

INFORMATION HANDOUT

For Contract No. 01-0C9404

At 01-Hum-96-3.7/11.6

Identified by

Project ID 0113000080

AGREEMENTS

PLAC - Hoopa Tribe Memorandum of Understanding (MOU) Tribal Employment Rights Ordinance (TERO)

MOU 15-01

Attachment A - Hoopa Valley TERO Provisions

Attachment B - TERO Highway Construction Permit (THCP) Application

MEMORANDUM OF UNDERSTANDING

Tribal Employment Rights Ordinance

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The Hoopa Valley Tribe (**Tribe**) and the State of California Department of Transportation (**Caltrans**), in order to coordinate and carry out their respective functions and duties regarding Indian Employment Preference on State highway construction projects on lands within the Hoopa Valley Indian Reservation (**Tribal Lands**), do hereby enter into this Memorandum of Understanding (**MOU**).

This **MOU** constitutes a guide to the respective intentions, obligations, and policies of the **Tribe** and **Caltrans** in entering into this agreement. It is not intended to be used as a sole basis for authorizing funding, nor is it a legally binding contract upon either party.

Contract No. Project ID	Project County- Route- Postmile	Work Description	Hoopa Tribal Lands	Hoopa IRR Inventory
01-0C940 0113000080	Hum-96- 3.70/11.60	Chip Seal	Hum-96- 7.80/22.75	Hum-96- 0.00/22.75

I. INDIAN EMPLOYMENT PREFERENCE AND TERO FEE

A. Recitals

1. Section 122 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 23 USC ss. 140(d), recognizes the establishment of Indian Employment Preferences in the Federal Aid Highway Program.
2. The **Tribe** has enacted certain tribal employment rights policies included within the Hoopa Valley Tribe **Tribal Employment Rights Ordinance** establishing a tribal employment rights function and mandating Indian Employment Preferences on State construction projects and in other forms of employment within the Reservation.
3. The parties hereto recognize that Caltrans shall employ the services of one or more independent contractors in order to accomplish all or some of the activities necessary for State highway construction on **Tribal Lands**.

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4. **Caltrans** and the **Tribe** desire to promote Indian employment by
 - a) applying Indian Employment Preferences to the State's contractors for highway work conducted on **Tribal Lands** or on any State highway included in the **Tribe's** Indian Reservation Road (IRR) Inventory when a portion of the project is on Tribal Lands, and
 - b) establishing a mechanism to ensure that the **Tribe** receives TERO Fee, of 3% of the contract award amount, for the portion of the project that is on **Tribal Lands**.
5. The parties desire to clarify the rights and obligations of the **Tribe**, **Caltrans**, and prospective bidders and contractors who may perform work on **Tribal Lands** for State highway construction contracts.

B. Statement Of Intent

1. **Caltrans** shall inform prospective bidders of the Tribal, State, and Federal laws with respect to Indian Employment Preferences by inserting provisions (Attachment A) in its information to prospective bidders. These provisions shall become part of the State highway construction contract. The provisions shall require
 - a) submittal of TERO Highway Contract Permit (THCP) to Tribe within 5 days after Contract Approval. The prime contractor and each sub-contractor shall submit an individual TCHP to the Tribe.
 - b) a 45-day delayed start to allow for Contractor submittals to and from Tribe and Contractor submittal of completed THCP to Engineer
2. **Caltrans** shall not allow the contractor to begin work until the contractor has obtained, from the **Tribe**, a TERO Highway Contract Permit (Attachment B) from The TERO officer of the **Tribe**.
3. The TERO Officer of the **Tribe** shall work with Caltrans and Caltrans' contractor to process the TCHP in a timely manner and ensure that there is no delay in either beginning work or in providing qualified candidates to

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meet the contractor's personnel needs. The Tribe shall return the completed THCP to the contractor within 30 days of receiving the application.

4. Immediately after Contract Approval, **Caltrans** shall provide the TERO officer of the Tribe with all documentation necessary for the Tribe to properly invoice Caltrans for the TERO Fee. The **Tribe** shall invoice **Caltrans** for the TERO Fee, 3% of the contract award amount within 15 days after issuing the THCP. Upon receipt of an invoice for the TERO Fee, Caltrans shall forward the invoice to Accounting within 7 days and make prompt payment of the TERO Fee to the Tribe.
5. **Caltrans** shall notify the **Tribe** of each change order.
6. **Caltrans** and the **Tribe** shall make a reasonable effort to conduct joint investigations and share information. Nothing in this **MOU** shall be construed to restrict the authority of the **Tribe**, either to initiate enforcement actions in the Tribal Court or to amend Tribal laws.

