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SECTION ONE DECLARATION OF POLICY

- I. Declaration of Policy:
- II. As a guide to the interpretation and application of this Ordinance, the public policy of the Chippewa Cree Tribe is declared to be as follows:

Like land, water, and minerals, jobs, subcontracts and contracts in the private sector on or near the Rocky Boy Reservation are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special employment, subcontract and contract rights and Chippewa Cree Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. Indians are also entitled to the protection of the laws that the Federal Government has adopted to combat employment discrimination, and Tribal Government can and should play a role in the enforcement of those laws. The Chippewa Cree Tribe believes it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians.

SECTION TWO DEFINITIONS

- I. Definitions:
 - A. "Employee" means any person employed for remuneration.
 - B. "Employer" means any person, partnership, corporation or other;
 - C. "Covered Employee" means any employer employing two or more employees who during any 30-day period, spend, cumulatively, 40 or more hours performing work within the exterior boundaries of the Rocky Boy Reservation.
 - D. "Entity" means any person, partnership, corporation, joint ventures, government, 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 the Ordinance's coverage over all employment and contract activities within the Tribe's jurisdiction and the term shall be so interpreted by the Commission and the courts.
 - E. "Commission" means the Chippewa Cree Tribal Employment Rights Commission established by this Ordinance.

F. "Commercial Enterprise" means any activity by the Chippewa Cree Tribe or of the federal or state governments that is not a traditional government function as defined by the Internal Revenue Service.

G. "Indian" means any member of a federally-recognized tribe.

H. "Local Indian" means any member of a federally-recognized tribe who resides within the exterior boundaries of the Rocky Boy Reservation.

SECTION THREE INDIAN PREFERENCE IN EMPLOYMENT

I. Indian Preference in Employment:

All covered employers, for all employment occurring within the exterior boundaries of the Rocky Boy Reservation, shall give preference to qualified Indians, with the first preference to local Indians, in all hiring, promotion, training, lay-offs, and all other aspects of employment. Such employers shall comply with the rules, regulations, guideline and orders of the Chippewa Cree Tribal Employment Rights Commission which set forth the specific obligations of employers in regards to Indian preference and local Indian preference. These requirements shall not apply to any direct employment by the Chippewa Cree Tribe or by the federal, source or other governments of their subdivision. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

SECTION FOUR INDIAN PREFERENCE IN CONTRACTING

I. Indian Preference in Contracting:

All entities awarding contracts or subcontracts for supplies, services, labor and materials in an amount of \$5,000.00 or more where the majority of the work on the contract or subcontract will occur within the contracting and subcontracting to qualified entities that are certified by the Commission as 51% or more Indian owned and controlled by local Indians. These requirements shall not apply to the award of contracts awarded directly by the Chippewa Cree Tribe Council for approval. Tribal programs or divisions other than commercial enterprises shall not be required to comply with these requirements but shall be required, when submitting a contract to a local Indian contractor. These requirements shall apply to all subcontractors awarded by a tribal, federal or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. The Commission shall establish a system for certifying firms as Indian preference and local Indian preference eligible.

SECTION FIVE UNIONS

I. Unions:

Any covered employer who 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, and with the rules, regulations and guidelines of the Chippewa Cree Tribe. Such agreement shall be subjected to the approval of the Director.

SECTION SIX COMMISSION; MEMBERS; COMPENSATION; QUORUM

I. Commission; Members; Compensation; Quorum:

- A. There is created a Chippewa Cree Tribal Employment Rights Commission.
- B. The Commission shall be composed of five (5) commissioners appointed by the Chippewa Cree Tribal Council. The Committee shall designate one of such commissioners as Commission Chairman. The Commission shall serve at the pleasure of the Council until replaced.
- C. Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as are in effect for Commissioners of the Chippewa Cree Tribe or for committees or officers of the Chippewa Cree Tribal Council.
- D. A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

SECTION SEVEN POWERS OF THE COMMISSION

I. The Commission has the full power, jurisdiction and authority to:

- A. Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this Ordinance. Except when an emergency exists, the Commission shall provide the public with a reasonable time for comment before promulgating any final regulations.
- B. Require each covered employer or entity to submit to the Commission an acceptable compliance plan indicating how it will comply with this

Ordinance, before a covered employer or entity may commence work within the exterior boundaries of the Rocky Boy Reservation.

