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KARUK TRIBE

Tribal Employment Rights Ordinance and Workforce Protection Act

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Tribal Employment Rights Ordinance and Workforce Protection Act

SECTION 1 - General Provisions

Section 1.1 Short Title

This Act shall be known as the Karuk Tribe Workforce Protection Act of 2014. ("WPA").

Section 1.2 Authority

The Karuk Tribal Council in recognition of the Dignity and Respect owed to all Peoples and of the need to protect and treat fairly all employees working on behalf of the Tribe and its affiliated tribal entities, hereby enacts the Karuk Tribe Workforce Protection Act of 2014. This Act, where applicable, shall exclusively govern, prescribe, and enforce the rights and obligations of the Karuk Tribe and its employees and the rights and obligations of nontribal employers and their employees while working for or on behalf of the Karuk Tribe.

This Act is created pursuant to the Karuk Tribe's sovereign authority, as a federally recognized Indian Tribe, to control and govern its internal affairs. Accordingly, it is the express intent of the Karuk Tribal Council to maintain the full extent of its sovereignty, and no provision under this Act shall be construed as a waiver of that Sovereignty.

Section1.3 Effective Date

This Act shall become effective sixty (60) days after approval by the Karuk Tribal Council.

SECTION 2 - Administration of TERO Ordinance

Section 2.1 The TERO Commission

(a) Establishment. There is hereby created a Tribal Employment Rights Commission.

(b) Number, Tenure, Nomination and Qualifications of the Commissioners. The Board shall consist of six (6) Commissioners. A Commissioner shall be a person of at least twenty-one (21) years of age, and a majority of the Commissioners shall be enrolled Tribal Members. No employee of the TERO Office and no owner or employee of a Certified Business shall be eligible to serve on the Commission. The Tribal Council shall designate two (2) Tribal Council members as its representatives on the TERO Commission; the designated Tribal Council representatives shall serve for the duration of their term unless removed by the Tribal Council prior to completing their term. All other Commissioners shall be appointed by the Tribal Council for staggered four (4) year terms, and each Commissioner appointed shall hold office until such Commissioner's successor is appointed. Commissioners shall be from each tribal district when possible.

(c) Vacancies; Removal. Any vacancy occurring in the Commission due to the removal or resignation of a Commissioner shall be filled by the Tribal Council in a manner prescribed by the Tribal Council following the advertisement of the position. Any Commissioner may be removed from office at any time by the Tribal Council for cause, subject to notice and opportunity for a hearing before the Council. Upon a Commissioner's resignation, death, or disability, the Tribal Council shall act to fill the position. If the vacancy was left by a Commissioner who was a designated Tribal Council member, then such vacancy must be filled with a new Tribal Council member.

(d) Conflicts of Interest. Situations which result in actual or even potential conflicts of interest must be avoided. Personal, social and economic relationships which may impair a Commissioner's ability to exercise good judgment on behalf of the Tribe, or which give the appearance of such impairment, create an actual or potential conflict of interest. Any Commissioner involved in such a relationship must immediately and fully disclose the nature of the relationship to the full Commission so a determination can be made as to whether an actual or potential conflict exists, and if so, how to correct the situation.

(e) Compensation. Commissioners shall receive a stipend for the following purposes as consideration for their time in conducting Karuk Tribal business, when funds exist.

1) Regular and Special Meetings of the TERO Commission,

2) Attendance at off-site meetings when attending on behalf of the TERO Commission,

3) Participation as a panel member for interviews,

4) Required Hearings of the TERO Commission,

5) Attendance at Training Sessions on behalf of the TERO Commission.

(f) Mileage. Commissioners shall be reimbursed in accordance with current Federal reimbursement rates for privately owned vehicle use to conduct TERO business based upon the shortest route to the destination, when funds exist.

Section 2.2 Powers and Duties of Commission

The TERO Commission shall report directly to the Tribal Council. The TERO Commission shall have the following powers and duties:

(a) To develop an annual operating budget for the necessary implementation and enforcement of this Act.

(b) To hire staff; to secure and obligate funding from the Tribal Council and all other sources as necessary to carry out its duties.

(c) To issue rules, regulations, interpretations, and guidelines for Indian preference as is necessary to implement and enforce this Act. Such rules and regulations shall become effective upon written approval of the Tribal Council.

(d) To establish a Tribal Skills Bank as a means of providing qualified Indian employees to employers doing business with the Tribe.

(e) To certify Karuk Indian Firms, for purposes of Indian preference, minority business contract eligibility, and other purposes.

(f) To ensure that that all employers doing business with the Tribe are registered with the TERO Office. To be registered, a business must have an Indian Preference plan.

(g) To investigate complaints regarding any violation of this Act. The Commission shall also investigate possible violations on its own initiative

(h) To hold hearings on and determine any matter under its authority, including hearings necessary to the issuance, modification, and revocation of any permit or license, as well as any hearing regarding violations of this Act. The Commission shall develop procedures to govern its hearings, and is authorized to issue compliance orders and sanctions for violations of this Act.

