

## RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

### Approving and Enacting the Chapter 10: Kayenta Township Employment Rights Ordinance.

#### WHEREAS:

1. The Kayenta Township Commission (KTC) was established and authorized by the Navajo Nation Council by resolutions CJA-3-96 and CN-76-96, more specifically cited in the Plan of Operation, Section III, Jurisdiction, B. "The KTC shall have the jurisdiction over all planning and control of that area authorized and designated by the Navajo Nation Council in November 1985 (Resolution CN-86-85) and the official Survey Plat filed with Navajo County and submitted to Bureau of Indian Affairs (incorporated by reference herein) hereinafter referred to as the Township area."; and
2. There is presently no Office of Navajo Labor Relations (ONLR) in the Kayenta Township to provide local workforce and subcontract preference, and employment rights protection; and
3. The Navajo Nation Job Service office has also moved their staff to Tuba City who come to Kayenta Township once a week; and
4. The Kayenta Township Commission can best provide this local service and derive revenue from the construction activity via a 3% Kayenta Township Employment Rights (KERO) Fee within the Township, as depicted on the chart attached as Exhibit " C;" and
5. The Kayenta Township Commission staff developed a Chapter 10; Kayenta Township Employment Rights Ordinance (KERO) and Form, herein attached respectively as Exhibits "A" and "B".
6. Appendix for permits and fees is in development for later consideration.


#### NOW THEREFORE BE IT RESOLVED:

1. The Kayenta Township Commission hereby approves and enacts the Chapter 10; Kayenta Township Employment Rights Ordinance, herein attached as Exhibit "A", effective on this date of enactment.

#### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Kayenta Township Commission at a duly called meeting at Kayenta, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, and 0 abstained, this 23 rd day of May, 1999.

Motion: Richard P. Mike  
Second: Yazzie Leonard

  
 Chairperson, Kayenta Township Commission

CHAPTER 10:  
KAYENTA EMPLOYMENT RIGHTS ORDINANCE

TABLE OF CONTENTS

Section 1	Definitions
Section 2	Indian and Tribal Preference in Employment
Section 3	Contractors and Subcontractors
Section 4	Implementation of Indian and Tribal Preference Requirements
Section 5	Compliance by Unions
Section 6	Fees
Section 7	Sanctions
Section 8	The Kayenta Employment Rights Office "KERO"
Appendix	KERO PERMITS AND FEES

# KAYENTA TOWNSHIP EMPLOYMENT RIGHTS ORDINANCE

## CHAPTER 10: KAYENTA EMPLOYMENT RIGHTS ORDINANCE

The Kayenta Township Commission has recognized that, Indians have unique and special employment rights and are entitled to the protection of laws established by the federal government to combat employment discrimination on or near Indian reservations, including:

1. Public Law 93-638 (Indian Self-Determination Act), Section 7(b)
2. Title VII of the Civil Rights Act of 1964 (as amended by the Equal Opportunity Act of 1972 and the Civil Rights Act of 1991), including Section 703(i);
3. Executive Order 11246, including its Indian Preference provisions.

The Kayenta Township Commission, by its inherent sovereign powers, and in order to increase employment of local residents has the authority to guarantee and implement the unique employment rights of Indians within the boundaries of the Kayenta Township.

The Kayenta Township Commission has the authority to regulate the employment practices of employers operating within the boundaries of the Kayenta Township.

### Section 1 Definitions

- 1.1 "Tribal member" shall mean an enrolled member of the Navajo Nation.
- 1.2 "EEOC" shall mean the Equal Employment Opportunities Commission of the United States.
- 1.3 "The Kayenta Township Commission" shall mean the elected governing body of the Kayenta Township which consists of 3606.43 acres.
- 1.4 "Indian" shall mean an American Indian (Native American) or Canadian Aboriginal as defined by federal regulation or statute.
- 1.5 "Indian Preference" shall mean preference in hiring "Indian" employees.
- 1.6 "Preferred employee" shall mean a person entitled to a preference in employment under this Ordinance.

### Section 2. Indian and Tribal Preference in Employment

- 2.1 All employers operating within the Kayenta Township boundaries shall give preference to Indians in hiring, promotion,

# KAYENTA TOWNSHIP EMPLOYMENT RIGHTS ORDINANCE

- contractor is not an Indian owned firm, the contractor must provide evidence of good faith steps taken to identify qualified Indian firms for the subcontract.
- 3.5 A contractor shall not refuse to employ an Indian subcontractor for the reason of price so long as the Indian firm's price is within five percent (5%) of the lowest bid, calculated by multiplying the lowest bid by 105%, in relationship to the cost of materials and labor.
- 3.6 A contractor shall not refuse to subcontract with an Indian firm for the reason that a non-Indian firm is more qualified, so long as the Indian firm satisfies the threshold requirements for qualifications for the job.
- 3.7 A contractor who fails to submit an Indian Preference plan shall be considered a non-responsive bidder.
- 3.8 If awarded the contract, a contractor may not deviate from the Indian Preference plan or add new subcontractors without the written consent of the Kayenta Township Office.
- 3.9 A contractor is prohibited from engaging in bid shopping as a means of avoiding its Indian Preference subcontract obligations. "Bid shopping" is defined as any practice in which a bidder or contractor informs a prospective subcontractor that it will receive a subcontract only if it offers a price lower than that proposed by another firm.
- 3.10 Prior to or with the submission of a bid, a prospective contractor and all subcontractors shall identify regular, permanent employees. Because of their importance to the contractor, such employees may be employed on the project whether or not they are Indian. A regular, permanent employee is defined as one who is, and has been for at least one year, on the contractor's or subcontractor's annual payroll, or is an owner of the firm. The fact that an individual has worked for the contractor on previous projects does not qualify that individual as a regular, permanent employee. Exceptions for superintendents and other key personnel may be granted by the Kayenta Township Office on a case-by-case basis.
- 3.11 Any contractor or subcontractor which fills a vacant position within its organization immediately prior to undertaking work within the Kayenta Township shall provide evidence acceptable to the Kayenta Township Office that such action was not intended to circumvent Indian Preference requirements.
- 3.12 No Indian employee shall be laid off as long as a non-Indian worker in the same craft is still employed. The non-Indian shall be laid off first, as long as the Indian employee meets the qualifications for the job. If the contractor lays off by crews, qualified Indians shall be transferred to a crew that will be

