



To Whom It May Concern:

As of January 1, 2018, a recently enacted California statute (Senate Bill 496, 2017) provides that all newly entered contracts limit responsibility of a design professional to pay for the cost of defending lawsuits against an indemnitee to the degree that the design professional is at fault. Even if a design professional were to sign a contract agreeing to defend regardless of fault, statutory language would invalidate that contractual arrangement.

SB 496 (Chapter 8, Statutes of 2017) amended California Civil Code 2782.8 in two significant areas:

- For contracts starting in 2018, design professionals will only have an obligation to pay costs for defense of a client to the design professional's proportionate percentage of fault.
- Civil Code 2782.8 now applies to most private and public works projects.

SB 496 makes the Civil Code 2782.8 provisions applicable to all public and private design professional contracts, with three exemptions:

1. Any contract where a project-specific general liability policy insures all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis;
2. When a design professional is a party to a written design-build joint venture agreement; and
3. Contracts with the State of California.

Below is sample language that may serve as a basis for updating your agreements or RFPs/RFQs:

Notwithstanding any clause or provision in this Agreement or any other applicable Agreement to the contrary, Consultant agrees to indemnify and hold harmless (but not defend) the Client, its officers, directors and employees from and against damages and costs that Client is legally obligated to pay, to the extent caused by the negligent act, error or omission of the Consultant or anyone for whom the Consultant is legally responsible, subject to any limitations of liability contained in this Agreement. Consultant shall have liability for reasonable and necessary defense costs incurred by persons indemnified to the extent caused by Consultant's negligence herein and recoverable under applicable law on account of negligence.

Thank you for your attention to this matter. We recognize that this is a significant change from previous law, and we invite you to contact the American Council of Engineering Companies, California at (916) 441-7991 if you have any questions about this or any other consulting issue.

Sincerely,

American Council of Engineering Companies, California
American Institute of Architects, California Council
American Society of Landscape Architects, California Council
California Geotechnical Engineering Association
California Land Surveyors Association
Structural Engineers Association of California