

ATTACHMENT A (I)

TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO) COMPLIANCE REQUIREMENTS

Confederated Tribes of the Umatilla Indian Reservation

This Attachment I (the “**TERO Attachment**”) is incorporated into and made a part of the Progressive Design Build Agreement for the CTUIR Tribal Early Learning Center Project (the “**Agreement**”) to which it is attached, as a Contract Document listed in Section 12.2 of the Agreement. In the event of a conflict between this TERO Attachment and any other provision of the Agreement with respect to obligations arising under the TERO Code, this TERO Attachment shall control to the extent of the conflict. Capitalized terms not defined herein have the meanings given in the Agreement or in the TERO Code.

1. Purpose and Incorporation of the TERO Code

1.1 The Project is located on, or will be performed in whole or in part on, TERO Jurisdiction Lands of the Confederated Tribes of the Umatilla Indian Reservation (the “**Tribe**”). Accordingly, the work performed under the Agreement is subject to the Tribal Employment Rights Office Code of the Tribe, as amended through Resolution No. 17-053 (July 17, 2017), and as it may be further amended (the “**TERO Code**”). The TERO Code is incorporated herein by reference. Design-Builder acknowledges that it has received, reviewed, and understands the TERO Code.

1.2 For all purposes under the TERO Code, Design-Builder is the “**Employer**” with respect to the work it performs with non-regular employees on TERO Jurisdiction Lands, and Design-Builder shall cause each of its Subcontractors of every tier that performs Covered Activities to be treated as an Employer subject to the TERO Code. The Tribe acting through its Tribal Employment Rights Office (“TERO”) and its Program Manager administers and enforces the TERO Code.

1.3 The obligations in this TERO Attachment apply to all Covered Activities under the Agreement where the project costs equal or exceed \$25,000, including construction, repair, installation, or maintenance of buildings, structures, improvements, roads, utility lines, and similar work as described in Section 1.05.F of the TERO Code. Farming and ranching activities expressly excluded by the TERO Code are not subject to this TERO Attachment.

2. Definitions

As used in this TERO Attachment, the following terms have the meanings set forth below. Terms not defined here that are defined in the TERO Code have the meaning given in the TERO Code.

- “**Compliance Agreement**” means the written agreement between Design-Builder (as Employer) and TERO required by Section 6.02 of the TERO Code that sets forth Indian-preference hiring and subcontracting goals, wage and reporting requirements, the Compliance Tax rate, and related terms, and that must be executed before commencement of work.
- “**Compliance Tax**” means the TERO compliance tax assessed and collected under Section 6.03 of the TERO Code, calculated as set forth in Section 4 of this TERO Attachment.

- **“Indian Owned Business” or “IOB”** means a business certified by the TERO Program Manager as at least sixty percent (60%) owned, operated, and controlled by an Indian and listed on the TERO Certified Indian Owned Business Directory (the “IOB Directory”).
- **“Program Manager”** means the Program Manager of the Umatilla Tribal Employment Rights Office, including his or her designees.
- **“Project Costs”** means all eligible costs as defined in Section 1.05.N of the TERO Code, including installation, supplies and materials, labor, repair, and maintenance, and excluding the items the TERO Code excludes (e.g., tangible personal property and movables; and engineering, design, freight, and permitting costs).
- **“Subcontractor”** means any subcontractor, of any tier, and any supplier performing Covered Activities under the Agreement.
- **“TERO Jurisdiction Lands”** has the meaning set forth in Section 1.05.P of the TERO Code.

3. TERO Compliance Agreement — Condition Precedent to Commencing Work

3.1 Required Before Mobilization. Before commencing any portion of the work, including any site mobilization, Design-Builder shall coordinate with the TERO Program to negotiate and execute a written Compliance Agreement as required by Sections 1.05.D and 6.02 of the TERO Code. **No work or site mobilization shall begin until a Compliance Agreement has been negotiated and fully executed.** Design-Builder shall initiate this process sufficiently in advance of the planned start date to avoid delay; any delay caused by Design-Builder’s failure to do so shall not entitle Design-Builder to additional time or compensation under the Agreement.

