

Tribal Prevailing Wage Ordinance
#16-550-03

Article I. Purpose; Findings.

1.01 *Purpose.* The purpose of this ordinance is to authorize the Tribe to determine area prevailing wages to the extent permitted under Federal law so that the Davis-Bacon prevailing wage determination will not apply under covered agreements.

1.02 *Scope.* This Ordinance shall cover all federally funded construction projects that would otherwise require Davis-Bacon wages under the Davis-Bacon Act.

1.03 *Findings.* The Tribal Council has made the following legislative findings with respect to the establishment of a Tribal Prevailing Wage:

- a. 25 U.S.C. Section 4114(b)(3) expressly provides that the determination of prevailing wages by an Indian Tribe supersedes prevailing wage determinations of the Secretary and the Davis-Bacon Act, 40 U.S.C. Section 276.
- b. The Tribal Council has determined it is in the best interest of the Tribe to establish a prevailing wage for laborers, mechanics, and other positions which may be designated by the Federal Government or the Tribe, in order to promote the general welfare and economic development of the Tribe in exercise of the Tribe's inherent authority and congressionally delegated authority.
- c. The prevailing wages established by the Tribe under this ordinance are intended to supersede all Federal wage determinations to the greatest extent allowed under Federal Law and to the fullest legal authority of Tribal Law.

Article II. Adoption, Amendment, Repeal, Severability.

2.01 *Adoption.* This Ordinance was adopted by Resolution #16-0810-225.

2.02 *Title.* This Ordinance shall be called the "Tribal Prevailing Wage Ordinance."

2.03 *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the procedures set forth in the Administrative Procedures Act – Ordinance.

2.04 *Repeal.* This Ordinance may be subsequently repealed by the Tribal Council in accordance with the procedures set forth in the Administrative Procedures Act – Ordinance.

2.05 *Severability.* If any provision of this Ordinance or its application to any person or circumstances is found to be invalid, illegal, or unconstitutional by a court of competent

jurisdiction, the invalidity, illegality, or unconstitutionality of that provision shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid, illegal or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions.

3.01 “*Act*” means any United States federal law containing requirements for establishment and payment of a determined prevailing wage, including, but not limited to, wage determinations of the Secretary or wage determinations set under the Davis-Bacon Act 40 U.S.C. Section 276 applicable to Indian Tribes.

3.02 “*Agreement*” means any contract, agreement, or other written document for assistance, sale or lease funded under any United States Act applicable to Indian Tribes and specifically including the Native American Housing and Self-Determination Act of 1996 as amended, 25 U.S.C. 4101, et. seq. and other such Tribal agreements as may be determined by Tribal Council to be appropriate.

3.03 “*Housing*” means the Little River Band of Ottawa Indians Housing Department.

3.04 “*Human Resources*” means the Little River Band of Ottawa Indians Human Resources Department.

3.04 “*Prevailing Wage*” means the wages determined by the Tribe prevailing within the Tribe’s areas of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, plumber, electrician, and mechanic.

3.05 “*Secretary*” means Secretary of Housing and Urban Development, Secretary of Interior, Secretary of Health and Human Services, or their designees.

3.06 “*Tribe*” means the Little River Band of Ottawa Indians.

3.07 “*Tribal Council*” means the body defined in Article IV of the Constitution of the Little River Band of Ottawa Indians.

3.08 “*Tribal Court*” means the Little River Band of Ottawa Indians Tribal Court as identified in Article VI of the Constitution of the Little River Band of Ottawa Indians.

Article IV. Payment of Prevailing Wage Required

4.01 *Payment Required in Agreements.* Any Agreement, within the scope of this Ordinance for construction, installation, alteration, repair, or maintenance of buildings, or other works or for provision of labor/services/materials to be performed within the area of operation of the Tribe shall contain a provision requiring not less than the Tribal Prevailing Wage as set by Human Resources, and approved by Tribal Council, pursuant to this Ordinance shall be paid by the

contractor/employer. Agreements not pursuant to an Act as defined in this Ordinance are exempt from this requirement unless Tribal Council in its direction requires the use of Tribal Prevailing Wages on a particular project.

4.02 *Volunteers.* Prevailing Wages under this Ordinance shall not apply to any individual who receives no compensation or is only reimbursed or paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an Agreement for the same or similar services shall be considered a volunteer on the same project.

Article V. Determination of Tribal Prevailing Wage.

5.01 *Tribe to Conduct Wage Survey.* Human Resources shall consider changes to the established Tribal Prevailing Wage in accordance with this Ordinance. If Human Resources decides to make any changes to the Tribal Prevailing Wage, the changes shall be authorized through adoption of a Schedule of Tribal Prevailing Wages and ratified by a subsequent Tribal Council resolution.

- a. Once every three years, Human Resources must conduct a wage survey and submit the recommended Tribal Prevailing Wage based on a wage survey to the Tribal Council. The first such wage study shall be conducted within 90 days of the passage of this ordinance.
- b. Human Resources shall obtain wage rates from available sources of each class of profession or trade included in the survey. The Prevailing Wages shall not be less than the average wage paid to each class or profession or trade included in the survey. The survey shall also include the classification for trainees and apprenticeships in all relevant trades. The Prevailing Wage study shall include a recommended minimum wage to be paid under the Prevailing Wage to address any classification for which a wage may not have been set.
- c. Human Resources shall maintain the names and addresses of all sources contacted and the wage rates reported by each source for a minimum of three years.
- d. Wage rates shall include the monetary salary but not the value of fringe benefits paid to or on behalf of the employees.
- e. The results of the survey and the prevailing wage shall be contained in a Schedule of Prevailing Wages which shall list each covered class of profession, trade, and trainees and the hourly rate for each and the effective dates of the schedule.

