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TRIBAL CODE

CHAPTER 45

LAC DU FLAMBEAU TRIBAL EMPLOYMENT RIGHTS ORDINANCE

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HISTORY NOTE:

Prior Ordinance:

Adopted by the Tribal Council July 21, 1986, Resolution 269(86); effective as to members July 21, 1986.

The ordinance was disapproved as to non-members by the Secretary of Interior on August 6, 1986, and so does not apply to non-members.

Chapter IV of the prior ordinance, the TERO Tax, was to take effect upon a referendum vote within a year of its adoption. No such referendum was held, so Chapter IV never went into effect.

Application of this ordinance had been suspended as a practical matter.

Current Ordinance:

CHAPTER I: GENERAL PROVISIONS

45.101 TITLE

This Article may be cited as the Lac du Flambeau Tribal Employment Rights Ordinance.

45.102 AUTHORITY

This ordinance is enacted pursuant to Article VI, Section (n) of the Constitution and Bylaws of the Lac du Flambeau Band of Lake Superior Chippewa Indians (hereinafter, "Tribe"). There exists substantial legal support for the policy of Indian Preference in employment in federal statutory and regulatory law, of which the following represent only a few examples: Title VII of the Civil Rights Act, including section 703 (I), which makes Indian Preference in employment permissible; the Indian Self-Determination Act, Section 7(b) of Public Law 93-638 which provides for Indian Preference in employment and training, contracting or

subcontracting on all contracts negotiated or let on behalf of an Indian Tribe; the Code of Federal Regulations (25 C.F.R. 271.44) implementing the provisions of the above-identified section of the Indian Self-Determination Act requires, to the greatest extent feasible, that preference is given to Indians in employment and training and to Indian organizations and Indian-owned economic enterprises in awarding contracts and subcontracts. Executive Order 11246 of the Office of Federal Contract Compliance Programs provides, at 41 C.F.R. 60-1.5(a) (6), a specific exemption in the context of Indian Preference, as follows:

Work on or near an Indian reservation: it shall not be a violation of the equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

45.103 PURPOSE

The Tribe Indians enacts this Ordinance to create employment and training opportunities for the Tribal membership and to attempt to eliminate employment discrimination. As an integral part of attaining these goals this Ordinance provides structure for employment and training opportunities to Indians living on or near the Lac du Flambeau Band of Lake Superior Chippewa Indian Reservation. To provide for the hiring of Indians who are qualified and for the training of Indians in those areas in which there is not a sufficient number of qualified Indians to meet the employment opportunities, the policy of Indian Preference will be implemented and adhered to in contracting and subcontracting, in accordance with the applicable provisions set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Office, in an effort to promote Tribal and individual economic development.

45.104 EFFECTIVE DATE

This Ordinance shall be effective on the date of enactment by the Lac du Flambeau Tribal Council (hereinafter, referred to as the "Tribal Council") by official resolution.

45.105 SEVERABILITY AND NON-LIABILITY

If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. The Tribe asserts there is no liability on the part of the Lac du Flambeau Tribe, its agencies or employees for damages that may occur as a result of reliance upon and conformance with this ordinance.

45.106 SOVEREIGN IMMUNITY

- (1) Nothing in the enactment, contents, administration, or enforcement of this Ordinance is intended to, nor shall waive the Sovereign Immunity from unconsented suit of the Lac du Flambeau Band of Lake Superior Chippewa, its officers, officials, employees, or agents acting within the course and scope of their official duties of authority, including, but not limited, to the following:
 - A. taking legal action against any person to enforce or otherwise further the purpose of this Ordinance;
 - B. defending legal action taken by another person to invalidate all or a portion of this Ordinance, or any actions taken under the authority of this Ordinance, for any failure to act under this Ordinance; or
 - C. acting to enforce any penalties or sanctions under this Ordinance.
- (2) Notwithstanding subsection (1), any employer or other person against whom the TERO Office Director has assessed fees, penalties or interest or who has paid under protest any fees, penalties or interest, may bring an action in Tribal Court for the purpose of enjoining the TERO Office from collecting any fees, penalties or interest assessed or for the recovery of any fees, penalties or interest paid under written protest which the Tribal Court determines to have been wrongfully assessed or collected.
- (3) In no event shall the Court be authorized to award or order the payment of damages or to fashion any remedy except to enjoin the collection or order the return of the fees, penalties or interest in controversy unless an additional remedy is specifically provided within this Code.
- (4) Whenever any taxpayer shall establish in administrative or Court proceedings that they are entitled to a refund of any taxes, penalties or interest previously paid, the Tax Director shall immediately refund all taxes, penalties and interest specified in the administrative or Court order. All amounts found to have been wrongfully collected and refundable shall earn simple interest at five percent (5%) per annum until refunded.