II. TERO PROVISIONS – Pertaining to Contracted State Highway Work

Listed below are the provisions from the Hoopa Valley Tribe TERO that pertain to State Highway work.

**Hoopa Valley Tribe
Tribal Employment Rights Ordinance
Title 13
Approved: May 17, 2012**

13.0 SHORT TITLE

The Short title of this ordinance shall be the Tribal Employment Rights Ordinance, or TERO.

13.1 EFFECT ON PRIOR ENACTMENTS

13.1.1 Repeal. Resolution 91-71 A, as amended March 6, 1995, Ordinance No. 2-80, as amended April, 27, 1995, the Rules for Hearings Before the TERO Commission, as amended June 10, 1998, are hereby repealed and shall be of no further force and effect as stated in Section 13.13.1 of this ordinance; provided, however, that any existing agreements or contracts authorized under these now repealed enactments shall remain

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in effect until such agreements or contracts expire or are terminated; and provided, further, that the TERO Commission established by this Ordinance may terminate any existing Indian preference agreement and issue a permit in conformance with this Ordinance upon notice to the affected party and opportunity for a hearing.

13.1.2 N/A

13.1.3 N/A

13.2 DEFINITIONS

13.2.1 "Indian" means any member of any federally recognized tribe, or any person who furnishes documentary proof that he or she is recognized as an Indian by the United States, pursuant to its trust responsibility to American Indians.

13.2.2 "Hoopa Reservation" or "Reservation" means the Hoopa Valley Indian Reservation as defined under Article III of the Constitution and Bylaws of the Hoopa Valley Tribe.

13.2.3 "Employer" means any person, company, contractor, subcontractor or entity located or engaging in commercial or employment activity within the exterior boundaries of the Hoopa Valley Indian Reservation, and which employs two or more persons.

13.2.4 N/A

13.2.5 "Commission" and **"Office"** mean the Tribal Employment Rights Commission and its Office and the Tribal Office of Employment Relations.

13.2.6 "Council" means the Hoopa Valley Tribal Council.

13.2.7 "Minimum Threshold" means a minimum level that any job applicant shall be required to meet prior to Indian Preference being applied to that job applicant. Criteria to establish a minimum threshold may be established by but are not limited to the following:

1. Job Descriptions;
2. Interview Committees;
3. Skills Tests;
4. RFP's and License Requirements;

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5. Other Job Requirements.

13.3 ESTABLISHMENT OF TERO COMMISSION AND OFFICE

13.3.1 Establishment and Purpose of Commission

(A) The Hoopa Valley Tribal Council does hereby establish the Tribal Employment Rights Commission (TERO Commission) for the purposes of implementing and enforcing the Indian Preference provisions of this Ordinance, and disseminating information regarding unlawful employment discrimination by State and private employers subject to Title VII of the Civil Rights Act of 1964 who are operating on or near the Hoopa Valley Indian Reservation.

(B) TANF; Training by TERO Commission. The TERO Commission is hereby authorized to provide basic life/work skills training consistent with the needs of the community and implementation of the Tribal, state or federal TANF program; to establish a Tribal Employment Rights training center; to enter into agreements with labor unions and other persons or entities to provide work skills training and education opportunities; and to generally provide employment training to members of the Tribe and residents of the Hoopa Valley Indian Reservation through means deemed appropriate by the Tribal Council.

(C) TERO Tax. The TERO Commission shall be allocated sufficient funds as determined by the Hoopa Valley Tribal Council derived from the TERO Tax as described in Section 13.5 of this Ordinance for implementation, conduct, and fulfillment of the TERO Commission's purposes.

13.3.2 General Powers of the Commission

(A) Organizational Authority. The Commission may hire immediate TERO staff, obligate funds appropriated by the Council, and secure and obligate funding from Federal, State or other sources to carry out its duties and functions under this Ordinance. The Commission is further authorized and directed to adopt such organizational bylaws as are necessary to enable it to carry out its duties and functions under this Ordinance. The Commission shall report directly to the Council. The TERO Commission shall be subject to the Conflict-of-Interest and Nepotism Ordinance of the Hoopa Valley Tribe.

(B) Regulatory Authority.

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(1) The Commission shall promulgate rules, regulations, interpretations of law, and guidelines for Indian preference that are necessary to implement this Ordinance. Such rules shall become effective upon Council approval of a resolution adopting said rules. Council approved rules shall be codified in the Revised Code of the Hoopa Valley Tribe, and the Commission shall take other reasonable steps to insure that the general Reservation community is on notice of all Indian preference and applicable employment related laws.

