

**LOWER BRULE SIOUX TRIBE
TRIBAL EMPLOYMENT RIGHTS OFFICE
COMPLIANCE PLAN**

STATE DEPARTMENT OF TRANSPORTATION PROJECTS

COMPANY

DATE

PROJECT

NOTE: Any contractor/subcontractor not submitting an acceptable compliance plan may be denied the right to commence or continue business on the Lower Brule Reservation

The South Dakota Department of Transportation (Department) will not allow any contractor/subcontractor to commence work until the compliance plan has been approved by the TERO office and a copy has been received by the Department's Area Office.

AGREEMENT BETWEEN
THE LOWER BRULE SIOUX TRIBAL EMPLOYMENT RIGHTS OFFICE
AND

This Agreement is entered into on this date _____ between the

LOWER BRULE SIOUX TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)

and _____ (Employer) with respect to

employment practices on the Lower Brule Reservation on South Dakota Department of

Transportation Project _____ .

1. EMPLOYMENT PRIORITY

The TERO Director will be given at least forty-eight (48) hours' notice to locate and refer a qualified Indian applicant for any vacancy or new position except when circumstances require that the position be filled within a shorter period of time. If the TERO Office is unable to fill the vacancy, an Employer may recruit and hire workers from whatever sources are available to the Employer and by whatever process the Employer so chooses, provided that the Employer will notify TERO of any job vacancies, positions, or any negotiated positions. The Tribal TERO Office will use its Job Skills Bank to assist the Employer in meeting the stipulated hiring goal for this project.

TERO will maintain a Job Skills Bank, listing available resident Indian applicants by job classification based on skill level as indicated on their TERO application to be used to fill job vacancies, new positions, or any other negotiated position under this Agreement.

The Employer will consider hiring, either for a job vacancy or new positions all available local Indians and Indian applicants who meet pre-employment standards.

2. PRE-EMPLOYMENT STANDARDS

For the purpose of this Agreement, pre-employment standards are those directly job related standards of fitness and ability which indicate that, with a reasonable amount of job training, a person would be capable of satisfactorily performing entry job as well as jobs at a higher level which, with a reasonable amount of further training, are normally filled by progression from the entry job. This provision applies to those persons who, at the time of application for employment, are not fully qualified for the available jobs but have general potential of becoming qualified through a reasonable amount of training.

The Employer will not use qualifications, criteria, or other personnel requirements as barriers to Indian employment except where such criteria are required by business

necessity. The Employer will have the burden of showing that such criteria or requirements are required by business necessity.

3. TRAINING AND SALARY

The Employer agrees that all local Indians and Indian employees will be adequately trained for the position for which they are hired. The Employer will evaluate and pay all Indian employees in accordance with current Employer company policy, TERO policies, and contract provisions.

4. DISCRIMINATION

There will be no discrimination in wage rates, fringe benefits, hiring, or for other employment related activity on the basis of race, color, creed, age, sex, national origin, disability, or religion.

5. EMPLOYMENT GOALS

The Employer agrees Indians will be given preference for at least seventy percent (70%) of the project work force provided that sufficient qualified Indian applicants are available. The phrase "work force" will not include "core crew employees". The Employer will consult with the Tribal TERO officials to locate qualified applicants for those positions.

The Employer (Prime Contractor) will require that subcontractors meet the Indian preference in employment requirements as specified in the preceding paragraph.

Nothing in this Agreement will be construed to interfere with the Employer's ability to dismiss any employee for cause including, but not limited to, lack of adequate skills or training, inability to perform by virtue of state of federal law, or breach of the contractor's standards of conduct.

6. EMPLOYMENT RIGHTS FEE

The Employer (Prime Contractor) will pay a TERO fee of two percent (2%) and a Training Fee of one-half of one percent (0.5%) of the total contract dollar amount in accord with the following (check one):

- The parties agree the fee will be paid in _____ payments of equal amounts of \$ _____ over the life of this Agreement. The last payment will be due no later than _____ and will be adjusted to reflect any increases or decreases in total contract amount due to change orders or other contract changes.
- The parties agree the fee will be paid in amounts of two point five percent (2.5%) of progress payments received from the State of South Dakota over the life of this Agreement. The last payment will be due no later than 10 days following the final payment from the State of South Dakota and will be adjusted to reflect any increases

or decreases in total contract amount due to change orders or other contract changes.