(i) To enter into cooperative agreements with state and federal agencies in order to implement the intent of this Act. Any such agreements must be approved by Tribal Council prior to taking effect.

(j) To establish policies and procedures governing all activities of the TERO Commission and the TERO Office,

(k) To hold public hearings on tribal employment rights issues.

(l) To hold hearings to adjudicate complaints and appeals from the actions of the TERO Director using the procedures set forth in this Act.

Section 2.3 Establishment of the TERO Office

(a) Establishment. There is hereby created a Tribal Employment Rights Office. The TERO Director shall oversee this Office.

(b) Supervision. The Tribal Chairperson shall have supervisory authority to direct the TERO Director with respect to administrative duties.

(c) Qualifications. The TERO Director shall have such administrative ability, education, and training as the Tribal Council determines, with advice from the TERO Commission.

Section 2.4 Powers and Duties of the TERO Office

The TERO Director shall have the authority to carry out the day-to-day operations of the TERO Office, to enforce this Act, and to employ and supervise staff of the TERO Office and such other authority as is convenient or necessary to the efficient administration of this Act.

In addition, the TERO Director shall have the following powers and duties:

(a) To establish procedures, forms and internal policies necessary to carry out the purposes of this Act;

(b) To maintain a current list of Certified Indian Owned Businesses;

(c) To coordinate training and mentorship programs for Tribal Members, Indians, and Certified Businesses;

(d) To hire staff; to secure and obligate funding from the Tribal Council and all other sources as necessary to carry out the duties of the TERO Director.

(e) To maintain a Tribal Skills Bank;

(f) To investigate complaints alleging violations of this Act;

(g) To make recommendations to the TERO Commission regarding issuance of orders and assessments of penalties to remedy violations of this Act, and to represent the TERO Office at hearings and appeals before the TERO Commission, any court or other adjudicatory body, and any proceedings before the Tribal Council; and

(h) To ensure that the TERO Fee is assessed and recovered on applicable contracts.

Section 2.5: Tribal Employment Rights Fee

A tribal employment rights fee is imposed as follows:

(a) Employers. Every employer with a contract or agreement in the amount of $2,500.00 or more shall pay a fee of two percent (2%) of the total amount of the contract, regardless of where the work is performed. This applies to all employers doing business with the Tribe or one of its affiliated tribal entities. The Tribal Council at its discretion may exempt an employer from this requirement.

(b) Non-Tribal Businesses on Tribal Lands. All non-tribal businesses with a place of business on tribal lands and annual net income shall pay an annual fee of two percent (2%) of annual net income to the TERO Office.

Section 2.6: Fee Collection and Expenditure

The TERO fee shall be collected by the Tribe's Fiscal Department and credited to the TERO Account.

Section 2.7 Certification of Businesses

(a)Business Categories

An applicant may seek to be certified for preference in one of the following two categories:

(1) *Tribal Business*. A Tribal Entity must own, operate, manage and control 100% of the day-to-day operations of the business.
(2) *Tribal Member Business*. Enrolled Karuk Tribal Members must own, operate, manage and control at least 51% of the day-to-day management and operations of the business.

(b) Requirements for Certification

The TERO Office will evaluate the application for certification based on factors, including, but not limited to, the following:

(1) *Ownership*

The firm must be 51% or more enrolled Karuk Tribal Member-owned. The applicant must demonstrate the following:

(a) Formal Ownership. That the enrolled Karuk Tribal Member own(s) 51% or more of the partnership, corporation, or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's Originating documents, such as its stock ownership or partnership agreement. Ownership includes:

(b) Assets. The enrolled Karuk Tribal Member owns 51% or more of the assets and equipment, will receive 51% or more of the firm's assets upon dissolution, and will receive 51% or more of the profits, and interest.

(c) Control. The enrolled Karuk Tribal Member's 51% or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.

(d) Value. The enrolled Karuk Tribal Member provided real value for his or her 51% or more ownership by providing capital, equipment, real property, or similar assets commensurate with the value of his or her ownership share. It will not be considered "real value" if the enrolled Karuk Tribal Member purchased his or her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Karuk Tribal Member owner of the firm

or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the enrolled Karuk Tribal Member brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there was no Tribal preference program in existence. Where the enrolled Karuk Tribal Member participant can demonstrate that he or she could not pay good value for his or her 51% or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian, that person may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the enrolled Karuk Tribal Member participant clearly is at risk in the business in relationship to his or her means.

(e) Profit. The enrolled Karuk Tribal Member owner(s) will receive 51% or more of all profits. If there is any provision that gives the non-Karuk owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that enrolled Karuk Tribal Member owners receive 51% or more of the profits.

(2) *Management and Control*

The firm must be under significant Indian management and control. The firm must be able to demonstrate that: one or more of the Indian owners must be substantially involved, as a senior level

official, in the day-to-day management of the firm as his or her primary employment activity.

The Indian owner does not have to be the "Chief Executive Officer."

However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm's activities to be accountable to the Tribe for the firm's activities.