(2) The Commission shall maintain an Indian Skills Bank as a means of providing qualified Indian employees to employers, contractors, and subcontractors. The Commission shall actively recruit Indians for listing in the Skills Bank. The Commission shall also actively recruit and certify Indian firms as eligible for Indian Preference in contracting and sub-contacting.

(3) N/A

(4) The Commission may (. . . N/A . . .) issue permits to such contractors according to rules and procedures to be developed, which shall include procedures for revocation of such permits.

(5) The Commission is further authorized and directed to investigate complaints regarding any violation of the provisions of this Ordinance or any other tribal the Commission is authorized to enforce. The Commission may also investigate possible violations of this Ordinance if there is reasonable cause to believe a violation of this Ordinance has occurred or is occurring. Neither the Commission or any of its employees shall have the authority to investigate or assist any Hoopa Tribal employee in pursuing any employment related claim not within its authority under this Ordinance

(C) Adjudicatory Authority

The Commission may hold hearings on and determine any matter under its authority, including but not limited to hearings necessary to the issuance, modification, and revocation of any permit, license, certification, or assessment authorized hereunder, as well as any adjudicatory hearing regarding violations of the provisions of this Ordinance. The Commission shall have no authority or jurisdiction to hear or adjudicate complaints brought by Hoopa Valley Tribal employees that are not specifically authorized under this Ordinance. The Commission shall promulgate simple and fair rules to govern its adjudications,

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and is authorized to issue compliance orders and impose civil penalties in the form of fines.

(D) Cooperative Agreements with Other Governments

The Commission may negotiate, and upon Council approval, enter into cooperative agreements with agencies of state and federal government in order to implement the intent of this Ordinance and eliminate unlawful discrimination against Indians.

13.3.3 Composition of the Commission

(A) The Commission shall be composed of five (5) members in good standing in the community. Three (3) members of the Commission shall be appointed by the Council in October of even numbered years, each for a term of two (2) years; and two (2) members shall be appointed in odd numbered years, each initially for a term of one (1) year, thereafter being appointed in October of odd-numbered years each for a term of two (2) years. Any member may be removed by the Council at any time for cause, subject to notice and opportunity for a hearing before Council. The Council's decision shall be final. All terms of office shall commence on October 1 of the year position becomes vacant.

(B) Decisions of the TERO Commission shall be made by a majority vote. A quorum shall consist of any two of the three Commission members.

(C) Any Commission member shall be disqualified from any involvement in decisions affecting the tribal department or entity with which he or she is employed or volunteers their time to that department.

13.3.4 Powers of the TERO Director

The TERO Director shall have those powers delegated by the Commission as it deems necessary to carry out this Ordinance. The Director shall be the investigating agent for the Commission responsible for investigating, researching, reporting and documenting any relevant information required by the Commission. The Director shall report directly to the Commission.

13.4 INDIAN EMPLOYMENT PREFERENCE POLICY AND PROCEDURES

All employers shall extend a preference to qualified Indians, as provided herein, in all aspects of employment, including but not limited to recruitment, hiring,

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promotion, lateral transfers, retentions, training, contracting, and subcontracting. No employer may recruit, hire, or otherwise employ any non-Indian for any employment position covered by this Ordinance; unless and until the TERO Commission has furnished written notice to such employer that no qualified Indians are available for such position.

13.4.1 Applicability

Unless clearly and expressly prohibited by federal and other tribal laws or Council action, this Ordinance shall apply to all employers, including but not limited to: The Council and all its programs, departments, and chartered entities or enterprises; private employers and independent contractors and subcontractors~ including those performing work for the Council, the State of California, or the United States.

13.4.2 Covered Positions

The Indian Employment Preference Policy of this section shall apply to each and every job classification, skill area, or craft recognized or utilized by an employer, including administrative, supervisory, and professional classifications.

13.4.3 Qualified Indians; Employment Criteria

An Indian shall be qualified for employment in a position if he or she meets the minimum threshold requirements for such position, and such Indian shall be accorded the preferences to which he or she is entitled under this Ordinance. No employer may utilize any employment criterion that is not legitimately related to the performance of the position.

13.4.4 Eligible Indians

(A) If this section conflicts with any applicable federal laws or regulations, the Hoopa Valley Tribe and its programs, departments and chartered entities and enterprises, and private employers contracting with the Tribe shall extend Indian preferences according to the requirements of said federal laws and regulations.

(B) Private Employers Not Contracting with the Hoopa Valley Tribe: Private employers not contracting with the Hoopa Valley Tribe and doing business within the exterior boundaries of the Hoopa Valley Indian reservation shall not be subject to the

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priority requirements of Section 13.4.4(A), but shall extend a preference to qualified Indians residing on or near the exterior boundaries of the Hoopa Valley Indian Reservation. (. . . N/A . . .)

