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**THE CONFEDERATED TRIBES OF THE  
GRAND RONDE COMMUNITY OF OREGON**

**CHAPTER 604  
TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

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**THE CONFEDERATED TRIBES OF THE  
GRAND RONDE COMMUNITY OF OREGON**

**Chapter 604  
Tribal Employment Rights Ordinance**

**PART I – GENERAL PROVISIONS**

- (a) PREAMBLE. The Tribe has enacted this Ordinance pursuant to its inherent sovereign powers in order to promote the interests of self-governance and to ensure that Indian people have employment, training, contracting, subcontracting, and other business opportunities on and near the Grand Ronde Reservation.
- (b) PURPOSE. This Ordinance shall be liberally construed to fulfill the following purposes:
- (1) To provide Tribal laws and rules governing preference in employment and contracting within the Tribe’s jurisdiction;
  - (2) To increase employment of Grand Ronde Tribal Members and other Indians;
  - (3) To establish the Tribal Employments Rights Office (“TERO”) and empower the Tribal Employment Rights Commission (“Commission”) and TERO staff to enforce the laws and rules governing employment and contracting preference; and
  - (4) To provide a fair, enforceable, and effective system of priorities in contracting or subcontracting where a significant part of the work will be performed on or near the Tribe’s Reservation.
- (c) DEFINITIONS. Terms used in this Ordinance are hereby defined as follows:
- (1) Compliance Agreement. An agreement between a Construction Contractor or ODOT Contractor and the TERO, setting forth how the contractor will meet the Tribal and/or Indian preference in hiring, and if applicable, subcontracting goals and other obligations under this Ordinance.
  - (2) Construction Contractor. A Covered Employer, other than an Oregon Department of Transportation (“ODOT”) Contractor or Tribal Employer, who contracts or subcontracts to perform construction work on the Tribe’s Reservation.
  - (3) Covered Employer. An Employer subject to this Ordinance pursuant to Part I, Section (d) below.
  - (4) Employer. Any person, partnership, corporation, company, government, governmental enterprise, contractor, subcontractor or other entity that employs for wages or other remuneration two (2) or more individuals. The term shall not include state or

county governments or state or county governmental agencies, but shall include contractors and subcontractors of said governments or governmental agencies.

- (5) Executive Level Position. A position that reports directly to the Tribal Council or to the Spirit Mountain Gaming, Inc. Board of Directors.
- (6) Grand Ronde Owned Business. A business that is at least 51% or more owned, operated, and controlled by a Grand Ronde Tribal Member or the Grand Ronde Tribe.
- (7) Grand Ronde Tribe or Tribe. The Confederated Tribes of the Grand Ronde Community of Oregon.
- (8) Grand Ronde Tribal Member. An enrolled member of the Grand Ronde Tribe.
- (9) His/Himself. Shall refer equally to “Her/Herself.” The use of masculine pronouns throughout this Ordinance is in the interest of simplicity, uniformity, and expediency only.
- (10) Human Resources Department. The individual, staff, division, or unit of a Tribal Employer responsible for finding, screening, and recruiting job applicants, as well as administering personnel policies and employee benefits.
- (11) Immediate Family. A brother, sister, child, mother, father, or spouse, regardless of whether they are step, half, or adoptive relations.
- (12) Indian. A member of a federally recognized Indian Tribe.
- (13) Indian Owned Business (“IOB”). A business that is at least 51% owned, operated and controlled by an Indian or Indian Tribe.
- (14) Indian Tribe. Any federally recognized Indian Tribe.
- (15) Local Resident. A person who lives on or within a reasonable daily commuting distance of the Tribe’s Reservation.
- (16) ODOT Contractor. Any contractor engaged in specified highway construction projects under contract with ODOT subject to the Tribal/ODOT MOU.
- (17) Qualified. The individual meets the minimum job qualification criteria set forth in the job description and in any written personnel requirements of the Covered Employer. An individual’s work performance for a Covered Employer, including any failure to comply with workplace policies, may be considered in assessing the individual’s qualifications. In general, only individuals with a history of chronic or serious violations of workplace policy (e.g., harassment, criminal activity) or repeated involuntary separations from employment should be disqualified under this provision. An individual should not be disqualified based on activities occurring more than seven years



before the date of interview unless those activities give rise to current workplace safety concerns. In the case of Executive Level Positions or licensed health providers, qualified shall also mean that the individual's work history and references demonstrate their competency to perform the job as reasonably determined by the Covered Employer. In the case of contracting, it shall also mean a responsive and responsible bidder.

(18) Registered Workers. Enrolled Grand Ronde Tribal Members and other Indians who are Local Residents and who are registered with the TERO.

(19) Tribal Council. The nine (9) member governing body of the Grand Ronde Tribe.

(20) Tribal Employer. Includes the Tribal government and all wholly owned corporations, companies, businesses, or other entities of the Tribe.

(21) Tribal/ODOT MOU. The Agreement between the Grand Ronde Tribe and ODOT providing preference in employment for Indians on ODOT specified transportation projects and authorizing TERO to impose a compliance fee on ODOT contractors on these projects.

(22) Tribe's Reservation. Includes the Grand Ronde Reservation and all other land within the jurisdiction of the Tribe.

(d) JURISDICTION. This Ordinance shall apply to all Employers who:

(1) Are located or operating a business on the Tribe's Reservation;

(2) Contract with the Tribe to perform work on the Tribe's Reservation; or

(3) Are otherwise within the jurisdiction of the Tribe, including ODOT Contractors as authorized by applicable federal law, this Ordinance, and the Tribal/ODOT MOU.

(e) NOTIFICATION. TERO staff shall make good faith efforts to educate all Covered Employers and the public about this Ordinance. All contracting agencies shall also make good faith efforts to notify contractors/subcontractors of their obligations under this Ordinance. Notwithstanding the above, it shall not be a defense to any enforcement action for a person or entity to allege that they have failed to receive notification of the requirements of this Ordinance.

## **PART II – TRIBAL EMPLOYMENT RIGHTS OFFICE**

(a) **ESTABLISHMENT OF COMMISSION.** The Tribal Employment Rights Commission is hereby established as the regulatory body charged with enforcement of the provisions set forth in this Ordinance. The Commission will consist of at least three (3), but no more than five (5) individuals who are appointed, and may be removed with or without cause, by the Tribal Council. Commissioners shall be Public Officials subject to the Tribal Ethical Standards Ordinance, Tribal Code Chapter 107.

(1) At least three of the Commissioners shall have education or experience in one or more of the following areas:

- (A) Human Resources;
- (B) Tribal Employment Rights;
- (C) Construction Management;
- (D) Regulatory Enforcement; or
- (E) Auditing or Investigations.

(2) Commissioners shall serve for terms of three (3) years; provided that the appointments to the Commission shall be made in such a manner that their terms shall be staggered, so that the terms of no more than two (2) Commissioners shall terminate in any year.

(3) Three (3) Commissioners shall constitute a quorum to transact business. All decisions of the Commission shall be made by a majority vote.

(4) Current Human Resources Department employees are not eligible to serve on the Commission.

(5) Commissioners may receive a stipend for their services at a rate established by the Tribal Council. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses in a manner consistent with applicable Tribal policies and procedures.

(6) The Commission shall meet at least quarterly.

(7) At its first meeting, and annually thereafter, the Commission shall select a Chair, Vice-Chair, and Secretary. The Chair shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.

(b) DUTIES AND POWERS OF THE COMMISSION. The Commission has the power, jurisdiction, responsibility, and authority to:

- (1) Take all appropriate actions necessary to implement the provisions of this Ordinance.
- (2) In consultation with the TERO Director perform the following:
  - (A) Make recommendations to Tribal Council on amendments to this Ordinance; and
  - (B) Formulate, adopt, amend, and rescind rules and guidelines consistent with and necessary to carry out the provisions of this Ordinance.
- (3) Establish a system for certifying firms as Indian Owned Businesses or Grand Ronde Owned Businesses.
- (4) Hold public hearings on matters covered by this Ordinance.
- (5) Assist in presentations to the public on Indian employment and contracting preference requirements.
- (6) Issue notices to appear and order relief or sanctions that are necessary and appropriate to enforce this Ordinance.
- (7) Review and recommend the annual TERO budget prepared by the TERO Director for approval.
- (8) Consult with the Tribal Attorney's Office on legal questions, appeals, and rule-making.

(c) RECUSAL OF COMMISSION MEMBERS.

- (1) No member of the Commission shall participate in any action or decision by the Commission directly involving himself, a member of his Immediate Family or any person, business, or other entity of which he or a member of his Immediate Family is an employee, has a substantial ownership interest, or with which he or a member of his Immediate Family has a contractual relationship.
- (2) No member of the Commission shall have contact with a Complainant (as that term is defined in Part V, Section (b)(1)) regarding the specifics of a complaint prior to a Commission hearing or decision on the complaint. In the event of such contact, the Commissioner shall recuse himself from participating in any hearing and decision on the complaint.

(3) A Commissioner shall recuse himself and decline to participate in any action or decision when the Commissioner, in his discretion, believes that:

(A) He cannot act fairly or without bias; or

(B) There is or may be a perception that they cannot act fairly or without bias.