This provision may be waived when:

(a) The firm is 100% Indian owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the Tribe's service area, and the majority of employees are Indian; or

(b) The firm is modeled on a publicly-held corporation such that it is owned by 10 or more persons, is at least 70% Indian-owned, the Chief Executive Officer and the highest-salaried employee in the firm is/are Indian, and a majority of the employees are Indian.

(3) Integrity of Structure

There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the TERO will consider the factors set out below. The TERO shall exercise broad discretion in applying these criteria in order to

preserve the integrity of the Indian preference program and in questionable cases shall deny certification.

(a) History of the Firm: Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Tribal preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non-Indian owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Indian firm.

(b) Employees: Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant. Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

(c) Relative Experience and Resources: Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm other than to be able to take advantage of the Indian preference program.

(4) Brokers

Brokers will be certified only if they are dealers who own, operate, or maintain a store, warehouse, or other establishment in which the

commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business; provided, that this requirement shall not apply where the applicant demonstrates that it is customary and usual in the area of trade for a broker/dealer not to maintain an establishment and to keep the commodities in stock.

(5) Manufacturing Companies

In determining whether or not a manufacturing firm is 51% Indian-owned and controlled, the Commission shall be guided by the Small Business Administration Standard Operating Procedures on certifying firms as eligible for the 8(a) program.

Section 2.8 Application Procedures

(a) Application for Certification: A business seeking certification as a Certified Business or registration for a particular category of business shall submit a completed application to the TERO Office on a form provided by the TERO Office.

(b) Issuance of Certification: The TERO Director shall exercise broad discretion in reviewing the application and supporting documents in order to preserve the integrity of the Tribal preference program. If the TERO Director has any question as to the applicant's fulfillment of one of the requirements, the TERO Director may deny the application and refuse to submit the application to the TERO Commission for final approval.

(c) Appeal of Denial of Application: The applicant may request a hearing before the TERO Commission to appeal a denial of an application. The principal(s) of the business shall be present at the hearing and shall have the opportunity to present evidence in support of their case. The decision of the TERO Commission shall be final and binding and not subject to any further appeal.

(d) Businesses Certified Prior to the Adoption of these Criteria:

(1) Each business granted Tribal preference certification by the Tribe prior to the effective date of this Act shall submit a new application to the TERO Office within ninety (90) days to be recertified. If the TERO Director denies recertification, the business may appeal the decision to the TERO Commission.

(2) Change in Status and Annual Updates: Each Certified Business shall be in compliance with all certification requirements at all times during the solicitation, evaluation, and awarding of contracts and shall report in writing to the TERO Office any changes in its responses to the certification application and/or supporting documents within sixty (60) days after such changes have occurred. Each Certified Business shall update the information provided in its initial application paperwork on an annual basis.

Section 2.9 Withdrawal of Certification

(a) Initiation of Proceedings: The TERO Director may initiate proceedings to withdraw or suspend the certification of any businesses as warranted. The TERO Director shall provide written notice to the business that its Certification is being re-evaluated. The business shall have ten (10) days in which to respond and provide additional documentation.

(b) Finding: The TERO Director shall prepare a Recommendation to the TERO Commission regarding whether the business continues to meet the eligibility requirements for certification and make a determination of withdrawal or suspension of certification based on the available information. The Recommendation shall be submitted to the TERO Commission

for a final determination. The TERO Commission shall provide the business a written notice of its decision.

(c) Request for Reconsideration: Upon receiving the Notice of Decision from the TERO Commission, a business shall have ten (10) days in which to make a request that the Commission reconsider its decision. To be considered, any Request for Reconsideration must be accompanied by additional evidence not already before the Commission.

SECTION 3 - Indian Preference

Section 3.1 Findings and Intent

A principal goal of the Karuk Tribe is to promote the general welfare of all Karuk people by providing employment preference to tribal members and their descendants.

It shall be the policy of the Tribe to affect a program of preferential treatment for Karuk Tribal Members, their descendants, Indians, and enterprises which are owned and controlled by Tribal Members and/or Indians in order to:

(a) Provide employment opportunities for Tribal Members, Enrolled Descendant Tribal Members, and Indians,

(b) Promote sound and productive free enterprise,

(c) Provide maximum contracting and subcontracting opportunities for enterprises which are owned and controlled by Tribal Members and/or Indians, and

(d) Provide the Tribe quality goods and services that are fair, reasonable and cost effective.

Section 3.2 Hiring Preference in Employment

(a) All Employers working for or on behalf of the Karuk Tribe and its affiliated Tribal Entities must follow these hiring preferences:

(1) In the event that more than one applicant meets the threshold for a position as defined in this Act, preference shall be given in the following order:

(a) Enrolled Karuk Tribal Member

(b) Enrolled Karuk Descendent Member

(c) Spouse of an Enrolled Karuk Tribal Member or Parent of a Enrolled Karuk Tribal Member who is under the age of 18.

(d) Enrolled Member of another Federally Recognized Tribe.

