




City of La Quinta

ENGINEERING BULLETIN #97-04

TO: All Interested Parties

FROM:  Timothy R. Jonasson, Public Works Director/City Engineer

REVISED EFFECTIVE DATE: May 11, 2015

ORIGINAL EFFECTIVE DATE: December 19, 2006

SUBJECT: Indemnification & Insurance Requirements for Encroachment Permits

Effective immediately, and pursuant to La Quinta Municipal Code Section 14.16.110, all Permittees that are issued Encroachment Permits by the City of La Quinta (the "City") shall comply with indemnification and insurance requirements specified in this Bulletin.

1.0 INDEMNIFICATION

a. Indemnification for Professional Liability. When the law establishes a professional standard of care for Permittee's services or work, to the fullest extent permitted by law, Permittee shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities of every kind, nature, and description, damages, injury (including, without limitation, injury to or death of an employee of Permittee or of any contractor or subcontractor), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, to the extent same are cause in whole or in part by any negligent or wrongful act, error or omission of Permittee, its officers, agents, employees, contractors, or subcontractors (or any entity or individual that Permittee shall bear the legal liability thereof) in connection with the encroachment permit or the work performed in the City for which the encroachment permit was required. With respect to the design of public improvements, Permittee shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in the encroachment permit without the written consent of Permittee.

b. Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Permittee shall indemnify, defend (with counsel selected by the City), and hold

harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses) incurred in connection therewith and costs of investigation, where the same arise out of, are a consequence of, or are in any way in connection with, in whole or in part, the encroachment permit or the work performed in the City for which the encroachment permit was required, by Permittee or by any individual or entity for which Permittee is legally liable, including but not limited to officers, agents, employees, contractors, or subcontractors of Permittee.

2.0 STANDARD INDEMNIFICATION PROVISIONS

a. Indemnity Agreements. Permittee agrees to obtain executed indemnity agreements with provisions identical to those set forth herein from each and every contractor or subcontractor or any other person or entity involved by, for, with or on behalf of Permittee in the performance the work performed in the City for which the encroachment permit was required. In the event Permittee fails to obtain such indemnity obligations from others as required herein, Permittee agrees to be fully responsible according to the terms of this Bulletin. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend the City as set forth herein is binding on the successors, assigns or heirs of Permittee and shall survive the termination of the encroachment permit.

b. Limitation on Indemnity. Without affecting the rights of the City under any provision of this agreement, Permittee shall not be required to indemnify and hold harmless the City for liability attributable to the active negligence of the City, provided such active negligence is determined by agreement between Permittee and the City or by the findings of a court of competent jurisdiction. In instances where the City is shown to have been actively negligent and where the City's active negligence accounts for only a percentage of the liability involved, the obligation of Permittee will be for that entire portion or percentage of liability not attributable to the active negligence of the City.

3.0 INSURANCE REQUIREMENTS

a. General

Prior to the beginning of and throughout the duration of the work performed in the City for which the encroachment permit was required, Permittee will maintain insurance in conformance with the requirements set forth below. Permittee may use existing coverage to comply with these requirements. If that existing

coverage does not meet the requirements set forth here, it must be amended to do so. Permittee acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Bulletin and which is applicable to a given loss, will be available to the City.

Permittee shall submit coverage verification for review and approval by the City prior to issuance of the encroachment permit.

The encroachment permit for the proposed work will not be issued, and the Permittee shall not commence work, until such insurance has been approved by the City. Permittee shall not allow any contractor or subcontractors to commence work on its subcontract until all similar insurance required of the contractor or subcontractor has been obtained and verified by Permittee. Such insurance shall remain in full force and effect at all times during the performance of the work and until the final completion and acceptance thereof.

The encroachment permit does not relieve the Permittee of the duty to obtain such insurance as required by this Section 3.0 INSURANCE REQUIREMENTS.

Insurance procured pursuant to these requirements shall be written by insurers that are authorized carriers in the state of California and with an A.M. Best rating of A- or better and a minimum financial size of VII.

b. Required Policies. Permittee shall provide the following types and amounts of insurance:

Commercial General Liability Policy

Commercial General Liability Insurance at least as broad as Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the equivalent. Defense costs must be paid in addition to limits. Limits shall be no less than One Million Dollars (\$1,000,000) per occurrence for all covered losses and no less than Two Million Dollars (\$2,000,000) general aggregate.

Permittee's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- a. Explosion, Collapse or Underground Hazard(X CU).
- b. Products and Completed Operations.
- c. Pollution liability.
- d. Contractual liability.

