

TRIBAL EMPLOYMENT RIGHTS

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## TRIBAL EMPLOYMENT RIGHTS

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#### ARTICLE 1

### TRIBAL EMPLOYMENT RIGHTS

[NOTE: Except as otherwise noted, provisions of Article 1 were enacted on October 20, 1986 by Ordinance No. 86-5; amended July 30, 1987, Ord. No. 87-1, § 1; amended May 14, 1988, Ord. No. 88-1, § 2.; amended July 11, 1992, Ord. No. 92-3; amended October 8, 2010, Ord. No. 10-04. The provisions of Ord. No. 10-04 become effective January 1, 2011.]

#### CHAPTER 1. GENERAL PROVISIONS

##### Section 1-101. Findings of the Tribal Council.

The Tribal Council hereby finds and declares:

(A) Like land, water, and minerals, jobs in private employment on or near the Colorado River Indian Reservation are an important resource for Indian people and Indians must use their rights to obtain their share of such jobs as they become available.

(B) Indians have unique and special employment rights and the Colorado River Indian Tribes has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians.

(C) Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of those laws.

(D) It is important to establish an employment rights program on the Colorado River Indian Reservation in order to use the aforementioned laws and powers to increase employment as well as strengthen the economy of the Colorado River Indian Reservation and eradicate discrimination against Indians.

##### Section 1-102. Definitions.

(A) "Agricultural Services Contract" means any contract for soil preparation services, crop services, animal services except veterinary services, farm labor and management services, and landscape and horticultural services.

(B) "Business" shall mean all activities or acts, personal, corporate or otherwise, engaged in with the object of profit, gain, benefit, or advantage, either directly or indirectly, wholly or in part, within the boundaries of the Colorado River Indian Reservation.

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(C) "Commission" means the duly appointed Colorado River Indian Tribes Employment Rights Commission.

(D) "Construction Contract" means any contract for the construction, repair, or maintenance of any facility, building, road, or other infrastructure such as utilities, irrigation, and other structures.

(E) "Covered employer" means a person employing three (3) or more employees, any of whom performs work or conducts business, within the Colorado River Indian Reservation. The term "covered employer" shall not include the Colorado River Indian Tribes, the Federal government or any state government.

(F) "Director" means the duly appointed Director of the Colorado River Indian Tribes Employment Rights Commission.

(G) "Indian" means a person who is a member of, or is eligible for membership in, a Federally recognized Indian tribe.

(H) "Local" is an Indian residing within, or no more than twenty-five (25) miles from, the exterior boundaries of the Colorado River Reservation and has so resided for not less than six (6) months from commencement of employment.

(I) "Person" means a natural individual, corporation, partnership, association, company, agency (public, private or governmental), institution or other identifiable entity. "Person" shall also include the Colorado River Indian Tribes and its enterprises.

(J) "Tribes" means the Colorado River Indian Tribes.

(K) "Tribal Council" means the Tribal Council of the Colorado River Indian Tribes.

[As amended July 30, 1987, Ord. No. 87-1, § 1; as amended May 14, 1988, Ord. No. 88-1, § 2; as amended October 8, 2010, Ord. No. 10-04.]

### **Section 1-103. Severability.**

If any provision of this Article or its application to any person or class of persons or to any circumstances is held invalid for any reason whatsoever, the remainder of its provisions shall not be affected and shall remain in full force and effect.

## **CHAPTER 2. COLORADO RIVER INDIAN TRIBES EMPLOYMENT RIGHTS COMMISSION**

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### **Section 1-201. Establishment of Commission, Compensation.**

(A) There is hereby established a Colorado River Indian Tribes Employment Rights Commission composed of five members who shall be appointed by the Tribal Council for staggered terms of three (3) years each. The terms of the first three members appointed to the Commission shall expire at midnight, December 31, 1988. The terms of the remaining members first appointed to the Commission shall expire at midnight, December 31, 1989. Thereafter, all terms shall expire at midnight on December 31, three (3) years after they commence.

