

**The CTUIR Design Build 33,000 sf warehouse on Coyote Business Park South  
Lot 2  
Progressive Design-Build Agreement**

**Attachment A (C) – Insurance Requirements**

Design-Builder will at all times specified herein, and prior to any entry onto the job site, provide and maintain for itself and require the Subcontractors to provide and maintain the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/IX or better in the most recent edition of “Best’s Insurance Guide” (or such lesser rating as may be approved by Owner in writing) and authorized to do business in the state where the Project is located. Continued compliance with these requirements is a condition precedent to payment.

**A. Workers’ Compensation and Employer’s Liability:**

- (i) Workers’ Compensation, with limits as required by applicable law.
- (ii) Employers Liability:
  - \$1,000,000        Each Accident
  - \$1,000,000        Disease, Policy Limit
  - \$1,000,000        Disease, Each EmployeeCoverage will be carried out for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

**B. Commercial General Liability (Occurrence Form):**

- (i) Combined Bodily Injury and Property Damage:
  - \$1,000,000        Each Occurrence
  - \$1,000,000        Personal and Advertising Injury
  - \$2,000,000        General Aggregate
  - \$2,000,000        Products/Completed Operations Aggregate
  - \$300,000         Fire Damage Legal Liability
  - \$10,000          Medical Expenses Per Person
- (ii) The scope of coverage must meet the following:
  - (1) Operations must be included.
  - (2) Elevators and Escalators must be included.
  - (3) Coverage for Independent Design-Builders and work performed on Design-Builder’s behalf by Subcontractors must be included.
  - (4) Contractual Liabilities must be included (including the contract obligations specified in the indemnification paragraph(s) of the Contract)
  - (5) The Products and Completed Operations Insurance will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
  - (6) There can be no exclusions for subsidence, collapse, explosion or underground property damage.
  - (7) There can be no insured vs. insured cross-suit exclusion. The policies will provide for cross-liability coverage as would be achieved under the standard Insurance Services Office “separation of insureds” clause.
  - (8) The limits will not be eroded or wasted by defense costs.
  - (9) The policy will be endorsed to be primary and non-contributory with any insurance maintained by Owner, its affiliates, subsidiaries, members, directors, officers, employees and agents. (This endorsement must be shown on the insurance certificate provided to Design-Builder)

- (10) Maximum deductible will be \$10,000. Design-Builder shall pay all deductibles without reimbursement from Owner.
- (11) If not included in its General Liability Policy, Design-Builder will secure Pollution Liability coverage with limits of not less than \$1,000,000 per occurrence. Design-Builder's Pollution Liability coverage will include insurance covering the Design-Builder's liability for a third-party bodily injury and property damage arising from pollution conditions caused by the Design-Builder while performing operations under the contract. The insurance coverage also shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be expressly accepted, in writing, by the Owner. The insurance coverage shall also respond to cleanup cost. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract.

**C. Commercial Business Auto:**

- (i) Combined Bodily Injury and Property Damage  
\$1,000,000 Each Accident
- (ii) The following coverages must be included:
  - (1) Owned Automobiles
  - (2) Non-Owned and Hired Automobiles

Will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

**D. Excess/Umbrella Liability Coverage:**

- (i) \$10,000,000 Each Occurrence
- (ii) \$10,000,000 Aggregate
- (iii) Coverage will be at least as broad as all liability policies described above.
- (iv) Coverage will be carried out for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
- (v) The policy must provide that coverage will be triggered by exhaustion of the General Liability, Commercial Business Auto, Employer's Liability policies above only and not any other policies; exhaustion of the applicable policies above will be achieved by reasonable compromise for amounts less than the full limits of such applicable policies.

- E. (1) Professional Liability Insurance Is to Be Provided By Design Consultant.** Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant. *[Note: Even if this coverage part is selected, the Design-Builder should consider obtaining its own professional liability coverage.]*

*Select One*

- ☐ The professional liability policy required pursuant to Section 1.1.3(A) above shall be written on a Project specific basis and the policy premium shall be paid by Owner.
- ☒ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design Consultant's practice policy and shall include in the Design Consultant Agreement a provision requiring the Design Consultant to give the Design-Builder 30 Days written notice of any cancellation or non-renewal.