45.107 GENERAL DEFINITIONS

Words used in the present tense include the future, the singular includes the plural, and the plural includes the singular. The word "*shall*" is mandatory and the word "*may*" is permissive.

- (1) "*Ceded boundaries and ancestral territory*" are lands within aboriginal territory that have been lost by a tribe or taken by the United States although tribes retain certain rights even if ancestral and ceded lands are no longer within Indian country.

- (2) “*Certified Indian-owned firm or entity*” shall mean and include any commercial, industrial, or other business firm or entity in which fifty-one percent (51 %) or more of the ownership is held by and fifty-one percent (51%) or more of the actual management and control is exercised by an Indian or Indians which percentages shall be certified by the TERO Office.
- (3) “*Commerce*” shall mean and include all trades, traffic, distribution, communications and the provisions of services.
- (4) “*Core employee*” shall mean employee who performs an essential job function and has been identified as an employee who is vital to the success, of the endeavor.
- (5) “*Covered employer*” means any person, company, contractor, subcontractor, or entity located or engaging in commercial or employment activity within the ceded boundaries of the Lac du Flambeau Band of Lake Superior Chippewa service area, including the Lac du Flambeau Band of Lake Superior Chippewa Reservation.
- (6) “*Director*” shall mean the Tribal Employment Rights Ordinance Officer of the TERO Office.
- (7) “*Employee*” shall mean and include any currently working employee, any applicant for employment, and any employee whose work has ceased as a consequence of, or in connection with, any current labor dispute or as a result of unfair labor practices and who has not secured any alternative regular and substantially equivalent employment. However, the term shall not mean and include any individual employed in the domestic services with any family or person at his/her home, or any individual employed by any other individual who is not a “covered employer,” as such term is defined herein.
- (8) “*Indian/Native American*” means any person of the United States of America who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).
- (9) “*Indian Preference*” shall generally mean that Indians living on or near the Lac du Flambeau Band of Lake Superior Chippewa, without regard to tribal affiliation, shall be given preference over other Indians in employment, training, contracting, and subcontracting, and that Indians, whether resident or non-resident, shall be given preference over non-Indians in employment, training, contracting and subcontracting.
- (10) “*Indian Tribe*” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601), which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

- (11) ***“Located on or near”*** the Lac du Flambeau Band of Lake Superior Chippewa Reservation means located within what a reasonable, prudent person would construe as the normal commuting distance from a location off the Lac du Flambeau Band of Lake Superior Chippewa Reservation within the ceded boundaries of the Lac du Flambeau Band of Lake Superior Chippewa.
- (12) ***“Notice”*** is required to be given to unnamed parties to an action and to all interested persons not parties to an action, and in all instances where in a specific person is not addressed shall be sufficient if such notice is published in a news publication serving the geographic area of the Tribe and posted in a public place within the ceded boundaries of the Tribe.
- (13) ***“Person”*** shall mean and include both natural persons and entities, including but not limited to, corporations, partnerships, joint ventures, sole proprietorships, associations, unions, trusts, trustees, and agents.
- (14) ***“Qualified Indian”*** shall mean an Indian who meets or exceeds the minimum requirements for a position as determined by the job requirements. No employer may utilize any employment criteria not legitimately related to the performance of the position.
- (15) ***“Qualified Tribal Member”*** shall mean a Lac du Flambeau Band of Lake Superior Chippewa Tribal Member who meets the minimum qualifications requirements for a position as determined by the job requirements. No employer may utilize any employment criteria not legitimately related to the performance of the position.
- (16) ***“TERO”*** shall mean the Lac du Flambeau Band of Lake Superior Chippewa Tribal Employment Rights Ordinance, or the Lac du Flambeau Band of Lake Superior Chippewa Tribal Employment Rights Office, depending on the context.
- (17) ***“Tribal Business or Firm”*** shall mean a firm or business certified by the TERO Office as eligible for Indian Preference in contracting and subcontracting; providing that the Lac du Flambeau Band of Lake Superior Chippewa Tribal Member(s) holds at least fifty-one (51%) percent ownership interest in such a firm or business and exercise majority management control. Verification of proof of ownership shall be provided to the TERO Office prior to the issuance of any TERO Permit.
- (18) ***“Tribal Council”*** shall mean the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa.
- (19) ***“Tribe”*** shall mean the federally recognized Tribe of the Lac du Flambeau Band of Lake Superior Chippewa, operating under the authority of the Lac du Flambeau Band of Lake Superior Chippewa Constitution.

