

## CALIFORNIA

### Construction Contracts Generally

***In light of California Civil Code Sections 2782(a) and 2782.05, we recommend the following indemnification provision for general construction contracts:***

"To the fullest extent permitted by law, CONTRACTOR/VENDOR shall indemnify, defend, and hold harmless PROPERTY OWNER, and its agents, affiliates, employees, managers, officers, other contractors, heirs and assigns (hereinafter "Indemnified Parties") from and against any and all liability, claims, damage, costs, expenses, awards, fines, judgments, and attorneys' fees (including, without limitation, expert witness fees and other litigation expenses) of every nature arising out of or in connection with CONTRACTOR/VENDOR's performance of work hereunder, or work of its agents, employees, subcontractors and/or independent contractors, or their failure to comply with any of its obligations contained in the agreement, except to the extent: (1) the claims arise out of, pertain to, or relate to the sole negligence, active negligence, or willful misconduct of Indemnified Parties or Indemnified Parties' other agents, other servants, or other independent contractors who are responsible to Indemnified Parties; (2) the claim is for defects in design furnished by Indemnified Parties or Indemnified Parties' other agents, other servants, or other independent contractors who are responsible to Indemnified Parties; or (3) to the extent the claims do not arise out of the scope of work of CONTRACTOR/VENDOR pursuant to the construction contract. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to PARTIES.

The indemnification obligations of CONTRACTOR/VENDOR under this Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which CONTRACTOR/VENDOR is required to carry under this Agreement. Indemnified Parties' right to indemnification from CONTRACTOR/VENDOR under this section shall be independent of Indemnified Parties' rights under the insurance to be provided by CONTRACTOR/VENDOR under this Agreement.

CONTRACTOR/VENDOR's duty to defend the Indemnified Parties is entirely separate from, independent of, and free-standing from CONTRACTOR/VENDOR's duty to indemnify the Indemnified Parties, including, without limitation, the defense of the Indemnified Parties against claims for which the Indemnified Parties (or any of them) may be strictly liable and applies whether the issue of CONTRACTOR/VENDOR's liability, breach of this Agreement or other obligation, or CONTRACTOR/VENDOR's responsibility has been determined and whether the Indemnified Parties (or any of them) have paid any sums or

incurred any detriment, arising out of or resulting directly or indirectly from CONTRACTOR/VENDOR's performance of the Work. Such defense obligation shall arise immediately upon presentation of a claim by any Person which arises out of or is connected to the Work performed by CONTRACTOR/VENDOR or any of its Agents and written notice of such claim being tendered to CONTRACTOR/VENDOR.

CONTRACTOR/VENDOR and PROPERTY OWNER acknowledge that the foregoing indemnification provisions were mutually negotiated. The foregoing indemnification obligations shall survive termination, expiration, and/or full performance of the Work and/or this Subcontract. CONTRACTOR/VENDOR waives all defenses based on statutes of limitation or repose to the extent necessary to give effect to the foregoing obligations."

*In the event none of the limitations described below are applicable to the contract at issue, this is the provision that should be used.*

### **Construction Contracts Where Public Agency is a Party**

***In light of California Civil Code Sections 2782(b)(1) and 2782(b)(2) we recommend the following indemnification provision for construction contracts where a public agency is a party:***

"To the fullest extent permitted by law, CONTRACTOR/VENDOR shall indemnify, defend, and hold harmless PROPERTY OWNER, and its agents, affiliates, employees, managers, officers, other contractors, heirs and assigns (hereinafter "Indemnified Parties") from and against any and all liability, claims, damage, costs, expenses, awards, fines, judgments, and attorneys' fees (including, without limitation, expert witness fees and other litigation expenses) of every nature arising out of or in connection with CONTRACTOR/VENDOR's performance of work hereunder, or work of its agents, employees, subcontractors and/or independent contractors, or their failure to comply with any of its obligations contained in the agreement, except to the extent the claims arise from active negligence of Indemnified Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to PARTIES.

The indemnification obligations of CONTRACTOR/VENDOR under this Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which CONTRACTOR/VENDOR is required to carry under this Agreement. Indemnified Parties' right to indemnification from CONTRACTOR/VENDOR under this section shall be independent of Indemnified Parties' rights under the insurance to be provided by CONTRACTOR/VENDOR under this Agreement.