(e) Veterans

(f) Non-Indian

(2) In the event that a position of employment is funded in whole or in part by any federal grant and/or contract or other public funding where Tribal Preference is not allowed, preference shall be given to Indians over Non-Indians.

(c) Job Qualifications and Business Necessity. No employer shall use any threshold, job qualification criteria, or other personnel requirements that serve as barriers to Tribal Preference in

employment, as determined by TERO, unless the Employer can demonstrate that such criteria or requirements are required by business necessity.

Section 3.3 Preference for Indian Owned Business

All employers shall give preference to certified Indian owned businesses. If there are no qualified certified Indian owned businesses, then a non-Indian owned business may be used.

SECTION 4 - Fair Employment

Section 4.1 Findings and Intent

The Tribal Council finds the following:

(a) The practice of unfair discrimination in employment against properly qualified individuals by reason of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard, or any other reserve component of the military forces of the United States adversely affects the welfare of our Tribal community and deprives those individuals of the earnings that are necessary to maintain a just and decent standard of living;

(b) It is the intent of the Tribal Council to prohibit by law unfair discrimination in employment on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the National Guard, or any other reserve component of the military forces of the United States.

Section 4.2 Prohibited Bases of Discrimination

No employer, labor organization, employment agency, licensing agency or other person may engage in any act of employment discrimination against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States. "It shall not be employment discrimination based on conviction record to preclude certain Tribal employment positions from being filled by persons with certain criminal convictions pursuant to applicable Tribal or federal law."

Section 4.3 Actions Prohibited

It is an act of employment discrimination to do any of the following:

(a) To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of any basis enumerated in Section 4.1 – 4.2.

(b) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which implies or expresses any limitation, specification or discrimination with respect to an individual or any intent to make such limitation, specification or discrimination because of any basis enumerated in Section 4.1 – 4.2.

(c) To discharge, demote, suspend, threaten, harass, or otherwise discriminate against any individual because of any of the following:

(1) The individual files a complaint or attempts to enforce his or her rights under this Act or under any other tribal or applicable federal or state law;

(2) The individual testifies or assists in any action or proceeding under this Act or any other tribal or applicable federal or state law;

(3) The individual, as required by his or her profession, reports in good faith a violation of tribal or applicable federal or state law.

(4) The individual's employer believes that the individual has engaged in the acts described in subparagraphs (1), (2), or (3);

Section 4.4 Age; Exceptions and Special Cases

(a) The prohibition against employment discrimination on the basis of age applies only to discrimination against an individual who is age 40 or over.

(b) Notwithstanding, it is not employment discrimination because of age to do any of the following:

(1) To terminate the employment of any employee physically or otherwise unable to perform his or her duties.

(2) To implement the provisions of any retirement plan or system of any employer if the retirement plan or system is not a

subterfuge to evade the purposes of this Act. No plan or system may excuse the failure to hire, or require or permit the involuntary retirement of, any individual under sub. (a) because of that individual's age.

(3) To apply varying insurance coverage according to an employee's age.

(4) To exercise an age distinction with respect to employment in which the employee is exposed to physical danger or hazard, including, without limitation because of enumeration, certain employment in law enforcement or firefighting.

Section 4.5 Religion; Creed; Exceptions and Special Cases

Employment discrimination because of a religious creed includes, but is not limited to, refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.

Section 4.6 Disability; Exceptions and Special Cases

(a) Employment discrimination because of disability includes, but is not limited to:

(1) Contributing a lesser amount to the fringe benefits, including life or disability insurance coverage, of any employee because of the employee's disability; or

(2) Refusing to reasonably accommodate an employee's or prospective employee's disability unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise or business.

Section 4.7 Marital Status; Exceptions and Special Cases

It is not employment discrimination because of marital status to prohibit an individual from directly supervising or being directly supervised by his or her spouse.

Section 4.8 Sex, Sexual Orientation; Exceptions and Special Cases

(a) Employment discrimination because of sex includes, but is not limited to, any of the following actions by any employer, labor organization, employment agency, licensing agency or other person:

(1) Discriminating against any individual in promotion, compensation paid for equal or substantially similar work, or in terms, conditions or privileges of employment or licensing on the basis of sex where sex is not a bona fide occupational qualification.

(2) Engaging in sexual harassment; or implicitly or explicitly making or permitting acquiescence in or submission to sexual harassment a term or condition of employment; or making or permitting acquiescence in, submission to or rejection of sexual harassment the basis or any part of the basis for any employment decision affecting an employee, other than an employment decision that is disciplinary action against an employee for engaging in sexual harassment in violation of this paragraph; or permitting sexual harassment to have the purpose or effect of substantially interfering with an employee's work performance or of creating an intimidating, hostile or offensive work environment. Under this paragraph, substantial interference with an employee's work

performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.

(3) Engaging in harassment that consists of unwelcome verbal or physical conduct directed at another individual because of that individual's gender, other than the conduct described in par. (2), and that has the purpose or effect of creating an intimidating, hostile or offensive work environment or has the purpose or effect of substantially interfering with that individual's work performance. Under this paragraph, substantial interference with an employee's work performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.