- The parties agree if the TERO fee is less than \$1,000.00, it will be paid in a lump sum payment due at the time the compliance plan is completed. The contractor may opt to pay a lump sum for fees over that amount by checking this option of payment. Any adjustments to reflect any increases or decreases in the total contract amount due to change orders or other contract changes will be due no later than 10 days following the final payment from the State of South Dakota to the contractor.

This fee will be made payable by check to the Lower Brule Sioux Tribal Employment Rights Office, which will be deposited in a specific account by the Lower Brule Sioux Tribal Treasurer.

7. INSPECTIONS

The TERO Director or designees will have the right to inspect all sites where employment is taking place under the provisions of this Agreement upon the Lower Brule Reservation.

8. RECORDS

The Employer will submit the following on a weekly basis to the TERO Office:

- (A) Weekly TERO Employment Report which includes the following data (forms for this item available from the TERO Office):
1. Wage and hour reports
 2. Personnel actions which include new hires, promotions, terminations, and disciplinary actions
- (B) Copies of official payrolls.

9. ASSISTANCE

If the Employer deems that an employee's performance is such that he or she is in danger of being suspended or terminated, the Employer may contact TERO for assistance in resolving the problem.

10. EMPLOYMENT POLICIES AND PROCEDURES

It is further understood that the Employer recognizes that all or a part of its operations are taking place within a unique cultural setting within the exterior boundaries of the Lower Brule Reservation. Employers will consider and takes into account Tribal Holidays and other cultural customs to promote rather than hinder the employment of Native Americans on the project.

11. LAYOFFS

If a layoff is required, the Employer will conduct a layoff consistent with its obligations under Section 5 of this Agreement. Any layoffs must be justified by business considerations.

12. PRIME RESPONSIBLE FOR COMPLIANCE OF SUBCONTRACTORS

The Employer (Prime Contractor) will be held responsible and accountable for assuring that any subcontracts let under this Agreement have a signed compliance plan, and that the subcontractor shall meet the Indian employment preference requirements and shall follow all stipulations under this compliance plan.

13. JURISDICTION

The parties agree this Compliance Plan will be implemented on a cooperative basis without regard to jurisdictional issues. Nothing in this Agreement will prevent the Tribe, the Department, or any contractor from instituting any litigation pertaining to any jurisdictional issue with regard to the employment rights code or any other matter.

14. DURATION

This Agreement will be for the life of this specific project.

Please note: Only the prime contractor is responsible for paying the TERO Fee but all subcontractors need to complete the company information below:

Contract Amount \$ _____ TERO Fee at 2% _____

Training Fee at 0.5% _____ Total Fee _____

Company _____

Project No. _____

Superintendent _____

Local Phone Number _____ Alt. Phone _____

Mailing Address _____
(Box or Street) (City) (State)

Local Mailing Address (if different from above) _____

Date Project Start _____ Date Project End _____

Core Crew Definition:

A contractor's or subcontractor's core crew is composed of full time employed individuals necessary to satisfy his/her reasonable needs for supervisory or specially experienced personnel to assure an efficient execution of the contract work. Any Indian already employed by a contractor will be included in the core crew, regardless of job function, to avoid the unintended results of having a contractor lay-off or terminate an Indian employee to hire another under this provision.

Core Crew and Classification (please note any Indian employees and be prepared to provide copies of Tribal Enrollment or Tribal IDs):

Estimated Number of Other Workers by Job Classification that are non-Core Crew:

List the vacancies and positions needed to fill by TERO Office other than training positions:

List the training positions:

DATE

TERO DIRECTOR, LOWER BRULE SIOUX TRIBE

DATE

AUTHORIZED COMPANY OFFICIAL

TITLE

ADDRESS