(4) If a Commissioner does not voluntarily recuse himself or decline to participate in an action or decision of the Commission when required by Part II, Sections (c)(1)-(3) above, and the Commission determines, after hearing any arguments for and/or against recusal, that recusal is appropriate and necessary to preserve the integrity and fairness of the process, the Commissioner may be disqualified from participating in the action or decision by a majority vote of the remaining Commissioners.

(5) Nothing in this Ordinance shall be deemed to prevent a Commissioner from entering into a contractual relationship or business relationship with the Tribe, provided that such relationship does not violate the terms of this Ordinance or any Commission policies and procedures, and that the Commissioner has disclosed the nature of the relationship to the Commission.

(d) TERO DIRECTOR.

(1) The Commission shall, with the approval of the Tribal Council, hire a Director of the TERO, who shall be an employee of the Tribe and, subject to the direction of the Commission, be responsible for administering the provisions of this Ordinance, including implementing and enforcing rules and regulations promulgated by the Commission. The TERO Director shall be responsible for the development and day-to-day management of the TERO Program and the Program budget. The TERO Director shall also provide direction, leadership, and management of TERO staff.

(2) The authority and duties of the TERO Director, or his designee, shall include, but are not limited to, the following:

(A) Implement and enforce the provisions of this Ordinance, as well as any properly adopted rules, regulations, or policies promulgated by the Commission.

(B) Hire and manage staff, administer the TERO budget, and expend designated funds from the approved TERO budget.

(C) Recommend regulations, amendments, and agreements to the Commission.

(D) Establish Construction Contractor and ODOT Contractor record keeping requirements.



- (E) Enter Compliance Agreements with Construction Contractors and ODOT Contractors.
- (F) Investigate and process complaints alleging violations of this Ordinance.
- (G) Impose penalties or recommend remedies, as applicable, for violations of this Ordinance or any regulations adopted hereunder.
- (H) Represent the TERO at Tribal Council meetings, Commission hearings, and Tribal Court proceedings.
- (I) Coordinate and provide reports for Commission meetings.
- (J) For purposes of Compliance Agreements, negotiate workforce requirements that reflect the available labor pool and the TERO fee payment schedule, if applicable, with Construction Contractors and ODOT Contractors. The TERO Director shall consult with the Tribe's Project Manager regarding workforce requirements prior to negotiating or specifying the number of Registered Workers required on Tribal construction projects.
- (K) Work cooperatively with Tribal programs, including, but not limited to, any Tribal Career Development Programs to provide education, training, and other support programs for Tribal/Indian workers to assist them in acquiring and retaining employment.
- (L) Certify Grand Ronde Owned or Indian Owned Businesses.
- (M) Maintain a list of Grand Ronde Tribal Members and Indians who are Local Residents available for employment, and assist such persons with job placement.
- (N) Ensure compliance with the quarterly reporting requirements set forth in the Tribal/ODOT MOU.
- (O) Conduct Certification Workshops for ODOT Contractors bidding on Tribal/ODOT MOU projects.

**PART III – TERO EMPLOYMENT AND CONTRACTING OBLIGATIONS**

(a) APPLICATION. Unless expressly stated otherwise, the provisions of this Part III shall not apply to ODOT Contractors

(b) TRIBAL AND INDIAN PREFERENCE IN EMPLOYMENT.

(1) Covered Employers. Unless prohibited by applicable federal law, all Covered Employers shall give preference to Qualified Grand Ronde Tribal Members in hiring, promotion, retention, training and all other aspects of employment and shall comply with the terms of this Ordinance and any applicable rules or policies adopted by the Commission.

(2) Federal Law Requirements. Where prohibited by applicable federal law, the preference set forth in Part III, Section (b)(1) above shall not apply. In such case, and to the extent permitted by federal law, Indian preference shall be given, with the first preference given to Qualified Indians who are Local Residents.

(3) Job Qualifications and Requirements. All Covered Employers shall establish written job requirements for each employment position in their work force. A Covered Employer shall not create excessive and unnecessary job skill qualification criteria or personnel requirements that are not required by business necessity and which serve as barriers to the preference objectives of this Ordinance. Written job requirements shall be provided to the TERO Director at least three (3) business days prior to posting a position. The TERO Director may grant a waiver of this requirement where the Covered Employer shows that the time period would result in an undue burden to the Covered Employer’s business.

(4) Layoffs. Unless prohibited by applicable federal law, in the event of a reduction-in-force affecting a certain class of positions, Covered Employers shall retain Qualified Grand Ronde Tribal Members, until all non-Grand Ronde Tribal Members in that class of positions are laid off.

(c) INDIAN PREFERENCE IN CONTRACTING.

(1) All Covered Employers advertising or soliciting responses or bids for projects or contracts, including contracts to provide materials, goods, or services, shall include IOBs in the relevant trade who are certified and registered with the TERO, in the solicitation process. Unless prohibited by federal law, preference in the selection shall be given to qualified IOBs who submit responsive bids within five percent (5%) of the low bid as follows:

<b>Order of Preference</b>	<b>Business</b>
1 <sup>st</sup> Preference	Certified Grand Ronde Owned Businesses who submit a bid where 50% or more of the bid amount is for work to

	be performed by Grand Ronde Owned Business certified by TERO.
2 <sup>nd</sup> Preference	Certified Grand Ronde Owned Businesses.
3 <sup>rd</sup> Preference	IOB certified by TERO who submits a bid where 50% or more of the bid amount is for work that will be performed by Grand Ronde Owned Businesses certified by TERO.
4 <sup>th</sup> Preference	IOBs certified by TERO.
5 <sup>th</sup> Preference	Non-IOB who submits a bid where 50% or more of the work will be performed by Grand Ronde Owned Business certified by TERO.

(2) Where federal law prohibits Tribal preference in contracting, preference in contractor selection shall be given to IOBs as authorized by federal law.

(3) The preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors of Covered Employers, regardless of tier, and shall be deemed part of all contract and subcontract specifications. The Covered Employer shall have the initial and primary responsibility for insuring all contractors and subcontractors comply with these requirements.

(4) The TERO Director shall maintain a list of Grand Ronde Owned Businesses and IOBs which shall be supplied to Covered Employers for their use.

(d) PROHIBITED ACTIVITIES. The following is a non-exhaustive list of prohibited activities. Covered Employers who engage in prohibited activities or otherwise violate this Ordinance shall be subject to penalties in accordance with Part V, Section (d) of this Ordinance.

(1) Submitting false or fraudulent information to TERO;

(2) Operating as a front or pass through company; or

(3) Preventing or interfering with a Covered Employer's compliance with this Ordinance.

(e) SPECIFIC PROVISIONS FOR CONSTRUCTION CONTRACTORS. The following provisions set forth additional requirements for Construction Contractors.

(1) Workforce.

(A) The TERO may specify the number of Grand Ronde Tribal Members or, when only Indian preference is applicable, the number of Indians a Construction Contractor shall hire by craft and skill level on a specific project. The TERO shall establish a TERO workforce utilization goal percentage on a project-by-project basis on each construction project. Contractor performance in attainment

of the goal will be monitored through regular submittals of payrolls and contractors may be directed to take corrective action to meet the set goal. A violation of the Ordinance may be issued and a penalty assessed if the contractor is unresponsive to corrective action.

(B) Construction Contractors must contact the TERO at least seventy-two (72) hours prior to commencing work to negotiate the workforce requirements and to provide the TERO an opportunity to locate and refer Qualified Registered Workers available to work. If no Qualified Registered Workers are available for work, the Construction Contractor may recruit from other resources.

(C) A contractor shall not create excessive or unnecessary job skill qualifications on TERO referred workers. If qualifications for a position require further review, a contractor shall submit any requested job descriptions to TERO. Upon review, if the skill qualifications appear to be excessive or unnecessary, the contractor shall submit a justification to TERO.

(2) Core Crew. Construction Contractors may, if necessary, have a core crew on a construction project which is exempt from the Tribal/Indian preference requirements of this Ordinance. A core crew is comprised of permanent and key employees. Any Indian already employed by a Construction Contractor shall be considered part of the Core Crew, but shall not be counted for purposes of calculating the maximum percentage of key and permanent employees.

(A) Prior to commencing work on or near the Tribe's Reservation, all Construction Contractors shall provide the TERO Director with a list of all permanent and key employees.

(B) A permanent employee is one who is and has been continuously employed by the Construction Contractor for at least one (1) year in a regular position of the employer or as an owner of the firm.

(C) A key employee is one who is in a top position or performs a critical function such that the Construction Contractor would likely risk financial damage or loss if that task were assigned to a person unknown to the employer.

(D) Permanent and key employees shall not exceed fifty percent (50%) of the workforce unless the total number of employees needed for the job is less than ten (10). The TERO Director may, at his or her discretion, grant an employer a larger core crew upon satisfactory demonstration by the employer that a larger core crew is necessary due to unique or specialized positions that are essential for the operation of business or performance of the work.