- (20) "*Tribal Service Area*" shall mean all lands within the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa and any lands within the ceded boundaries of the Lac du Flambeau Band of Lake Superior Chippewa.

CHAPTER II: TRIBAL EMPLOYMENT RIGHTS OFFICE AND DIRECTOR

45.201 TRIBAL EMPLOYMENT RIGHTS OFFICE

The TERO Office shall be vested with the general authority to implement the policy of Indian Preference in employment and in contracting as established and approved by this Ordinance. The TERO Office shall have the specific duty and responsibility of implementation of the provisions set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules and regulations, and/or guidelines.

45.201 TRIBAL EMPLOYMENT RIGHTS OFFICE DIRECTOR

- (1) The TERO Director shall have the authority to prescribe, promulgate and enforce written rules and regulations not inconsistent with this Title to:
- A. provide for the TERO Office's internal operational procedures;
 - B. to interpret or apply any of this Ordinance's TERO provisions, subject to challenge and review by the Tribal Court;
 - C. for the filing of any reports or documents as required by this Ordinance;
 - D. as shall be reasonably necessary for the efficient performance of TERO Director's duties; or
 - E. as may be required or permitted by law.
- (2) The TERO Director shall have supervisory authority over the staff of the TERO Office. The Director shall prepare line item budgets, based upon any and all sources of funding for the operation of the TERO Office, and shall oversee the expenditures of funds there from, and may prosecute before the Tribal Court, any and all claims of noncompliance with this Ordinance with any and all supplementary ordinances, or with any and all rules, regulations and/or guidelines.
- (3) The TERO Director, in conjunction with the staff within the TERO Office, shall have the following authority, duties, and responsibilities:
- A. To develop and maintain in updated status a register setting forth the names of Indian-owned firms certified for Indian Preference by the TERO Office,

together with an identification of the respective areas of work in which such firms are considered qualified.

- B. To develop and maintain a plan for the dissemination of this Ordinance, of any and all supplementary ordinances, and of any and all rules, regulation, and/or guidelines, to all covered employers and to all governmental entities letting contracts within the ceded boundaries of the Lac du Flambeau Band of Lake Superior Chippewa.
- C. To ensure compliance by covered employers with any and all reporting requirements as prescribed by this Ordinance, in any and all supplementary ordinances, and by any and all rules, regulations, and/or guidelines promulgated by the TERO Office.
- D. To enter into formal negotiations with representatives of any covered employer in an effort to resolve, on an informal, voluntary basis, any claim of noncompliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines.
- E. To inspect any and all non-privileged information set forth in the books and records maintained by any covered employer for the purpose of ensuring continued compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines.
- F. To conduct on-site inspections at any time during the actual operation of the business of any covered employer for the purpose of monitoring compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines, and to speak with any contractor, subcontractor, or employee on-site.
- G. To initiate proceedings before the Tribal Court for the purpose of suspending or revoking the Indian Preference Certification of a firm when changed circumstances so warrant.
- H. To monitor and ensure the collection from covered employers of the appropriate TERO Fees for the purpose of providing fiscal support for the operation of the TERO Office.
- I. To secure additional funding from alternative sources (e.g. federal and/or state funding sources, private foundations, and public agencies), for the continued adequate functioning of the TERO Office.

- J. To implement and maintain a "Skills Bank" from which covered employers shall select and employ qualified Indians to fill employment positions.
- K. To require covered employers to establish and maintain job training or apprenticeship programs for the purpose of assisting Indians to become qualified in the various crafts skill areas, or job classifications used by such employers and increasing the pool of Indians qualified to engage in the various employment positions available on or near the Lac du Flambeau Band of Lake Superior Chippewa.
- L. To prohibit covered employers from instituting and utilizing job qualification criteria and/or personnel requirements, which, in effect, serve as barriers to employment of Indians, unless such criteria and/or requirements can be demonstrated to be required by business necessity.
- M. To enter into negotiated agreements with labor unions for the purpose of ensuring union compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines.
- N. To take such other actions and engage in such other activities as are deemed necessary by the TERO Director to achieve the purposes and objectives inherent in the policy of Indian Preference in employment and in contracting.

CHAPTER III: SEAL, FORMS AND RECORDS

45.301 SEAL

The TERO Office is authorized and directed to acquire and use a seal, which shall be of circular form, with the words "LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS" around the edge and the words "OFFICIAL TERO SEAL" in the center. The seal shall be used on all original and or certified copies of all licenses, orders, rules, regulations and other official documents of the TERO Office as evidence of their authenticity. The seal shall be secured at all times to prevent unauthorized use.

45.302 FORMS

The TERO Director shall prepare and make available to the public such standard forms which are not otherwise provided by this Code as are necessary to carry out the duties of the TERO Office.

