



**PREVAILING WAGE ORDINANCE
BLUE LAKE RANCHERIA**

ORDINANCE NO: 09-02

DATE APPROVED: December 11, 2009

SUBJECT: REQUIRING THE PAYMENT OF PREVAILING WAGES ON CERTAIN CONTRACTS WITH THE TRIBE OR TRIBAL HOUSING ENTITY ON THE BLUE LAKE RANCHERIA

WHEREAS: The Blue Lake Rancheria, adopted a Constitution on February 11, 1994 approved by the Commissioner of Indian Affairs on March 7, 1994;

WHEREAS: Article V, Section 5(m) of the Blue Lake Rancheria Constitution establishes the Blue Lake Rancheria Business Council as the governing body of the Tribe with the enumerated power to enact laws and codes governing conduct on the Tribe's reservation; and

WHEREAS: The Tribe desires to establish a prevailing wage for laborers, mechanics and other positions which may be designated by the Federal Government or the Tribe on the Blue Lake Rancheria Indian Reservation in order to promote the general welfare and economic development of the Tribe on the Blue Lake Rancheria in exercise of the Tribe's inherent authority and Congressionally delegated authority; and

WHEREAS: 25 United States Code Section 4114 (b) (3) expressly provides that the determination of prevailing wages by an Indian Tribe supersedes prevailing wage determination of the Secretary and the Davis-Bacon Act, 40 United States Code Section 276a et seq., and upon passage of this Ordinance the Tribally determined prevailing wage shall be applied to contracts or agreements including contracts and agreements for assistance, sale or lease pursuant to 25 United States Code Chapter 43, Sections 4101 et seq. known as the Native American Housing Assistance and Self Determination Act ("NAHASDA"); and

WHEREAS: 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.

NOW, THEREFORBE, IT RESOLVED that the Business Council enacts the following Ordinance to provide for prevailing wages to be determined and paid pursuant to agreements to be performed in the area of operation of the Blue Lake Rancheria Tribe and Blue Lake Rancheria Housing Authority by adding the ordinance to the Blue Lake Rancheria Tribal Code in Title 3, Chapter 5, Article 1 to read as follows

CHAPTER 5

WAGE AND HOUR LAWS

ARTICLE 1

PREVAILING WAGE

Section 3.5.1.1. TITLE

This Ordinance shall be known as the “Blue Lake Rancheria Prevailing Wage Ordinance.”

Section 3.5.1.2. DEFINITIONS

2.01 “Acts” shall mean any United States Federal Act 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 United States Code Section 276a et seq. , applicable to Indian Tribes.

2.02 “Agreement” shall include any contract or agreement for assistance, Sale or lease funded under any United States Act applicable to Indian Tribes and specifically including NAHASDA and such other Tribal agreements as may be determined by Business Council to be appropriate.

2.03 “BLRHA” shall mean the Blue Lake Rancheria Housing Authority, the Tribe’s designated housing entity.

2.04 “Prevailing Wage” shall mean the wages as determined by the Tribe prevailing on the Tribe’s Reservation and within the Tribe’s and BLRHA’s area of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, and mechanic.

2.05 “Tribe” shall mean the Blue Lake Rancheria of California.

2.06 “Council” shall mean the Blue Lake Rancheria Business Council.

Section 3.5.1.3. PAYMENT OF PREVAILING WAGES REQUIRED.

3.01 Payment Required in Agreements. Any Agreement pursuant to Acts with the Tribe or any of its Departments or entities for construction, alteration, repair or maintenance of buildings or works or for provision of labor to be performed within the area of operation of Tribe or BLRHA shall contain a provision requiring not less than Prevailing Wages as set pursuant to this Ordinance shall be paid by the contractor. Agreements not pursuant to Acts are exempt from this requirement unless the Business Council in its discretions requires payment of determined prevailing wages.

3.02 Volunteers. Prevailing wages under this Ordinance shall not apply to any individual who receives no compensation or is paid 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 on a project shall be considered a volunteer on the same project.