(3) Construction Wage Scale. All Construction Contractors shall compensate all Tribal/Indian workers at a rate consistent with the wages paid to their non-Indian employees performing the same jobs. If the Construction Contractor is a signatory to a



Construction Trade Union, the current pay scale and benefits of that trade will be paid. If Tribally determined wage rates or Davis Bacon wage rates are required by federal law, those wages shall be paid.

(4) Compliance Agreement.

(A) All Construction Contractors shall, no less than seventy-two (72) hours prior to commencing any work, prepare a plan acceptable to the TERO Director setting out how the Construction Contractor will comply with the requirements of this Ordinance regarding Indian employment and contract preference. A compliance agreement shall be used to monitor compliance with this Ordinance. Compliance agreement requirements and goals may be tailored to the individual circumstances of the Construction Contractor in order to maximize Indian employment and IOB contracting.

(B) A compliance agreement shall constitute a binding agreement; the terms of which shall be fully enforceable by the TERO. Failure to obtain or adhere to the terms of an approved compliance agreement, or supplying false information to the TERO, shall subject the non-complying party to monetary penalties of up to \$1,000 per violation, per day. Penalties assessed may be appealed to the Commission. Construction Contractors engaged in work without an approved compliance agreement will be required to stop work until an acceptable plan for implementing their obligations has been submitted to and approved by the TERO.

(C) Nothing in this Ordinance shall be construed to prohibit a Tribal Employer from requiring a Construction Contractor to submit a proposed Compliance Agreement as part of a response to a solicitation for bids or request for proposals.

(5) Compliance Monitoring. Upon the request of the TERO, all Construction Contractors shall submit reports and other information, including but not limited to contract documents and certified payroll and personnel records, as requested. On Tribal construction projects, contractors shall be required to regularly submit payroll information of all workers on the project to the TERO to determine compliance to the set workforce utilization goal. Payroll information will be due at the time the contractor issues their payroll. Contractors shall allow for onsite monitoring by TERO staff of construction projects for compliance and to confirm workforce utilization requirements.

(6) TERO Fee.

(A) A TERO fee of 2.5% shall be assessed on projects or contracts with a total contract price of one hundred thousand dollars (\$100,000) or more.

(B) The general contractor on a project shall be responsible for paying the entire TERO fee on the project prior to commencing any work.



(C) The TERO may invoice the general contractor and payment will be due within fourteen (14) days from the date of invoice; provided, however that the fee shall be paid prior to commencement of any work and the absence of an invoice shall not relieve the general contractor of the obligation to pay the TERO fee. Where good cause is shown, the TERO may authorize installment payments to be paid over the course of the contract.

(D) If for any reason the cost of a project increases or decreases, the general contractor shall notify TERO of this change, and any change in the TERO fee shall be assessed and paid or refunded as applicable.

(7) Discipline Determination. Construction Contractors shall make every effort to provide counseling and guidance to employees to correct work performance deficiencies prior to terminating an individual entitled to employment preference pursuant to this Ordinance. The TERO shall be notified prior to the termination of an assigned TERO worker.

(f) SPECIFIC PROVISIONS FOR TRIBAL EMPLOYERS. The following provisions set forth additional requirements specific to Tribal Employers.

(1) Employment Statistics Report. All Tribal Employers, through their respective Human Resources Departments, shall be required to track employees for retention purposes. Tribal Employers shall submit a quarterly report to the TERO for Commission review by the fifteenth (15th) day after the end of each calendar quarter. The report must contain the following employment statistics: number of employees by department; employment level and preference status of current employees, including contract employees; resignations; and terminations.

<b>Months</b>	<b>Report Due</b>
January-March	April 15
April-June	July 15
July-September	October 15
October-December	January 15

(2) Tribal Member Career Development.

(A) *On the Job Training.* Tribal Employers may be required by the TERO to participate in on-the job training or mentor programs (including without limitation, job shadowing) designed by the TERO (or any Tribal career development program recognized by the Tribe) to assist Grand Ronde Tribal Members to become qualified in various job classifications used by the employer.

(B) *Succession Planning.* Tribal Employers shall work cooperatively with TERO in assisting current Tribal employees who demonstrate interest in and the

potential to fill key leadership positions, in developing the necessary experience and education to fill such positions.

(3) Counseling and Support Programs. The TERO (or any Tribal career development program recognized by the Tribe) may establish counseling and other support programs to assist Grand Ronde Tribal Members in obtaining and retaining employment. Tribal Employers shall be required to cooperate with the TERO regarding such counseling and support programs.

(4) Employment Process.

(A) *Assessment of Minimum Qualifications.* The TERO Director or his/her designee shall review all minimum qualification assessments conducted for Tribal member job applicants before job interviews are scheduled. The TERO Director may require reassessment of any Tribal member that TERO believes has been incorrectly assessed as not meeting the minimum qualifications. If Human Resources and/or the hiring manager still screens out the Tribal member applicant after reassessment, they shall provide the TERO Director with a written explanation detailing the reasons the Tribal member was screened out. If within five (5) days of receiving the written explanation, the TERO Director and hiring manager are unable to reach an agreement as to whether the Tribal member meets minimum qualifications, the matter will be referred to the TERO Commission for review. The TERO Commission shall promptly review the matter and issue a determination. The Tribal Employer may not proceed with candidate screening or selection for the position pending TERO Commission review. The Commission's determination shall be final.

(B) *Conducting Interviews.* TERO shall be provided an opportunity to review proposed interview questions prior to job interviews for the purposes of confirming consistency with posted job requirements. Tribal members who are offered a job interview may request TERO staff be present for the interview. TERO's role during the interview will be solely as an observer of the process and to gather information about the Tribal member's interview performance for the purpose of providing feedback and coaching to the Tribal member. TERO shall not participate in the assessment of interviewees or in the selection of the successful candidate. However, TERO may, upon request of the interview panel, offer any additional information it may have about a candidate's qualifications.

(C) *Selection of Candidate for Hire.* Tribal Employers shall notify the TERO Director of all hiring decisions, Tribal and Non-Tribal, prior to extending an offer of employment to the selected candidate.

(D) *Retention.* Tribal Employers shall notify provide any Tribal member approaching separation of employment for attendance or performance issues with written notice of their opportunity to seek job training or other job assistance services from TERO.

(5) Promotions. Tribal job openings must be advertised; except that, a Tribal Employer may promote an employee, in good standing, to an open position within a department which is no more than two (2) salary grades higher than the employee's current position without advertising the position. Tribal Employers must consult with TERO prior to making such a promotion. A Tribal Employer shall not promote a non-Tribal member over an equally qualified Tribal member within the department.

(6) Prohibition Against Retaliation. It shall be a violation of this Ordinance for any Tribal Employer, Tribal Council member, or any appointed Board Member or Commissioner, to retaliate against a Tribal employee or Tribal job applicant as a result of their preference status under this Ordinance. Any individual who believes they have been retaliated against because of the preference afforded by this Ordinance may file a complaint with TERO. The TERO Director shall investigate the complaint and may issue a notice of violation to any employee determined to have retaliated against a Tribal member in violation of this Ordinance. The notice of violation may be appealed to the TERO Commission as provided in Section (e) below. An employee who is determined to have retaliated in violation of this Ordinance is subject to disciplinary action by their employer.

(g) UNIONS.

(1) Nothing herein shall constitute official recognition by the Tribe of any union or endorsement of any union activities. The unions will honor the Tribe's sovereign authority and recognize the Tribe's jurisdiction to regulate employment and contracting activities within the boundaries of the Reservation.

(2) Covered Employers with collective bargaining agreements with a union are responsible for informing such unions of this Ordinance. No union agreement shall supersede the requirements of this Ordinance.

(3) As stated in the Tribe's Right to Work Ordinance, no Registered Workers shall be required to become or remain a member of any union or labor organization as a condition of employment, or continuation of employment, while they are working on the Reservation.

## **PART IV – ODOT CONTRACTORS**

(a) **APPLICATION.** Unless expressly stated otherwise, the provisions of this Part IV shall apply only to ODOT Contractors.

(b) **ODOT CONTRACTOR OBLIGATIONS.** ODOT Contractors performing work within the MOU Boundary as defined in the Tribal/ODOT MOU shall:

(1) Give preference to Indians who are Local Residents in hiring, promotion, training, and all other aspects of employment.

(2) Notify the TERO Director whenever a Registered Worker is not performing adequately. The contractor shall not terminate an Indian employee until the TERO Director or his/her designee has had an opportunity to provide counseling.

(3) In all layoffs and reductions in force, no Tribal/Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed.

(4) An ODOT Contractor shall not use qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the ODOT Contractor is able to demonstrate that such criteria or requirements are required by business necessity.

(5) Attend mandatory pre-bid certification workshops conducted by the TERO. ODOT Contractors must have a certificate of completion from the TERO in order to be eligible to bid on ODOT contracts that require compliance with the Tribal/ODOT MOU requirements.

(6) Comply with the requirements of the Compliance Agreement executed pursuant to Section (c) below.

(7) Pay the TERO fee as specified in the Tribal/ODOT MOU prior to commencement of work.

(8) Provide certified weekly payroll reports to the TERO Director as required.

