CALIFORNIA  Strict Indemnity Language

Contractor (Indemnitor) shall indemnify, defend, and hold harmless Authority, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and attorney fees (including, without limitation, costs, attorney fees, expert witness fees, and other expenses of litigation) of every nature arising out of or in connection with Contractor’s performance of work hereunder, or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of Authority.

CAUTION: While the above type of agreement provides the broadest protection for the Authority if a construction contract is involved, it would be subject to challenge under California Civil Code Section 2782(b) because it purports to indemnify the Authority for losses for its own active or joint negligence. Therefore, the above agreement should not be used if a construction contract is involved. If that is the case, the following example (intermediate form) should then be used.

CALIFORNIA Intermediate Indemnity Language

Contractor shall defend, indemnify, and hold harmless Authority, its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses, including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of Contractor, any sub-contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the Authority.

In this second example, the Authority receives indemnity if it was not negligent or if its negligence was only passive. (There is a great deal of case law on the active/passive distinction. Essentially, active negligence is affirmative participation in causing the harm, or failure to prevent a known danger, whereas passive negligence is failure to detect a danger which the Authority is under a duty to detect, such as a dangerous condition on its property created by the contractor).

There is a great variety of language used to arrive at this type of intermediate form, because any indemnity contract which does not specifically refer to the indemnitee’s negligence will be construed as this type of general clause, considerably limiting the extent of the indemnification. So, if the contract promises indemnity for losses (however they may be caused regardless of responsibility for negligence arising from use of the premises, facilities, or services, or caused by any person or persons whomever), the wording will be interpreted as a general indemnity clause.
NEVADA

The following language has been provided by a Nevada defense attorney as acceptable language for contracts subject to Nevada Law:

**Contractor** (Indemnitor) shall defend, indemnify, reimburse, and forever hold harmless **Authority**, and Authority’s directors, subsidiaries, affiliates, officers, agents, servants, employees, successors, assigns, and representatives from and against any and all adversarial proceedings that shall include, but are not limited to, formal or informal complaints, claims or allegations, whether legal or administrative, any action (whether in law or in equity), demand, loss, fine, penalty lien, interest, attorney fee, cost, or any liability for injuries whether to property or person (up to and including death) and any other associated or like expense of any kind or nature, whether arising before or after the completion of the work set forth herein which is in any manner directly or indirectly caused, associated with, occasioned by, or contributed to, in whole or in part, or claimed to be caused, associated with, occasioned by, or contributed to, in whole or in part, by reason of any act, failure to act, neglect, breach of representation, warranty, covenant, omission, fault, or negligence of **Contractor**, of **Contractor’s** sub-contractors, sub-contractors, directors, subsidiaries, affiliates, officers, agents, servants, employees, successors, assigns, and representatives or of anyone acting under **Contractor’s** direction or control or on **Contractor’s** behalf which is or may be in connection with or incidental to the performance of this contract.

Upon **Authority’s** notice of any claim(s) associated with **Contractor** for which **Authority** demands indemnification, **Contractor** shall assume the good faith defense, compromise, or settlement of any such claim at **Contractor’s** sole expense through the services of attorneys reasonably acceptable to **Authority**. However, in assuming said good faith defense, compromise or settlement, **Contractor** may not, without the prior written consent of **Authority**, agree to (1) any injunction or relief or restriction that may affect the **Authority**, or (2) any settlement which would adversely affect the business or operations of **Authority**.

If **Contractor** does not elect to defend such claim or suit within ten (10) days after having received **Authority’s** notice thereof or fails to defend the interest of **Authority** diligently, at **Authority’s** reasonable discretion, **Authority** may defend against such claim or suit at **Contractor’s** expense. In doing so, **Authority** may elect to compromise or settle such claim or suit with claimant at **Contractor’s** expense.
Indemnity clauses in construction contracts are governed by ORS 30.140, which will not permit a party to indemnify another party for that other party’s sole negligence. Nor can a party be indemnified if it negligently designed the construction project, or for its sole negligence in the inspection of the project. With these restrictions in mind, the following language is recommended for building trade contracts:

**Contractor** hereby releases and shall indemnify, defend, and hold harmless **Authority**, its subsidiaries affiliates, officers, agents employees, successors, assigns, and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of **Contractor**, its sub-contractors, or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract.