- (i) The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.
  - (ii) Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.
  - (iii) Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.
  - (iv) The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.
  - (v) If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of Design Consultant to ensure that such person or entity provide Design-Builder and Design Consultant with evidence of insurance to comport with this Attachment.
  - (vi) Waiver of subrogation is to be provided in favor of Design-Builder and its officers, directors and employees, and (if commercially available) Owner and its officers, directors and employees.
- (2) **Professional Liability Insurance Is to Be Provided By Design-Builder.** Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-Builder.

*Select One*

- ☐ The professional liability policy required pursuant to Section 1.1.3(B) above shall be written on a Project specific basis and the policy premium shall be paid by Owner.
- ☒ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Builder.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-Builder's practice policy.

- (i) The Design-Builder's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder's valid and collectible commercial general liability/umbrella excess liability policies. Notwithstanding the above, a Design-Builder's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.
- (ii) Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.
- (iii) Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Builder.

- (iv) The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

If any portion of the design or other professional service is to be performed by any person or entity other than Design-Builder then it is the responsibility of Design-Builder to ensure that person or entity provide Design-Builder with evidence of insurance to comport with this Attachment.

- (vi) Waiver of subrogation is to be provided in favor of Design-Builder and Owner (if commercially available) and their respective officers, directors and employees.

**(3) Any** coverage required to be maintained after Final Payment shall be identified below. *(List here any coverages required to be maintained after Final Payment is made)*

**(4)** Professional Liability coverage shall be retroactive to the date that professional services first commenced.

**(5)** If the Professional Liability coverage is provided on a Project specific basis it shall include an extended reporting period of \_\_\_\_\_ (\_\_\_\_\_) years beyond the date for Substantial Completion of the Project unless otherwise specified.

**F. Certificates and Certified Copies of Policies.** Certificates of insurance for Design-Builder's and Subcontractors' insurance along with copies of all endorsements necessary to evidence compliance with all insurance requirements will be filed with Owner and be acceptable to Owner prior to commencement of the Work. For those insurance coverages that are required to remain in force after Final Completion, additional certificate evidencing continuation of such coverage will be submitted as part of the application for final payment and upon each annual renewal for the duration of coverage required. Upon Owner's request at any time, Design-Builder will immediately provide an actual certified copy of its insurance policies. Provision of the certificates and copies of policies as required herein will be a condition precedent to payment.

**G. Notice of Cancellation, Reduction or Expiration.** The insurance policies required by this Attachment will be endorsed to include a covenant that coverages or limits afforded under the policies will not be canceled, reduced or allowed to expire until at least 30 days' prior written notice has been given to Owner. In addition, Design-Builder and subcontractors will give immediate written notice to Owner immediately upon learning that their coverages may be cancelled, reduced or their limits impaired by claims. Information concerning cancellation or reduction of limits on account of claims paid or to be paid will be furnished by the Design-Builder to Owner not more than three (3) business days of when Design-Builder learns that revised or reduced limits are likely. When Design-Builder becomes aware of cancellation, expiration or reduction in coverage or available limits, Design-Builder within ten (10) business days will procure other policies of insurance that meet all requirements of this Attachment.

**H. Owner's Right to Terminate or Cure.** Failure of Design-Builder or a Subcontractor to secure and maintain insurance with the coverages and limits required by this Attachment will be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Design-Builder for work on the Project, (ii) terminate the Design-Builder for cause, and (iii) purchase any additional insurance it deems reasonable necessary to protect itself at the expense of the Design-Builder. Design-Builder consents to Owner procuring replacement insurance in Design-Builder's name and will cooperate in all respects with Owner's efforts in procuring additional or replacement insurance. Owner will have the discretion to purchase an Owner's protective policy or other similar policy that affords Owner coverages and limits providing reasonably equivalent protections as Owner would have received if Design-Builder and Subcontractors maintained the insurance required by this Attachment. Owner's costs incurred in finding replacement insurance or an Owner's protective policy will either be reimbursed directly by Design-Builder or may be offset against

amounts owed by Owner to Design-Builder on the Project or other projects. These requirements will remain enforceable for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