(9) Allow on-site inspections by TERO representatives.

(c) **COMPLIANCE AGREEMENT.**

(1) Each ODOT Contractor shall be required to meet with the TERO Director to negotiate and execute a Compliance Agreement which sets forth:

(A) The minimum number of Indians that shall be hired for a particular project with numerical goals for each craft, skill area, or job classification used by the ODOT Contractor including, but not limited to, general labor, skilled, administrative, supervisory, and professional categories. The Indian employment

goals are for the Contractor's work force who are other than "core crew" members as that term is used in Part III, Section (e)(2). Indian employees of an ODOT Contractor shall be included in the core crew, regardless of job function, but shall not count towards the Contractor's maximum core crew.

(B) The contractor's agreement to utilize qualified and available Registered Workers referred by the TERO Director.

(C) Periodic reporting requirements to the TERO Director on the number of Indians employed, record of persons hired, fired, or promoted during the reporting period, and a statement regarding compliance with the hiring goals set forth in the Compliance Agreement.

(D) Applicable wage scale provisions, prevailing wage standards, and salary compensation terms that may be applicable to a project or contract.

(2) No ODOT Contractor shall commence work or site mobilization until a Compliance Agreement has been negotiated and executed.

(3) Any violation of an executed Compliance Agreement shall be a violation of this Ordinance.

(4) An ODOT Contractor is subject to penalties and/or sanctions as provided in Part V below for violating this Ordinance or a Compliance Agreement.



## **PART V – ENFORCEMENT**

### (a) INVESTIGATIONS.

(1) The TERO Director or his designee may, upon his own initiative or pursuant to a complaint filed in accordance with Part V, Section (b), conduct such investigations as they deem necessary to ensure compliance with this Ordinance, or to determine whether a Covered Employer has violated this Ordinance.

(2) The TERO Director or his designee may enter the place of business of a Covered Employer for the purpose of conducting investigations and, in a manner consistent with orderly operation of business activity, interview employees of the Covered Employer, review and copy documents, and carry out such other activity as the TERO Director deems necessary to the investigation; provided that any review and copying of confidential and proprietary documents shall comply with Part V, Section (a)(4) of this Ordinance. Notwithstanding the above, the TERO Director shall not have authority to review regulatory files of the Grand Ronde Gaming Commission.

(3) If a Covered Employer unreasonably refuses to permit the TERO Director to enter onto business premises during business hours, or to reasonably inspect or copy documents, sanctions may be imposed.

(4) All proprietary and confidential information obtained in connection with an investigation hereunder shall be kept confidential and used only as necessary by the TERO Director, Commission, or parties to a hearing before the Commission or appeal to the Tribal Court, in a manner that, to the maximum extent possible consistent with the requirement of fairness to the parties, protects the confidentiality of the documents.

(5) If at the conclusion of any investigation hereunder, the TERO Director determines that a violation of this Ordinance has occurred, he may take any steps to resolve the violation that he deems appropriate and which are authorized by this Ordinance.

### (b) COMPLAINTS.

(1) Filing and Contents of Complaint. Subject to Part V, Section (b)(2), any individual, business, or entity that believes that a Covered Employer has violated the requirements of this Ordinance (“Complainant”), may file a written complaint with the TERO Director. A copy of the complaint shall be provided to the Covered Employer. The complaint shall include a description of all relevant facts, evidence, witnesses, and such other information as is necessary to enable the TERO Director to carry out an investigation.

#### (2) Timeline for Filing Complaint.

(A) *Exhaustion Requirement.* No complaint may be brought against a Covered Employer unless the Complainant has first attempted to resolve the

complaint directly with the Covered Employer. In the case of a complaint against a Tribal Employer, no complaint may be filed unless the Complainant has, within five (5) days of the alleged violation: 1) filed a complaint directly with the Human Resource Department of the Tribal Employer, and thereafter exhausted any available administrative remedies provided by that Tribal Employer; or 2) filed a complaint with the Tribal Employer and seven (7) days have passed without any action by the Tribal Employer. A complaint is subject to dismissal by the TERO Director when these exhaustion requirements have not been satisfied.

(B) *Maximum Time.* In no event may a complaint be filed more than fourteen (14) days after the date of an alleged violation of this Ordinance.

(3) Action on Complaint. Within ten (10) days of receipt of a timely filed complaint, the TERO Director or his designee shall initiate and complete an investigation of the allegations in the complaint. If the TERO Director finds insufficient evidence of a violation of this Ordinance, he shall dismiss the complaint and notify the Complainant and Covered Employer that the matter is closed. If upon investigation, the TERO Director believes a violation of this Ordinance has occurred, he shall proceed to resolve the matter in accordance with Part V, Section (c) below.

(c) RESOLUTION OF VIOLATIONS.

(1) If, after conducting an investigation either on his own initiative or in response to a complaint, the TERO Director believes that a violation of this Ordinance has occurred (including without limitation, any failure to pay required TERO fees or to comply with an investigatory request), the TERO Director shall notify the Covered Employer, and Complainant if applicable, in writing of the specific violations found and the basis for the findings.

(2) The TERO Director shall make good faith efforts to reach an informal settlement of the violations with the Covered Employer.

(3) If an informal settlement cannot be reached, the TERO Director shall:

(A) In the case of an alleged violation by a Tribal Employer, issue a written notice to the General Manager (or similarly situated head of the Tribal Employer) and Human Resource Department of the Tribal Employer advising them of the nature of the alleged violation and setting forth any recommendations for addressing the violation;

(B) The General Manager (or similarly situated head of the Tribal Employer) of a Tribal Employer who receives a notice of an alleged violation from the TERO Director shall review the notice and determine which recommendations of the TERO Director it will implement and/or propose alternate resolutions to the alleged violation. The General Manager shall notify the TERO Director of his/her determination and provide a written explanation for his/her planned resolution.

(C) In the event the TERO Director is not satisfied by the General Manager's (or similarly situated head of the Tribal Employer's) written explanation, the TERO Director may submit a written request for review by the TERO Commission. The TERO Commission shall promptly hear the matter. The hearing shall be conducted in accordance with Part V, Subsection (f).

(D) In the case of a Covered Employer other than a Tribal Employer, issue a corrective order to the Covered Employer specifying any corrective action that must be taken by the Covered Employer and the timeframe in which the corrective action must be taken to avoid penalties. The notice shall also advise the Covered Employer of its right to appeal the corrective order to the Commission. If the TERO Director believes that immediate action is necessary to prevent irreparable harm resulting from an alleged violation of this Ordinance, he may request the Commission order a temporary injunctive order pending a hearing before the Commission on the matter. In no event shall the temporary injunctive order exceed fourteen (14) days.

(4) If a Covered Employer other than a Tribal Employer fails or refuses to comply with a corrective order within the timeframe set forth in the order, and fails to request a hearing before the Commission, the TERO Director may impose additional penalties on the Covered Employer as set forth below.

(d) PENALTIES/SANCTIONS. The following corrective actions, penalties, or sanctions may be imposed on a Covered Employer, other than a Tribal Employer, who violates any provision of this Ordinance.

- (1) A civil fine in an amount not to exceed \$1,000 per violation;
- (2) An order that the employer make payment of back pay or other damages to any aggrieved party;
- (3) Deny the Covered Employer the right to commence business on the Tribe's Reservation;
- (4) Order the Covered Employer to hire, promote, or train a preference individual or IOB;
- (5) Order the Covered Employer to dismiss any employees hired in violation of this Ordinance;
- (6) Order a percentage of lost profits (contract price less estimated expenses, materials, and labor costs); or
- (7) Suspend the Covered Employer's business activity on the Tribe's Reservation.

All monetary penalties assessed under this Ordinance shall be paid within thirty (30) days from the date imposed. If the Covered Employer fails to pay any fine as required, the TERO Director may request a Commission hearing be scheduled. Any Commission hearing so requested shall be conducted in accordance with the hearing procedures set forth in Part V, Section (f).

(e) APPEALS TO THE COMMISSION. Any person or Covered Employer aggrieved by a decision or action of the TERO Director or TERO staff (including any claims that the TERO Director or staff have exceeded the authority granted under this Ordinance) may seek review of the action or decision by filing a petition for review with the Commission. The petition must be filed no later than fourteen (14) days from the date of the action or decision being appealed. The petition shall state the reasons review is being sought and shall include, if applicable, a copy of the decision or order being appealed. The person or Covered Employer filing the Petition shall have the burden of proving, by a preponderance of the evidence, that a violation of this Ordinance did not occur, that a penalty or sanction imposed or corrective action ordered by the TERO Director was improper, or that the TERO Director exceeded his authority.

(f) COMMISSION HEARINGS.

(1) Hearings before the Commission shall be governed by rules of practice and procedure that are adopted by the Commission; provided that the Commission may consider any evidence that it deems relevant to the hearing and the Commission shall establish such procedures and safeguards to ensure the due process rights of all parties are protected.

(2) The Chair of the Commission will direct the proceedings and shall take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing.

(3) The TERO Director shall represent and defend any TERO action or determination challenged at the hearing; provided that the TERO Director may be represented by the Tribal Attorney's Office.

