TABLE OF CONTENTS

SOUTHERN UTE INDIAN TRIBAL CODE

TITLE 17

EMPLOYMENT RIGHTS CODE

ARTICLE 1. GENERAL PROVISIONS AND PURPOSE 1

17-1-101. TITLE 1
17-1-102. PURPOSE 1
17-1-103. DEFINITIONS 1

ARTICLE 2. TRIBAL EMPLOYMENT RIGHTS OFFICE 3

17-2-101 ESTABLISHMENT 3
17-2-102 FUNCTIONS 3
17-2-103 DIRECTOR 4

ARTICLE 3. TRIBAL EMPLOYMENT RIGHTS COMMISSION 5

17-3-101. ESTABLISHMENT OF COMMISSION 5
17-3-102. TERM OF APPOINTMENT OF COMMISSIONERS 6
17-3-103. REMOVAL 6
17-3-104. POWERS OF THE COMMISSION 6

ARTICLE 4. INDIAN PREFERENCE IN EMPLOYMENT 7

17-4-101. PREFERENCE POLICY 7
17-4-102. HIRING 7
17-4-103. PROMOTIONS 9
17-4-104. LAY-OFFS 9
17-4-105. TRAINING 9
17-4-106. PRIORITY OF EMPLOYMENT PREFERENCE 9
17-4-107. COLLECTIVE BARGAINING AGREEMENTS 9

ARTICLE 5. PREFERENCE IN CONTRACTING AND SUBCONTRACTING 10

17-5-101. CONTRACT PREFERENCE POLICY 10
17-5-102. DETERMINATION OF TECHNICAL QUALIFICATIONS 10
17-5-103. PRIORITY OF CONTRACT PREFERENCE 11
17-5-104. APPLICABILITY 12

ARTICLE 6. CERTIFICATION OF INDIAN OWNED BUSINESSES 12

17-6-101. OWNERSHIP 12
17-6-102. MANAGEMENT CONTROL 13
17-6-103. INTEGRITY OF STRUCTURE 13
17-6-104. PROBATIONARY CERTIFICATION 14

17-6-105. CERTIFICATION PROCEDURES 14
17-6-106. HEARINGS 15
17-6-107. SUSPENSION OR REVOCATION OF FINAL CERTIFICATION 16

ARTICLE 7. REPORTING REQUIREMENTS 16

17-7-101. COVERED EMPLOYERS 17
17-7-102. INDIAN OWNED BUSINESSES 17

ARTICLE 8. EMPLOYMENT RIGHTS FEE 17

17-8-101. ESTABLISHMENT OF FEE 17

ARTICLE 9. COMPLAINTS 18

17-9-101. COMPLAINTS BY TERO 18
17-9-102. COMPLAINT BY INDIVIDUAL 18
17-9-103. TIME LIMITATION 18

ARTICLE 10. HEARINGS AND APPEALS 19

17-10-101. NOTICE 19
17-10-102. HEARING PROCEDURE 19
17-10-103. COMMISSION ORDER 21
17-10-104. APPEAL TO TRIBAL COURT 21
17-10-105. RELIEF PENDING APPEAL 22

ARTICLE 11. ENFORCEMENT 22

17-11-101. ENFORCEMENT BY TRIBAL COURT 22
17-11-102. ENFORCEMENT BY OFFICERS 23
17-11-103. PENALTIES 23

ARTICLE 12. TRIBAL COUNCIL WAIVER 23

17-12-101. WAIVER 23
17-12-102. EMERGENCY WAIVER 23

TITLE 17
SOUTHERN UTE INDIAN TRIBAL CODE
EMPLOYMENT RIGHTS CODE

Article 1. GENERAL PROVISIONS AND PURPOSE

17-1-101. Title. This Code shall be known as the Southern Ute Tribal Employment Rights Code.

17-1-102. Purpose. The purpose of this Code is to promote the employment of Indians, in accordance with federal law, on or near the Southern Ute Indian Reservation; to provide for Indian preference in employment in accordance with federal law; to assist employers, contractors and subcontractors in the fair employment of Indians on or near the Reservation; to provide a contracting preference for Indian owned businesses; to prevent discrimination against Indians in the employment practices of employers within the jurisdiction of the Tribe; and to establish a Tribal Employment Rights Commission and Office to further these objectives.

17-1-103. Definitions.

(1) "Commission" means the Southern Ute Indian Tribal Employment Rights Commission.

(2) "Commissioner" means a duly appointed member of the Commission.

(3) "Contract" or "Contracts" means all contracts and subcontracts, including, but not limited to, contracts for supplies, services and equipment.

(4) "Contractor" means a Person performing work pursuant to contracts or subcontracts.

(5) "Covered Employer" means an Employer doing business within the exterior boundaries of the Reservation, on land subject to the jurisdiction of the Tribe, who employs for wages five or more persons. The term "Covered Employer" excludes federal, state and county governmental entities, but includes the Tribe, except as otherwise provided herein. Regardless of the Federal Employer Identification Number used for particular employment positions within their organizations, for purposes of this Code, the Growth Fund, Sky Ute Casino, and Shared Services shall each be deemed separate Covered Employers with respect to employment or contracting occurring within the boundaries of the Reservation on land subject to the jurisdiction of the Tribe.