13.4.5 Notice of Employee Rights. All employers subject to this Ordinance shall prominently display a notice to all employees and applicants for employment of their rights under this Ordinance.

13.4.6 Employer Retaliation Prohibited. It shall be violation of this Ordinance for any employer to take any adverse personnel or hiring action, or to retaliate in any way, against any person who attempts to enforce the requirements under this Ordinance. Employers found by the Commission, pursuant to an adjudicatory hearing, to have engaged in retaliation shall be subject to appropriate sanctions to be imposed by the Commission. The Commission may in its discretion either hold a hearing or file action in Tribal Court to review an allegation of unlawful retaliation. The Tribal Court is authorized to issue temporary injunctions for enforcement of this provision to prevent unlawful conduct.

13.5 ESTABLISHMENT OF TERO TAX AND FEES

There is hereby established a TERO Tax to be paid to the Hoopa Valley Tribal Council . . . The tax shall be equivalent to three percent (3%) The proceeds of the tax shall be used in implementing this Ordinance. The Hoopa Valley Tribal Council shall authorize the appropriate amounts of the TERO Tax to be utilized by the TERO Commission according to proof of budgetary needs provided by each department. The TERO tax shall be governed under guidelines approved by the Tribal Fiscal Department. (. . . N/A . . .) The Hoopa Valley Tribal Council when it is determined to be in the interests of the Hoopa Valley Tribe reserves the right to waive TERO Taxes and Fees for any contract or contracts, and further, may approve a waiver schedule consistent with the objectives of this Ordinance, that is implemented directly by the TERO Office and that establishes tax adjustments to not less than one percent (1%).

13.6 SPECIAL REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS

The requirements of this Section apply to all employers engaging in commercial or employment activities within the Reservation pursuant to public or private contract. If this section's contracting requirements conflict with applicable federal law or regulations, the applicable federal laws or regulations shall supersede this section.

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13.6.1 N/A

13.6.2 N/A

13.6.3 N/A

13.6.4 N/A . . . the contractor may not deviate from the plan or add or delete any existing new subcontracts or subcontractors without the written consent of the Contracting Officer or his designee and notice to the Commission. Any amendments to the Indian Preference Plan must be in writing and approved prior to the date of implementation.

13.6.5 N/A

13.7 N/A

13.7.1 Identification of Regular, Permanent Employees

- (A) Contractors/employers shall be required to hire and maintain as many TERO Native American preference employees as apply for and are qualified for each craft or skill.
- (B) Notwithstanding subsection A, above, Contractors/employers may hire key employees to fill not more than 25% of the workforce.

(1) Prior to commencing work on the Hoopa Valley Indian Reservation the prospective employer, contractor and sub-contractors shall identify key regular and permanent employees. The TERO Office and contractor/employer in possession of past employment records documenting employment of past supervisors or foreman shall coordinate on certifying eligibility for treatment of employees as key employee.

(2) A key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. A key employee has been on the employers' or contractors' annual payroll for a period of one year continuously in a supervisory capacity, or is an owner of the firm. An employee who is hired on a project-by-project basis shall not be considered a key employee.

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13.7.2 Lay-Offs

No Indian Worker shall be laid off as long as a non-Indian worker in the same craft is still employed, not as long as the Indian meets threshold qualifications for the job, unless such non-Indian has been employed for more than 90 days longer than such Indian. If the contractor lays off by crews, qualified Indians shall be transferred to any crew that will be retained, as long as there are non-Indians in the same craft employed elsewhere on the Reservation under the same contract.

13.7.3 Existing Contracts, Employers

Any existing contracts or other work presently operating under an agreement with the Tribal Employment Rights Office will continue under the same written guidelines and rules. Each employer shall provide to the Commission a list of employees and their Indian affiliation, if any, as part of the implementation of this Ordinance.

13.7.4 Reporting Requirements

Each employer shall submit monthly reports to the Commission on a form provided indicating the number of employees, including a separate tally of Indians, it has on its work force, monthly hires and fires, and other information as may be identified on the form. An employer who fails to submit monthly reports shall be subject to sanctions provided under this Ordinance.

13.8 IMPLEMENTATION

In implementing the requirements of this Ordinance, the Commission may:

13.8.1 Numerical Hiring Goal

Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire.

13.8.2 N/A

13.8.3 Attend and monitor all job interviews as a non-voting participant.

13.8.4 Prohibit an employer from establishing extraneous qualification criteria or other requirements that serve as barriers to Indian employment.