CONTRACTOR/VENDOR's duty to defend the Indemnified Parties is

entirely separate from, independent of, and free-standing from CONTRACTOR/VENDOR's duty to indemnify the Indemnified Parties, including, without limitation, the defense of the Indemnified Parties against claims for which the Indemnified Parties (or any of them) may be strictly liable and applies whether the issue of CONTRACTOR/VENDOR's liability, breach of this Agreement or other obligation, or CONTRACTOR/VENDOR's responsibility has been determined and whether the Indemnified Parties (or any of them) have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from CONTRACTOR/VENDOR's performance of the Work. Such defense obligation shall arise immediately upon presentation of a claim by any Person which arises out of or is connected to the Work performed by CONTRACTOR/VENDOR or any of its Agents and written notice of such claim being tendered to CONTRACTOR/VENDOR.

CONTRACTOR/VENDOR and PROPERTY OWNER acknowledge that the foregoing indemnification provisions were mutually negotiated. The foregoing indemnification obligations shall survive termination, expiration, and/or full performance of the Work and/or this.

CONTRACTOR/VENDOR waives all defenses based on statutes of limitation or repose to the extent necessary to give effect to the foregoing obligations."

Please note that in this provision, PROPERTY OWNER represents the public agency.

### **Residential Construction Contract**

***In light of California Civil Code Section 2782(d) we recommend the following indemnification provision for residential construction contracts:***

"To the fullest extent permitted by law, CONTRACTOR/VENDOR shall indemnify, defend, and hold harmless PROPERTY OWNER, and its agents, affiliates, employees, managers, officers, other contractors, heirs and assigns (hereinafter "Indemnified Parties") from and against any and all liability, claims, damage, costs, expenses, awards, fines, judgments, and attorneys' fees (including, without limitation, expert witness fees and other litigation expenses) of every nature arising out of or in connection with CONTRACTOR/VENDOR's performance of work hereunder, or work of its agents, employees, subcontractors and/or independent contractors, or their failure to comply with any of its obligations contained in the agreement, except to the extent: (1) the claims arise out of, pertain to, or relate to the negligence of Indemnified Parties or Indemnified Parties' other agents, other servants, or other independent contractors who are directly responsible to Indemnified Parties; (2) the claims are for defects in design furnished by Indemnified Parties or Indemnified Parties' other agents, other servants, or other independent contractors who are directly responsible to Indemnified Parties; or (3) the claims do not arise out of pertain to, or relate to the scope of work in the written agreement between

Indemnified Parties and CONTRACTOR/VENDOR. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to PARTIES.

The indemnification obligations of CONTRACTOR/VENDOR under this Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which CONTRACTOR/VENDOR is required to carry under this Agreement. Indemnified Parties' right to indemnification from CONTRACTOR/VENDOR under this section shall be independent of Indemnified Parties' rights under the insurance to be provided by CONTRACTOR/VENDOR under this Agreement.

CONTRACTOR/VENDOR and PROPERETY OWNER acknowledge that the foregoing indemnification provisions were mutually negotiated. The foregoing indemnification obligations shall survive termination, expiration, and/or full performance of the Work and/or this. CONTRACTOR/VENDOR waives all defenses based on statutes of limitation or repose to the extent necessary to give effect to the foregoing obligations."

CONTRACTOR/VENDOR's duty to defend the Indemnified Parties is entirely separate from, independent of, and free-standing from CONTRACTOR/VENDOR's duty to indemnify the Indemnified Parties, including, without limitation, the defense of the Indemnified Parties against claims for which the Indemnified Parties (or any of them) may be strictly liable and applies whether the issue of CONTRACTOR/VENDOR's liability, breach of this Agreement or other obligation, or CONTRACTOR/VENDOR's responsibility has been determined and whether the Indemnified Parties (or any of them) have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from CONTRACTOR/VENDOR's performance of the Work. Such defense obligation shall arise immediately upon presentation of a claim by any Person which arises out of or is connected to the Work performed by CONTRACTOR/VENDOR or any of its Agents and written notice of such claim being tendered to CONTRACTOR/VENDOR."