45.303 STAMPS AND LICENSES

- (1) The TERO Director shall provide for the form, size, color and identifying characteristics of all licenses, permits, stamps, tags, receipts or other documents or things evidencing receipt of any license or payment of any or fee administered by the TERO Director or otherwise showing compliance with the TERO laws.
- (2) Such stamps or licenses shall contain at least the following information:
 - A. The words: "Lac du Flambeau Tribe."
 - B. The words: "TERO Office."
 - C. The monetary amount for which the fee was issued.
 - D. If the instrument is a license, permit or receipt, wording indicating the type of license, permit or receipt, its effective dates and the name and address of the employer or employee to whom issued.
- (3) The TERO Director shall provide for the manufacture, delivery, storage and safeguarding of such stamps, licenses, permits, tags, receipts or other documents and shall safeguard such instruments against theft, counterfeiting and improper use.
- (4) The Tax Director may exchange new stamps for damaged, out of date or otherwise unusable stamps under such rules and regulations as the Tax Director shall prescribe.

45.304 RECORDS

- (1) The TERO Director shall keep and maintain accurate, complete and detailed records that reflect all fees, penalties and interest levied, due and paid, all licenses issued and each and every official transaction, communication or action of the Director.
- (2) Such records shall be maintained at the TERO Office and shall not be removed from said office without the written permission of the TERO Director.
- (3) Such records shall be subject to audit at any time at the direction of the Tribal Council and shall be audited not less than once each year.
- (4) Any and all records of the TERO Director, except the record of an official decision or opinion rendered upon a judicial action, which relate to the individual business or personal activities of a named employer shall not be open to public inspection and shall only be released upon written request of the employer, written request of Tribal officials who have a legitimate official need for such records or upon the written order of the Tribal Court.

- (5) Any record of the Tax Director which does not relate to the individual business or personal activities of a named particular employer and all decisions or opinions rendered upon an judicial action appeal shall be public records of the TERO Office and shall be available for public inspection during regular business hours. Copies of such records may be obtained by submitting a signed written request and upon payment of such copying costs as may be established by rule of the Tax Director, provided, that the names and other forms of identification of any taxpayer appearing in such record shall be rendered unreadable prior to issuance of such copy unless the provisions of subsection (4) above would allow release of such information.

45.305 BOOKKEEPING

There shall be established and kept, within the Accounting Department of the Lac du Flambeau Tribe and subject to the current Indirect Cost rate, such financial records/books as may be necessary under generally accepted accounting standards to adequately account for all funds and monies received and disbursed by the TERO Director.

45.306 COLLECTION ACCOUNT AND DEPOSITS

- (1) It is hereby authorized to be established an account in a federally insured financial banking institution to be known as the Lac du Flambeau TERO Fee Collection Account. TERO funds may be kept in an existing federally insured Tribal account provided separate accounting books, clearly designated as Lac du Flambeau TERO Fee Collection Account, are maintained in accordance with generally accepted accounting standards.
- (2) All fees, penalties, interest, service fees/charges or other funds collected by the TERO Office in the administration and enforcement of this Code shall be clearly identified and submitted to the Tribal Accounting Department for deposit in this account for the benefit of the Lac du Flambeau Tribe. The receipt for such funds shall be maintained as an original record and attached to or reconciled with any original records of receipt of the TERO Director.

CHAPTER IV: APPLICABILITY AND SCOPE OF INDIAN PREFERENCE

45.401 APPLICABILITY

- (1) The provisions set forth in this Ordinance shall apply to any and all lands situated within the ceded boundaries of the Lac du Flambeau Band of Lake Superior Chippewa and to such other lands, within or without such territory, as have been or may be hereafter included within and subject to the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa under any law of the United States, except as otherwise provided by law.

- (2) Unless specifically prohibited by Federal law or Tribal law, this Ordinance shall apply to all employers, including but not limited to: the Lac du Flambeau Band of Lake Superior Chippewa's programs, departments, entities, enterprises, private employers, independent contractors/subcontractors, including those performing work for the State of Wisconsin, or the United States.
- (3) The Lac du Flambeau Band of Lake Superior Chippewa Indian Employment Preference Policy shall apply to every job classification, skill area, or craft recognized or utilized by an employer, including administrative, supervisory, and professional classifications. All employers shall extend an employment preference to qualified Indians as provided in this Ordinance, in all aspects of employment, including but not limited to recruitment, hiring, promotion, lateral transfers, retention, 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 Director has furnished a written notice to such employer that no qualified Indians are available for such position.
- (4) Federal law recognizes the inherent authority of the Lac du Flambeau Band of Lake Superior Chippewa to exercise an employment preference for its own members and other Native Americans. This is often referred to as "Indian Preference." Accordingly, preference in all aspects of employment with the Tribe will be given first to Native Americans, namely qualified members of a federally recognized Tribe. This preference is for the furthering of goals of self-determination and employment opportunities for all Native Americans. However, the Tribe values the contributions of its non-tribal employees and welcomes interest in employment from all people.
- (5) An employer shall not use employment criteria that would unreasonably exclude qualified Indians from being hired. Criteria not clearly related to job performance are strictly prohibited. If an Indian meets the threshold qualifications for a position, or if an Indian could meet or exceed those requirements with reasonable training, the employer shall hire such Indian in preference to non-Indians, even if the non-Indian appears more qualified.

