



October 8, 2020

To: Region Real Estate Services Managers
Megaprograms Management (METC team)

From: Heather Lindstrom, Acquisition Program Manager

Re: Defense and Indemnity Language

HQ RES collaborated with Region RES and the Attorney General's Office to update and approve our *Defense & Indemnity Language*. The language below has now been approved for use on the majority of acquisitions without prior approval from HQ/AAG and shall replace any previous language on file.

Use will depend on the type of right needed to construct, operate and maintain the highway, and may depend on the construction activities scheduled to occur. It's not uncommon for the property owner to make a request for indemnification based on the construction activities and type of acquisition rights to be acquired.

Most often, this language will be used in conjunction with *Easements, Permits, or Right of Entries*. If you have any questions regarding use, please contact your HQ-RES reviewer.

Note: Government, Political and Municipal Agencies, including tribal and utility companies, will include their own Indemnity language and will not accept WSDOT's language. If that happens, please send the proposed Indemnity language to HQ-RES for approval.

Defense & Indemnity Language – Approved 8/13/20

Grantee shall protect, defend, indemnify, and hold harmless Grantor and its successors or assigns and employees, and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, Grantee's use of the Premises as authorized herein. Grantee's use of the property includes Grantee's employees, authorized agents, invitees, and contractors' use of the property. Grantee shall not be required to indemnify, defend, or hold harmless Grantor if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the Grantor; provided that if such claims, suits, or actions result from the concurrent negligence of: (a) the Grantor, its successors or assigns, employees, authorized agents, invitees, or contractors and (b) the Grantee, its employees, authorized agents, invitees or contractors, and/or

involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, invitees, and/or contractors. The Grantor and Grantee agree that each of their obligations under this Defense and Indemnity obligation extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its respective employees or agents while occupying the Premises for any purpose. For this purpose, Grantor and Grantee, by MUTUAL NEGOTIATION, hereby waive with respect to the other Party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW. The defense, indemnification and WAIVER provisions contained in this Section shall survive the termination or expiration of this easement.

Enclosure / Word Version (Defense & Indemnity Language)

cc: Jessica Stokesberry, HQ Real Estate Service Program Administrator
Matt Huot, Attorney General's Office, Transportation and Public Construction
Mark Schumock, Attorney General's Office, Transportation and Public
Construction

cm/hl