(4) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave or related medical conditions by engaging in any of the actions prohibited under this Section, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability.

(5) For any employer, labor organization, licensing agency or employment agency or other person to refuse to hire, employ, admit or license, or to bar or terminate from employment, membership or licensure any individual, or to discriminate

against an individual in promotion, compensation or in terms, conditions or privileges of employment because of the individual's sexual orientation; or

(6) For any employer, labor organization, licensing agency or employment agency or other person to discharge or otherwise discriminate against any person because he or she has opposed any discriminatory practices under this paragraph or because he or she has made a complaint, testified or assisted in any proceeding under this paragraph.

(7) For purposes of sexual harassment claims, an employer, labor organization, employment agency or licensing agency is presumed liable for an act of sexual harassment by that employer, labor organization, employment agency or licensing agency or by any of its employees or members, if the act occurs while the complaining employee is at his or her place of employment or is performing duties relating to his or her employment, if the complaining employee informs the employer, labor organization, employment agency or licensing agency of the act, and if the employer, labor organization, employment agency or licensing agency fails to take appropriate action within a reasonable time.

SECTION 5 - Family Medical Leave Act

The Karuk Tribe meets or exceeds federal law provisions for family, medical and pregnancy disability leaves. The Tribe grants leave benefits only to the extent required by law.

SECTION 6 - Right to Work & Union Membership

Section 6.1 Declaration of policy

It is hereby declared to be the public policy of the Tribe that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. (Tribal Casino & Hotel excluded.)

Section 6.2 Agreement to deny right to work on account of membership or non-membership in labor union prohibited

Any agreement between any Employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said Employer, or whereby such membership is made a condition of employment or continuation of employment by such Employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy and illegal.

Section 6.3 Employers not to require union membership as condition of employment

No person shall be required by an Employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

Section 6.4 Employers not to require abstention from union membership as condition of employment

No person shall be required by an Employer to abstain or refrain from membership or holding office in any labor union or labor organization as a condition of employment or continuation of employment.

Section 6.5 Employer not to require payment of union dues, etc., as condition of employment

No Employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

SECTION 7 - Complaints and Enforcement

Section 7.1 Grievance Procedures

(a) The Karuk Tribe, its affiliated tribal entities, and all nontribal employers doing business with the Tribe shall have grievance procedures to handle disputes between the employer and its employees. Employers shall disclose information regarding any employment grievances to the TERO Office.

(b) An employee must exhaust all administrative remedies with their employer prior to filing a complaint against the employer with the TERO Office.

(c) Reviews of grievances against an employer by the TERO Office will be limited to the following:

(1) Violations of the Workforce Protection Act;

(2) Violations of employer's protest procedures for failure to review a complaint or protest that is covered by the Workforce Protection Act.

Section 7.2 Complaint

(a) Any employee who believes that an employer has violated their rights, as protected by this Act, may file a written complaint with the TERO Office.

(b) SIGNED WRITTEN COMPLAINT. After exhausting all administrative remedies available, the employee shall file with the TERO Director, a signed written complaint stating with particularity the violation alleged, and the factual basis supporting such allegation. The complaint must be in written form and must be signed by the employee.

The complaint, at a minimum, must contain the following required statement: "*I, (employee's name), believe that the following violation has occurred: claimed violation and factual basis in support of the claim. I believe that I have exhausted all administrative remedies available to me and that my only remaining recourse is to bring this matter to the TERO Office.*"

The complaint shall be filed within ten (10) days after the employee's receipt of notice of exhaustion of all administrative remedies.

(c) Any person, organization, or entity who believes that an action by the TERO Office is in excess of the authority granted by this Act or is otherwise in violation of Tribal law may file a signed written complaint with the TERO Commission. The complaint must be filed no later than ten (10) days from the date of the action (or omission) upon which the complaint is based.

Section 7.3 Jurisdiction

The TERO Director shall review the Complaint to determine whether the following jurisdictional requirements have been met:

(1) the employee has met the filing deadline; and

(2) the facts as stated allege a violation of the Workforce Protection Act.

If the employee has not satisfied the jurisdictional requirements, the TERO Director shall dismiss the complaint and issue a written notice to the Parties.

Section 7.4 Investigation

(a) *Response Required.* Once jurisdiction is determined, the TERO Director shall provide a copy of the Complaint to the employer who shall have ten (10) business days to prepare a written response to the Complaint setting forth all relevant facts with supporting documentation and any actions taken to resolve the dispute. Upon receipt of the employer's Response, the TERO Director shall ensure the record is complete. If there is insufficient documentation received from the employee and/or the employer, the TERO Director shall request that the parties provide additional information as necessary.

(b) *Scope and Procedure.* No later than thirty (30) days after receiving the employer's written Response, the TERO Director shall make such investigations as is necessary to determine whether the employer has violated any provision of this Act. Upon reasonable notice to the employer, TERO employees shall have the authority to inspect and copy all relevant records, to interview employees, and to engage in similar investigatory activities. All information collected by the TERO Office shall be kept confidential when possible.