Coverage shall be applicable to the City for injury to employees of: Permittees, contractors, subcontractors or others involved in the project. Policy shall be endorsed to provide a separate limit applicable to this project.

A certificate evidencing the foregoing and naming the City and its officers and employees as additional insured (on the Commercial General Liability policy only) shall be delivered to and approved by the City prior to issuance of the encroachment permit.

Workers' Compensation Insurance

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

Business Auto Policy

Submit Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the equivalent. Limits shall be no less than One Million Dollars (\$1,000,000) per accident, combined single limit. If Permittee owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Permittee or Permittee's employees will use personal autos in any way on this project, Permittee shall provide evidence of personal auto liability coverage for each such person. The term "automobile" includes, but is not limited to, a land motor vehicle, trailer or semi-trailer designed for travel on public roads. The automobile insurance policy shall contain a severability of interest clause providing that coverage shall be primary for losses arising out of Permittee's work and neither the City nor its insurers shall be required to contribute to such loss.

Excess or Umbrella Liability Insurance

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage for liability not covered by primary but covered by the umbrella. Self-insured retentions are not permitted. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Permittee, contractors, subcontractors or others involved in the work. The scope of coverage provided is subject to approval of the City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than One Million Dollars (\$1,000,000) per occurrence and aggregate.

c. General Conditions Pertaining to Provisions of Insurance Coverage.

1. Permittee agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Permittee also agrees to require all contractors, subcontractors, and anyone else involved in any way with the project contemplated by the encroachment permit to do likewise.
2. Any waiver of subrogation, express or implied, on the part of the City to any party involved in the encroachment permit or related documents applies only to the extent of insurance proceeds actually paid. The City, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, Permittee agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the project(s) contemplated by the encroachment permit, to do likewise.
3. All insurance coverage maintained or procured by Permittee or required of others by Permittee pursuant to the encroachment permit shall be endorsed to delete the subrogation condition as to the City, or to specifically allow Permittees or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.
4. It is agreed by Permittee and the City that insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of the City, or to the supervisory role, if any, of the City. All insurance coverage provided pursuant to this or any other contract (express or implied) in any way relating to the City is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any contract involving the City in relation to the project(s) contemplated by the encroachment permit is intended to be construed to limit the application of insurance coverage in any way.
5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to the City and approved of in writing.
6. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

7. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Permittee shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

8. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Permittee's general liability policy, shall be delivered to the City prior to the issuance of the encroachment permit. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Permittee.

9. It is acknowledged by Permittee and the City that all insurance coverage required to be provided by Permittee or any contractor or subcontractor, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self-insurance available to the City.

10. Permittee agrees to ensure that contractors, subcontractors, and any other party involved with the work that is brought onto or involved in the project by Permittee, provide the same minimum insurance coverage required of Permittee. Permittee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Bulletin. Permittee agrees that upon request, all agreements with contractors, subcontractors and others engaged in the work will be submitted to the City for review.

11. Permittee agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by the encroachment permit to self-insure its obligations to the City. If Permittee's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with Permittee, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The City reserves the right, at any time during the term of the encroachment permit, to change the amounts and types of insurance

required by giving Permittee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Permittee, the City will negotiate additional compensation proportional to the increased benefit to City.

13. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under the encroachment permit.

14. Permittee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Permittee of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.

15. Permittee will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to the encroachment permit. This obligation applies whether or not the encroachment permit is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until the City executes a written statement to that effect.

16. Permittee shall provide proof that policies of insurance required herein expiring during the term of the encroachment permit have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Permittee's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five (5) days of the expiration of coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of Permittee. Permittee expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials, and agents..

18. Requirements of specific coverage features or limits are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by Permittee, the City, or insured to be limiting or all-inclusive.

19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in encroachment permit and are intended by Permittee and the City here to be interpreted as such.

20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of the encroachment permit and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by the City.

21. Permittee agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge the City or Permittee for the cost of additional insurance coverage required by this Bulletin. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.

22. Permittee agrees to provide immediate notice to the City of any claim or loss against Permittee arising out of the work that is subject to the encroachment permit. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

23. Permittee agrees to obtain and provide to the City a copy of Professional Liability coverage for Architects or Engineers, if any are involved in the proposed work under the encroachment permit through Permittee. The City shall determine the liability limit.

- d. Change in Terms. Permittee shall provide immediate written notice to the City of any change in terms and conditions and/or reduction in the coverage of any nature to the insurance policies. The notice shall be sent to:

Timothy R. Jonasson, Public Works Director/ City Engineer
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