(4) Upon receiving notice of a hearing, a party may review any TERO files relevant to the issues to be addressed at the hearing; provided that TERO staff may remove proprietary or confidential information from the file, which will not be relied upon in the presentation of TERO Director's case.

(5) For good cause, the Chair of the Commission may postpone a hearing to a later date upon the written request of a party.

(6) Within fourteen (14) days of a hearing on a petition for review, the Commission shall issue a written order affirming, modifying, or reversing the TERO Director's decision.

(7) The Commission's order shall be a final order for purposes of appeal to the Tribal Court of the Confederated Tribes of the Grand Ronde Community of Oregon.

(g) APPEALS TO TRIBAL COURT.

(1) Any party adversely affected by a final order of the Commission may file an appeal with the Grand Ronde Tribal Court. A copy of the appeal must be sent to the TERO Director and any other party to the Commission proceeding no later than fourteen (14) days of the date of the Commission order.

(2) The notice of appeal shall set forth the order from which the appeal is taken and the grounds upon which reversal or modification is sought.

(3) The Commission's decision or order shall be stayed pending the determination of the Tribal Court.

(4) The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission was arbitrary and capricious, in violation of the Grand Ronde Constitution, or in excess of the authority granted the Commission.

(h) ENFORCEMENT ORDERS. If a Covered Employer has failed to comply with an order of the Commission or the TERO Director, and the time for filing an appeal of such order has passed, the TERO Director may petition the Tribal Court for enforcement of the order and the Tribal Court may grant such relief as is necessary and appropriate to enforce the Commission or TERO Director order, including, without limitation, confiscation of property within the jurisdiction of the Tribe.

I certify this to be a true copy of the Confederated Tribes of the Grand Ronde Community of Oregon Tribal Employment Rights Ordinance.

  
Tribal Council Secretary

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## **SPECIAL PROVISION**

### **INDIAN PREFERENCE IN EMPLOYMENT ON FEDERAL-AID HIGHWAY PROJECTS ON AND NEAR INDIAN RESERVATIONS**

**January 1, 2019**

#### **PURPOSE**

The purpose of this Special Provision is to outline the Indian Employment Preference requirements and procedures to be followed by The Confederated Tribes of Grand Ronde (CTGR), the Oregon Department of Transportation (ODOT), and all Contractors or subcontractors engaged in highway construction work that is under contract with ODOT on federal-aid highway projects that are located on and near the Grand Ronde Indian Reservation.

#### **BACKGROUND**

The Surface Transportation Assistance Act (as reauthorized in 1987), the Intermodal Surface Transportation Efficiency Act of 1991, the Moving Ahead for Progress in the 21st Century Act of 2012 and the Fixing America's Surface Transportation Act of 2015, permit Indian Preference employment goals on the Federal-Aid highway projects located on or near Indian reservations. Section 140(d) of the United States Code, Title 23 provides, "States may implement a preference for employment of Indians on projects carried out under this title near Indian reservation."

#### **AUTHORITY**

ODOT acknowledges the inherent sovereign authority of the CTGR to promulgate and enforce the Tribal Employment Rights Ordinance ("TERO Ordinance") within the boundaries of the Grand Ronde Indian Reservation and acknowledges Title 23, Section 140(d) of the USC.

The current TERO Ordinance of the CTGR and its compliance requirements and procedures are incorporated herein and made part of this Special Provision.

ODOT and CTGR entered into a Memorandum of Understanding (MOU) to implement TERO Ordinance provisions into ODOT contracts.

#### **APPLICABILITY**

Eligible projects for Indian employment preference consideration under this Special Provision are those projects which are on or near Indian Reservation Roads or on the

Grand Ronde Reservation. Roads "near" The Grand Ronde Reservation are defined by mileposts as shown on Exhibit A attached to the MOU.

### **ELIGIBLE EMPLOYEES**

All Indians are eligible for Indian preference without regard to Tribal affiliation or place of enrollment. However, recruiting efforts will be targeted toward those living on or near the Grand Ronde Indian Reservation.

Employers with collective bargaining agreements with a union are responsible for informing such unions of this requirement.

### **INDIAN EMPLOYMENT PREFERENCE GOAL**

The Indian Employment Preference goal is indicated in the project Special Provisions.

Classifications for Indian Employment Preference goal consideration are:

- Carpenter
- Laborer
- Equipment Operator
- Cement Masons
- Truck Drivers
- Electricians
- Ironworkers

Classification shall be according to requirements for certified payrolls.

Indian Employment Preference goals will apply to total project work hours and will not be applied individually to the Contractor and subcontractors. Indian Employment Preference goals do not apply to number of persons employed at any given period of time.

Indian Employment Preference goals are for the Contractor's work force who are other than core crew members. A Contractor's core crew is composed of full-time employed individuals necessary to satisfy his/her reasonable needs for supervisory or special experienced personnel to assure an efficient execution of the contract work. Indian employees of the Contractor shall be included in the core crew, regardless of job function, to avoid the unintended results of having a Contractor lay-off or terminate an Indian employee to hire another under this provision.

In setting the Indian Employment Preference goals, consideration has been given to the availability of skilled and unskilled Indian workers, the type of work to be performed, the Contractor's employment requirements, the need for new hires, and unemployment rates prevailing among non-Indians. Consideration has also been given to the employment goals for minorities and women established for the area by the U.S.

Department of Labor's Office of Federal Contract Compliance Programs pursuant to Chapter 41, Code of Federal Regulations, Part 60-4.

The Indian Employment Preference goals may only be changed by ODOT after consultation with the CTGR and the Contractor, and after consideration of the good faith efforts of the Contractor together with the ability of the CTGR to refer workers in numbers and in time for the Contractor to meet the Indian Employment Preference goals and to perform the work.

If the CTGR is unable to provide sufficient qualified or qualifiable applicants to meet the Indian Employment Preference goal within 48 hours of the placement of a job order by the Contractor, the Contractor, ensuring nondiscrimination and providing equal employment opportunity, may recruit from other sources off the Grand Ronde Indian Reservation. The Contractor shall give full consideration to all qualified job applicants referred by the CTGR. The Contractor is not required to employ any applicant who, in the Contractor's opinion, is not qualified to perform the classification of work required.

### **FRINGE BENEFITS**

All fringe benefits for Indian workers referred by the Tribal Employment Rights Office of the CTGR shall be paid in cash. Indian workers who are union members will have the option of fringe benefits in cash or paid into a bonafide plan or program. However, this does not change any agreements between Indian union members and their respective unions.

### **PRECONSTRUCTION CONFERENCE**

The preconstruction conference will be the forum for finalizing all compliance agreements and requirements between the CTGR and the Contractor and subcontractor(s) and to answer any questions regarding the Indian Employment Preference goal and applicable Special Provisions.

### **MANDATORY TERO WORKSHOP**

The Tribal Employment Rights Office of the CTGR agrees to conduct mandatory prebid quarterly TERO/MOU workshops, and shall issue certificates of completion to those Contractors who sign in, attend, and participate. Contractors must have a certificate in order to be eligible to bid on ODOT Contracts that require compliance with these TERO/MOU requirements. The certificate will be good for 3 years.

### **COMPLIANCE**

The State will follow normal contract compliance procedures to effect compliance. The State may elect to invite the CTGR to assist their monitoring efforts in all or any part of its compliance process. The State will review the Contractor's employment practices

and take appropriate enforcement actions when the goal is not reached after consideration of good faith efforts. See attached "ON-SITE WORKFORCE AFFIRMATIVE ACTION REQUIREMENTS FOR WOMEN AND MINORITIES ON FEDERAL AID CONTRACTS" or contact the Tribal Employment Rights Office for sanctions that may be imposed for failure to meet these goals.

### **COMPLIANCE FEE**

The Contractor shall pay the compliance fee directly to the TERO before beginning work subject to this Special Provision. Use the Contract Amount to calculate the compliance fee. See Section 5 of the MOU for percentages.

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**STATE OF OREGON DEPARTMENT OF TRANSPORTATION**  
**And**  
**THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF**  
**OREGON**

THIS AGREEMENT, hereinafter "Agreement" or "MOU," is made and entered into by and between the STATE OF OREGON, acting by and through the Oregon Department of Transportation (ODOT or State); and the CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON (CTGR or Tribe), acting by and through its elected officials and the Tribal Employment Rights Office (TERO), hereinafter individually referred to as "Party" and collectively referred to as the "Parties." The Agreement pertains to cooperation between the Parties to apply the Indian Employment Preference to Federal-Aid highway projects (also "federally funded projects") taking place on or near the Grand Ronde Reservation.

**RECITALS**

Oregon Revised Statutes (ORS) 190.110 et seq. grants authority to state agencies to enter into agreements with an American Indian tribe or an agency of an American Indian tribe for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

CTGR has the inherent sovereign authority to promulgate and enforce the Tribal Employment Rights Office Ordinance ("Ordinance") within the boundaries of the Grand Ronde Reservation ("Reservation").