**Contractor**’s aforesaid release, indemnity, and hold harmless obligations, or portions of applications thereof, shall apply even in the event of the fault, negligence, or strict liability of the parties released, indemnified, or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the sole negligence of the parties released, indemnified, or held harmless. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

**Contractor** hereby agrees to require all its subcontractors or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming **Authority** as indemnitee.

**Contractor**’s failure to require a sub-contractor or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an identical indemnity clause to the preceding clause renders **Contractor** liable to indemnify **Authority** to the extent it would have been indemnified had the requirement been fulfilled.

For contracts other than those involving the building trades, the following language is recommended:

**Contractor** hereby releases and shall indemnify, defend, and hold harmless **Authority**, its subsidiaries affiliates, officers, agents employees, successors, assigns, and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, whether arising before or after completion of the work hereunder, and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of **Authority, Contractor, Contractor**’s sub-contractor, or of anyone acting under **Contractor**’s direction or control or on **Contractor**’s behalf in
connection with or incidental to the performance of this contract. **Contractor’s aforesaid release, indemnity and hold harmless obligations, or portions of applications thereof, shall apply even in the event of Authority’s sole negligence or strict liability. Authority** shall be indemnified and held harmless to the fullest extent permitted by law. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

**Contractor** hereby agrees to require all its sub-contrators or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming **Authority** as indemnitee.

**Contractor’s** failure to require a sub-contractor or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an identical indemnity clause to the preceding clause renders **Contractor** liable to indemnify **Authority** to the extent it would have been indemnified had the requirement been fulfilled.

**NOTE:** If the non-construction contractor will not accept the broad indemnification language recommended above, substitute the building trades contract indemnification language.
WASHINGTON

Due to various Washington tort reform statutes and RCW 3.24.115 dealing with construction contracts, your Authority will not be able to require contractors to indemnify the Authority for its own negligence. With regard to injuries occurring during the construction process, the Authority (owner) may have a duty to warn of or make safe all conditions on the premises which it knows or should know of that may be unreasonably dangerous. It is advisable that the Authority take measures of its own to ensure the safety of its premises. Failure to inspect your property or to supervise the Contractor’s use could result in the Authority becoming liable for injuries occurring on the property, even if the Contractor creates the hazard. In view of the restrictions on indemnification and the affirmative duties of property owners, the following language is recommended for building trade contracts:

Contractor hereby releases and shall indemnify, defend, and hold harmless Authority, its subsidiaries, affiliates, officers, agents, employees, successors, assigns and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, including those arising out of injury to or death of Contractor’s employees, whether arising before or after completion of the work hereunder, and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of Contractor, its sub-contractors, or of anyone acting under its direction or control, or on its behalf in connection with or incidental to the performance of this contract. Contractor’s aforesaid release, indemnity, and hold harmless obligations, or portions of applications thereof, shall apply even in the event of the fault, negligence, or strict liability of the parties released, indemnified, or held harmless to the fullest extent permitted by law. However, in no event shall they apply to liability caused by the sole negligence of the parties released, indemnified, or held harmless. Contractor expressly waives its immunity under industrial insurance, Title 51 RCW. This waiver was mutually negotiated by the parties, as evidenced by the initials of the undersigned, in the right margin. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

The parties agree that Contractor is an independent contractor and the Authority has no right of control over employees engaged by the Contractor.

Contractor hereby agrees to require all its sub-contractors or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming Authority as indemnitee.

There is no Washington statutory law governing indemnification in areas beyond the building trades contracts. However, Washington case law does not favor broad indemnification clauses and strictly construes them. The following language is recommended for non-construction contracts.

Contractor hereby releases and shall indemnify, defend, and hold harmless Authority, its subsidiaries, affiliates, officers, agents, employees, successors, assigns, and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, including those arising out of injury to or death of Contractor’s employees, whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or
claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of Authority, Contractor, Contractor's sub-contractors, or of anyone acting under Contractor's direction of control, or on Contractor's behalf in connection with or incidental to the performance of this contract. Contractor's aforesaid release, indemnity, and hold harmless obligations, or portions of applications thereof, shall apply even in the event of the Authority's sole negligence or strict liability. Authority shall be indemnified and held harmless to the fullest extent permitted by law. Contractor expressly waives its immunity under industrial insurance, Title 51 RCW. This waiver was mutually negotiated by the parties, as evidenced by the initials in the right margin. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

The parties agree that Contractor is an independent contractor and the Authority has no right of control over employees engaged by the Contractor. Contractor hereby agrees to require all its sub-contractors or anyone acting under its direction, control, or on its behalf in connection with, or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming Authority as indemnitee.