- I. Insurance In Excess of Requirements.** In the event Design-Builder or any Subcontractor(s) purchase insurance in excess of the coverages or limits required under this Attachment, such excess coverages or limits will apply to the Project and ensure to the benefit of Owner.
- J. No Waiver by Owner.** The insurance requirements under this Attachment can only be waived or modified by Owner by an express written instrument signed by Owner acknowledging the reduced coverages or limits. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, will amount to Owner's waiver of the insurance requirements of this Attachment.
- K. Subcontractor Insurance.** All Subcontractors' insurance will meet all insurance requirements of Design-Builder as provided in this Attachment, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for Subcontractors will be no less than the following:

*Design Professional:*

- (i) Workers' Compensation and Employer's Liability: same as above except for the following limits for Employer's Liability:
  - \$100,000      Each Accident
  - \$100,000      Disease, Policy Limit
  - \$500,000      Disease, Each Employee
- (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
  - \$1,000,000      Each Occurrence
  - \$1,000,000      Personal and Advertising Injury
  - \$2,000,000      General Aggregate
  - \$2,000,000      Products/Completed Operations Aggregate
- (iii) Business Auto: same as above.
- (iv) Excess/Umbrella Liability Coverage: none required.
- (v) Professional Liability (\$1,000,000) per claim and (\$2,000,000) in the aggregate.

*Subcontractor:*

- (i) Workers' Compensation and Employer's Liability: same as Design-Builder
- (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
  - \$1,000,000      Each Occurrence
  - \$1,000,000      Personal and Advertising Injury
  - \$2,000,000      General Aggregate
  - \$2,000,000      Products/Completed Operations Aggregate
- (iii) Business Auto: same as above.
- (iv) Excess/Umbrella Liability Coverage: \$5,000,000
- (v) Pollution Liability and Hazardous Materials Liability
  - \$1,000,000      Each Occurrence
  - \$1,000,000      General Aggregate

- L. Waiver of Subrogation.** All of Design-Builder's and Subcontractors' liability insurance policies, including worker's compensation, will contain a waiver of subrogation against Owner, its affiliates, subsidiaries, directors, officers, employees and agents.
- M. Additional Insureds.** All of Design-Builder's and Subcontractors' liability insurance policies will be endorsed to expressly name Owner, its affiliates, subsidiaries, directors, officers, employees and agents (including but not limited to those listed below) as additional insureds. The coverage under the additional insured endorsement will (i) be primary and noncontributory with respect to any insurance of the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Attachment, and will not be limited to vicarious liability, (iii) not be limited to on-going operations, and include completed operations (iv) be maintained for the same durations as the coverages afforded to the primary insured as required by this Attachment and blanket endorsements will not be acceptable. The following persons or entities affiliated with Owner will be expressly named as Additional Insured: The Confederated Tribes of the Umatilla Indian Reservation.
- N. Builder's Risk Insurance.**
- (1)** The Owner shall purchase and maintain builders risk insurance or its equivalent with such terms and coverages as the Owner determines. Upon the Design-Builder's request, Owner will provide a copy of the policy to the Design-Builder. The Design-Builder shall, and shall cause all Subcontractors to, cooperate with the Owner in the investigation, prosecution and settlement of claims.
  - (2) Insured Loss.** The owner shall have sole power and authority to adjust and settle a loss with insurers. A loss insured under the Builder's Risk Insurance or any Builder's Risk Installation Floater shall be adjusted by the Owner and any payments or settlements shall be made payable to the Owner for the insureds, as their interests may appear. The Owner shall be entitled to full payment of its loss from the insurance proceeds before payment of the remainder to any other beneficiaries of the policy. The Design-Builder shall pay Subcontractors their just share of remaining insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to the Sub-subcontractors in similar manner.
  - (3) Deductible.** Payment of the deductible on the Builders Risk policy claims, up to \$5,000 per claim, is the responsibility of the Design-Builder and is not subject to reimbursement by the Owner. The Design-Builder promptly shall pay such deductible (or if the claim is less than the deductible, the amount of the claim) promptly and without offset or deduction. If the Design-Builder does not do so, the Owner may, in addition to other remedies, deduct and offset the amount of the deductible from the Contract Sum.