(6) "Employee" means any individual, natural Person employed for remuneration.

(7) "Employer" means a Person that has Employees.

(8) "Indian" means an individual, natural Person who is an enrolled member of a federally recognized Indian Tribe.

(9) "Indian Owned Business" means any commercial, industrial, or other business 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 a Local Indian or Local Indians, and which is so certified in accordance with Article 6 herein.

(10) "Local Indian" means an Indian residing on or near the Reservation, who has so resided for not less than six (6) months prior to commencement of, or application for, employment with a Covered Employer or not less than six (6) months prior to application as an Indian Owned Business.

(11) "Near the reservation" means within reasonable commuting time to the Reservation of not more than two hours.

(12) "Person" means both natural persons and artificial persons, including but not limited to, corporations, partnerships, limited liability companies, unions, societies, sole proprietorships, joint ventures and trusts.

(13) "Qualified Indian Applicant" means an Indian applicant for employment who meets the minimum mandatory requirements of a position and is capable of performing those requirements as they are stated by the Employer in a written job description or written policies, including factors for the determination of general suitability, such as previous employment job history and criminal history, as minimum mandatory requirements; provided, however, that such established requirements may not include non-job related requirements that have an improper or unlawful discriminatory impact on Indian applicants.

(14) "Reservation" means the Southern Ute Indian Reservation.

(15) "TERO" means the Tribal Employment Rights Office.

(16) "Tribal Council" means the Southern Ute Indian Tribal Council.

(17) "Tribal Court" means the Southern Ute Tribal Court.

(18) "Tribe" means the Southern Ute Indian Tribe.

(19) "Union" or "labor organization" means an organization, combination or association in which Employees participate, or by which Employees are represented, and which exists for the purpose, in whole or in part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment.

Article 2. TRIBAL EMPLOYMENT RIGHTS OFFICE

17-2-101 Establishment. TERO is hereby created as a division of the Tribe, responsible for the implementation and enforcement of the provisions of this Code.

17-2-102 Functions. TERO shall have the following responsibilities:

(1) To implement and enforce the established rules and regulations governing the activities of TERO.

(2) To assist Indians seeking or applying for employment with job counseling and referrals to training programs.

(3) To cooperate with federal agencies to enforce applicable federal anti-discrimination statutes and regulations, eliminate hiring discrimination against Indians, and enforce federal Indian preference requirements on lands subject to the Tribe's jurisdiction.

(4) To process requests by Employers for Indian Employees.

(5) To receive, process and investigate informal complaints regarding employment discrimination on lands subject to the Tribe's jurisdiction.

(6) To assess penalties, pursuant to a table of penalties approved by the Commission, from any Indian Owned Business or Covered Employer who fails to comply with the reasonable instructions of TERO.

(7) To issue probationary certifications and to make recommendations to the Commission concerning final certification or decertification of businesses as Indian Owned Businesses.

(8) To maintain a list of certified Indian Owned Businesses and to review their status with the Commission on an annual basis.

(9) To advise the Director and recommend review of Indian Owned Businesses whose eligibility for certification becomes questionable based on ownership or performance on contracts.

(10) To establish and maintain a skills bank to assist Employers by referring Qualified Indian Applicants for available job positions.

(11) To file complaints with the Commission as set forth herein.

(12) To coordinate with the Personnel/Human Resource Departments of the Tribe, the Growth Fund, and Casino, as well as the Tribal Higher Education Department, to determine and address training needs for Indians and Indian Owned Businesses.

(13) To take such other actions as are necessary to achieve the purposes and objectives of this Code; provided, however, that no significant new program or component of a program may be introduced, or program or component of a program significantly expanded, without prior approval of the Tribal Council.

(14) To account properly for the TERO fees assessed and collected pursuant to Article 8 of this Code, to prepare proposed budgets for use of those fees in accordance with the purposes of this Code, and to use such funds as appropriated by the Tribal Council for the uses designated by the Tribal Council.

17-2-103 Director. The Director of TERO shall be hired in accordance with Southern Ute Tribal Personnel Policies and Procedures. The TERO Director shall have the following responsibilities:

(1) To administer all TERO programs.

(2) To hire and supervise TERO employees pursuant to the Southern Ute Tribal Personnel Policy and Procedures.

(3) To process Indian Owned Business applications and issue probationary certifications when the applicants meet all of the requirements set forth in Article 6.

(4) To issue recommendations to the Commission for decertification of a listed Indian Owned Business when qualifications supporting its listing no longer exist, based on ownership, management or location, or when such business no longer meets the qualifications for listing based upon its job performance history.

(5) To obtain funds from federal, state, or other sources to carry out the purposes of TERO.

(6) To present to the Tribal Council such reports as the Tribal Council may require, including reports on TERO's activities on at least a quarterly basis.

