

\_\_\_\_\_ TRIBE PREVAILING WAGE ORDINANCE

1.00 PURPOSE

- (1) The \_\_\_\_\_ Tribe desires to establish a Tribal prevailing wage for laborers, mechanics, architects, technical engineers, draftsmen, technicians, and other positions which may be designated by the Tribe as necessary to fulfilling contracts or agreements for assistance, sale, or lease under the Native American Housing Assistance and Self-Determination Act (NAHASDA).
- (2) Notwithstanding any other provision of Tribal law to the contrary, the Tribal prevailing wage established under this ordinance is intended to supersede all federal wage determinations otherwise applicable to NAHASDA contracts or agreements to the greatest extent allowed under federal law and to the fullest legal authority under Tribal law.

1.01 DEFINITIONS

The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (1) “Agreement” means any contract or agreement for assistance, sale or lease funded under NAHASDA.
- (2) “Council” means the \_\_\_\_\_ Business Committee.
- (3) “THO” means the \_\_\_\_\_ Tribe Housing Office, the \_\_\_\_\_ Tribe’s designated housing entity.
- (4) “NAHASDA” means the Native American Housing Assistance and Self-Determination Act of 1996, as amended, Pub. L. 104-330, 25 U.S.C. 4101 et seq.
- (5) “Prevailing wage” means the wage as determined by the Tribe pursuant to this ordinance as the wage prevailing on the Tribe’s Reservation and within the Tribe’s and the \_\_\_\_\_ Tribe Housing Office’s (THO) area of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, and mechanic.
- (6) “Tribe” means the \_\_\_\_\_ Tribe of Indians.

1.02 ESTABLISHMENT OF TRIBAL PREVAILING WAGE.

- (1) The Tribe shall establish a Tribal prevailing wage pursuant to the process set out in this section. Notwithstanding any other provision of Tribal law to the contrary, the prevailing wage established pursuant to this ordinance shall apply only to contracts or agreements for assistance, sale, or lease under the Native American Housing Assistance and Self-Determination Act (NAHASDA).
- (2) Tribe to Conduct Wage Survey. The Tribe shall arrange for a wage survey to be conducted every three years in order to determine and establish the Tribal prevailing wage.
  - (A) The Tribe shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall establish the prevailing wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall also include the classification for trainee in all trades.

- (B) The Tribe shall retain for not less than three years the names and addresses of all sources contacted and the wage rates reported by each source.
  - (C) Wage rates shall include salary but not the value of benefits paid to or on behalf of the employees.
  - (D) The results of the survey shall be contained in a proposed schedule of prevailing wages which shall list each covered class of profession, trade and trainees and the hourly rate for each and the effective dates of the schedule.
- (3) The Council shall review the results of the survey, and, if the survey results and methodology are acceptable, the Council shall approve such results and shall approve the schedule of prevailing wages. This approval shall establish the Tribal prevailing wage.
  - (4) Delegation of Authority. The Tribe may delegate its authority to conduct surveys and/or to establish the Tribal Prevailing Wage under this chapter to a Department in the Tribe. Council retains the right to review and approve the schedule of prevailing wages.

#### 1.03 PAYMENT OF PREVAILING WAGES REQUIRED.

- (1) Payment of Prevailing Wages and Access to Records. Each employer, including the Tribe and any of its departments, entities, and instrumentalities (including but not limited to the THO), when performing services funded through or otherwise managed through agreements under NAHASDA, shall pay the prevailing wage established pursuant to this ordinance.
- (2) Volunteers. The requirement to pay the prevailing wage under this chapter shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the same or similar services on a project shall be considered a volunteer on the same project.
- (3) Schedule to Be Provided. The THO shall provide every employer at the time bids or proposals are solicited with a copy of the currently effective schedule of prevailing wages.
- (4) Posting of Wage Schedules. At all times while performing under an agreement subject to this ordinance, each employer shall post at the job site and in its principal office a copy of the schedule of Tribal prevailing wages.
- (5) Payment of Prevailing Wage Required in Agreements. Any contract or agreement pursuant to NAHASDA for assistance, sale, or lease shall contain a provision requiring not less than the Tribal prevailing wage shall be paid by the contractor.
- (6) Authority to Withhold Payments. In addition to the remedies available in under this ordinance, the THO has the authority to withhold payment to contractors/employers if the THO, in good faith, believes that a contractor/employer is not complying with any provision of this ordinance.

#### 1.04 REMEDIES

- (1) Tribal Court Action. The Tribe, its departments, entities, and instrumentalities (including but not limited to the THO) and any adversely affected employee may bring an action in the \_\_\_\_\_ Tribal Court against any employer for failure to comply with the provisions of this chapter.

- (2) Upon a finding by the Tribal Court based upon credible evidence and by a preponderance of the evidence that a violation of this chapter has occurred, the Court may order any of the following remedies:
- (A) If the employee has been underpaid, the employer may be ordered to pay the difference in the wage paid to the employee and the prevailing wage.
  - (B) The Court may also order punitive damages not to exceed three times the amount of subsection (1)(A) of this section.
  - (C) The Court may also award reasonable attorney fees to the prevailing party.
  - (D) The Court may also issue an order barring the contractor/employer and/or its principal employees from performing work or services for the Tribe, its departments, entities, and instrumentalities (including but not limited to the THO) not to exceed five years.
  - (E) The Court may also order any other remedy that is narrowly tailored to remedy the violation.
- (3) Statute of Limitations. No action under this chapter shall be filed or allowed more than two years after the date such wages became due and payable under the agreement.

#### 1.05 SOVEREIGN IMMUNITY

This ordinance does not grant jurisdiction or authority to bring suit against the \_\_\_\_\_ Tribe of Indians. Nothing in this ordinance shall be deemed a waiver of the sovereign immunity from suit of the Tribe or its agents, entities, instrumentalities, or officials, which immunity is hereby held to extend to the Tribe and its officers and employees acting for the Tribe within the scope of their Tribal authority.