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13.8.5 Enter into agreements, subject to approval by the Hoopa Tribal Council, with unions and other employers to insure compliance with this Ordinance.

13.8.6 N/A

13.8.7 Establish programs to provide counseling and support to Indian Workers to assist them to retain employment. Employers may be required to participate in and/or cooperate with such support and counseling programs.

13.8.8 Issue Permits

Issue permits for implementation and provisions of this Ordinance and other agreements entered into under the authority of this Ordinance.

13.9 ENFORCEMENT BY TERO COMMISSION

In implementing this Ordinance the Commission shall have the following powers of enforcement;

13.9.1 Investigation. Monitoring

To investigate and monitor complaints, concern, and inquiries regarding Indian preference.

13.9.2 Issue Notices of Non-Compliance and Compliance Orders

To issue notices of non-compliance and compliance orders with the Indian preference provisions of this Ordinance and other applicable provisions of this Ordinance.

13.9.3 Citations, Subpoenas and Penalties

To issue citations and subpoenas to employers regarding violations of the Indian preference provisions of this Ordinance, and to impose such civil penalties, including fines, as may be reasonably necessary to remedy the consequences of a violation of the Indian preference provisions this Ordinance or to deter future violations.

13.9.4 Hearings

To hold such hearings as may be necessary to resolve complaints, enforce the

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provisions of this Ordinance, and hear concerns regarding issues pursuant to the Commission's authority under this Ordinance.

13.9.5 File and Defend Cases in Tribal Court

To bring or defend a complaint or other pleading in Tribal Court for enforcement of the Indian preference provisions of this Ordinance, against any employer within the exterior boundaries of the Hoopa Reservation.

13.10 TRIBAL COURT

Appeals of decisions of the TERO Commission may be filed under the rules of the Tribal Court. The Tribal Court is hereby authorized to hear and dispose of appeals from final decisions from TERO Commission hearings. Any appeal from a final decision of the TERO Commission must be filed within twenty (20) calendar days after the date of receipt of the TERO Commission's decision. Any decision not appealed within the required time frame shall become final and the Tribal Court shall have no jurisdiction to hear the appeal.

13.11 LEGAL REPRESENTATION

In carrying out its responsibilities under this Title, the Commission shall consult a legal counsel of its choosing subject to the approval of the Council. Any legal counsel chosen must be admitted in good standing to practice law in the state of California and the Hoopa Valley Tribal Court bar.

13.12 PRINCIPLES OF CONSTRUCTION; SEVERABILITY; SOVEREIGN IMMUNITY PRESERVED

13.12.1 This Ordinance is remedial legislation intended to rectify the long-standing problem of severe under-employment of Hoopa tribal members and other Indians living in the Reservation community. Accordingly, it is to be construed liberally to achieve its purposes. Doubtful issues are to be resolved in favor of a right of any party to obtain administrative review.

13.12.2 If any part of this Ordinance is found to be invalid for any reason, it is the intent of the Council that the remaining provisions remain in force to the maximum extent possible, and that they continue to be construed according to the provisions of this Section.

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13.12.3 Nothing in this Ordinance is to be construed as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, nor as consent by the Tribe to bring an action against the Tribe, its officers, or any of its departments or entities.

13.13 EFFECT OF AMENDMENTS ON PRIOR TERO LEGISLATION AND PENDING CASES

13.13.1 Prior TERO Enactments or Rules: Resolution 91-71A, as amended March 6, 1995, Ordinance No. 2-80, as amended April 27, 1995 are repealed and shall have no further force and effect. The Rules for Hearings before the TERO Commission, as amended June 10, 1998 shall be permitted to be used where they are consistent with the language of this statute by providing uniform rules for hearings when they are authorized under this ordinance. Under no circumstances shall those present rules be considered authority for the TERO Commission to hear employment related grievances other than which is authorized under this statute. The TERO Commission under the authority granted by §13.3 .2(C) shall draft new Rules Before Hearings to effect the most recent amendments to this Ordinance.

13.13.2 All current employee grievances that are not related to termination where the TERO Commission has not issued a final decision shall be dismissed. An employee termination case that has been appealed to tile TERO Commission prior to the date of the Tribal Council transferring employee termination grievances to the Tribal Court shall be heard by the TERO Commission. However, all employee termination cases regardless of whether they are pending before the TERO Commission or before the Tribal Court shall be subject to the requirements of 1 H.V.T.C § 1.1.04(f) as it relates to the Hoopa Valley Tribe's limited waiver of sovereign immunity.

