



STATE OF ALABAMA
BUILDING COMMISSION

770 WASHINGTON AVE
SUITE 444
Montgomery, Alabama 36130-1150
Telephone: (334) 242-4082
Fax: (334) 242-4182

ROBERT BENTLEY
Governor

Katherine Lynn
Director

October 1, 2012

TO: STATE AGENCIES, K-12 SUPERINTENDENTS, COMMUNITY COLLEGES

**FROM: KATHERINE LYNN, DIRECTOR
ALABAMA BUILDING COMMISSION** *Katherine Lynn*

SUBJECT: CHANGES TO WAIVERS OF SUBROGATION CLAUSES

Upon the recommendation of the Department of Finance, Division of Risk Management, the waivers of subrogation clauses included in the Building Commission's professional services agreements and construction contracts have been modified. The revisions are mandatory for all projects that are or will be insured under the State Insurance Fund. The revised contract clause for ABC Form B-2A, "Standard Articles of the Agreement Between the Owner and Architect" is included in Attachment A. The revised contract clause for ABC Form C-8, "General Conditions of the Construction Contract" is included in Attachment B.

It is the responsibility of the Owner to ensure that the revised language is incorporated into all professional service agreements and construction contracts. Failure to incorporate the revisions could result in a loss of property coverage by the State Insurance Fund.

If you should have any questions, please feel free to contact me at (334) 242-4082 or Ben Spillers, Risk Management, at (334) 223-6120.

cc: Mr. Ben Spillers, Risk Management
Mr. Max Graham, Risk Management
Dr. Marquita Davis, State Finance Director
Mr. Richard Cater, Finance Legal
Mr. Perry Taylor, State School Architect
Dr. Susan Yvette Price, Acting Chancellor, Department of Postsecondary Education
Ms. Lynne Thrower, Department of Postsecondary Education
Mr. Frank Barnes, Department of Postsecondary Education

ATTACHMENT A
to the
STANDARD ARTICLES of the AGREEMENT BETWEEN OWNER
AND ARCHITECT

(MANDATORY FOR PROJECTS COVERED THROUGH
THE STATE INSURANCE FUND (SIF))

1. Article 13 "Architect's Insurance", Paragraph G is modified as follows:

G. WAIVERS of SUBROGATION

To the extent ~~damages are that~~ loss or damage is covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to proceeds of such insurance held by the Owner, Architect, or Contractor as fiduciary. The Owner or Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. This waiver shall not be applicable to loss or damage that occurs after final acceptance of the Work.

END of ATTACHMENT A to the
STANDARD ARTICLES of the AGREEMENT BETWEEN OWNER AND ARCHITECT

ATTACHMENT B
to the
GENERAL CONDITIONS of the CONTRACT

(MANDATORY FOR PROJECTS COVERED THROUGH
THE STATE INSURANCE FUND (SIF))

1. Article 37 "Contractor's and Subcontractors' Insurance", Paragraph E is modified as follows:

E. WAIVERS of SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors performing construction or operations related to the Project, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss. But said waiver shall apply only to the extent the loss or damage is covered by builder's risk insurance or other property insurance applicable to the Work or to other property located within or adjacent to the Project, except such rights as they may have to proceeds of such insurance held by the Owner or Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the subcontractor, sub-subcontractors, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The Policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to the person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The waivers provided for in this paragraph shall survive not be applicable to loss or damage that occurs after final acceptance of the Work, and continue to apply to insured losses to the Work or other property on or adjacent to the Project.

END of ATTACHMENT B to the
GENERAL CONDITIONS of the CONTRACT