(7) To assist Covered Employers in pursuing whatever corrective actions are necessary for such Covered Employers to come into compliance with the requirements set forth in this Code or with Commission rules and regulations.

Article 3. TRIBAL EMPLOYMENT RIGHTS COMMISSION

17-3-101. Establishment of Commission.

(1) The Commission is hereby established to carry out the powers and duties set forth in this Code.

(2) Commission members shall be appointed by the Tribal Council and shall serve until resignation or replacement. The membership shall be composed of the following five regular members and one alternate who shall each be enrolled members of the Southern Ute Indian Tribe:

(a) One member with tribal regulatory knowledge and experience;

(b) One member with knowledge and experience in Tribal energy resource development;

(c) One member with knowledge and experience in Tribal economic development; and

(d) Two members at-large who are not currently employed by the Tribe or a tribal entity or division and who do not have an ownership interest in or are employed by a certified Indian Owned Business.

(3) The Chairman of the Commission shall be designated by the Commission and shall preside over all meetings of the Commission. The Commission Chairman shall be entitled to vote on all matters before the Commission the same as other members.

(4) Three members of the Commission shall constitute a quorum.

(5) Commission members shall disqualify themselves from proceedings in cases that present a conflict of interest.

(6) When a Commissioner has been disqualified with regard to a matter before the Commission, the Chairman of the Commission may substitute an alternate with similar qualifications to serve as a Commissioner for that particular matter.

(7) Commissioners who are not otherwise compensated by the tribe by contract or through employment shall be compensated at the same daily rate as Gaming Commissioners.

17-3-102. Term of Appointment of Commissioners. Commissioners shall be appointed to three-year staggered terms; provided, however, that each Commissioner shall serve until reappointed or a successor is appointed. The beginning date of a term shall be fixed and shall not change based on the actual date of appointment, even if that means the Commissioner serves less than a full three-year term.

17-3-103. Removal. A Commissioner may be removed by a majority vote of the Tribal Council for neglect of duty, failure to attend meetings or other good cause demonstrating a Commissioner's unfitness for continued service.

17-3-104. Powers of the Commission. The Commission shall have the following responsibilities:

(1) To promulgate and implement such written rules and regulations as may be necessary to effectuate the purposes of this Code, including all activities and procedures of the Commission; provided, however, with the sole exception of rules or regulations governing hearing proceedings before the Commission, no new rule or regulation shall be implemented without prior approval of the Tribal Council.

(2) To review and hold hearings on formal complaints of employment discrimination.

(3) To approve or deny final certifications to businesses granted probationary certification as Indian Owned Businesses.

(4) To approve de-certification for any business no longer meeting the requirements for certification as an Indian Owned Business, including requirements related to the ownership or management structure of the Indian Owned Business or the performance history and qualifications of the Indian Owned Business.

(5) To regulate collective bargaining agreements of any Covered Employer, as well as to regulate collective bargaining by employees of a Covered Employer.

(6) To impose appropriate sanctions and grant any relief authorized by this Code.

(7) To take such other lawful actions as are necessary to achieve the purposes and objectives inherent in the policy of Indian preference in employment and contracting.

Article 4. INDIAN PREFERENCE IN EMPLOYMENT

17-4-101. Preference Policy.

(1) Every Covered Employer is required to give employment preference to Qualified Indian Applicants in accordance with this Code in hiring, promotion, lay-off and training for work performed within the exterior boundaries of the Reservation on land subject to the jurisdiction of the Tribe.

(2) A Covered Employer shall include and specify an employment preference policy statement consistent with this Code in all job announcements and advertisements covered by this Code.

(3) If any requirement of this Code is inconsistent with requirements directly applicable pursuant to federal law, or regulations or indirectly applicable through enactments by the Tribal Council adopting such federal standards, those federal standards shall take precedence. When contracting with any federal agency, the term "Indian or Native American preference" may be used if required by federal law.

17-4-102. Hiring.

(1) A Covered Employer may not hire any Person not entitled to preference pursuant to this Code for work on land subject to the jurisdiction of the Tribe until the Covered Employer has given TERO a reasonable time to locate a Qualified Indian Applicant or to communicate to the Covered Employer that no Qualified Indian Applicant is available to fill the job.

(2) For purposes of this section, "reasonable time" shall be defined as follows:

(a) For construction jobs, TERO shall have 72 hours to refer a Qualified Indian Applicant.

(b) For all other kinds of employment, TERO shall have five working days to refer a Qualified Indian Applicant.

(c) TERO may reduce these time periods if they would impose an undue burden upon the Covered Employer or if emergencies threatening life, property or environment justify such a reduction.

(3) For purposes of this section, the terms "hire" and "vacancy" shall not apply to positions that are subject to promotion opportunities that conform to the requirements of Section 17-4-103.

(4) A Covered Employer may set the job requirements for employee hiring; provided, however, that such requirements may not include non-job related qualifications that have a discriminatory impact on Indian applicants.

(5) Every Covered Employer shall establish written minimum qualifications for each position in its work force, a copy of which shall be provided to TERO and to all applicants at the time they express an interest in such position. These may be provided in electronic form.

