Model 5 - Construction Contracts

Recommend Indemnification Language – To the extent permitted by law, Contractor shall defend, indemnify and hold harmless Madera Irrigation District, its directors, officers, employees, and authorized volunteers from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and costs to defend arising out of the performance of the work described herein, and caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the Madera Irrigation District, its directors, officers, employees, and authorized volunteers.

Minimum Scope and Limits of Insurance: Contractor shall procure and maintain for the duration of the contract, *and for 5 years thereafter*, insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

Coverage - Coverage shall be at least as broad as the following:

1. **General Liability - Commercial General Liability (CGL) -** Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least five million dollars ($5,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to Madera Irrigation District) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability -** Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) with limit of one million dollars ($1,000,000) for bodily injury and property damage each accident.

3. **Workers' Compensation Insurance -**. The Contractor shall provide workers' compensation coverage as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. **Waiver of Subrogation** (also known as Transfer of Rights of Recovery Against Others to Us)**:** The Contractor hereby agrees to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the Madera Irrigation District, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the Named Insured for the Madera Irrigation District; this provision applies regardless of whether or not the Madera Irrigation District has received a waiver of subrogation from the insurer.

4. **Builder's Risk** – (Course of Construction) if necessary- insurance utilizing an "All Risk" (Special Perils) coverage form with limits equal to the completed value of the project and no coinsurance penalty provision. See **Responsibility of Work**

5. **Contractor's Pollution Liability** – (optional: if project involves environmental hazards) with limits no less than $5,000,000 per occurrence or claim, and $10,000,000 policy aggregate.

If the Contractor maintains broader coverage and or/higher limits than the minimums shown above, the Madera Irrigation District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum of insurance and coverage shall be available to the Madera Irrigation District)

Other Required Provisions – The Commercial General Liability policy and Contractors Pollution (if necessary) are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Madera Irrigation District, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10 10 01 and CG 20 37 10 01, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance.

2. **Primary Coverage:** For any claims related to this project, the Contractor's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Madera Irrigation District, its directors, officers, employees, and authorized volunteers. Any insurance or self-insurance maintained by the Madera Irrigation District, its directors, officers, employees, and authorized volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Madera Irrigation District.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or equivalent or as otherwise approved by Madera Irrigation District.

The Contractor agrees and he/she will comply with such provisions before commencing work. All of the insurance shall be provided on policy forms and through companies satisfactory to Madera Irrigation District. The Member Water Agency reserves the right to obtain complete, certified copies of all required insurance policies, including the policy declarations page with endorsement number. Failure to continually satisfy the Insurance requirements is a material breach of contract.

Responsibility for Work - Until the completion and final acceptance by Madera Irrigation District of all the work under and implied by this agreement, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

The Contractor shall provide and maintain **builder's risk** (course of construction) or an installation floater (for materials and equipment) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by Madera Irrigation District. Such insurance shall insure at least against the perils of fire and extended coverage, theft, vandalism and malicious mischief, and collapse. The Policy shall be endorsed with Madera Irrigation District, its directors, officers, employees, and authorized volunteers named as loss payee, as their interest may appear. The making of progress payments to the Contractor shall not be construed as creating

an insurable interest by or for Madera Irrigation District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by Madera Irrigation District.

Deductibles and Self-Insured Retentions - Insurance deductibles or self-insured retentions must be declared by the Contractor, and approved by the Madera Irrigation District. At the election of Madera Irrigation District the Contractor shall either cause the insurer to reduce or eliminate such self-insured retentions as respects the Madera Irrigation District, its directors, officers, employees, and authorized volunteers or the Contractor shall provide a financial guarantee satisfactory to the Madera Irrigation District guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Madera Irrigation District.

Verification of Coverage - Evidences of Insurance Contractor shall furnish the Madera Irrigation District with copies of certificates and amendatory endorsements effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the Madera Irrigation District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Madera Irrigation District reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages, required by these specifications, at any time. Failure to continually satisfy the Insurance requirements is a material breach of contract.

Continuation of Coverage - The Contractor shall, upon demand of Member Water Agency deliver evidence of coverage showing continuation of coverage for at least (5) years after completion of the project. Contractor further waives all rights of subrogation under this agreement When any of the required coverages expire during the term of this agreement, the Contractor shall deliver the renewal certificate(s) including the general liability additional insured endorsement and evidence of waiver of rights of subrogation against Madera Irrigation District (if builder's risk insurance is applicable) to Madera Irrigation District at least ten (10) days prior to the expiration date.

Sub-Contractors - In the event that the Contractor employs other Contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above (via as broad as ISO CG 20 38 04 13). The Contractor shall, upon demand of Member Water Agency, deliver to Member Water Agency copies such policy or policies of insurance and the receipts for payment of premiums thereon.

Other Considerations/Exceptions:

If scope includes Design/Build exposures include:

Professional Liability - with limits no less than $1,000,000 per occurrence or claim, and $2,000,000 policy aggregate.

Professional Liability maybe Claims Made Policies – include the following provisions.

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Dat**e prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.

GENERAL CONDITIONS

Safety - In the performance of this contract the Contractor shall comply with all applicable federal, state and local statutory and regulatory requirements including, but not limited to California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, related to their scope of work and operations. In case of conflict in regulations, the most stringent shall apply. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. Safety precautions shall include but shall not be limited to: adequate life protection and life saving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection, and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses (including but not limited to exposure to the Coccidioides fungus and Valley Fever); and adequate facilities for the proper inspection and maintenance of all safety measures

Contractor must obtain all applicable Division of Occupational Safety and Health (CAL-OSHA) permit(s) and others required by California Labor Code and California Government Code, prior to the initiation of any practices, work, method, operation, or process related to the work covered in the contract. Permits required by governmental authorities will be obtained at Contractor's expense.

It is a condition of this contract, and shall be made a condition of each subcontract which the Contractor enters into pursuant to this contract, that the Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under Cal/OSHA safety and health standards.

The Contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning work, the Contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The Contractor shall immediately notify Member Water Agency and the utility owner if he/she disturbs, disconnects, or damages any utility.

In accordance with Section 6705 of the California Labor Code, the Contractor shall submit to Member Water Agency specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by Member Water Agency prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the Construction Safety Orders of the California Department of Industrial Relations (Cal/OSHA), the plan

shall be prepared by a California registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the Cal/OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping or other provisions of the Safety Orders. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders. Submission of this plan in no way relieves the Contractor of the requirement to maintain safety in all areas. If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, the Contractor shall submit his/her permit with the excavation/trench work safety plan to Member Water Agency before work begins.

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