# KAYENTA TOWNSHIP EMPLOYMENT RIGHTS ORDINANCE

- 4.6 Establish programs to provide counseling and support to Indian and tribal member workers to assist them in retaining employment. Employers shall be required to participate in and/or cooperate with such programs.
- 4.7 Coordinate with federal employment rights agencies to eliminate unlawful discrimination against Indians.
- 4.8 Take such other action as is necessary to achieve the purposes and objectives of this Ordinance.

## Section 5. Compliance by Unions

- 5.1 Every employer who has a collective bargaining agreement with one or more unions shall be required to obtain a written agreement from such union(s) stating that the union shall comply with this Ordinance. Until such agreement is filed with the Kayenta Township Office, the employer may not commence work within the Township boundaries.
- 5.2 Every such union agreement filed with the Kayenta Township Office stating that the union will comply with this Ordinance, shall also include the following:
  - a. Preferred Employee Preference. The union will give absolute preference to preferred employees in job referrals regardless of which union referrals regardless of which union referral list they are on.
  - b. Cooperation with the Kayenta Township Office in all respects.
  - c. Registration. The union will establish a mechanism allowing preferred employees to register for job referral lists by telephone mail or fax.
  - d. Apprentices/Helpers/Trainees. The union will fill any openings for apprentices, helpers or trainees with preferred employees. If the union has no Indians, it must make waivers to use referrals of the Kayenta Township Office.
  - e. "Blanketing-In" Preferred Employees. The union will "blanket-in" all preferred employees who do not wish to join the union.
  - f. Temporary Work Permits. The union will grant temporary work permits to preferred employees who do not wish to join the union.

# KAYENTA TOWNSHIP EMPLOYMENT RIGHTS ORDINANCE

## Section 7. Sanctions

- 7.1 Any employer who willfully fails to comply with the laws, rules, regulations and guidelines of the Kayenta Township or of this ordinance will be subject to denial of the right to commence or continue operations within the Kayenta Township boundaries.
- 7.2 Non-compliance with the laws, rules, regulations and guidelines of the Kayenta Township or of this Ordinance may result in one or more of the following sanctions being imposed by the Kayenta Township Office:
  - a. Civil Fines.
  - b. Suspension or termination of the employer's operation.
  - c. Denial of the right to conduct any further operations within the Kayenta Township Boundaries.
  - d. Payment of back pay or other funds to correct any harm done to legitimately aggrieved Indians.
  - e. Termination of employees hired in violation of this ordinance.
- 7.3 Any employee, employer, union, person or other entity subject to this Ordinance which retaliates against any worker, employer, union, person or other entity because of the exercise of the person's or entity's rights under this Ordinance.
- 7.4 Prior to sanctions being imposed, an employer will be given the opportunity to present evidence in a Hearing supporting a contention of non-violation of the laws, regulations or guidelines of the this Ordinance.
- 7.5 Hearings and Appeals will be conducted according to the provisions set out in the "Kero Handbook".

## Section 8 The Kayenta Employment Rights Office "KERO"

- 8.1 For purposes of implementing and enforcing this Ordinance, the Kayenta Township Office shall also act as the Kayenta Employment Rights Office.
- 8.2 The Township Office staff shall hire and supervise qualified staff as necessary, expend funds designated in the "KERO" account for KERO enforcement and monitoring purposes, and seek, obtain and expend funds from federal state or other sources to carry out the purposes of this KERO Ordinance.
- 8.3 The Kayenta Township Office shall impose, in accordance with the purposes of this Ordinance, numerical hiring goals and timetables specifying the minimum number Indians and, where

**KAYENTA TOWNSHIP COMMISSION**  
**P.O. BOX 1490**  
**Kayenta, Arizona 86033**  
**(520)697-8451**  
**(520)697-8461**

**KERO PERMITS AND FEES**

GROSS AMOUNT OF CONTRACT \$ \_\_\_\_\_

KERO FEES  
(2% of gross contract amount) \$ \_\_\_\_\_

To be paid within 30 days of signing of the contract. If the contract exceeds \$1,000,000 the Kayenta Township Office may approve installment payments as long as the full amount is paid within 90 days of the signing of the contract.

CONSTRUCTION PERMIT FEE \$ \_\_\_\_\_  
(1% of gross contract amount)

To be paid prior to actual construction start date.

This agreement is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in accordance with the Kayenta Employment Rights Ordinance, by and between \_\_\_\_\_ Construction Company, Inc. (contractor) and the Kayenta Township Office.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kayenta Township Office

\_\_\_\_\_  
Date