The Surface Transportation Assistance Act (as reauthorized in 1987), the Intermodal Surface Transportation Efficiency Act of 1991, the Moving Ahead for Progress in the 21st Century Act of 2012, and the Fixing America's Surface Transportation Act of 2015, permit Indian Preference employment goals on Federal-Aid highway projects located on or near Indian reservations. Section 140(d) of the United States Code, Title 23 provides, "States may implement a preference for employment of Indians on projects carried out under this title near Indian reservation."

USDOT Notice 4720.7 states,

In off reservation situations, [Tribal Employment Rights Offices] can bill contractors at an agreed upon rate for services rendered, i.e., recruitment, employee referral and related supportive services. The proceeds are used by the tribes to develop and maintain skills banks, to fund job referral, counseling, liaison, and other services and activities related to the employment and training of Indians.



In the event there is a change in federal law, regulation or guidance applicable to this MOU, or that the Federal Highway Administration changes its interpretations of these laws and regulations, such change will automatically apply to the MOU from the date of the adoption or publication.

ODOT recognizes that jobs in the private employment sector on and near the Reservation are an important resource for Indians residing on or near the reservation.

ODOT considers the availability of a pool of skilled and trained workers in heavy highway construction trades to be beneficial to Federal-Aid highway projects on or near the Reservation.

The purpose of this Agreement is to establish procedures to be followed by both Parties to aid in ensuring that:

- (1) when contractors are performing work on Federal-Aid highway projects under an ODOT contract on the Grand Ronde Reservation, the contractors comply with the Ordinance.
- (2) when contractors are performing work on ODOT MOU Contracts, as defined herein, the contractors comply with the Ordinance that existed at the time this MOU was entered into and other terms as set forth in this MOU.

Parties enter into this agreement in the spirit of partnership, transparency and communication. In the event problems arise with Contractors under this MOU, both parties agree that it is in the best interest of their ongoing partnership to proactively consult and confer with each other on proposed solutions for the mutual benefit of their separate and combined goals.

This MOU amends and replaces a prior MOU between the parties which took effect on January 17, 2014.

**NOW THEREFORE** in consideration of the mutual understandings and agreements herein set forth, CTGR and ODOT enter into the following Agreement:

**1. EFFECTIVE DATE AND DURATION.**

The term of this Agreement shall begin on the date all required signatures are obtained and shall remain in effect for five (5) years, unless earlier terminated per Section 9.

**2. DEFINITIONS.**

- 2.1. Compliance Agreement or MOU Compliance Agreement** – An agreement between a Contractor and TERO, setting forth how the contractor will meet the Indian preference in hiring and other obligations under the Ordinance. The template for this agreement is attached as Exhibit B.

- 2.2. **Contractor** – Any contractor engaged in highway construction project with ODOT subject to this MOU.
- 2.3. **CTGR/CTWS TERO Boundary Overlap** – Region that is within both the CTGR MOU TERO Boundary and CTWS MOU TERO Boundary, as identified in Exhibit C.
- 2.4. **Federal-Aid highway project** – Projects that occur on Federal-Aid highway that are funded under USC Title 23. Federal-Aid highway projects may be eligible for Indian Preference in Employment if they are on or near the Reservation, per USDOT Notice 4207.7.
- 2.5. **Indian** – Any person enrolled in a federally recognized tribe.
- 2.6. **Indian Preference in Employment** – Preference for Indians in all aspects of employment, including but not limited to, hiring, training, promotions, layoffs, contracting and subcontracting for work in whole or in part within MOU TERO Boundary.
- 2.7. **MOU TERO Boundary** – Region of land near reservation boundary, as identified on map attached as Exhibit A. “Outside the MOU TERO Boundary” refers to the region that is neither within the MOU TERO Boundary nor the reservation.
- 2.8. **ODOT MOU Contract** – Contract for work on a Federal-Aid highway between ODOT and a contractor for work in whole or in part within MOU TERO Boundary that by agreement of the Parties, is subject to this MOU and the Indian Preference in Employment. ODOT will require that the Contractor enter into the Compliance Agreement as a condition of award of the ODOT MOU Contract.
- 2.9. **On-Reservation Contract** – Contract for work on a Federal-Aid highway between ODOT and a contractor for work on the Grand Ronde Reservation. As a condition of award of the On-Reservation Contract, ODOT will require that the Contractor agree to comply with the Ordinance and enter into the Compliance Agreement.
- 2.10. **Reservation** – the Grand Ronde Reservation.
- 2.11. **TERO Ordinance or Ordinance** – Tribal Employment Rights Ordinance, adopted November 6, 2013, and last amended August 3, 2016.

### 3. ON-RESERVATION CONTRACTS.

The State acknowledges the inherent sovereign authority of CTGR to assess and collect the Compliance Fees set forth in the Ordinance, Part III (e)(6) for On-Reservation Contracts.

ODOT agrees that a condition of award of contract for these On-Reservation Contracts is that Contractor agrees to be subject to the TERO Ordinance and execute the Compliance Agreement. ODOT will include a copy of the Ordinance and the Compliance Agreement template in the contract documents for such projects.

#### **4. ODOT MOU CONTRACTS.**

##### **4.1. Selection**

ODOT and TERO will work together to identify projects eligible under this MOU to promote and support Indian employment on federally funded projects. ODOT will share the State Transportation Improvement Program (STIP) with the TERO and identify those projects that are Federal-Aid highway projects that are on Reservation or otherwise within the MOU TERO Boundary (TERO eligible projects).

ODOT and TERO will meet annually each spring to mutually decide which TERO eligible projects will be subject to this MOU and the Indian Preference in Employment as well as any specific project workforce training and needs, project schedule, bid documents (applicable deadlines, Compliance Agreement template and applicable Ordinance amendments), scope, and duration.

Parties may also discuss fee-supported training activities, goal setting process, reporting summaries, and challenges or successes in contractor compliance, such as participation and performance of contractors under respective compliance agreements.

ODOT shall notify TERO of any TERO eligible projects that come up after the parties' annual meeting. At CTGR's election, such projects shall become subject to this MOU and contractor will be required to enter into a compliance agreement with TERO as a condition of the ODOT MOU Contract. To the extent a TERO eligible project lies within the CTGR/CTWS TERO Boundary Overlap, the selection process outlined in 4.2 shall apply; provided, however, that the Tribe which selected first during a given year shall have the second selection of any TERO eligible projects within the Boundary Overlap that come up later that year.

##### **4.2. Projects in the MOU TERO Boundary Overlap**

The Confederated Tribes of the Grand Ronde (CTGR) MOU TERO Boundary and the Confederated Tribes of Warm Springs (CTWS) MOU TERO Boundary overlap as indicated in Exhibit C hereto (CTGR/CTWS TERO Overlap). Each MOU TERO boundary is established to define "near reservation" and is based solely on a reasonable commuting distance from a tribe's reservation (approximately 60 miles). The boundary is established with no relation to tribal historic or ceded lands. For this reason, MOU TERO boundaries among Oregon tribes may overlap.

In order to provide for the efficient and equitable distribution of the opportunity to participate in Federal-Aid highway projects within the CTGR/CTWS TERO Overlap, should it exist beyond 2018, the following project identification and selection process will be used:

1. ODOT shall provide a list of the planned Federal-Aid highway projects, if any, that fall within the CTGR/CTWS TERO Overlap to the CTGR and CTWS TERO Programs on a yearly basis;
2. ODOT, CTGR TERO and CTWS TERO shall meet annually in or around March of each year to determine which TERO Program shall administer and set the Indian preference goals for which eligible projects within the CTGR/CTWS TERO Overlap;
3. During the annual meeting, CTGR TERO and CTWS TERO shall take turns selecting TERO eligible projects within the CTGR/CTWS TERO Overlap to administer, with CTWS selecting first in odd numbered years and CTGR selecting first in even numbered years;
4. The selection process will continue until all eligible projects within the CTGR/CTWS TERO overlap have been selected or both TEROs indicate they are unable to administer additional projects.
5. CTGR and CTWS will jointly provide notes of the results of this selection to ODOT.

In the event CTWS TERO selects, but is subsequently unable or unwilling to administer, an eligible project within the MOU TERO Boundary Overlap, CTGR shall have the option to administer the project as provided in this MOU, to the extent it does not interfere with ODOT procurement or contract administration.

#### **4.3. Goal Setting**

TERO shall analyze each project selected to become an ODOT MOU Contract to establish an accomplishable hiring goal. The established goal shall be based on an assessment of workforce availability and worker skill needs for the project.

Eligible employees for goals include all Indians without regard to tribal affiliation or place of enrollment. However, TERO recruiting efforts shall be targeted towards those living on or near the CTGR.

Hiring goals apply to employees in job classifications for heavy highway construction trades.

#### **4.4. MOU Compliance Agreement**

TERO agrees to meet with each Contractor awarded an ODOT MOU Contract to develop a numerical hiring goal for each eligible job craft which shall be used on the contract. TERO will formalize the hiring goals using the MOU Compliance Agreement form, attached as Exhibit B, or a form substantially similar to it. This includes numerical hiring goals and timetables for each craft, skill area, job classification, etc., as a percentage of total hours worked on the project, used by the Contractor. This Compliance Agreement form may be revised from time to time by mutual consent of the parties, without formal amendment to this MOU.

