duty of the Commissioner to explain they are prohibited from discussing any aspects of the complaint or appeal. If information pertaining to the appeal or matters at issue in a hearing is shared with a Commissioner, the Commissioner shall disclose the existence of such communications on the record prior to the hearing. If the communication involved sharing of evidence or argument regarding the appeal outside the hearing process, the Commissioner shall be recused from participating in the hearing.

2. A Commissioner shall not participate in any action, hearing, or decision where that Commissioner or the Commissioner's immediate family member has a financial or business interest (contractual or otherwise) in the transaction or Entity involved in the

hearing or is an Employee of such Entity. For purposes of this section, "immediate family" means, including by adoption, brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, and half-sister.

3. In situations where recusal is not required, a Commissioner should nonetheless recuse themselves if the Commissioner believes that:

   a. He or she cannot act fairly or without bias; or
   b. There is an appearance that he or she cannot act fairly or without bias.

4. A Commissioner, the Commission, or other interested party may request recusal of a Commissioner if they believe that a Commissioner is unable to act in a fair and impartial manner due to a relationship of any kind. In this circumstance, the other Commissioners may hear arguments and review evidence, including testimony, and decide on recusal by majority vote. The decision of the Commission shall be final and not subject to appeal.

5. If a Commissioner is recusing themselves and a meeting needs to establish quorum, substitutions may occur in the following order:

   a. An alternate may be seated temporarily to meet quorum.

   b. If no alternates are available or able to be seated, then a member of Council with no bias may be seated to establish quorum.

C. Retaliation or Reprisal

1. Any harassment, action, discrimination, or threat against any person or company because that person or company filed a complaint or testified, assisted, or participated in any manner in an investigation, proceeding or hearing is an unlawful employment practice and subject to the penalties as set forth in this Act.

2. In addition, any person or company found to have harassed, discriminated against, or threatened another person based on that person's participation in any investigation, proceeding, or hearing may be required to pay restitution for any financial loss suffered.

3. An Employer shall be responsible for the actions of its subcontractors and their Employees regarding the prohibitions in this section.

D. Compliance Monitoring

1. Construction Employers shall submit reports and other information, including but not limited to Contract documents and certified payroll records in a form acceptable to TERO, if requested by the Commission or the TERO Manager. Personnel records shall be requested only during an investigation; provided the TERO Manager has obtained an authorization to release such records, signed by the Employee. All information collected by the TERO Office is confidential unless disclosure is required during a hearing or appeal as provided in this Act.

2. The Manager or the TERO Manager's designee shall have the right to make on-site inspections during regular working hours to monitor a Construction Employer's compliance with this Act. The Manager or the TERO Manager's designee also has the authority to inspect and copy all relevant records of a contractor, of the contractor's signatory unions or subcontracts, to speak with workers on the contractor's or subcontractor's job site and to engage in similar investigatory inspection activities.

3. For Employers other than Construction Employers, including the Tribe's enterprises, if any report required by this Act indicates that the Employer is out of compliance, the TERO Manager or the TERO Manager's designee has the authority to initiate an on-site inspection. The Manager or the TERO Manager's designee shall provide 24 hours' notice of the inspections to a designated point of contact and ensure that the inspection does not disrupt business operations. The Manager or the TERO Manager's designee may inspect and copy all relevant records of the Employer, speak with workers on the premises during normal breaks and engage in similar investigatory inspection activities.

SECTION 16.0 - TRIBAL TRAINING PROGRAMS

The Snoqualmie Tribe shall establish training programs, as funding permits, to prepare TERO Workers for job opportunities developed pursuant to this Section and the Snoqualmie Tribal Employment Rights Program. The Snoqualmie TERO Manager shall coordinate with unions and other agencies.

SECTION 17.0- COMPLIANCE PLANS

As of the effective date of this Section, no new employer may commence work on the Snoqualmie Reservation until it has consulted with the Snoqualmie TERO Manager and negotiated and signed a Compliance Plan approved by the TERO Manager for meeting its obligations under this Chapter.

SECTION 18.0- SEVERABILITY

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

SECTION 19.0 - PUBLICATION

A. The TERO Manager shall notify the prime contractor and employers of this Section 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 Section and all rules and regulations and orders of the Commission and TERO Manager.

B. The TERO Manager shall provide a copy of this Act to every employer operating on the Reservation and any amendments or revisions thereto, by request of the employer.

C. This TERO replaces and supersedes any and all prior TERO laws.

This Act will take effect immediately upon approval by the Tribal Council and will supersede and replace any and all prior ordinances of the Tribe relating to the subject matter of this Act.

ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 12TH DAY OF JULY 2001 IN SESSION DULY MET, VIA RESULTION NO. 38-(20)01.

CODIFIED AS AMENDED BY THE SNOQUALMIE TRIBAL SECRETARY ON THE 21ST DAY OF OCTOBER 2008.

CODIFIED AS AMENDED BY THE SNOQULAMIE TRIBAL SECRETARY ON THE 3RD DAY OF FEBRUARY 2022.

CODIFIED AS AMENDED BY THE SNOQUALMIE ACTING TRIBAL SECRETARY ON THE 29TH DAY OF JULY 2022.

FURTHER AMENDED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 8TH DAY OF JUNE 2023 IN SESSION DULY MET, WITH 7 FOR, 0 AGAINST, AND 0 ABSTAINING, VIA RESOLUTION NO. 116-2023.

FURTHER AMENDED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 29TH DAY OF AUGUST 2024 IN SESSION DULY MET, WITH 5 FOR, 0 AGAINST, AND 0 ABSTAINING, VIA RESOLUTION NO. 206-2024.

CODIFIED AS AMENDED BY THE SNOQUALMIE TRIBAL SECRETARY ON THE 29TH DAY OF AUGUST 2024.

AMBER HOLLOWAY, SECRETARY OF TRIBAL AFFAIRS