45.402 SCOPE OF INDIAN PREFERENCE

- (1) The requirements set forth in this Ordinance are binding on all covered employers, contractors, and subcontractors and will be considered a part of all Tribal contracts and subcontract specifications. The employer bears the responsibility for compliance with the requirements of this Ordinance, and for ensuring that all contractors and subcontractors similarly comply.
- (2) All employers, contractors, subcontractors will include in their contracts clauses acknowledging the equal opportunity and Indian Preference requirements contained in this Ordinance.

- (3) Covered employers, contractors, subcontractors shall implement the Indian Preference requirements in the following order:
- A. All covered employers, contractors, subcontractors shall grant preference to Indians living on or near the reservation, without regard to tribal affiliation, over non-Indians in hiring, promotion, training and all other elements of employment.
 - B. All covered employers, contractors, subcontractors shall grant preference to certified Indian-owned firms, whose principal places of business are located within the ceded boundaries of the Lac du Flambeau Band of Lake Superior Chippewa, without regard to tribal affiliation, over certified Indian-owned firms whose principal places of business are located without such ceded boundaries, in awarding contracts and subcontracts.
 - C. All covered employers shall grant preference to certified Indian-owned firms, without regard to the location of their respective principal places of business, over noncertified firms with some Indian ownership, in awarding contracts and subcontracts.
 - D. All covered employers shall grant preference to non-certified firms with some Indian ownership, without regard to the location of their respective principal places of business, over non-Indian-owned firms, in awarding contracts and subcontracts.
 - E. No Indian worker shall be laid off as long as a non-Indian worker in the same job classification is still employed or, not as long as such Indian meets the threshold qualifications for the job unless such non-Indian has been employed by same company for more than one (1) year longer than such Indian worker. 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 job classification employed elsewhere under the same contract.

45.403 PREFERENCE IN CONTRACTING AND SUBCONTRACTING

- (1) Contingent on funding source requirements, all covered employers shall give preference first to Lac du Flambeau Band of Lake Superior Chippewa-owned businesses or firms and second to Indian-owned businesses or firms in the award of any contract or subcontract. In order to qualify under TERO as an Indian owned firm, the business must at least be fifty-one (51 %) percent Indian majority management control. The Director will register and maintain a list of both Lac du Flambeau Band of Lake Superior Chippewa and Indian owned business or firms.

- (2) For the purpose of establishing eligibility for Indian Preference in contracting and subcontracting, the Director is authorized to actively recruit and certify Indian firms, whether located within or outside the Lac du Flambeau Band of Lake Superior Chippewa Reservation. Any Contractor wishing to claim Indian Preference with TERO must complete a "Contractors Qualification Questionnaire for Indian Preference" for contracting with the Lac du Flambeau Band of Lake Superior Chippewa. Once certified by the Director as either a Lac du Flambeau Band of Lake Superior Chippewa owned business or Indian firm, applicants will be placed on a bidder's eligibility list.
- (3) Contingent on funding requirements, preference in contracting and subcontracting shall be awarded first to Lac du Flambeau Band of Lake Superior Chippewa Tribal Members. For example, if a non-Indian or a non-Lac du Flambeau Band of Lake Superior Chippewa Tribal Member submits the lowest bid, and a Lac du Flambeau Band of Lake Superior Chippewa Tribal Member or Lac du Flambeau Band of Lake Superior Chippewa owned business submits a bid that is within five (5%) percent of the non-Tribal Member bidder, the Lac du Flambeau Band of Lake Superior Chippewa Tribal Member or tribal firm shall be provided the opportunity to match any bids within five (5%) percent. Upon matching such a bid the contract shall be awarded to the Lac du Flambeau Band of Lake Superior Chippewa Member or business.