(6) If TERO has reason to believe that any Covered Employer is setting discriminatory job qualifications, it shall first attempt to meet with the Covered Employer and resolve the matter informally. If informal resolution is unsuccessful, TERO may file a complaint against the Covered Employer pursuant to § 17-9-101.

(7) A Covered Employer may recruit and hire Employees or trainees from whatever source and by whatever process the Covered Employer chooses; however, the Covered Employer must notify TERO and provide a list of Employees hired.

(8) A Covered Employer shall advertise and announce all job vacancies in the Southern Ute Drum, on KSUT, on the Tribal Member Portal and on at least one locally available on line job listing service with the following exceptions:

(a) a Covered Employer may post a job vacancy internally to allow promotion of existing Employees. However, if the Covered Employer has no Southern Ute tribal member employees who are qualified for the vacancy or no Southern Ute tribal member is selected to fill the vacancy, then the vacancy must be advertised and announced externally in the manner required by this section;

(b) a Covered Employer is not required to advertise and announce a vacancy in the event a Southern Ute tribal member, who is a current employee or

participant in an internship or apprenticeship program, is selected for the employment opportunity.

17-4-103. Promotions.

(1) Each Covered Employer must give preference to Qualified Indian Applicants in all promotion opportunities.

(2) Covered Employers shall provide adequate advance notice of promotion opportunities to their current Indian Employees.

17-4-104. Lay-Offs.

(1) Each Covered Employer must accord preferential protection to Indians against lay-off and reductions in work force. Such preference shall be in accordance with § 17-4-106.

(2) A Covered Employer may not lay-off or terminate an Indian Employee as a result of lay-off or reduction in work force if a non-Indian Employee in the same job classification and with the same seniority is still employed.

17-4-105. Training. Each Covered Employer must give preference to Qualified Indian Applicants in existing training or apprenticeship programs. Every Covered Employer with a training program shall employ the maximum number of Indian trainees for available positions in such program.

17-4-106. Priority of Employment Preference. The employment preference provided for in this Code shall follow these priorities:

(1) First preference shall be given to enrolled members of the Southern Ute Indian Tribe.

(2) Second preference shall be given to Indians who are legally married to enrolled members of the Southern Ute Indian Tribe.

(3) Third preference shall be given to enrolled members of the Ute Mountain Ute and Northern Ute tribes.

(4) Fourth preference shall be given to Local Indians.

(5) Fifth preference shall be given to non-Local Indians.

17-4-107. Collective Bargaining Agreements.

(1) All transaction documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between Covered Employers and labor organizations that are entered into by or issued to any Covered Employer and that are to be performed on lands subject to the jurisdiction of the Tribe shall contain a provision pursuant to which the Covered Employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Code. With respect to any transaction document that does not contain the foregoing provision, the terms and provisions of this Code are incorporated therein as a matter of law and the requirements of the Code shall constitute affirmative contractual obligations.

(2) No Employee of the Tribe, including employees of the Tribe at the Growth Fund, Shared Services or the Sky Ute Casino, may enter into a collective bargaining agreement.

Article 5. PREFERENCE IN CONTRACTING AND SUBCONTRACTING

17-5-101. Contract Preference Policy.

(1) All Covered Employers awarding contracts shall give preference to certified Indian Owned Businesses technically qualified to perform the work required and shall utilize competitive bid procedures in accordance with this Article when the majority of the work under the contract will occur on lands subject to the jurisdiction of the Tribe.

(2) If a qualified Indian Owned Business participates in the bidding process, then the contracting entity shall give preference to such bidder if the Indian Owned Business' initial bid or resubmitted bid is no more than 5% higher than the lowest bid received.

(3) Before a Covered Employer can reject a qualified Indian Owned Business on the basis of its bid, it must offer the Indian Owned Business a single opportunity to resubmit a revised bid. In requesting and/or receiving revised bids from Indian Owned Businesses, the Covered Employer shall not, in any circumstance, disclose any other bids received.

17-5-102. Determination of Technical Qualifications.

(1) All Covered Employers awarding contracts under this Article shall have the discretion to determine technical qualifications. However, if the Covered Employer determines that there are no Indian Owned Businesses that are

technically qualified, the Covered Employer must provide to each Indian Owned Business it rejects a written description of areas in which it believes the business is weak and steps the Indian Owned Business could take to upgrade its qualifications. A Covered Employer may also be required to cooperate in establishing a tribal member or Indian Owned Business training program, coordinated with and fully funded by TERO.

(2) If a Covered Employer determines that an Indian Owned Business lacks the technical qualifications to perform all of the work required under the proposed contract, the Covered Employer shall make a good faith effort to divide the scope of work requirement into small contracts or components, so that the Indian Owned Business can qualify for a portion of the work or provide a written explanation as to why the contract cannot be so divided. Such written explanation shall be provided to the disqualified Indian Owned Business.