5.02 *Delegation of Authority.* The Tribe may delegate its authority to conduct surveys and/or establish the Tribal Prevailing Wage under this Ordinance to an agent or agency of the Tribe, but Tribal Council shall approve the Schedule of Prevailing Wages prior to their adoption.

Article VI. Employer Requirements

6.01 *Payment of Prevailing Wages and Access to Records.* Each employer, including the Tribe, its Departments and entities, when performing under an Agreement as defined in this Ordinance, shall pay the established Prevailing Wage, and shall maintain certified payroll records reporting the hourly rates paid to each employee. The certified payroll records shall be available for inspection and copying during regular office hours by the employee. Any employee shall be entitled to inspect and copy his or her certified payroll record.

6.02 *Wage Schedule to be Provided.* Upon request by bidders, contractors, or employers pursuant to an Agreement as defined in this Ordinance, the Tribe shall provide the currently effective Schedule of Prevailing Wages.

6.03 *Posting of Wage Schedule.* At all times while performing under an Agreement as defined in this Ordinance, each employer shall post at the job site and in its principal office a copy of the Schedule of Prevailing Wages furnished by the Tribe.

6.04 *Verification of Prevailing Wage.* Each employer, while performing under an Agreement as defined in this Ordinance, will allow the Tribe's auditors, project managers, or other authorized staff to inspect and copy payroll records and/or interview employees in order to verify compliance with this Ordinance.

7.01 *Agreements and Penalties.* Each Agreement as defined in this Ordinance shall contain a provision mandating the compliance with the current Schedule of Prevailing Wages and that the employer/contractor is subject to the penalties outlined in Section 7.05 for any violation of this Ordinance.

Article VII. Tribal Court Jurisdiction

7.02 *Jurisdictional Mandate.* The Little River Band of Ottawa Indians Tribal Court shall have exclusive jurisdiction to hear actions to enforce the provisions of this Ordinance.

7.03 *Tribal Court Action.* A petitioner alleging this ordinance was violated may bring an action in Tribal Court. A petitioner may be the Tribe, its departments and entities, and any adversely affected employee. Contractors or Construction companies not owned by the Tribe may not bring suit under this Ordinance. A petition or claim filed in Tribal Court under this Ordinance must include the following information at a minimum.

- a. The name and address of the petitioner;
- b. A statement identifying which of the provisions of this Ordinance has been violated;
- c. A brief description of the facts and events that gave rise to the alleged violation; and
- d. The specific remedy sought.

7.04 *Tribal Court Rules.* In addition to the requirements contained in this article, all petitioners must comply with the filing requirements contained in the Tribal Court Rules of Civil Procedure.

7.05 *Tribal Court Remedy.* Upon a finding by the Tribal Court based upon credible evidence and by a preponderance of the evidence that a violation of this Ordinance has occurred, the Court may order any of the following remedies:

- a. If the employee has been underpaid, the contractor/employer may be ordered to pay the difference in the wage paid to the employee and the Prevailing Wage.
 1. The Court may also issue an order barring the contractor/employer and/or its principal employees from performing work or services to the Tribe, not to exceed five years.
 2. The Court may also order any other remedy that is narrowly tailored to remedy the violation.
- b. For any other violations, the Court may order or impose fines and interest not to exceed \$500.00 per day.

7.06 *Limitations of Actions.* No action under this Ordinance shall be filed or allowed more than one-hundred and eighty (180) days after the event that gave rise to the petitioner's claim.

Article VIII. Sovereign Immunity

8.01 *Limited Waiver of Sovereign Immunity.* This Ordinance provides for a limited waiver of sovereign immunity only to jurisdiction of the Tribal Court over wage claims and remedies provided by this Ordinance and no other claims or remedies. This Ordinance shall not be construed or interpreted to grant jurisdiction to any other Court over the Tribe, its Departments or entities or individuals acting in their official Tribal Capacity. Nothing in this Ordinance shall be construed to be a waiver of any Tribal sovereign immunity except as specifically provided for in this Ordinance.

Article IX. Effective Date of Schedule of Prevailing Wages

9.01 *Effective Date of Ordinance.* This Ordinance shall take effect upon adoption by resolution of the Tribal Council. This Ordinance applies only to projects that the Tribe has not yet accepted for bid. This Ordinance does not apply to projects already in progress where the Tribe has accepted bids or bids/projects that are currently in progress.

9.02 *Establishment of First Schedule of Prevailing Wages.* No later than ninety (90) days after final adoption of this Ordinance, the Human Resources Department shall conduct a wage survey and provide the Tribal Council with the results of the wage survey and a recommended Schedule of Prevailing Wages as outlined in Article IV. The first Schedule of Prevailing Wages shall become effective upon authorization by Tribal Council resolution.


9.03 *Subsequent Schedules of Prevailing Wages.* All subsequent determinations of Prevailing Wages will be conducted in accordance with Article V.

CERTIFICATION

I, Joseph Riley, II, do hereby certify that this is a true and correct copy of the Indian Preference Ordinance, Ordinance #16-550-03, adopted by Tribal Council Resolution #16-0810-225.

8-19-16

Date



Joseph Riley, II
Tribal Council Recorder