3.2 Contents of the Compliance Agreement. The Compliance Agreement shall address, at a minimum, the matters required by Section 6.02.A of the TERO Code, including: (a) Indian hiring goals, including numerical goals and timetables by craft, skill area, and job classification stated as a percentage of total hours worked; (b) applicable wage rates, including any Tribal minimum or prevailing wage promulgated under Section 2.03 of the TERO Code; (c) periodic reporting requirements; (d) the Compliance Tax rate; (e) coordination with the IOB Directory to solicit Indian Owned Businesses; (f) Indian subcontracting hiring goals; and (g) on-the-job training hours, if applicable.

3.3 Core Crew. Any request to designate Core Crew employees under Section 4.01 of the TERO Code shall be submitted to TERO staff in writing before the start of any project work and is subject to the Program Manager’s approval. Approval of Core Crew does not exempt Design-Builder from TERO hiring goals or other Compliance Agreement terms.

3.4 Indian Preference; Hiring Hall. Design-Builder shall apply Indian Preference in all aspects of employment on the Project as required by Chapter 4 of the TERO Code, shall use the Tribal Hiring Hall to fill vacancies, and shall not hire a non-Indian in violation of the Compliance Agreement until the Program Manager has certified that no qualified Indian is available within the time periods specified in Section 4.02 of the TERO Code.

3.5 Reporting and Inspections. Design-Builder shall submit the periodic reports required by the Compliance Agreement and shall permit the Program Manager and authorized TERO staff to conduct on-

site inspections and to inspect and copy relevant records during regular working hours, as provided in Section 6.06 of the TERO Code.

4. TERO Compliance Tax (TERO Fee)

4.1 Assessment. The Program Manager shall assess and collect a Compliance Tax following a review of the entire eligible Project Costs, in accordance with Section 6.03 of the TERO Code. The Compliance Tax is calculated on eligible Project Costs (excluding the items the TERO Code excludes from Project Costs) at the following rates:

Eligible Project Costs	Compliance Tax Rate
\$0 – \$24,999	Not applicable
\$25,000 – \$99,999	4%
\$100,000 – \$999,999	3%
\$1,000,000 – \$9,999,999	2%
\$10,000,000 and above	1%

4.2 Maximum. The total Compliance Tax for the Project shall not exceed Five Hundred Thousand Dollars (\$500,000).

4.3 Payment Before Work. The CTUIR as Owner has agreed to pay the Compliance Tax to TERO, **which shall be paid prior to commencing work on TERO Jurisdiction Lands**, as required by Section 6.03.C of the TERO Code. Payment of the Compliance Tax is a condition precedent to the start of work, in addition to execution of the Compliance Agreement.

5. Indian Owned Business (IOB) Participation in Subcontracting

5.1 Preference Required. Design-Builder shall give preference to certified Indian Owned Businesses in the award of subcontracts to the extent permitted by applicable law, as required by Chapter 5 of the TERO Code. Only IOBs that are certified by the Program Manager and listed on the IOB Directory are entitled to the preference set forth in this Section 5. Design-Builder shall obtain the current IOB Directory from the Program Manager before issuing any solicitation for subcontracted work.

5.2 Notice and Solicitation to IOBs

For each scope of work that Design-Builder intends to subcontract, Design-Builder shall, before awarding the subcontract, issue a written notice soliciting bids to **all certified Indian Owned Businesses listed on the IOB Directory**. The notice shall:

- (a) identify Design-Builder and the Project;
- (b) describe the scope of the subcontracted work and the applicable plans, specifications, and contract requirements, and state how the IOB may obtain or review them;
- (c) state the bid submission deadline, which shall allow each IOB a reasonable time to prepare and submit a responsive bid, together with the place and manner of submission and a point of contact;

- (d) state the standard evaluation criteria (experience, expertise, personnel, resources, schedule, bonding, and the like) that Design-Builder will use to determine whether a bidder is responsive and qualified; and
- (e) state that responsive and qualified IOB bids will be evaluated with the Indian-preference bid calculation required by the TERO Code, as described in Section 5.3 below.

Design-Builder shall retain proof of the notice (including the date sent, the list of IOB recipients, and the means of delivery) and copies of all bids and responses received, and shall make these records available to the Program Manager upon request. Design-Builder shall provide a copy of each IOB solicitation notice to the Program Manager at or before the time it is issued.