(3) If an Indian Owned Business disqualified on technical qualification grounds believes that the disqualification was the result of an improper effort by a Covered Employer awarding the contract to circumvent its preference responsibilities under this Article, the Indian Owned Business may file a written complaint pursuant to§ 17-9-102.

17-5-103. Priority of Contract Preference. The Indian contract preference provided for in this Code shall be given in the following priority:

(1) First preference shall be given to Indian Owned Businesses controlled by enrolled members of the Southern Ute Indian Tribe.

(2) Second preference shall be given to Indian Owned Businesses controlled by Indians who are legally married to enrolled members of the Southern Ute Indian Tribe.

(3) Third preference shall be given to Indian Owned Businesses controlled by enrolled members of the Ute Mountain Ute and Northern Ute tribes.

(4) Fourth preference shall be given to Indian Owned Businesses controlled by Local Indians.

(5) In the event that there are two or more businesses entitled to preference within any of the above-listed categories, a 100% Indian Owned Business shall be given preference over a less than 100% Indian Owned Business, and an Indian Owned Business located within the exterior boundaries of the Reservation shall be given preference over an Indian Owned Business controlled by Local Indians but located off the Reservation.

17-5-104. Applicability.

(1) These bid award procedures shall not apply to the award of contracts by federal, state, county and municipal governmental entities but shall apply to the Tribe, unless explicitly waived pursuant to Article 12.

(2) When a Tribal department, division, entity or enterprise selects a contractor other than in accordance with the priorities listed in § 17-5-103, it must indicate the steps taken to award the contract in accordance with those priorities and the reasons for its selection when submitting a contract to the Tribal Council for approval.

Article 6. CERTIFICATION OF INDIAN OWNED BUSINESSES

An applicant for certification as an Indian Owned Business must satisfy all of the criteria prescribed under this Article.

17-6-101. Ownership.

(1) Formal Ownership.

(a) The applicant must demonstrate that a Local Indian or Local Indians own(s) fifty-one percent (51%) or more of the partnership, corporation, joint venture, or other business arrangement for which certification is sought.

(b) Such Indian ownership must be embodied in the organizational documents of the business.

(c) The Indian ownership must have a majority of the voting rights or employ a decisional mechanism for making all decisions of the business.

(d) The Indian ownership must be entitled to receive at least a majority of the business' assets upon dissolution.

(2) Value. To obtain a majority ownership of the business, the Indian ownership must have provided real value, such as capital, equipment, real property, or similar assets, commensurate with the value of the ownership share. Purchase of the Indian ownership through a promissory note, the holder of which is the non-Indian owner of the business or an immediate relation thereof or through any

similar arrangement is not real value unless: a) the applicant makes a convincing showing that the Indian ownership brought special skills or similar benefits to the business; and b) that there is good reason to believe the arrangement would have been entered into even if there were no Indian preference program in existence.

(3) Profits. The Indian ownership must be entitled to receive at least fifty-one percent (51%) of all business profits. If the non-Indian ownership is entitled to a share of the profits greater than 50%, under whatever agreement or arrangement, including but not limited to management fees, equipment rental fees, or bonuses tied to profits, certification will be denied.

17-6-102. Management Control.

(1) The business must demonstrate that one or more of the Indian owners is substantially involved as a senior level official in the day-to-day management of the business as his primary employment activity. Although the Indian owner does not have to be the Chief Executive Officer, he must, through prior experience or training, have substantial occupational ties to the business and therefore be qualified to serve in a senior level position. He must also be sufficiently knowledgeable about the business to be accountable to the Tribe for the business' activities.

(2) Any joint venture applicant must also demonstrate that the Indian business is, in fact, the controlling partner in the joint venture; that the Indian partner has the experience and expertise to manage the entire operation; and that the non-Indian partner is providing specialized resources or expertise to the joint venture and is not, in fact, the manager.

17-6-103. Integrity of Structure. The applicant must show that the business was not established primarily to take advantage of Indian preference. In evaluating the applicant, TERO shall consider the factors set out below and shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program:

(1) Whether the history of the firm demonstrates it was established primarily to take advantage of the Indian preference program, particularly in cases where the firm was originally a non-Indian owned business, or associated with a non-Indian owned business, which gained little in terms of capital, expertise, and equipment by adding Indian ownership or merging with the Indian business.

(2) 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.

(3) Whether the experience, expertise and resources of the non-Indian ownership are so much greater than those of the Indian ownership that there is little sound business reason for the non-Indian ownership to accept a junior role in the business other than to be able to take advantage of the Indian preference program.

17-6-104. Probationary Certification.

(1) Probationary certification may be granted for up to six-months, and Indian-owned Business certification expires at the end of this period unless the business applies for final certification and is granted full certification or the probationary certification period is extended.

(2) During the probationary period, TERO staff shall monitor the business' activities to ensure that the business is operating consistent with the description in its application. During the probationary period, the business shall provide TERO updated information and documents necessary to evaluate the business operation.

(3) Within 30 days of the end of the probationary period, the business with probationary certification shall file an updated application for final certification.

17-6-105. Certification Procedures.