(B) The members of the Commission shall designate one amongst their membership to serve as Commission Chairman. The Commission Chairman shall be entitled to vote on all matters before the Commission.

(C) Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as are in effect for committees of the Tribes;

(D) A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

(E) Members of the Commission may be removed by the Tribal Council for cause upon notice and hearing. No member of the Commission may have any financial interest in any business establishment located or operating on the Reservation.

### **Section 1-202. Powers and Duties of the Commission.**

The CRIT Employment Rights Commission shall have full power, jurisdiction and authority to:

(A) Formulate and adopt, subject to the approval of the Administrative Committee of the Tribes, regulations necessary to carry out the provisions of this Article. In developing regulations, the Commission shall adopt the Equal Employment Opportunity Council (EEOC) guidelines on the same subject matter to the extent that they are appropriate. The Commission shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique problems confronting Indians. Except when an emergency exists, the Commission shall provide the public with a reasonable time for comment before promulgating regulations.

(B) Require each covered employer, before commencing any activity on the Colorado River Indian Reservation, to submit to the Commission an acceptable compliance plan indicating how it will comply with the provisions of this Article.

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(C) Impose numerical hiring goals and timetables that specify the minimum number of Indians a covered employer must hire by craft or skill level.

(D) Require covered employers to establish or participate in such training programs as the Commission determines necessary in order to increase the pool of job-qualified Indians on the Colorado River Indian Reservation as quickly as possible.

(E) Establish in conjunction with Tribal employment and training programs, a Tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the Tribal hiring hall or skills bank has certified that no qualified Indian, in accordance with the preference priorities set forth in Section 1-302, is available to fill the vacancy.

(F) To enter into agreements, with the approval of the Tribal Council, with unions to insure union compliance with the provisions of this Article. Such agreements shall in no way constitute recognition or endorsement of any union.

(G) Impose contract and subcontract preference requirements, in accordance with the preference priorities set forth in Section 1-302, and establish and operate a system for certifying firms as eligible for Indian preference.

(H) Enter into cooperative relationships with Federal and State employment rights agencies, in order to eliminate discrimination against Indians on and off the Colorado River Indian Reservation.

(I) Conduct investigations, hold hearings and render decisions pursuant to the provisions of this Article.

### **Section 1-203. Annual Report.**

The Commission shall annually present to the Tribal Council a plan for the financing of the Commission out of monies other than the Tribal Treasury. The plan shall indicate the expected amount of revenue from Employment Rights Fees, and other potential sources of funding for the Commission, including but not limited to, new funds or reallocation of existing funds from Federal or State agencies or programs.

### **Section 1-204. Director of the Commission.**

In addition to the powers set forth in Section 1-202, the Commission shall have exclusive authority to appoint a Director of the Commission. In the performance of his duties the Director shall be under the immediate supervision and direction of the Commission and shall be subject to removal for cause by the Commission.

### **Section 1-205. Duties of the Director.**

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(A) It shall be the duty of the Director to perform or cause to be performed all functions prescribed for him by the Commission or the provisions of this Article.

(B) It shall be the duty of the Director to hire staff, expend funds appropriated by the Tribal Council, and to obtain and expend, with approval of the Commission and the Tribal Council, funding from Federal, State or other sources to carry out the purposes of this Article.

### **Section 1-206. Delegation of Authority.**

The Commission shall delegate to the Director the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of the provisions of this Article, except that the Commission may not delegate its power or duty to:

(A) Adopt regulations.

(B) To conduct hearings or impose sanctions pursuant to Chapter 5 of this Article.

## **CHAPTER 3. EMPLOYMENT RIGHTS**

### **Section 1-301. Indian Preference.**

All covered employers operating on the Colorado River Indian Reservation shall give preference in accordance with the priorities set forth in Section 1-302, to Indians in hiring, promotion, training, subcontracting and in all other aspects of employment.

