



## CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

### **CJPRMA RECOMMENDED LANGUAGE FOR AGREEMENTS**

The California Joint Powers Risk Management Authority (CJPRMA) worked with Robert Marshburn of Certified Risk Managers.com to develop CJPRMA recommended language that should be added to all new agreements. The new indemnity/hold harmless/insurance language has been developed to eliminate gaps in coverage that often occur for liability that arises out of agreements/contracts. This new language was also developed to minimize loss of coverage that has arisen from the introduction of the ISO 2013 forms. You were provided a copy of this document if you attended one of the training sessions that were provided by CJPRMA titled “2015 Update Your Contracts or Risk Losing Coverage!”

As stated in the program, you should consult with your Counsel prior to adding the following provisions to your agreements. This document has been prepared in Word format, and you are encouraged to cut and paste as necessary to upgrade your agreement.

Please note the following disclaimer statement that was included at the beginning of the materials provided at the training.

***NOTE:*** *In this workshop we discuss what needs to be done to effectively transfer risk and satisfy standard policy provisions to obtain maximum protection for the City.*

*Throughout this information you will note that CJPRMA is providing recommended indemnity and insurance specifications for agreements. The recommended language is based upon the most current information available today and should be reviewed by both your City Attorney and Risk Management Department. The information and language contained in this workshop will be provided to CJPRMA Members electronically and are recommended for your use.*

*These documents and recommended language should not be provided to non-members of CJPRMA and should only be used after consulting with legal counsel. In the event that you receive a request for a copy of the recommended language, please ask the other party to contact David Clovis, General Manager of CJPRMA.*

It is not our intent to rewrite your contract language and requirements. Rather, we are recommending language due to (1) changes needed as a result of new insurance coverage forms and (2) to help plug the gaps in the problem areas we have observed in many contracts.

**If you have any questions on the language or require assistance with identifying the location within your agreements to add the described language, please contact Tony Giles, General Manager at 925-290-1316 or via email: [tony@cjprma.org](mailto:tony@cjprma.org).**

## **CJPRMA Recommended Language for Agreements**

### **CJPRMA Recommended language (to overcome coverage & limits restrictions):**

*It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.*

### **CJPRMA Recommended language (to insure that all subcontractors also include the “City” as an additional insured):**

*Contractor shall require and verify that all subcontractors or other parties hired for this Work purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor’s work with the same Certificate of Insurance requirements and naming as additional insureds all parties to this Contract. Contractor shall include the following language in their agreement with Subcontractors: “Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Contract Documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request.” Contractor shall provide proof of such Compliance and verification to the City upon request.*

### **CJPRMA Recommended language to be added to Additional Insured requirements language**

*The Additional Insured coverage under the Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the City’s insurance or self insurance and shall be at least as broad as CG 20 01 04 13.*

### **CJPRMA Recommended language to be added to additional insured language in Contract document**

*The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City’s own Insurance or self insurance shall be called upon to protect it as a named insured.*

**CJPRMA Recommended language to be added at the end of the indemnity section of the Agreement:**

*Contractor/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.*

**CJPRMA Recommended language to be added to indemnification clause in the Agreement:**

*The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.*

**CJPRMA Recommended language to be added to the general insurance requirements section within an Agreement:**

- 1. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability.*
- 2. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.*
- 3. City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.*

**CJPRMA Recommended language to be added to all Agreements that may include the use of subcontractor(s):**

*Contractor shall include the following language in their agreement with Subcontractors:*

*“Subcontractor agrees to be bound to GC and City in the same manner and to the same extent as GC is bound to City under the Contract Documents. Subcontractor further agrees to include the same requirements and provisions of this agreement, including the indemnity and Insurance requirements, with any Sub-subcontractor to the extent they apply to the scope of the Sub-subcontractor's work. A copy of the City Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request.*

**CJPRMA Recommended language that should be included with the Indemnity and Insurance requirements section of a Purchase Order that is signed and dated:**

*I have read, understand, and agree to comply with the Indemnity and Insurance requirements supplied with this Purchase Order.*

**CJPRMA Recommended language that should be included in the Indemnity and Insurance requirements section when issuing an RFP or RFQ:**