(c) *Refusal to Cooperate.* If an employer refuses to cooperate with an investigation, the matter shall be referred to the TERO Commission for further proceedings.

(d) *Initial Determination.* If the TERO Director finds insufficient evidence to establish that a violation occurred, the Complaint shall be dismissed. If there is sufficient evidence to determine that a violation occurred, the TERO Director shall state the specific violations and the basis for the findings. This shall be in the form of a written report provided to both Parties.

(e) *Voluntary Compliance.* Upon determining that a violation has occurred, the TERO Director shall contact the employer to achieve voluntary compliance with the Act. Compliance by the employer may include, but is not limited to, (1) agreement to change the employer's policies or procedures; (2) where possible, reversing the action that is the subject of the complaint; or (3) disciplinary action against the employees responsible for causing the violation.

(f) *Issuance of Noncompliance Order.* If the Parties are unable to resolve the dispute, the TERO Director shall issue a Noncompliance Order. The Noncompliance Order shall set forth in writing the nature of the violations; the penalties, sanctions, and remedies necessary to achieve compliance with the Act. The order shall provide that the employer shall either comply with or appeal the Order to the TERO Commission within thirty (30) days of the effective date of the Order. If the TERO Director has reason to believe that irreparable harm would result, the TERO Director may require that compliance occur within a shorter amount of time.

(g) *Failure to Comply.* If the employer fails to or refuses to comply and has not appealed the noncompliance order to the

Commission within the thirty (30) day period, the employer shall lose all rights to challenge or appeal the Order thereafter.

(h) *Service.* Service of any documents required under this Act shall be sufficient if accomplished by personal delivery, electronic mail, or regular U.S. mail.

Section 7.5 Appeals to the TERO Commission

Any employer that is affected by an Order of the TERO Office/Director or an employee that is affected by the closing of a Complaint may appeal to the TERO Commission. The Party shall have ten (10) days from the date the Order is issued to file a Notice of Appeal. The Notice of Appeal shall be submitted in writing to the Commission and shall state the reasons upon which the Appeal is based. The Commission shall issue a written notice of hearing to the employer and employee, and require the opposing party to respond to the appeal at a hearing before the Commission. The hearing shall be held within a reasonable amount of time, but in no event shall a hearing be held sooner than thirty (30) days after the Notice of Appeal is filed.

Section 7.6 Appeal Hearing Procedures

The TERO Commission shall serve as the hearing body for all appeals brought before them. Administrative hearings shall be held in accordance with the following procedures:

(a) *Recusal by Commissioners*

Any TERO commissioner who has a conflict of interest with respect to a complaint before the Commission shall disclose the conflict to the other Commissioners and be recused from participating in any matters related to the complaint. In the event

that the TERO Commission loses a quorum due to conflicts of interest, the Commission shall request that the Tribal Council appoint one or more disinterested individuals to make a quorum.

(b) *Communication*

Parties to an action before the Commission shall have no communication, written or otherwise, with members of the TERO Commission regarding their case. Any such communication shall be reported in writing to the Tribal Council, so that appropriate action may be taken, including disqualification of the party from participation in the proceedings.

(c) *Review of TERO Files*

Any party to an appeal shall have the right to review the case file by scheduling a visit to the TERO Office during regular working hours. The TERO Director shall have the right to redact proprietary information, the identities of confidential informants or other confidential information from the file.

(d) *Disclosure of Witnesses*

The TERO Director and all parties to the action shall provide to the other parties a list of witnesses no later than five (5) business days prior to the date set for hearing. A copy of the witness list, the approximate length of their testimony, the subject matter and relevance of their testimony shall also be included in this disclosure. Parties failing to provide this information shall be subject to sanctions by the TERO Commission. If the TERO Commission determines that additional witnesses are necessary, the TERO Commission will provide a list of the additional

witnesses needed to all parties no later than two (2) business days prior to the date set for the hearing.

(e) *Disclosure of Documents*

The TERO Director and all parties to the action shall provide to the other parties a copy of all documents to be used at the hearing as soon as possible, but no later than ten (10) business days prior to the date set for hearing.

(f) *Continuances*

Any request for a continuance must be submitted in writing to the TERO Commission Chairperson no fewer than three (3) business days prior to the hearing. If all parties agree, a request for a continuance may be submitted at any time.

(g) *Conduct of Hearings*

1) Hearings shall be closed to the general public. Attendance shall be limited to the parties and their representatives;

2) The Chair shall preside over the hearing and begin the proceedings by reading the allegations of the complaint into the official record;

3) Witnesses shall be excluded from the hearing until such time as they are called upon to testify. Witnesses will be placed under oath by the Chair prior to testifying;

4) The TERO Director and each party to the action may give an opening statement;

5) The TERO Director and each party to the action may call witnesses and submit evidence in support of their position;

6) The TERO Director and each party to the action will have an opportunity to cross-examine opposing witnesses;

7) No party will be allowed to introduce evidence without first providing a foundational basis for that evidence.