### **Section 1-302. Preference Priority.**

(A) For purposes of this Article, the following preference priorities shall be observed in connection with hiring, promotion, training, subcontracting and in all other aspects of employment:

- (1) First preference shall be given to members of the Colorado River Indian Tribes;
- (2) Second preference shall be given to Indian spouses of members of the Colorado River Indian Tribes or Indian heads of households containing members of the Colorado River Indian Tribes;
- (3) Third preference shall be given to Indians residing on the Colorado River Indian Reservation;

(4) Final preference shall be given to all other Indians.

(B) Where preference priorities set forth in Subsection (A) above are prohibited by Federal law or regulation, the following preference priority shall apply:

(1) First preference shall be given to local Indians;

(2) Final preference shall be given to all other Indians.

[As Amended July 30, 1987, Ord. No. 87-1, § 2.]

**Section 1-303. Union Agreements.**

Any covered employer who has a collective bargaining agreement with one or more unions shall obtain a written agreement from said union(s) stating that the union(s) shall comply with this Article and all regulations promulgated hereunder. Such agreement shall be subject to the approval of the Tribal Council. Such agreement shall not constitute official tribal recognition or sanction of any union.

**Section 1-304. Employment Assistance Programs.**

All employment assistance or educational programs sponsored by the Tribes shall devote such of their resources as is necessary to prepare Indians for job opportunities created by the operation of this Article. The Directors of all employment assistance or educational programs sponsored by the Colorado River Indian Tribes shall coordinate with the Director of the Tribes Employment Rights Commission in the development of all training programs sponsored by the Tribes.

[As Amended July 30, 1987, Ord. No. 87-1, § 3.]

**Section 1-305. Prohibited Conduct.**

It is unlawful for any covered employer to violate a provision of Chapter 3 or 4 of this Article or a regulation promulgated by the Commission.

**CHAPTER 4. EMPLOYMENT RIGHTS FEE**

**Section 1-401. Required Fees.**

An Employment Rights Fee, to raise revenue for the operation of the Commission, is assessed as follows:



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(A) Every covered employer with a construction contract or an agricultural services contract in the sum of \$50,000 or more shall pay a fee of three and one-half (3 ½%) percent of the total project/contract amount. A general or prime contractor shall be responsible to pay the fee on the total project/contract amount, including collecting and remitting the fee for any portion of the project performed by subcontractors. If a general or prime contractor is exempt from payment of the fee pursuant to Section 1-102(D), subcontractors are directly responsible to remit the fee on their total contract amount. Said fee shall be paid by the employer prior to commencing work within the Colorado River Indian Reservation. Upon a showing of good cause, the Director may authorize an employer to pay said fee in installments over the course of the contract.

(B) For contracts which are not for a sum certain and involve recurring expenses, the contract threshold of \$50,000 is an aggregate amount to be determined over each twelve month period the contract is in effect.

[As Amended July 11, 1992, Ord. No. 92-3; as amended October 8, 2010, Ord. No. 10-04.]

### **Section 1-402. Collection of Fees.**

The Director shall be responsible for collecting assessed Employment Rights' fees pursuant to regulations adopted by the Commission. Said fees shall be made payable to the Treasurer of the Colorado River Indian Tribes. The Employment Rights Fee shall be credited as follows: three (3%) percent of the total fees collected shall be placed in the CRIT general fund and one-half (1/2%) percent of the total fees collected shall be expended by the TERO Department and Commission to carry out the purposes of this Code subject to the annual budget process.

### **Section 1-403. Fee Increases.**

The Employment Rights Fee may be increased by regulation pursuant to the procedure outlined within Section 1-202(A). The provisions regarding the collection and crediting of fees in Section 1-402 may also be amended by regulation.

[As amended October 8, 2010, Ord. No. 10-04.]

## **CHAPTER 5. ENFORCEMENT OF EMPLOYMENT RIGHTS**

### **Section 1-501. Complaints.**

(A) Any person who believes that a covered employer has engaged in prohibited conduct may file a complaint with the Director.