**For RFPs:** It is strongly recommended when distributing an RFP (proposal) or RFQ (qualification), include a document titled “*Summary of Indemnity and Insurance Requirements*” which includes “*Please provide a copy of these indemnity and insurance requirements to your insurance broker or insurer to confirm Compliance. If any additional Contract documents are executed, the actual Indemnity language and Insurance Requirements may include additional provisions as deemed appropriate by City.*” This should be followed by the full text of both your

indemnity and insurance requirements. Then, at the bottom of the form have them sign, date, and return as above “*I have read, understand, and agree to comply with the Indemnity and Insurance requirements supplied with this proposal.*”

**CJPRMA Recommended language to include at the beginning of an Indemnity clause:**

1. *To the fullest extent allowed by law, Contractor shall... AND/OR—*
2. *With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall...*

**CJPRMA Recommended language that should be included in the insurance section of construction agreements regarding completed operations:**

*Contractor shall maintain insurance as required by this contract for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by contractor.*

**CJPRMA Recommended language for Indemnity clause with design professionals:**

*To the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, Consultant shall indemnify and hold harmless the City and its officers, officials, and employees (collectively Indemnitees) from and against damages, liabilities or costs (including incidental damages. Court costs, reasonable attorney’s fees as may be determined by the Court, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) to the extent they are caused by the negligence, recklessness, or willful misconduct of Consultant, or any subconsultants, or subcontractor or anyone directly or indirectly employed by them, or anyone for whom they are legally liable (collectively Liabilities) Such obligation to hold harmless and indemnify any indemnity shall not apply to the extent that such Liabilities are caused in part by the negligence or willful misconduct of such Indemnitee.*

**CJPRMA Recommended language that should be included in the conditions/provisions of encroachment permits:**

*In the event Applicant hires a contractor or sub-contractor to perform any work within the scope of this permit, Applicant shall require all contractors/sub-contractors to comply with all indemnification and insurance requirements required hereunder in favor of the city. Failure to require such indemnity and hold harmless will be grounds for termination of this permit. For purposes of Indemnity and Additional Insured Endorsement requirements, work shall be deemed to be performed for the City if the work is performed for or by parties who have been issued a permit by the City. Any certificate of insurance issued as required by this permit, where the insurance documents provide additional insured status per written agreement/contract, this encroachment permit shall be deemed a contract or agreement for any party performing work under the terms and conditions under this permit.*

*To the furthest extent permitted by law, Applicant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents,*

*and volunteers from and against any and all liabilities, losses, damages, claims, expenses, and costs of every nature arising out of or in connection with Applicant's work under this Permit, or its failure to comply with any of the obligations contained in this Permit. This indemnity includes completed operations. This indemnity may not apply, or liability may be proportionately apportioned if a court of competent jurisdiction finds that the City engaged in willful misconduct, or active negligence.*

*Applicant shall not allow its duly approved or authorized agents or contractors, or any subcontractors of its duly approved or authorized agents or contractors, to commence work under this Permit until Applicant has obtained, at its own cost and expense, and provided to City in advance of commencing work the requisite evidence or proof of insurance or copies of insurance policies of the types and in the coverage amounts required of Applicant by the City for this Permit. Such insurance and all required endorsements must be in full effect prior to commencing work. Applicant shall furnish separate certificates and certified endorsements naming City as an additional insured, and Applicant shall either include its duly approved or authorized agents or contractors and all subcontractors as insureds under Applicant's insurance policies or Applicant shall furnish separate evidence or proof of insurance coverage or copies of insurance policies and separate certified endorsements naming City as an additional insured from each of Applicant's duly approved and authorized agents or contractors and all subcontractors of each duly approved and authorized agent or contractor.*

*Applicant shall inform its duly approved or authorized agents or contractors and all subcontractors of the indemnity and insurance provisions of this permit and provide them with copies of those provisions. Any duly approved or authorized agents or contractors shall be required to sign the permit and acknowledge that they have read and understood the indemnity and insurance requirements and agree to be bound by them.*

**[The member should include the following language with the signature line: "I have read and understand the requirements above and agree to be bound by them." Member must also include its insurance requirements as part of the application.]**