8) The TERO Commission need not strictly adhere to the rules of evidence, but shall strive to ensure that due process is afforded to all parties to the action;

9) The TERO Director and each party to the action may give a closing statement.

10) The standard of proof shall be by the preponderance of the evidence.

11) The TERO Commission shall convene in closed session to deliberate. All Commissioners, including the Chairperson, will be entitled to vote on the appeal. The final order of the TERO Commission shall be made public.

(h) *Legal Representation*

It is the desire of the Tribe that disputes under this Act should, when possible, be resolved without the need for legal counsel. However, any party to the action may be represented by legal counsel at his or her own expense.

Section 7.7 Disposition of Complaints and Remedies

(a) The Commission shall serve a copy of its Order on all parties to the action after the hearing.

(b) The Commission may grant such relief as justice requires, which may include the following; provided, that the Commission may not assess total monetary penalties or remedies in excess of the total amount of monetary penalties or

damages issued by the TERO Director in the written noncompliance order, except for justified adjustments in back and/or front pay or costs of reimbursement amounts:

1. If practical, order the employer to hire the employee if the position has not been filled;

2. Impose a civil penalty on the employer in an amount not to exceed $25,000.00 for each violation;

3. Order the employer to pay back and/or front pay up to an amount equal to the annual salary of the employee;

4. Order the employer to hire, promote, or train an Indian preference eligible individual found to have been denied applicable preference;

5. Order the employer to pay the costs of filing and pursuing the complaint; and

6. Any such other relief as the TERO Commission deems necessary to cure the violation.

(c) Any monetary damage award to an employee shall be limited to orders of back and/or front pay or costs of reimbursement.

(d) If an employer fails to comply with an order from the Commission within ten (10) days, the TERO Director shall seek appropriate enforcement against that employer through the Tribal Council. The Tribal Council shall review the Order and if appropriate shall take all necessary steps required to enforce such Order, including but not limited to withholding payments still owing to the employer.

Section 7.8 Exclusivity of Remedy

No compensation for lost profits, emotional distress, punitive damages, or other types of damages shall be awarded by the TERO Director, Commission, or Tribal Council.

Section 7.9 Appeals to Tribal Council

All Final Orders of the TERO Commission affecting enrolled Karuk Tribal Members may be appealed to the Karuk Tribal Council. All others with Final Orders of the TERO Commission shall be final and binding on all Parties. Karuk Tribal member Appeals must be made in writing within ten (10) days of the issuance of the Final Order of the TERO Commission. The Karuk Tribal Council may choose to hear the Appeal. All Decisions by the Karuk Tribal Council shall be final and binding on all Parties.

Section 7.10 Severability

If any provision of this Act shall be found to be invalid by any administrative agency, or similar body, or court of competent jurisdiction or found to be in violation of any existing loan covenants for the Tribe or one of its Tribal Entities as of the effective date of this Act, such findings shall not affect the remaining provisions of this Act, and all other provisions herein shall remain in full force and effect.

SECTION 8 Definitions

When used in this Act:

(a)"**Arrest Record**" includes, but is not limited to, information indicating that an individual has been apprehended, taken into custody or detention, held for investigation, arrested, charged

with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

(b) "**Certified Business**" means a firm or business certified by the Commission or other recognized Tribal Commission as eligible for Indian Preference in contracting or subcontracting; provided that Indians hold at least 51% ownership interest in such firm or business and exercise majority management control.

(c) "**Commission**" means the Tribal Employment Rights Commission established under this Act ("TERO Commission").

(d) "**Conviction record**" includes, but is not limited to, information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority. It shall not be employment discrimination based on conviction record to preclude certain Tribal employment positions from being filled by persons with certain criminal convictions pursuant to applicable Tribal or federal law.

(e) "**Council**" means the Tribal Council of the Karuk Tribe.

(f) "**Creed**" means a system of religious beliefs, including moral or ethical beliefs about right and wrong, which are sincerely held with the strength of traditional religious views.

(g) "**Days**" will mean calendar days unless specified as business days. In general, periods of 10 days or less will be business days, and periods of 11 or more days will be calendar days.

(h) "**Discrimination**" has the meaning indicated in Section 4. Discrimination does not include preference based on membership in the Tribe, family relationship with a member of the Tribe or membership in another federally-recognized tribe.

(i) "**Employee**" means any individual person working for or on behalf of the Karuk Tribe or its affiliated tribal entities, or for nontribal businesses or persons, regardless of legal form, doing business with the Karuk Tribe or its affiliated tribal entities, whether for monetary compensation or otherwise. The term "employee" shall not include any individual person who receives a 1099 for tax purposes. The term "employee" shall not include any individual person working on a volunteer basis.

(j) "**Employer**" means the Karuk Tribe, its affiliated tribal entities, including KTHA, KCDC, and the KARUK CASINO; Employer shall also include all nontribal businesses or persons, regardless of legal form, doing business with the Tribe or its affiliated tribal entities. The term "employer" specifically includes contractors, subcontractors, and sole-proprietors working for or on behalf of the Tribe or its affiliated tribal entities.