- C. Impose numerical hiring goals and timetables that specify the minimum number of Indians a covered employer must hire, by craft or skill level.
- D. Required covered employers to establish or participate in such training programs as the Commission determines necessary in order to increase the pool of qualified Indians on the Rocky Boy Reservation as quickly as possible.
- E. Establish in conjunction with Tribal employment and training programs, a tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.
- F. 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 required by business necessity. In developing regulations to implement this requirement, The Commission shall adopt the EEOC guidelines on these matters to the extent that they are appropriate. The Commission shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians.
- G. To enter into agreements with unions to insure unions compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.
- H. Impose contract and subcontract preference requirements, with a first preference to local Indian firms, and establish and operate a system for certifying firms as eligible for Indian preference and local Indians.

SECTION EIGHT

DIRECTOR; QUALIFICATIONS; STAFF; DUTIES

- I. The Commission shall have exclusive authority to appoint, direct, suspend or remove the Director of the Commission.
- II. The Director shall have such administrative ability, education and training as the Commission determines. He may be removed by the Commission for cause.
- III. The Director shall have authority to hire staff, to expand funds appropriated by the Chippewa Cree Tribal Council, and to obtain and expand funding from federal, state

or other sources to carry out the purposes of the Commission, subject to approval by the Chippewa Cree Tribal Council.

- IV. The Director shall administer the policies, authorities, and duties prescribed for him in this Ordinance and delegated to him by the Commission pursuant to Section Nine.

SECTION NINE DELEGATION OF AUTHORITY

- I. The Commission shall delegate to the Director the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of this Ordinance, except that the Commission may not delegate its power or duty to:
- A. Adopt, amend and rescind rules, regulations, or guidelines.
 - B. To conduct hearings or to impose sanctions pursuant to Section 15.

SECTION TEN INTERGOVERNMENTAL RELATIONSHIPS

I. **Intergovernmental Relationships:**

The Commission acting through the Director is authorized to enter into cooperative relationships with Federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Rocky Boy Reservation.

SECTION ELEVEN ENVIRONMENT RIGHT FEE

- I. **Environment Right Fee:**
- II. **An employment rights fee, to raise revenue for the operation of the Commission, is imposed as follows:**

- A. Every covered employer with a construction contract in the sum of \$5,00.00 or more shall pay a one-time fee of 3% of the total amount of contract. Such fee shall be paid by the employer prior to commencing work on the Rocky Boy Reservation. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments over the course of the contract.

- B. Every covered employer, other than construction contractors, with twenty (20) or more employees working on the Rocky Boy Reservation, or with gross sales on the Rocky Boy Reservation of \$100, 00.00 or more shall pay a one-time fee of 1% of his employee's quarterly payroll which shall be paid within 30 days after the quarter. This fee shall not apply to education, health, governmental, or non-profit employers nor to utilities franchised by the Chippewa Cree Tribe.
- C. The Director shall be responsible for collecting said fees pursuant to any rules and regulations adopted by the Commission. Said fees shall be paid to the Chippewa Cree Tribal Treasurer and shall be credited to the general account of the Chippewa Cree Tribe.

SECTION TWELVE COMPLAINTS

I. Complaints:

Any individual, group of individuals or organization that believes any covered employer or entity, or the Commission has violated any requirements imposed by this Ordinance or regulations issued pursuant to it, may file a complaint with the Director. The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation. The Director shall investigate every complaint filed with him. If upon investigation he/she has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of Section 15. Within 20 days after receipt of the complaint, and on a regular basis thereafter, the Director shall provide the complaining party with a written report on the status of the complaint.

SECTION THIRTEEN INVESTIGATIONS

I. Investigations:

On his own initiative or pursuant to a complaint, the Director or any field compliance officer designated by the Director shall make such public or private investigations within the Rocky Boy Reservation as he or the Commission deems necessary to determine whether any covered employer or other hereunder, or to aid in prescribing rules, regulations and guidelines hereunder. The Director or his delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations; and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of this Ordinance or any rule or order hereunder.