(1) The applicant shall submit to TERO a completed application on forms provided by TERO, accompanied by an application processing fee as established by the Commission.

(2) Probationary Certification Determinations.

(a) Within 30 days after receipt of a completed application and the processing fee, TERO shall review the application and request such additional information as it believes appropriate, conduct any required investigations, and conduct the analysis necessary to make a determination on probationary certification.

(b) Computation of the 30-day period shall be stayed for the time a new request for additional information is outstanding, and the Director of TERO may extend the processing period by an additional 30 days by sending notification of the extension to the applicant.

(c) If the applicant meets all of the requirements set forth in this Article for Indian Owned Business certification, the Director shall issue the applicant a probationary certification for up to six months as an Indian Owned Business. If the TERO Director determines that the applicant fails to meet one or more of the requirements for Indian Owned Business certification, the TERO Director shall notify the applicant in writing of the denial of certification together with the reasons for the denial.

(d) If the applicant wishes to challenge the TERO Director's probationary certification decision, it may file a formal complaint with TERO within 30 calendar days of receipt of the TERO Director's probationary certification decision.

(3) Final Certification Determinations.

(a) The Commission shall review an application for full certification within 30 days of receiving an application.

(b) The Commission shall review the application with its supporting documents, as well as the performance of the business during the probationary period, and take action to:

(i) grant full certification;

(ii) continue the probationary period for an additional six months; or

(iii) deny certification.

17-6-106. Hearings.

(1) The Commission shall hold hearings on challenges to TERO decisions on probationary certification and on Commission decisions concerning final certification, decertification or suspension after providing notice to the ownership of the business, to TERO, and to the public through a published notice in The Southern Ute Drum and posting on the Tribe's website no less than 21 days prior to such hearing.

(2) Only principals of the business, the TERO Director, and witnesses who have been granted an opportunity by the Commission to participate shall be entitled to present evidence at the hearing.

(3) Any interested person, other than an owner, wishing to present information to the Commission shall be entitled to do so by requesting in writing an opportunity to participate, no less than five days prior to the hearing.

(4) Hearing procedures shall be governed by Article 10 herein.

17-6-107. Suspension or Revocation of Final Certification.

(1) TERO may initiate proceedings to suspend or revoke the certification of any business based upon information provided to TERO by the business or any Covered Employer, on the basis of a written complaint filed by any person, including a Covered Employer, or on its own initiative.

(2) TERO shall prepare an analysis, together with a recommended disposition, and shall notify the business by certified mail that its certification is being re-examined. The grounds for such re-examination shall be included in the notice.

(3) The Commission shall then set a date for hearing, which shall be held within 30 days after receipt of the analysis and recommended disposition from TERO.

(4) The hearing shall be conducted in accordance with Article 10 herein. At the hearing TERO staff shall present the case for suspension or revocation and any interested person, having submitted a timely written request to participate, may also present information to the Commission.

(5) If the complaint is substantiated at the hearing, the Commission may take any of the following actions:

(a) suspend certification for up to one year;

(b) revoke certification;

(c) place the business on probationary certification and order that corrective action be taken within a fixed period, if warranted by the evidence.

(6) A business that has had certification revoked may not reapply for a period of one year.

Article 7. REPORTING REQUIREMENTS

17-7-101. Covered Employers. Every Covered Employer doing business within the exterior boundaries of the Reservation shall submit employment information reports to TERO. Such reports shall include all information necessary to determine compliance with the provisions of this Code. Reports shall be filed on a quarterly basis no later than 10 business days after the end of each calendar quarter.

17-7-102. Indian Owned Businesses.

(1) Each Indian Owned Business shall report to TERO, in writing, any changes in its ownership or control within 30 calendar days of such changes.

(2) Each Indian Owned Business shall also update the information provided in its initial application on a report form provided by TERO, which update shall be given annually on the anniversary of its receipt of final certification.

(3) Failure to provide information pursuant to these requirements shall constitute grounds for suspension or revocation of certification.

Article 8. EMPLOYMENT RIGHTS FEE

17-8-101. Establishment of Fee. The Tribe hereby establishes an employment rights fee for the funding, administration and operation of training programs for Southern Ute tribal members, as well as for the operational expenses of TERO.

(1) Every Covered Employer performing a construction, roustabout or maintenance contract in connection with building construction or oil and gas field work, including a contract for services, labor or materials or any combination thereof, for such work, a majority of which will occur on lands subject to the jurisdiction of the Tribe, shall pay a fee of 4% of the cumulative amount of the contract, which shall be calculated on a per-contract basis and paid before final payment is made to the contractor but after any and all change orders that may affect the contract price have been processed.

(2) Every Covered Employer, with twenty or more employees or gross revenues of $500,000 or more, other than the contractors referenced above, shall pay an annual fee of 4% of the annual payroll of those employees of the Covered Employer who perform work principally within the exterior boundaries of the Reservation subject to the jurisdiction of the Tribe. Such fee shall be paid within 30 calendar days of the end of each calendar year.

(3) The Tribe, state and federal governments, including their political subdivisions; and non-profit organizations shall be exempt from payment of TERO fees.