CHAPTER V: SKILLS BANK & TRAINING

45.501 SKILLS BANK

- (1) The TERO Director shall, in cooperation with other Tribal Departments, establish and administer a data bank of Lac du Flambeau Band of Lake Superior Chippewa Tribal Members and other Indians seeking employment. This data bank shall be called the "*Skills Bank*." The Skills Bank shall list all available workers, their respective skills, qualifications, and include documentation of training or other special qualifications and/or needs.
- (2) The TERO Director shall create a Skills Bank Form for Lac du Flambeau Band of Lake Superior Chippewa Tribal Members and other Indians seeking employment to complete in order to apply to become part of the Skills Bank.
- (3) No employer may hire non-Indians until a reasonable time for referral, as defined in this subsection, has elapsed or the TERO Office has certified in writing, that no qualified Indians are available to fill the particular job openings.

- (4) *“Reasonable Time for Referral”* for purposes of this Ordinance shall mean:
- A. For construction jobs, the Director will locate and refer qualified Indians within 72 working hours of the date and time of receiving the initial notice of available opening from the employer.
 - B. For all other jobs the Director shall within five (5) working days from the date of receipt from the initial notice of an available opening locate and refer qualified Indians to jobs.
 - C. The Director may agree to waive or modify these requirements if there is a clear indication that the time limits would impose an undue burden on the project.

45.502 TRAINING.

Employers may be required under this Ordinance to participate, or assign interested Indians living on or near the reservation and other Indians to participate in training programs designed to assist in becoming qualified in those occupations or job categories specific to the respective employer. In the event the requirements of this Ordinance create conflict with any union's seniority rights, the Director shall have the authority to negotiate such ratios with a respective employer/contractor.

CHAPTER VI: TERO PERMIT PROCESS

45.601 ISSUANCE OF PERMITS

- (1) The TERO Director will only issue permits to employers conducting work either within the ceded boundaries of the Lac du Flambeau Band of Lake Superior Chippewa, or on tribally funded projects, whether on or off the Lac du Flambeau Band of Lake Superior Chippewa Reservation.
- A. Once a contractor/subcontractor has been awarded the job, a TERO Permit Application & Labor Force Projection Form must be completed by the contractor/subcontractor and returned to the TERO Office prior to starting any work on the awarded job.
 - B. Once the TERO Permit Application & Labor Force Projection Form have been received and it has been determined that all the required information has been filled out correctly, a TERO Permit will then be issued to the awarded contractor/subcontractor. The contractor/subcontractor must be in possession of a valid permit issued by the Director prior to the commencement of any work.

45.602 INDIAN PREFERENCE PLAN

- (1) Bid packet(s) submitted within the jurisdiction of this Ordinance shall include a Indian Preference Plan for the prime general contract and any subcontract(s). The Indian Preference Plan shall include:
 - A. The name of the proposed subcontractor(s).
 - B. Whether it is an Indian-owned firm and, if not, information on the good faith steps taken to identify Indian firms for the subcontract.
 - C. An acknowledgement that the covered employer:
 1. understands they are required to comply with the Lac du Flambeau Band of Lake Superior Chippewa's TERO Ordinance and the requirements of Indian Preference; and
 2. agrees to comply with the requirements and procedures for the selection of contractors/subcontractors and recruitment of viable Indian applicants pursuant to this Ordinance.
- (2) Any contractor or subcontractor who fails to submit an Indian Preference and TERO Labor Force Projection Form shall be considered a non-responsive bidder for the purpose of awarding the contract and shall be disqualified from the bidding process.
- (3) If awarded the contract, the prime contractor can neither amend nor deviate from the Indian Preference Plan, nor add or delete any subcontracts or subcontractors without:
 - A. providing prior written notice to the TERO Director at least ten (10) business days prior to the date of the proposed amendment; and
 - B. receiving written authorization to proceed with the proposed amendments from the TERO Director prior to the date of implementation.

45.603 LABOR FORCE PROJECTION FORM

The TERO Labor Force Projection Form constitutes an agreement between the TERO Office and any employer engaging in commerce and employment under the jurisdiction of this Ordinance. Based upon the Labor Force Projection, the TERO Office will refer to the Skills Bank for any qualified applicants needed to fill any job openings that the awarded contractor/subcontractor may have for that contract.

CHAPTER VII: TERO FEES

45.701 IMPOSITION OF TERO FEE

- (1) The Lac du Flambeau Band of Lake Superior Chippewa hereby imposes a TERO Fee on certain covered employers, for the partial purpose of deriving a source of revenue for the administration and operation of the TERO Office as an instrumentality and agency of the Lac du Flambeau Band of Lake Superior Chippewa.
- (2) Covered employers with a construction/consultant contract must pay a TERO Fee of a specified percentage of the total gross amount of the contract.
- (3) As of the date of enactment of this Ordinance, the TERO fee shall be two and one-half percent (2.5%) of the total gross amount of the contract. The Tribal Council may, at its discretion, modify the percentage of the TERO fee without amending this Ordinance, as long as it provides 30 days written notice of the modified TERO fee percentage amount.