ODOT agrees that a condition to award of an ODOT MOU Contract will be that the contractor executes a MOU Compliance Agreement.

**4.5. Mandatory MOU Workshop**

TERO agrees to conduct mandatory pre-bid quarterly TERO/MOU workshops, and shall issue certificates of completion to those Contractors who sign in, attend, and participate. ODOT agrees to make a good faith effort to participate in such workshops. TERO agrees that the certificate shall be valid for three (3) years from the date of the workshop.

ODOT will require Contractors to obtain a valid certificate of completion issued by TERO in order to be eligible to bid for an ODOT MOU Contract.

**4.5. Pre-Construction Conference**

Pre-construction conferences for contractors of projects that are subject to this MOU shall be held on or at location near the Reservation. At the pre-construction conference TERO and ODOT shall be available to provide a detailed explanation of, and answer questions about, the provisions of the Ordinance, if applicable, and Indian Preference goals. The pre-construction conference shall be the forum for finalizing all compliance agreements and requirements between TERO and the Contractor and Subcontractor(s) and answering any questions on Indian Preference and applicable special contract provisions.

**4.6 Specialty and Service Provider Contractor Exclusion**

All specialty and service provider contractors who are not required by ODOT to have a full subcontract will be exempt from entering into a compliance agreement with TERO.

**5. MOU COMPLIANCE FEE.**

**5.1. Compliance Fee Calculation**

Parties agree that TERO may assess a Compliance Fee on ODOT MOU Contracts. The MOU Compliance Fee for an ODOT MOU Contract is the percentage of the total cost of the project, as set forth below:

Contract Value	Fee % allowed
\$1 to \$500,000	1.00%
\$500,001 to \$999,999	0.75%
\$1,000,000 to \$1,999,999	0.50%
\$2,000,000 to full contract value	0.25%

When a Federal-Aid highway project results in a contract that occurs both on the Reservation and within the MOU TERO Boundary, the portion of work on the Reservation is subject to the fee percentage established in the Ordinance and the portion of the work that is within the MOU TERO Boundary is subject to the MOU Compliance Fee.

**5.2. Reporting**

Parties agree that the Compliance Fees paid under this Agreement are to be used by the TERO to develop and maintain a TERO Program including a Tribal Hiring Hall, to fund job referral, conduct screening, career counseling, liaison representation, training, and apprenticeship.



TERO will provide a Tribal Hiring Hall referral report (Referral Report) on a monthly basis to ODOT Office of Civil Rights. Each Referral Report will provide the following data:

- month and year of report submitted,
- names of TERO employee referrals,
- dates referred,
- contractors referred to,
- trades,
- last four digits of employees' social security number,
- notation if registered apprentice, and
- active or terminated dates.

TERO will provide to ODOT quarterly reports summarizing Compliance Fee-supported activities (Quarterly Fee Report) within thirty (30) days after the completion of each quarter of CTGR's fiscal year. Reports will provide the following data:

- total compliance fees collected,
- number of Tribal Hiring Hall referrals,
- trade breakout of referrals,
- gender breakout of referrals,
- support activities such as screening, orientations, counseling, trainings, and
- other activities supported with Compliance Fees collected under this Agreement.

The parties agree to consult within thirty (30) days of any failure to deliver the Quarterly Fee Report in a timely manner.

ODOT, through its Office of Civil Rights, shall provide TERO with, at a minimum, a copy of the "TERO Project Employment" report, or its future equivalent, on a monthly basis.

## **6. NOTICES; ADMINISTRATORS.**

- 6.1. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or CTGR at the address, number or email address set forth in this Agreement. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective, any notice transmitted by facsimile must be confirmed by telephone notice to the other party's Administrator in Section 6.3. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice

given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

6.2. Service. All notices required or authorized to be served on either Party shall be served by first class mail to Party's Administrator in Section 6.3.

6.3. Administrators for this Agreement are:

ODOT	CTGR
ODOT IGA #	CTGR #
Administrator: Angela Crain Title: Manager, Office of Civil Rights Address: 3930 Fairview Industrial Dr., SE M-S 32 Salem, OR 97302 Phone: 503-986-4353 Email: <a href="mailto:angela.m.crain@odot.state.or.us">angela.m.crain@odot.state.or.us</a>	Administrator: Title: Address:  Phone: Email:

ODOT may make changes to ODOT's Administrator specified in this section, and such changes shall constitute contract administration for purposes of this Agreement. ODOT shall provide the CTGR notification of any such change in writing, which shall be effective without the necessity of a formal amendment to this Agreement.

**7. CHOICE OF LAWS.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. In no event shall anything be construed as a waiver by either party of any form of defense or immunity, whether sovereign immunity, governmental immunity, Tribal immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

**8. AMENDMENTS.**

This Agreement may be amended by mutual agreement of both parties, but only to the extent permitted by applicable statutes and administrative rules. No amendment to this Agreement shall be effective unless it is in writing signed by the Parties and all approvals required by applicable law have been obtained.

In the event CTGR amends its Ordinance before the expiration of this Agreement, the parties agree to confer regarding any necessary amendments to this Agreement.

**9. TERMINATION.**

9.1. This agreement shall remain in effect for five years, unless one of the following events occurs:

9.1.1. This Agreement is terminated by written agreement of both parties

- 9.1.2. Either party serves the other with notice of termination at least 30 days prior to proposed termination.
- 9.1.3. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited from paying for such work from the planned funding source.
- 9.2. In the event the parties terminate this Agreement and there is on-going work on a project within the MOU TERO Boundary or Reservation, the parties agree that ODOT may enter the project site and finish work by whatever method ODOT deems expedient.
- 9.3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**10. REPRESENTATIONS AND WARRANTIES OF THE PARTIES.**

- 10.1. The CTGR represents and warrants to ODOT that (1) the CTGR has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of the CTGR enforceable in accordance with its terms, (3) the person executing this Agreement on behalf of the CTGR has the necessary authority to execute this Agreement for and on behalf of the CTGR.
- 10.2. ODOT represents and warrants that (1) ODOT has the power and authority to enter into and perform this Agreement, and that (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of the State of Oregon enforceable in accordance with its terms.

**11. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart

**12. NONAPPROPRIATION.**

Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

CONFEDERATED TRIBES OF THE  
GRAND RONDE COMMUNITY OF  
OREGON

By Cheryle A. Kennedy  
Name: Cheryle A. Kennedy  
Title: Tribal Council Chair

Date 12-19-18

APPROVED AS TO LEGAL FORM

By \_\_\_\_\_  
Name:  
Title:  
Date \_\_\_\_\_

STATE OF OREGON, by and through  
its DEPARTMENT OF TRANSPORTATION

By Matthew L. Garrett  
Name: Matthew L. Garrett  
Title: Director

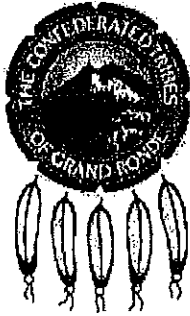
Date 1-3-19

APPROVED AS TO LEGAL SUFFICIENCY

By Karen E. Clevering  
Name: Karen E. Clevering  
Title: Assistant Attorney General  
Date 1/3/19







TRIBAL EMPLOYMENT RIGHTS OFFICE  
Confederated Tribes of the Grand Ronde

## MOU COMPLIANCE AGREEMENT

Project Name: \_\_\_\_\_

Contractor: \_\_\_\_\_

Contract # \_\_\_\_\_

Approximate Start Date: \_\_\_\_\_

The Confederated Tribes of the Grand Ronde, through the Tribal Employment Rights Office (TERO) program, and the State of Oregon Department of Transportation (ODOT) have executed a Memorandum of Understanding which applies Indian preference for employment and subcontracting opportunities within 60 miles of the Grand Ronde Reservation boundary. The prime contractor (Contractor) and its subcontractors involved in any project within the MOU boundary will negotiate with the TERO program representative to meet the goals prescribed on this project.

The CTGR TERO program and \_\_\_\_\_ (contractor),  
through its representative (name and title) \_\_\_\_\_,

Contact Person: \_\_\_\_\_, Phone Number: \_\_\_\_\_, E-mail: \_\_\_\_\_,

have entered into an agreement as a result of their company being awarded a contract (or subcontract) for the \_\_\_\_\_ project and hereby agree to the following:

**ARTICLE I – CONTRACTOR** – agrees to comply with the TERO provisions for the selection of American Indian employees and subcontractors. The Contractor will be responsible for relating these provisions to each of its subcontractors who are all subject to these hiring provisions; the Contractor will ensure that each subcontractor enter into a CTGR TERO Compliance Agreement prior to commencing work on the project.

**ARTICLE II – EMPLOYMENT PRIORITY** – The Contractor agrees to utilize to the greatest extent, TERO workers that are qualified, in the hiring of its employees for the duration of the project. Wages will be paid according to applicable laws. Monthly payroll reports will be submitted to the TERO program as required. Whenever the Contractor determines an Indian employee referred by TERO is not performing adequately the Employer shall notify TERO immediately about the problem. Contractor agrees not to terminate any Indian employee until a TERO representative has had an opportunity to provide counseling. If the situation is not remedied after counseling, TERO will refer another qualified worker.