(4) TERO fees shall be deposited in the Tribe's General Fund as a separate line item to be used to fund training for Southern Ute tribal members, enrolled members of the Ute Mountain Ute and Northern Ute Tribes and Local Indians, including apprenticeship programs and on-the- job training.

Article 9. COMPLAINTS

17-9-101. Complaints by TERO. If TERO believes that a Covered Employer or a Contractor that has been awarded a contract for work on Reservation lands subject to the jurisdiction of the Tribe has failed to comply with this Code or any rules, regulations, or order of TERO or the Commission, it may, after notifying the alleged violator and attempting to achieve informal settlement of the matter, file a complaint with the Commission.

17-9-102. Complaint by Individual.

(1) If an Indian Employee, employment applicant or Contractor believes that a Covered Employer has violated the express provisions of this Code, he may file an informal complaint with TERO that states with specificity the alleged violation under Article 4 or Article 5 of this Code.

(2) Upon receipt of the complaint, TERO shall investigate the allegations of the complaint. If TERO determines there is good cause to believe that an identified section of Article 4 or 5 of this Code has been violated, it shall attempt to reach an informal settlement of the matter. If there is no substantial evidence that a specific section of this Code has been violated, TERO shall dismiss the informal complaint and the matter shall be closed.

(3) If settlement of the informal complaint cannot be achieved, the Indian employee, applicant or Contractor may file a formal complaint with the Commission. The formal complaint is a separate document from the informal complaint and must identify with specificity the section of Article 4 or 5 of this Code that has been violated and provide evidence supporting the alleged violation. If the Indian Employee, applicant or Contractor fails to file a formal complaint or files a formal complaint that fails to state a claim for violation of this Code, TERO shall dismiss and close the matter.

17-9-103. Time Limitation. An informal complaint must be filed within 90 calendar days of the occurrence of the incident that constitutes the alleged violation of this Code or within 90 calendar days of discovery of the alleged violation. A formal complaint must be

filed within 90 calendar days of the determination by TERO that a settlement of the informal complaint cannot be achieved.

Article 10. HEARINGS AND APPEALS

17-10-101. Notice. If a formal complaint is filed with the Commission, the following notice procedures shall apply:

(1) The Commission shall review the formal complaint to determine whether it states a claim for violation of a provision of Article 4 or Article 5 of the TERO Code. If the Commission determines that the formal complaint fails to state a claim, notwithstanding any prior determination of TERO to the contrary, it shall dismiss the formal complaint and close the matter. If the Commission determines that the formal complaint states a claim for violation of a specifically identified section of Article 4 or Article 5 of the TERO Code, it shall set the matter for hearing.

(2) The alleged violator, the complainant and TERO shall be given notice of the hearing at least 30 calendar days prior to the hearing. A copy of the formal complaint shall be given to the alleged violator at the same time as the notice of hearing.

(3) Notice shall be given pursuant to the Tribal Civil Procedure Code.

17-10-102. Hearing Procedure. Hearings shall be governed by the following rules of procedure and such other rules as may be adopted by the Commission:

(1) The Commission, in its sole discretion, may refer the conduct of a hearing on any formal complaint to the Southern Ute Administrative Appeals and Hearings Office (AAHO). Upon referral, the AAHO shall conduct the hearing in accordance with these rules, such other rules as have been adopted by the Commission and those AAHO rules of procedure that are not inconsistent with these rules and other rules adopted by the Commission. When a referral is made, references in Sections 17-10-102, 17-10-103, 17-10-104, 17-10-105 and 17-11-101 to the "Chairman of the Commission" or the "Commission" shall be deemed to apply to the AAHO. TERO shall refer the matter to the AAHO and the AAHO shall conduct the hearing when there is not a full serving quorum of the Commission available within the time frame set for conducting the hearing.

(2) The Chairman of the Commission shall preside over the hearing and shall have the authority to administer oaths and affirmations to witnesses.

(3) All parties may be represented by counsel at their own expense.

(4) The Commission may have the advice and assistance of legal counsel for the Tribe at the hearing.

(5) The Chairman of the Commission shall have the authority to sign and issue subpoenas.

(6) The Commission may, in its sole discretion, hold a pre-hearing conference to narrow the issues in the matter, schedule hearings, identify witnesses, ensure that subpoenas are issued in a timely manner and take any other actions that will simplify the hearing and increase the overall efficiency of the hearing process.

(7) All parties have the right to testify, present testimony of witnesses and other relevant evidence, and to ask questions of witnesses. Prior to giving testimony, witnesses may be excluded from any hearing at the sole discretion of the Commission.

(8) Formal rules of evidence and procedure need not be followed, but the Commission shall determine the facts in a fair, reasonable and orderly fashion and may exclude evidence that is irrelevant or cumulative.

(9) Prior to the commencement of a hearing, the Commission may require the parties to meet to discuss whether a settlement can be reached.

(10) The initial burden of proof shall be on the complainant to establish a violation of a provision of Article 4 or 5 of the TERO Code. Once facts have been established that would constitute a violation, the burden of proof shall be on the Employer or Contractor to prove compliance with this Code.