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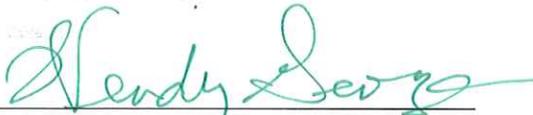
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This **MOU** may be amended by written agreement of the parties, or terminated by either party upon reasonable written notice. In the event of termination, unless otherwise mutually agreed by the parties, the provisions of this **MOU** will remain in force with respect to any contract covered hereunder which has already been awarded or for which contractor performance has already commenced.

The parties hereto have agreed to the objectives, principles, and recitations cited in this document and have further approved this **MOU** for signature by their duly authorized representatives.

for the Hoopa Valley Tribe

By: 

DANIELLE VIGIL-MASTEN

Chairperson

Date: 2/11/15

for the CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: 

CHARLES C. FIELDER

District Director, District 1

Date: January 30, 2015

ATTACHMENT A

Project-Specific Special Provisions For Hoopa Valley Tribe TERO 2015-01 MOU

SPECIAL NOTICE:

- This project includes Tribal Employment Rights Ordinance (TERO) requirements. See section 5-1.20E and 8-1.04C for TERO submittal requirements.

SSP 2-1.06B SUPPLEMENTAL PROJECT INFORMATION

The Department makes the following supplemental project information available:

Supplemental Project Information	
Means	Description
Included in <i>Information Handout</i>	Hoopa Valley Tribe TERO Memorandum of Understanding (MOU) with TERO Highway Construction Permit (THCP) Application

INFORMATION HANDOUT:

Hoopa Valley Tribe TERO Requirements Information Handout contains:

1. Signed one-time MOU between the Hoopa Valley Tribe and the Department.
2. Attachment A project-specific TERO special provisions.
3. Attachment B TERO Highway Construction Permit Application (THCP).

SSP 5-1.20G Tribal Employment Rights Ordinance Requirements:

Complete the Hoopa Valley Tribe TERO Highway Construction Permit (THCP) Application included in the *Information Handout*. Within 5 days after Contract approval, submit the completed application to the tribe and a copy of the submitted application to the Engineer.

Submit the executed THCP to the Engineer within 10 days after you receive it from the tribe.

SSP 8-1.04C:

Use a minimum 45-day delayed start after contract approval.

Do not start job site activities until the Department authorizes or accepts your submittal for:

Signed Hoopa Valley Tribe TERO Highway Construction Permit (THCP)

Do not start other job site activities until all the submittals from the above list are authorized or accepted and the following information is received by the Engineer:

Copy of the Hoopa Valley Tribe TERO Highway Construction Permit (THCP) Application submitted to the tribe.

Hoopa Valley Tribal Council
TRIBAL EMPLOYMENT RIGHTS OFFICE/H.R.

71 Willow St. ~ PO Box 1467 ~ Hoopa, CA 95546
Phone (530) 625-9200 Ext. 14 ~ Fax (530) 625-4269



January 29, 2015

TO: **ALL EMPLOYERS, CONTRACTORS AND/OR SUB-CONTRACTORS**

FROM: Penny L. Cordova, TERO Director

RE: **TERO HIGHWAY CONSTRUCTION PERMIT (THCP) COMPLYING WITH TRIBAL AND FEDERAL EMPLOYMENT LAWS FOR ALL CALTRANS CONTRACTORS AND ITS SUBCONTRACTORS**

The Tribal Employment Rights Office (hereafter "TERO"), on the Hoopa Valley Indian Reservation, has been implemented to assist employers, contractors and/or sub-contractors (hereinafter called "**Employer**") towards meeting the required rules and regulations of the Hoopa Valley Tribal Council, also the employment laws of the U.S. Government.

TERO Highway Construction Permit (THCP): This form is an agreement between the State of California Contractor/Employer and the Hoopa Valley Tribal Council allowing you and your company to conduct employment activity on the Hoopa Valley Indian Reservation and for providing equal employment opportunity. A TERO Highway Construction Permit (THCP) must be completed for each contract your company is awarded within five (5) days after state of California contract approval.

SKILLS BANK: The TERO Office maintains a Indian Skills Bank to assist **Employer** to meet the Indian Preference requirements as identified under the of the TITLE 13 TERO Ordinance, As Amended May 17, 2012 of the Hoopa Valley Tribal Council. Please note: "KEY EMPLOYEES" A key employee is one who is in a top supervisory position or performs a critical function such as that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. A key employee has been on the employer's or contractors' annual payroll for a period of one year continuously in a supervisory capacity, or is an owner of the firm. An employee who is hired on a project by project basis shall not be considered a key employee. (Possessing records of past employment as proof as a supervisor or foreman).