45.702 METHOD OF PAYMENT

- (1) The TERO Director shall be responsible for collecting all TERO Fees from covered employers. The TERO Fee shall be paid to the Lac du Flambeau Band of Lake Superior Chippewa and shall be credited to the account of the Lac du Flambeau Band of Lake Superior Chippewa TERO for use in implementing this Ordinance.
- (2) The TERO Fee may be paid in incremental payments, subject to the prior approval of the TERO Director with a written agreement in an acceptable form.
- (3) Any covered employer that fails to pay the TERO Fee pursuant to the terms set forth in this Ordinance shall be subject to sanctions set forth in Chapter 21 herein. All TERO Fees shall be made payable to the Lac du Flambeau Band of Lake Superior Chippewa TERO and forwarded to the following address:

Lac du Flambeau Band of Lake Superior Chippewa TERO
C/O Accounting Department
Post Office Box 67
Lac du Flambeau, WI 54538-0067

CHAPTER VIII: COMPLAINT PROCEDURE

45.801 COMPLAINT PROCEDURE

- (1) Any person, including covered employers, employees, contractors, subcontractors, and the TERO Director, who believes that any other person has failed to comply with any requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations and/or guidelines promulgated by the TERO Director, may file a written complaint with the TERO Office, regardless of whether or not such complaint can demonstrate personal harm as a result of the alleged noncompliance.
- (2) Upon the filing of any such complaint, the TERO Director shall forthwith direct written notice of the alleged noncompliance to the person against whom the allegation of noncompliance has been made. Within a period of seven (7) days (exclusive of weekends and legal holidays) from the date of receipt of such notice, the person against whom the complaint has been filed and the TERO Director and/or staff shall attempt to achieve a voluntary, informal resolution of the matter through discussion.
- (3) In the event the complaint is unable to be resolved informally, at the termination of the seven (7) day period in Subsection (2), the TERO Director may file the matter before the Tribal Court for a formal hearing.

45.802 HEARING PROCEDURE

- (1) Upon the Director's filing of the request for a hearing with the Tribal Clerk, the Clerk of Court shall schedule a hearing in the matter within ten (10) days thereof.
- (2) The Director shall provide written notice of the hearing to:
 - A. the complainant;
 - B. the person or entity against whom the complaint has been made; and
 - C. any and all other identified interested person, or such persons with knowledge as to the facts relevant to the resolution of the complaint.
- (3) The Director's written notice of the hearing shall include:
 - A. the date, time, and location of the hearing;
 - B. the issue which is in dispute;
 - C. the right to be present at and participate in the hearing;

- E. the right to present the testimony of witnesses and documentary evidence and to cross-examine witnesses; and
 - F. the right to be represented by counsel at their own expense.
- (4) On its own initiative, or upon the request of any person so notified of such hearing, the Tribal Court may subpoena identified witnesses and documents. Within the TERO Director's discretion, the TERO Director may present the claim or direct that the Tribal Prosecutor assist the complainant in the presentation of complainant's claim.
- (5) At all hearings before the Tribal Court, the following rules of procedure shall be recognized and adhered to:
- A. Notified interested person(s) shall have the right to be present at and participate in the hearing.
 - B. Notified interested person(s) shall have the right to present relevant sworn testimony and documentary evidence.
 - C. Notified interested person(s) shall have the right to call relevant witnesses on their behalf and to cross-examine witnesses called by any other hearing participant.
 - D. Each such person shall have the right to be represented by counsel at their own expense.
 - E. The Tribal judge shall preside over the proceedings.
 - F. Neither the formal rules of evidence nor any formal rules of procedure need be observed, but the Tribal judge shall proceed to ascertain the facts relevant to the disposition of the matter in a reasonable and orderly fashion.
 - G. The entire proceeding shall be recorded and the recording maintained by the TERO Office.
 - H. Any matter to be proven must be done so to the satisfaction of the Judge by a preponderance of the evidence.
 - I. At the termination of the proceedings, the Judge, within their discretion, may either render an immediate determination or take the matter under advisement and issue its decision no later than thirty (30) days from the date of the end of the hearing.

- K. Within a period not to exceed thirty (30) days from the date of the hearing, the judge shall issue its written decision and order, setting forth the specific grounds therefore and shall direct a copy thereof to each notified interested person who was present at and participated in the hearing.
- L. In the event that the judge determines that the person(s)/entity against whom the complaint was brought did fail to comply with any requirement(s) set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the TERO Office, the Judge shall impose one or a combination of the sanctions set forth in Section 45.803 of this Ordinance and may order such person(s)/entity to take such corrective actions as are deemed necessary to remedy the noncompliance at issue.