(11) All matters at issue must be proven by a preponderance of the evidence.

(12) In the event a party does not make an appearance at the date and time set for hearing, the Commission shall enter a default judgment against that party, provided, however, that proper notice has been given and such proof of notice is on file.

(13) A record of the hearing shall be kept by audio recording.

(14) Hearings may be continued for good cause.

(15) A written decision shall be issued within 30 calendar days after the hearing with copies mailed to all parties.

(16) Notice of the right to appeal to the Tribal Court shall be included with the Commission's decision.

17-10-103. Commission Order. If after hearing, the Commission finds that an Employer or Contractor has violated this Code, the Commission shall enter an order which may include any of the following:

(1) Denial of the right to commence or continue business on land subject to the jurisdiction of the Tribe, provided, however, that this provision shall not apply to any governmental or business entity of the Southern Ute Indian Tribe.

(2) Issuance of one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of non-Indian employees, injunctive relief, and mandated corrective action to cure the violation; provided, however, that liability for back pay or other forms of compensatory damages shall not accrue from a date more than 90 calendar days prior to the date of the filing of the complaint.

(3) Imposition of civil penalties, upon a finding of intentional violation.

(4) Mandated corrective action to ensure compliance with this Code or to remedy any harm caused by the violation of the Code, consistent with the requirements of the Indian Civil Rights Act.

(5) An award of attorney's fees and costs in the case of an individual suit initiated pursuant to § 17-9-1 02, if either the respondent's or complainant's position lacked substantial justification.

(6) Other provisions deemed necessary by the Commission.

17-10-104. Appeal to Tribal Court.

(1) Any person adversely affected by an order of the Commission may seek judicial review within calendar 30 days of such order by filing for review in accordance with the Tribal Appellate Code. Except as otherwise stated herein, the procedures stated in the Appellate Code shall be applied by the Tribal Court in the conduct of this review.

(2) Review by the Tribal Court shall be limited to the record made at the Commission hearing. The Tribal Court shall not substitute its judgment for that

of the Commission as to the weight of the evidence on any disputed finding of fact.

(3) The Tribal Court may reverse a Commission decision and remand the case to the Commission for an additional hearing if it finds that the decision is not supported by the record or if it finds a material error in procedure.

(4) The Tribal Court shall reverse or modify the Commission order if it finds an error of law or if it finds the decision to be arbitrary and capricious.

(5) Unless the Tribal Court finds cause for reversing, modifying or remanding the Commission's order, it shall affirm the Commission's action and enter an order directing its enforcement.

17-10-105. Relief Pending Appeal.

(1) The commencement of appeal proceedings shall not, unless specifically ordered by the Tribal Court, operate as a stay of the Commission's order.

(2) An application for stay shall be filed within the period prescribed for judicial review in § 17-10-104. No stay shall be granted unless the appellant demonstrates that the requirements for a stay stated in the Appellate Code at § 3-1-105 have been met.

Article 11. ENFORCEMENT

17-11-101. Enforcement by Tribal Court.

(1) If the Commission enters an order pursuant to § 17-10-103 that is not appealed, and there is no compliance with the order, the Commission may petition the Tribal Court for an order compelling compliance with the Commission order.

(2) The Tribal Court shall issue an enforcement order if it appears from the petition that the Commission order was lawfully entered pursuant to a written decision following a hearing, was within the scope of the authority granted to the Commission under this Code, and that the non-complying party received notice of the Commission order.

(3) If at any stage in the enforcement process, the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages or fees that are (a) owed by that party

pursuant to an outstanding order of the Commission or Court, or (b) which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Tribal Court for a writ of attachment to secure compliance.

17-11-102. Enforcement by Officers. Tribal peace officers are hereby authorized and directed to carry out the provisions of enforcement orders entered by the Tribal Court pursuant to this Article.

17-11-103. Penalties. Any Person who violates an enforcement order issued by the Tribal Court shall be liable, in addition to the remedial measures contained in the Commission order, for one or more of the following:

(1) A civil money penalty.

(2) A civil remedial forfeiture of any property used in the commission of a violation of an enforcement order.

(3) Suspension or revocation of any license or permit issued to the violator by the Tribe.

(4) Court costs and attorney's fees.

Article 12. TRIBAL COUNCIL WAIVER

17-12-101. Waiver. After notification and consultation with TERO, the Tribal Council may waive provisions of this Code if such waiver is deemed to be in the best interest of the Tribe. The waiver must be explicitly stated and authorized pursuant to a tribal resolution approved by the Tribal Council.

17-12-102. Emergency Waiver. Upon declaration by the Tribal Chairman that an emergency exists that threatens the public health or safety, and which requires an immediate response, this Code may be temporarily waived, and a Covered Employer, including the Tribe, the Growth Fund, Shared Services or the Casino, may engage the services of any party reasonably necessary to address the emergency. Once the emergency conditions have been addressed, the provisions of this Code shall be fully operational and applicable.