Recruitment of non-Indians shall not take place until the firm receives a written waiver notifying your company that TERO has no "qualified" Native Americans to perform that position or task. A waiver will only be issued for that position/task and the employee cannot be transferred to another position once, that job is done.

By following the above procedures, you and your company can expect an uninterrupted trouble-free contract conclusion.

PLEASE RETURN COMPLETED TERO .01 FORM BEFORE COMMENCING WORK ON THE HOOPA VALLEY INDIAN RESERVATION TO:

Penny L. Cordova, Director
Tribal Employment Rights Office
Post Office Box 1467
Hoopa, California 95546
(530) 625-9200 ext. 14 Office / (530) 625-4269 Fax
Email: hvtero@gmail.com

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IN RE: STATE CONTRACT: 01-0C940
0113000080

Contractor's Name: _____

Mailing Address: _____

City, State and Zip Code: _____

Contact Person: _____ Phone Number: () _____

EMAIL: _____ FAX #:() _____

Contracting with: CALTRANS Amount of Contract Award \$ _____

THIS IS AN AGREEMENT BETWEEN TERO AND EMPLOYER FOR CONDUCTING COMMERCE AND EMPLOYMENT ACTIVITY WITHIN THE EXTERIOR BOUNDARIES OF THE HOOPA VALLEY INDIAN RESERVATION AND HOOPA TRIBAL "LANDS." BETWEEN THE HOOPA VALLEY TRIBAL COUNCIL AND _____ (EMPLOYER/ CONTRACTOR (Hereafter "EMPLOYER").

Whereas, this agreement is entered into on this ____ day of _____, 20____; Between TERO and (Employer).

- 1. **EMPLOYER:** We hereby agree to comply with the requirements and procedures for the selection of contractors, sub-contractors and recruitment of viable Indian applicants, through TERO.

TERO shall receive notice, in the form of copies of bid forms by awarded prime **Employer** seeking bids of all sub-contract work to be conducted on the Hoopa Valley Indian Reservation. Notice shall be made reasonably in advance of any award, but not later than five (5) days in advance of an award.

The above-named **Employer** understands that they are required to comply with the Hoopa Valley Tribal Council's TERO Ordinance, as amended May 17, 2012 (**All of the parameters regarding "Indian Preference." as per Section #**)

- 2. **EMPLOYMENT PRIORITY: Hiring preferences shall be as follows per Section 13.4, (Section 13.4.1 through 13.4.6 of the TERO Ordinance – NOT APPLICABLE):**

For those claiming "Indian Preference" that are not Hoopa Tribal Members, the burden of proof to show verification of their enrollment in a Federally Recognized Tribe is upon them.

A "non-Indian" will not be allowed to be recruited, until the TERO Skills Bank has been totally exhausted, or a job description presented to TERO by the **Employer** cannot be met through the Skills Bank. (**See Section 13.4 of the TERO Ordinance.**) A "non-Indian" shall not be hired until that **Employer** has been issued a written waiver from TERO stating that there are no qualified Native Americans available, therefore authorizing them to hire a "non-Indian" for that specific position. (Note: The waiver does not authorize the "non-Indian" to be transferred to other positions that become available unless a new "waiver" has been obtained by the Employer from TERO.) An **Employer** failing to abide with the TERO Ordinance could be charged with alleged discrimination.

For purposes of this agreement, pre-employment standards are those directly job related, standards toward fairness and ability which express with a reasonable amount of job training an individual would be capable of satisfactorily performing an entry level job; moreover, could progress with reasonable further guidance and training. This provision would apply to those persons who at the time of application for employment, are not fully experienced for the available position, but does possess those threshold requirements and general potential for becoming qualified through reasonable training.