Section 3.5.1.4. DETERMINATION OF TRIBAL PREVAILING WAGE

4.01 Not less frequently than every three years the Tribe shall arrange for a wage survey to be conducted in order to determine the Prevailing Wage.

a. The Tribe shall obtain wage rates from not less than 3 employers of each class of profession or trade included in the survey and shall establish the Prevailing Wage at not less than the average wage paid to each class of profession or trade included in the survey.

b. Wage rates shall include salary but not the value of benefits paid to or on behalf of the employees.

c. 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 and trade and the hourly rate for each, and the effective dates of the schedule.

4.02 Delegation of Authority. The Tribe may delegate its authority to conduct surveys and/or to establish the Tribal Prevailing Wage under this Ordinance to an agent or agency of the Tribe, including, but not limited to the Tribal Employment Rights Organization or BLRHA.

Section 3.5.1.5. EMPLOYER REQUIREMENTS.

5.01 Payment of Prevailing Wages and Access to Records. Each employer, including the Tribe, its Departments and entities, when performing under an agreement pursuant to Acts or an agreement designated by Council, shall pay prevailing wages, and shall maintain certified payroll records reporting the hourly rates paid 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.

5.02 Schedule to be Provided. The Tribe shall provide every employer at the time bids and proposals are solicited with a copy of the currently effective Schedule of Prevailing Wages.

5.03 Post of Wage Schedules. At all times while performing under an Agreement pursuant to Acts, or agreement designated by Council 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.

Section 3.5.1.6. TRIBAL COURT ACTION AND REMEDIES

6.01 Agreements and Penalties Each Agreement pursuant to Acts, or agreements designated by Council shall contain a provision stating the penalties for failure to pay Tribally Determined Prevailing Wages (“Wage Penalty”) or for failing to maintain records (Records Penalty). The Wage Penalty shall be calculated by determining the difference between the amount the employee was actually paid under the agreement and the amount the employee was entitled to under this Ordinance and multiplying the sum by two (for example: employee is paid \$10.00/hour for eight hours for a total sum of \$80.00, employee is entitled to \$15.00/hour under this Ordinance for eight hours for a total sum of \$120.00; \$120.00 minus \$80.00 equals \$40.00; \$40.00 times two equals \$80.00 total Wage Penalty to be paid to employee). The Records Penalty of \$500 per day not to exceed a total of \$10,000.00 or 15% of the total agreement value whichever is greater shall be imposed on an employer for each day an employer fails to maintain or allow the Tribe, its Departments and entities, or an employee to inspect certified payroll records as required by this Ordinance or fails to provide a copy of such records within five work days of a written request (“Records Penalty”).

6.02 Tribal Court Action. The Tribe, its departments and entities and any adversely affected employee may bring an action in the Blue Lake Rancheria Tribal Court against any employer to recover the amount of the Wage Penalty required under this Ordinance

plus 10% per annum interest from the date a lawsuit is filed and/or the Records Penalty for failure to maintain, allow inspection or to provide copies of certified payroll records. In addition, in any such action, the Tribe, its departments or entities or the employee shall be entitled to recover from the employer reasonable attorneys fees in addition to his or her other costs of suit.

6.03 Limitation of Actions. No actions under this Ordinance shall be filed or allowed more than 2 years after the date such wages became due payable under the agreement.

Section 3.5.1.7. SOVERIGN IMMUNITY

7.01 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 the Ordinance shall be construed to be a waiver of any Tribal sovereign immunity except as specifically provided in this Ordinance.

CERTIFICATION

As the Chairperson of the Blue Lake Rancheria Business Council of the Blue Lake Rancheria Tribe of

California, I hereby certify that the Blue Lake Rancheria Tribal Council adopted this Ordinance by a vote of

5 for, with 0 against, with 0 abstaining, with 0 absent on this 11th day of December.

Claudia Brundin

Claudia Brundin, Chairperson

12-11-2009

Date of Approval

ATTEST:

Bonnie L. Mobbs

Bonnie L. Mobbs, Tribal Executive Secretary

12-11-09

Date of Approval