5.3 Calculation of IOB Preference (Added Bidding Value)

After the bid deadline, Design-Builder shall evaluate the bids and apply the Indian-preference calculation required by Section 5.06.B of the TERO Code as follows:

- Step 1. Identify the responsive and qualified bids, separating bids submitted by certified IOBs from bids submitted by non-Indian (non-IOB) bidders.
- Step 2. Determine the **“Low Non-IOB Bid”** — the lowest responsive and qualified bid submitted by a non-IOB bidder.
- Step 3. Determine the applicable preference percentage and dollar cap by locating the Low Non-IOB Bid within the brackets in the table below to obtain the **“Added Bidding Value.”**
- Step 4. Calculate the Added Bidding Value as the *lesser* of (i) the applicable percentage multiplied by the Low Non-IOB Bid, and (ii) the applicable maximum dollar amount. For the \$10 million-or-more bracket, the Added Bidding Value equals one percent (1%) of the Low Non-IOB Bid with no dollar limit.
- Step 5. Award the subcontract to a certified IOB if that IOB’s responsive and qualified bid is **less than or equal to the sum of the Low Non-IOB Bid plus the Added Bidding Value**. Where more than one IOB qualifies under this test, the subcontract shall be awarded to the lowest and most qualified IOB.

Contract Price (Low Non-IOB Bid)	Added Bidding Value
Less than \$100,000	10% of the lowest bid, max \$9,000
\$100,000 to less than \$250,000	8% of the lowest bid, max \$20,000
\$250,000 to less than \$500,000	6% of the lowest bid, max \$30,000
\$500,000 to less than \$1,000,000	5% of the lowest bid, max \$45,000
\$1,000,000 to less than \$5,000,000	3% of the lowest bid, max \$150,000
\$5,000,000 to less than \$10,000,000	2% of the lowest bid, max \$200,000
\$10,000,000 or more	1% of the lowest bid, no dollar limit

Illustration. If the Low Non-IOB Bid for a subcontract is \$300,000, the applicable bracket is “\$250,000 to less than \$500,000,” yielding 6% of the lowest bid or a maximum of \$30,000. Six percent of \$300,000 is

\$18,000, which is less than the \$30,000 cap, so the Added Bidding Value is \$18,000. A certified IOB whose responsive and qualified bid is \$318,000 or less shall be awarded the subcontract.

5.4 Rejection of Bids; No Forced Award

Consistent with Section 5.06.C of the TERO Code, nothing in this Section 5 prevents Design-Builder from rejecting a sole responsive bidder or rejecting all bids. The IOB preference applies only as among responsive and qualified bids actually received. Before rejecting a bid from an IOB as not responsive or not qualified, Design-Builder shall obtain agreement as to such from the TERO Program Manager.

5.5 Documentation and Reporting

For each subcontract subject to this Section 5, Design-Builder shall maintain and, upon request, provide to the Program Manager: the IOB solicitation notice and proof of delivery; the IOB Directory list used; all bids received; the bid tabulation showing the Low Non-IOB Bid, the applicable Added Bidding Value, and the preference calculation; and the basis for the award decision. Design-Builder is responsible for enforcing this solicitation process, including flow-down to any first-tier Subcontractor that further subcontracts Covered Activities.

6. Flow-Down to Subcontractors

6.1 Design-Builder shall include the substance of this TERO Attachment in every subcontract for Covered Activities, and shall require each Subcontractor to comply with the TERO Code, including the Compliance Agreement, Indian Preference, and IOB solicitation requirements, to the same extent as Design-Builder. Where Design-Builder serves as a general contractor, Design-Builder shall ensure that it and all of its Subcontractors comply with the TERO Code and may be held liable for its Subcontractors' violations, as provided in Section 6.04 of the TERO Code.

7. Enforcement, Citations, and Penalties

7.1 Violations of the TERO Code or the Compliance Agreement are subject to investigation, warning, citation, Program Manager review, emergency citation, sanctions, and penalties under Chapters 7 and 8 of the TERO Code, including monetary penalties of up to One Thousand Dollars (\$1,000) per violation per day, where each day a violation exists constitutes a separate violation. Appeals are governed by Chapters 9 and 10 of the TERO Code, including appeal to the TERO Commission and judicial review by the Umatilla Tribal Court. Design-Builder's compliance with this TERO Attachment and the TERO Code is a material obligation under the Agreement, and a failure to comply may constitute a default under the Agreement in addition to any remedy available under the TERO Code.

8. Interpretation and Order of Precedence

8.1 This TERO Attachment shall be read together with the TERO Code, and the TERO Code shall control any ambiguity in this TERO Attachment concerning TERO obligations.