**SECTION FOURTEEN
POWER TO REQUIRE TESTIMONY AND PRODUCTION OF
RECORDS**

I. Power to Require Testimony and Production of Records:

For the purpose of investigations or hearings which, in the opinion of the Director or the Commissioner, the Director, or any field compliance officer designated by the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

**SECTION FIFTEEN
ENFORCEMENT**

I. Enforcement:

- A. When, after conducting an investigation, initiated by a complaint pursuant to Section 12 of a self-initiated investigation pursuant to Section 13, the Director has reason to believe a violation of this Ordinance or regulations issued pursuant to it has occurred, the Director shall notify the covered employer or entity in writing, specifying the alleged violations. However, he may withhold the name (s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing.
- B. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time, which in no event shall be less than five days from the date of receipt of such notice, to comply, unless the Director has reason to believe irreparable harm will occur during that period, in which case he may require that compliance occur within fewer than five days. If the party fails or refuses to comply, he may request a hearing before the Commission which shall be held no sooner than five days and no later than 30 days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to subsection E.
- C. If the party requests a hearing pursuant to subsection B, and the Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Tribe

prior to the hearing, he may, in his discretion, request the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may proceed pursuant to subsection E. The Director may also petition Chippewa Cree Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the dependency of the compliant and hearing proceedings.

- D.** Any hearing held pursuant to subsection B shall be conducted by the Commission. Conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate the Commission. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.
- E.** If, after the hearing, the Commission determines that the violation alleged in subsection A occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may;
1. Deny such party the right to commence business on the Rocky Boy Reservation;
 2. Suspend such party's operation within the Rocky Boy Reservation;
 3. Terminate such party's operation within the Rocky Boy Reservation;
 4. Deny the right of such party to conduct any further business within the Rocky Boy Reservation;
 5. Impose a civil fine on such party in an amount not to exceed \$500.00 for each violation;
 6. Order such party to make payment of back pay to any aggrieved Indian;
 7. Order such party to dismiss any employees hired in violation of the Chippewa Tribe's employment rights requirements;
 8. Order the party to take such other action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation of this Ordinance, consistent with the requirements of 25 U.S.C. 1301. The Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than thirty days after the close of the hearing provide in subsection E.

where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may move the Tribal Court, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this Ordinance, pending the party's appeal or expiration of the time for appeal.

SECTION SIXTEEN APPEALS

I. Appeals:

A. An appeal to the Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby. Said appeal must be filed no later than 20 days after the party receives a copy of the Commission's decision. The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission. The appeal shall be taken by serving a written notice of appeal with the Tribal Court, with a copy to the Director within twenty days after the date of the entry of the order. The notice of appeal shall;

1. Set forth the order from which appeal is taken;
2. Specify the grounds upon which reversal or modification of order is sought;
3. Be signed by applicant.
 - a. Except as provided in subsection F, the order of the Commission shall abate pending the determination of the Tribal Court. However, the Director may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's Order if that Order is upheld by the court. If the order of the Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection there with, and the limitations, or conditions to be contained therein.

- b. If the Commission's order is upheld on appeal, or if no appeal is sought within 20 days from the date of party's receipt of the Commission's order, the Commission shall petition the court and the court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.
- B. If at any stage in the enforcement process, the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages or TERO fees that are (a) owned by that party pursuant to any outstanding order of the Commission or Court, or (b) which may be owed if the charges set or any outstanding notice of violations are upheld, the Commission may petition the Tribal Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

SECTION SEVENTEEN CONFISCATION AND SALE

I. Confiscation and Sale:

If, 21 days after a decision by the Commission pursuant to subsection (f) of Section 15 no appeal has been filed, or 30 days after a decision by the Court on an appeal from a decision by the Commission pursuant to subsection (A) of Section 16 a party has failed to pay monetary damages imposed on it or otherwise complied with an order of the Commission or the Court, the Commission may petition the Court to order the Tribal Police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the tribal police to confiscate and hold said property or as much as is available. The tribal police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If 30 days after confiscation the party has not come into compliance, the Court shall order the police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all costs incurred by the Court and police in the confiscation and sale. Any proceeds remaining shall be returned to the party.