Though the Contractor is not required to employ applicants who, in the Contractor’s opinion, are not qualified to perform the work required, the Contractor will make good faith effort to give those that are hired every opportunity to retain employment. Use of adverse employment practices or failure to meet hiring goals, shall cause the Contractor to be subject to sanction(s). Such sanction(s) include: 1) immediate replacement with Indian workers, 2) back pay and/or reinstatement where applicable, 3) if flagrant violations in hiring and/or employment practices by an employer occur, a monetary fine, not to exceed \$1,000 per violation, can be assessed.

Any form of harassment or discrimination directed towards TERO referrals by company employees on the project will not be tolerated. The TERO program will work with ODOT Civil Rights staff to investigate, frame charges, establish prima facie evidence, mediate and settle complaints associated with all forms of discrimination and/or harassment.

**ARTICLE III – EMPLOYMENT GOALS** – Employment goals for each project will be set by the TERO program and ODOT representatives. The Contractor shall give full consideration to all qualified Indians referred by the TERO program and meet the prescribed number of TERO referrals according to the “Hiring Goals” established in ATTACHMENT 1 (below). The Contractor must make every effort to place a job order with the TERO program 48 hours prior to needing a TERO referral. If after placing a job order with TERO, no qualified Indian workers are available, a waiver will be provided to the Contractor allowing them to hire from their own sources.

Core crew employees must have been on the company payroll for at least six months to qualify as core crew. Any training opportunities on this project must be extended to Indians.

**ARTICLE IV – COMPLIANCE FEE**- The Federal Highway Administration allows for payment of this fee from the Prime Contractor to the TERO program, which must be paid prior to commencement of work on this project. The fee on each project is determined and published in the pre-bid document “Special Provisions” issued by ODOT and based on the MOU between the Tribe and State of Oregon.

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
TERO Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**TRIBAL EMPLOYMENT RIGHTS OFFICE**  
Confederated Tribes of the Grand Ronde

MOU COMPLIANCE AGREEMENT  
ATTACHMENT 1

**HIRING GOALS**

Project Name: \_\_\_\_\_ Contractor: \_\_\_\_\_  
Goal: \_\_\_\_\_ %

TERO Representative Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Positions by trades skill on project	Estimate of each skill	TERO utilization	% of TERO workers	Wage
<b>TOTALS</b>				

*TERO reserves the right to negotiate for any positions listed above in order to meet the prescribed employment goals. This attachment supplements the TERO Compliance Agreement in which the Employer agrees to meet their obligation pursuant to the CTGR Tribal Employment Rights Ordinance.*

**TRIBAL EMPLOYMENT RIGHTS OFFICE**  
Confederated Tribes of the Grand Ronde

**CONTRACTOR'S SPECIFIC OBLIGATIONS**

As a contractor/subcontractor conducting business on or near the Grand Ronde Reservation, your specific obligations under the Tribal Employment Rights Code and this contract include the following:

1. Provide TERO with a precise listing of positions you will use on this project from the superintendent on down, and the number of each craft. These positions will be negotiated for as well as any Core Crew requested;
2. Core Crew requests must be in writing with rationale for each. The listing of positions and the Core Crew requested must be submitted to TERO at least three (3) days prior to a required pre-construction meeting with TERO staff or start up of the project. Core Crew must have been on the Company payroll for at least six (6) months in order to qualify as Core Crew.
3. Inform TERO of all signatory trade unions to be involved in the project. TERO obligations have priority over union obligations by a contractor signatory to any trade unions. However, TERO will consider Indian workers of the trade unions in order for contractors to meet their hiring goals.
4. Notify TERO of all job vacancies. All available Indian applicants shall be considered first before any non-Indians are considered for employment and training. If no qualified Indians are available, TERO will provide a consent form to waive this obligation;
5. Employees referred by the TERO program will have preference in retention of employment from the beginning to the end of the project. Inform TERO of any lay-offs.
6. Before any TERO referral is terminated from the project you must inform TERO immediately to allow for informal counseling;
7. Allow on-site inspections by TERO representatives;
8. Provide copies of Monthly Employment Utilization Report to the TERO program as specified in the TERO Compliance Agreement;
9. No work on the scheduled program will begin until all applicable agreements are signed. Failure to sign the required agreements shall serve as just cause for the contractor/subcontractor to be subject to sanction(s) as prescribed in the TERO Compliance Agreement and CTGR TERO Ordinance.

Respectfully submitted by me as evidenced by my signature found below, and under my authority vested in me as a duly-appointed representative for TERO:

\_\_\_\_\_  
TERO Representative

\_\_\_\_\_  
Date

**CERTIFICATION OF SERVICE:**

I, \_\_\_\_\_, duly swear that I have been provided the specific obligations of Indian preference as a contractor conducting business on or near the Grand Ronde Reservation. I attest to the fact that the TERO representative whose signature is found above did in fact read these specific obligations and allowed for an opportunity to present questions, comment or discussion on these requirements related to this contract.

\_\_\_\_\_  
Employer Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company



Exhibit C – CTGR/CTWS TERO Boundary Overlap

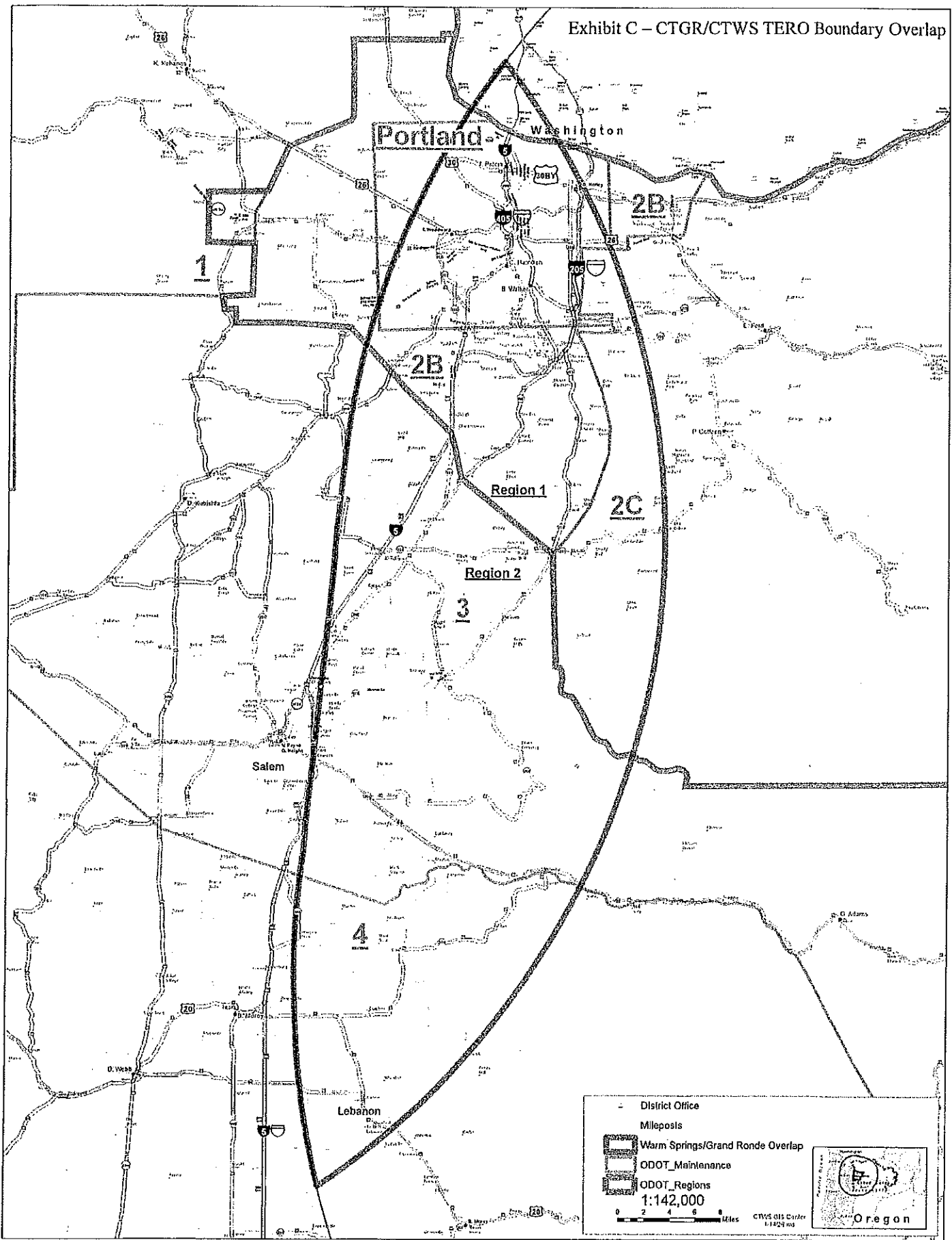


Exhibit C – CTGR/CTWS TERO Boundary Overlap