(B) The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation.

(C) Within twenty (20) days after receipt of a complaint, and on a regular basis thereafter until the matter is resolved, the Director shall provide the complaining party with a written report on the status of the complaint.

(D) The Director may withhold the name of a complaining party from an employer if the Director has reason to believe such party may be subject to retaliation.

**Section 1-502. Investigations.**

(A) On his own initiative or after receiving a complaint under Section 1-501, the Director, or any field compliance officer designated by the Director, shall make such public or private investigations within the Colorado River Indian Reservation as he or the Commission deems necessary to determine whether a covered employer has engaged in prohibited conduct. The Director or his designate may further conduct public or private investigation to aid in formulating regulations to be promulgated under this Article.

(B) The Director or his designate, may enter during business hours, the place of business or worksite of any covered employer for the purpose of conducting the investigations authorized by this Section.

(C) The Director may require a covered employer to submit such reports as are deemed necessary in his discretion to monitor compliance with the requirements of the provisions of this Article or any regulation promulgated under this Article.

**Section 1-503. Power to Require Testimony & Production of Records.**

For the purpose of carrying out the investigations or hearings allowed under the provisions of this Article, a Commissioner or the Director, may administer oaths or affirmations; subpoena witnesses; take evidence; and require, by citation, the production of books, papers, contracts, agreements or other documents, which are deemed relevant or material to an inquiry.

**Section 1-504. Notice of Prohibited Conduct, Informal Settlement.**

(A) When, after conducting an investigation pursuant to Section 1-502, the Director has reason to believe a covered employer has engaged in prohibited conduct, the Director shall notify the employer in writing of his findings, specifying the alleged prohibited conduct.

(B) After the notification required by this Section, the Director shall seek to achieve an informal settlement designed to bring the employer into compliance with the provisions of this Article.

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### **Section 1-505. Non-Compliance Citation.**

If the Director is unable to achieve an informal settlement pursuant to Section 1-504, he shall issue a non-compliance citation which shall:

(A) Set forth the nature of the alleged prohibited conduct and the steps that must be taken to achieve compliance with the provisions of this Article.

(B) Provide the employer with a reasonable time, which in no event shall be less than five (5) days from the date of receipt of the citation, to achieve compliance, unless the Director has reason to believe irreparable harm will occur during that period, in which case he may require that compliance be achieved within fewer than five (5) days.

(C) Advise the employer of his right to request a hearing.

### **Section 1-506. Request for Hearing.**

(A) If an employer fails or refuses to come into compliance as requested, he may request a hearing before the Commission which shall be held no sooner than five (5) and no later than thirty (30) days after the date the request for hearing is received, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm.

(B) If a party fails or refuses to come into compliance and does not request a hearing, the Commission may assess appropriate penalties pursuant to Subsection 1-509.

### **Section 1-507. Conduct of Hearings.**

All hearings conducted under the provisions of this Article shall be conducted by the Commission. Conduct of hearings shall be governed by rules of practice and procedure which may be adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order or decision made by the Commission. No stenographic record of the proceedings shall be required except upon arrangement by, and at the cost of, the party requesting the hearing.

### **Section 1-508. Bond; Interim Relief.**

(A) Whenever the Commission has good cause to believe that there is a danger that an employer may remove himself or his property from the jurisdiction of the Tribes during the pendency of the complaint and hearing proceedings, the Commission may, in its discretion, require the employer to post a bond in an amount sufficient to protect the interests of the Colorado River Indian Tribes or other affected parties.

(B) If the employer fails or refuses to post said bond, the Commission may assess any of the penalties prescribed in Section 1-509.

(C) In addition to requiring a bond, the Commission may also petition the Tribal Court for such interim and injunctive relief, including attachment of property, as is appropriate to protect the interests of the Tribes and other parties during the pendency of the complaint and hearing proceedings.