45.803 SANCTIONS

- (1) Anyone or combination of the following sanctions may be imposed by the Tribal Court upon the determination that a person/entity has failed to comply with any requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the Director.
 - A. Imposition of a civil monetary fine not to exceed the amount of one-thousand (\$1,000.00) dollars per violation. Each day on which a person has been determined to have been out of compliance with any TERO requirements may constitute a separate violation.
 - B. Suspension or termination of the person/entity's current conduct of business within the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa, provided that such person be granted a reasonable period of time during which to remove its equipment and other property and to arrange with another person the assumption of any of its outstanding contractual obligations.
 - C. Prohibition of the person's engaging in the future conduct of business within the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa for a definite or indefinite period.
 - D. Provision of monetary or other appropriate relief as and for damages to compensate any person harmed as a result of the noncompliance at issue.
 - E. Order the immediate termination by the covered employer of any individual(s) hired in contravention of any TERO requirements relative to Indian Preference in the selection and hiring of employees.

- F. Order the immediate revocation of any contract(s) and/or subcontract(s) entered into by the covered employer in contravention of any TERO requirements relative to Indian Preference in contracting and subcontracting.
- G. Order the award of a contract or subcontract by a covered employer to any qualified Indian-owned firm adversely affected by the noncompliance with any TERO requirements relative to Indian Preference in contracting and subcontracting.
- H. Order the award of back pay by the covered employer to any Indian individuals adversely affected by the noncompliance with any TERO requirements, relative to Indian Preference in employment opportunities.
- I. Order the covered employer to make such changes in its policies, procedures, and/or conduct as are deemed necessary for the purpose of securing compliance with any TERO requirements.
- J. Such other or further relief and/or sanctions as the Court should deem just and proper.

CHAPTER IX: PUBLICATION OF THE TERO ORDINANCE

45.901 DUTY OF PUBLICATION

The obligation of all covered employers to fully comply with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Director, shall be made known to all covered employers doing business within the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa whether currently or in the future. It shall be the duty and responsibility of the staff of the TERO Office to cause the publication of such requirements to be preformed to the extent as prescribed herein.

45.902 EXTENT OF PUBLICATION

The TERO Office shall direct copies of this Ordinance, of any and all supplementary ordinances, and of any and all rules, regulations, and/or guidelines promulgated by the Director, upon formal adoption thereof by the Tribal Council, to all covered employers intending to undertake projects within the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa. In addition, the TERO Office will continuously maintain in its files a sufficient number of copies of all such ordinances, rules, regulations, and/or guidelines for dissemination to any person who should request copies thereof.

* * * * *

RESOLUTION NO. 638(15)

- WHEREAS,** the Lac du Flambeau Band of Lake Superior Chippewa Indians ("Tribe"), is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. §461 et. seq.; and
- WHEREAS,** pursuant to Article III, Section 1 of the Lac du Flambeau Constitution ("Constitution"), the governing body of the Tribe is the Tribal Council; and
- WHEREAS,** Tribal Employee Rights Officer "TERO", Jerome BigJohn has presented the attached draft of Tribal Code 45 – Lac du Flambeau Tribal Employee Rights Ordinance to the Council for their review and approval; and
- WHEREAS,** the Council has reviewed and wishes to approve with the option to make amendments and to review in one year; now, therefore be it
- RESOLVED,** by this Council, in Rescheduled Special Session assembled, hereby approves of the attached Tribal Code 45- Lac du Flambeau Tribal Employee Rights Ordinance with the option for the Council to make amendments; to be reviewed in one year.

CERTIFICATION

I, the undersigned, as Secretary of the Lac du Flambeau Band of Lake Superior Chippewa Indians, a tribal government operating under a Constitution adopted pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C., s. 476, do hereby certify that the Tribal Council of the Band is composed of twelve members, of whom twelve constituting a quorum, were present at a Rescheduled Special Meeting, duly called, noticed, convened, and held on the 22nd Day of December, 2015, and that the foregoing resolution was duly adopted at said meeting by an affirmative vote of nine members, (J. Allen, D. Allen, A. Soulier, B. Graveen, M. Allen, Sr., J. Johnson, Sr, F. Mitchell, Sr., C. Burgess, G. Thompson), two against (M. Young, E. Chapman, Sr.), none abstaining, and that the said resolution has not been rescinded or amended in any way.



Jamie Allen, Secretary
Lac du Flambeau Band of
Lake Superior Chippewa Indians