3. **PRE-EMPLOYMENT STANDARDS:** Employer may not use qualification criterion or other personnel requirements which serve as barriers to local Indians or Indian employment, except only where such criteria is a requirement by business necessity. However, employer and/or contractor/sub-contractor shall have the responsibility and burden to show proof that such a criterion or requirement is truly a business necessity. (B.F.O.Q., must be a Bonafide Occupational Qualification).
4. **TRAINING:** Employer agrees that all local Indians and Indian employees will be adequately trained for the position for which they were hired. All Indian employees shall be evaluated and receive identical treatment as company/firm compensates other hires. **(See Section 13.8. of the TERO Ordinance)**
5. **DISCRIMINATION:** There shall be no discrimination in any aspect of employment related activity, equitability shall prevail; discrimination in the workplace on the basis of race, creed, color, age, sex, national origin or religion is totally unlawful.
6. **EMPLOYMENT GOALS:** (Entire issue depends on TERO Skills Bank)
 - A. **Employer** agrees that 75 % of all employees in its workforce shall be filled by local Indians as per Section 13.4.4 of the TERO Ordinance, as Amended May 17, 2012. At the end of one (1) year from the date of this agreement; this provision shall be reviewed and renegotiated or a new THCP has been obtained for a new contract.
 - B. If **Employer** is unable to reach the 75% employment goal as set forth above (A), it shall have the burden of justifying the rejection of every Indian applicant for any positions which became available to substantiate that criterion utilized in the recruitment process toward validity and being relevant to tasks performed, specifically the precise good faith efforts which the **Employer** had taken for pursuing the required goal.
 - C. **Monthly reports** are required for monitoring purposes; the data is not only a TERO compliance issue but coincides with federal employment statutes (EEOC-OFCCP). (Monthly Report Forms available at TERO Office.)
7. **TERO TAX FEE:** This TERO tax fee is to be paid to the TERO Commission by each CALTRANS, and/or by each **Employer** operating within the exterior boundaries of the Hoopa Valley Indian Reservation whose total contract and/or annual gross revenues is \$1,000.00 or more. The tax shall be equivalent to three percent (3%) of the total gross value of any contract performed within the Reservation or of the total annual gross revenues. **(See Section 13.5 of the Title 13 TERO Ordinance, as Amended May 17, 2012.)**
8. **COMPLIANCE INSPECTIONS:** The Director of TERO or staff shall make periodic or site visitations for assurance to all involved parties that employment rules are adhered to. **(See Section 13.9 of the TERO Ordinance)**
9. **MAINTAINING EMPLOYMENT RECORDS:** **Employer** shall maintain accurate employment records on all employees and all applicants for employment; regardless of length and category of employment, hired, fired, or laid-off. The files shall reflect: name, address and employment category for which applicant performed or applied to perform. If applicant was contacted but not hired, hired and fired, all data should reflect action taken by that firm. Such informational records shall be made available to the Director of TERO, upon reasonable notice.
10. **ASSISTANCE:** If an **Employer** deems that an Indian employee's performance is such that he or she is jeopardizing and endangering job loss, suspension, termination. **Employer** may contact TERO to provide assistance toward resolving of that issue.
11. **UNIONS:**

- A. Pursuant to congressional intent of the Indian Self-Determination and Education Assistance Act [P.L. (93-638) at Section 7(b)] Indian preference in employment and training shall prevail in all employment activity, within the boundaries of the Hoopa Valley Indian Reservation.
- B. Therefore **Employer** hereby agree to request all involved affiliated firms, mirror Indian preference priority, in all aspects of employment.

12. **EMPLOYMENT POLICIES AND PROCEDURES:** It is further understood that **Employer** recognizes that its operations are taking place within a unique cultural setting on the Hoopa Valley Indian Reservation. Accordingly, all firms in conjunction with the Director of TERO, consider seriously Tribal Holidays, and ceremonial customs; and to accommodate those Indian employees requesting certain leave of absences for religious purposes.

13. **CURTAILMENT:** Curtailment regarding Indian preference, local Indians and Indians shall be the last employees to be laid-off. This reference is made outside of core crew positions, this is to say where Indians meet threshold requirements for a given position.

14. **PRE-AWARD LABOR FORCE PROJECTION**

Contractor and/or Sub-Contractor (Firm Name)	Telephone Number
Name of Project	Contract Number

Briefly describe the basic tasks and type of work to be performed: _____

Please list types of skills and categories which will be required towards performing said contract.

- | | |
|----------|-----------|
| 1. _____ | 7. _____ |
| 2. _____ | 8. _____ |
| 3. _____ | 9. _____ |
| 4. _____ | 10. _____ |
| 5. _____ | 11. _____ |
| 6. _____ | 12. _____ |

Indian preference shall be accorded at every Tier Level. Please list the names and positions of your Key Staff per Section 13.7.1 of Title 13 TERO Ordinance, As amended November 23, 2011. The key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to one person unknown to the employer.

NAME	JOB TITLE
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needed Supervisors, that you depend on every day. All other people needed on this job will go through the TERO Skills Bank. (See Sections 13.4 and 13.7.1 of the Hoopa Valley Tribe's Title 13 TERO Ordinance, as amended May 17, 2012

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

(Please utilize as many sheets necessary for expressing your on-site employment related projection.)

15. DURATION: This agreement shall remain in effect for a period of one year from the date signed by TERO Director below:

Date

Owner/Representative's Signature

EFFECTIVE DATE

Signature of TERO Director

COMMENTS: _____