**Section 1-509. Penalties.**

Upon a determination by the Commission that a covered employer has engaged in conduct prohibited by Section 1-305, the Commission may:

- (1) Deny the employer the privilege of commencing business within the Colorado River Indian Reservation;
- (2) Suspend the employer's operations within the Colorado River Indian Reservation.
- (3) Terminate the employer's operations within the Colorado River Indian Reservation;
- (4) Deny the employer the privilege of conducting any future business within the Colorado River Indian Reservation;
- (5) Order the employer to forfeit to the Colorado River Indian Tribes a sum of not more than \$500 for each prohibited act engaged in for each day during which any such prohibited action shall continue;
- (6) Order the employer to dismiss any employee hired in violation of the provisions of Chapter 3 of the Article;
- (7) Order the employer to take such other action as is necessary to ensure compliance with Chapter 3 of this Article or to remedy any harm caused by prohibited conduct;
- (8) Order the employer to make restitution to appropriate parties for injuries suffered as a result of his prohibited conduct.

**Section 1-510. Decision of the Commission.**

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Any order or decision made by the Commission shall be in writing and shall be served on all affected parties no later than thirty (30) days after the same is rendered. Service shall be accomplished in a manner reasonably calculated to afford actual notice to the parties.

### **Section 1-511. Enforcement of Decisions.**

Failure of an employer to comply with an order or decision of the Commission or a judgment of the Tribal Court on appeal, shall entitle the party to be benefited by the order, decision or judgment to an order of the Tribal Court, upon notice and hearing, directing the CRIT Police Department to attach and hold for public sale such property of the defaulting employer as is necessary to enforce the terms of the order, decision or judgment. After deduction of sums necessary for satisfaction plus court and enforcement costs, any proceeds remaining from public sale shall be returned to the defaulting party.

## **CHAPTER 6. APPEAL**

### **Section 1-601. Right of Appeal.**

Any person adversely affected by a final order or decision of the Commission may appeal the same to the Tribal Court by filing a Notice of Appeal with the Court within thirty (30) days after the date the order or decision was rendered. The Notice of Appeal shall be served upon the Tribes as provided in Law and Order Code § 102.

### **Section 1-602. Content of Notice of Appeal.**

A Notice of Appeal shall:

- (1) Be in writing;
- (2) Be signed by the appellant;
- (3) Set forth the order or decision from which appeal is taken;
- (4) Specify the grounds upon which reversal or modification of an order or decision is sought.

### **Section 1-603. Abatement.**

The pendency of an appeal shall not abate or stay an order or decision of the Commission unless the Tribal Court specifically orders otherwise. Before ordering a stay or suspension of a Commission order or decision pending appeal, the Court shall hold a hearing on the advisability of such action.

**Section 1-604. Bond on Appeal.**

The Tribal Court may require an appellant to post an adequate bond to protect the interest of the Colorado River Indian Tribes or other affected parties during the pendency of an appeal.

**Section 1-605. Injunctive Relief, Attachment.**

Upon a showing of good cause that there is a danger that a party may remove himself or his property from the jurisdiction of the Tribal Court, the Court may order such interim and injunctive relief, including attachment of property, as is appropriate to protect the interests of the Tribes or other affected parties during the pendency of an appeal.

**Section 1-606. Standard of Review.**

The Tribal Court shall uphold an order or decision of the Commission unless it is demonstrated that the order or decision is arbitrary, capricious or in excess of the authority of the Commission.

**Section 1-607. Decision of the Tribal Court.**

(A) The decision of the Tribal Court on appeal shall be in writing and shall set forth findings of fact and conclusions of law.

(B) If the Tribal Court reverses or modifies an order or decision of the Commission, the Court shall by its mandate specifically inform the Commission if further action by the Commission is necessary on remand and the limitations or conditions of such remand.

(C) If an order or decision of the Commission is upheld on appeal, the Tribal Court shall enter such orders as are necessary and appropriate to carry out the terms of said order or decision.

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