(k) "**Enrolled Tribal Descendant Member**" is an individual of Karuk descent who possesses less than one eighth (1/8) degree of Karuk Indian blood.

(l) "**Indian**" means an enrolled member of a federally-recognized tribe; an enrolled member of a state recognized tribe.

(m) "**Indian Firm**" means an Indian-owned business certified by the Tribe of origin of the owners of the business or firm.

(n) "**Indian Preference**" means the preference to which Tribal Members, Enrolled Descendant Tribal Members, Indians, or

enterprises owned and controlled by Tribal Members and/or Indians are entitled under this Act and under federal and state laws.

(o) "**Individual with a disability**" means an individual who has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work; or has a record of such an impairment; or is perceived as having such an impairment.

(p) "**Labor organization**" means an organization of workers in the same skilled occupation or related skilled occupation who act together to secure for all members favorable wages, hours, and other working conditions.

(q) "**License**" means the whole or any part of any permit, certificate, approval, registration, charter or similar form of permission required by the Tribe for the undertaking, practice or continuation of any occupation or profession

(r) "**Licensing agency**" means any Tribal board, commission, committee, department, examining board, affiliated credentialing board or officer, except a judicial officer, authorized to grant, deny, renew, revoke, suspend, annul, withdraw or amend any license.

(s) "**Marital status**" means the status of being married, single, divorced, separated or widowed.

(t) "**Person**" means natural persons, either tribal member or non-tribal member, corporations, tribal governments and their political subdivisions.

(u) **"Sexual harassment"** means unwelcome sexual advances, unwelcome requests for sexual favors, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. "Sexual harassment" includes conduct directed by a person at another person of the same or opposite gender. "Unwelcome verbal or physical conduct of a sexual nature" includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments of a sexual nature; the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes; or deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that prevents an individual from effectively performing the duties of their position or creates an intimidating, hostile or offensive working environment, or when such conduct is made a condition of employment or compensation, either implicitly or explicitly.

(v) **"Sexual Orientation"** means having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.

(w) **"Spouse"** means a party, widow, or widower to a marriage to a Tribal Member recognized by any jurisdiction, including the Tribe, which must be shown by (1) a marriage certificate and (2) an affidavit from the Tribal Member spouse (for current marriage) or death certificate of the Tribal Member (for widowhood). It shall not include a party to a common law marriage to a Tribal Member.

(x) **"TERO"** means the Tribal Employment Rights Ordinance/Office.

(y) **"TERO Fee"** is a fee equal to 2% of all contracts exceeding $2,500 assessed under the sovereign authority of the Karuk

Tribe to raise revenues to support its essential governmental services and control economic activities within its jurisdiction.

(z) **"Threshold"** means a level above which Indian preference will be required as established by the: (1) Position Description; (2) Application Review Committee; (3) Interview Committee; (4) Skills Testing; (5) Request for Proposal, Notice of Funds Availability, and License requirements;

(aa) **"Tribe"** and **"Tribal"** means the Karuk Tribe unless otherwise stated.

(bb) **"Tribal Council"** means the Karuk Tribe Tribal Council.

(cc) ***"Tribal Government"*** means the Tribal Council, all offices and departments, governmental authorities, commissions, and all boards, instrumentalities, and other entities established by the Tribal Council.

(dd) **"Tribal Lands"** consist of the Karuk Tribe's Aboriginal Territory, service areas, and all lands subsequently and hereafter acquired by and for the Tribe, whether within or outside of the Tribe's Aboriginal Territory.

(ee) **"Tribal Member"** means an enrolled member of the Karuk Tribe as authorized by the Karuk Tribe's Enrollment Department in accordance with the Karuk Constitution and the Enrollment Ordinance of the Karuk Tribe.

(ff) **"Tribal Preference"** is the Karuk Tribe's sovereign right to exercise preference in hiring Karuk Tribal Members, Karuk Enrolled Descendent Tribal Members, Spouses and Parents of Karuk Tribal Members, and other Indians, based on funding

requirements, before non-Indians when they meet the threshold for the position.

(gg) **"Tribal Skills Bank"** means the compilation of information on Tribal Members, Enrolled Descendant Tribal Member of a Tribal Member, Tribal Member Spouse and other Indians who may be eligible for employment consideration by an Employer to be established and maintained by the TERO Office.

(hh) **"WPA"** means the Workforce Protection Act of 2014.

CERTIFICATION BY TRIBAL CHAIRMAN

The undersigned Tribal Chairperson of the Karuk Tribe hereby certifies that the foregoing Workforce Protection Act is a true and correct copy that was approved by a vote conducted on the [Date] and was duly adopted by a vote of 6 AYES, 0 NOES, 0 ABSTAIN. The Tribal Council is comprised of 9 members of which 6 (a quorum) voted.

Russell A. Attebery

Russell Attebery, Tribal Chairperson

10-14-15

Date