

Appendix A

University of Maine System

Supplementary Requirements to AIA Document B102-2007 Standard Form of Agreement Between Owner and Architect formerly B141-1997 Part 1.

NOTE: B-102-2007 AS MODIFIED WITH UNIVERSITY OF MAINE SYSTEM'S SUPPLEMENTARY REQUIREMENTS MUST BE INCLUDED WITH B201-2007.

§ 1.1.1 Whenever the term Architect is used in this agreement, it is intended to mean the designer of record and can be either a Maine Registered Architect or Engineer.

§ 1.2.1 Within four (4) weeks after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of services and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 1.5 Replace existing § 1.5 with the following:

§ 1.5. INSURANCE REQUIREMENTS

For this agreement, the Architect shall maintain the following insurance:

§ 1.5.1 Commercial General Liability: \$1,000,000 per occurrence covering Bodily Injury and Property Damage and written on an occurrence-based form.

§ 1.5.2 Automobile Liability: Minimum of \$1,000,000 per occurrence covering Bodily Injury and Property Damage. This Hired and Non-Owned Automobile Liability insurance covers vehicles used by the Architect that are not owned by the firm. This type of coverage by itself is acceptable if Design firm does not own any vehicles.

§ 1.5.3 Workers Compensation: In compliance with applicable state laws

§ 1.5.4 Professional Liability (Errors & Omissions): Minimum of \$1,000,000 limit.

§ 1.5.5 All insurance shall be maintained during the term of the design agreement, and for a period of one year following payment of the final invoice, except for Professional Liability which must be maintained an additional two years if coverage is written on a "claims made" basis.

§ 1.5.6 The University of Maine System shall be named as an Additional Insured on the Commercial General Liability Insurance.

§ 1.5.7 **Original** Certificates of Insurance for all of the above insurance shall be submitted to the Project Manager for review and acceptance prior to the signing of the design agreement. Said certificates, in addition to proof of coverage, shall contain the standard ACORD statement pertaining to written notification in the event of cancellation, with a thirty (30) day notification period. The insurance certificate shall state the University of Maine System as certificate holder and additional insured as follows: (regardless of campus):

The University of Maine System
Office of Facilities
16 Central Street
Bangor ME 04401

§1.5.8 **Architect** must assure that similar coverage is in place for all persons or companies working for the Architect, including consultants and independent contractors. By entering into this agreement with the University, the Architect certifies this coverage is or will be in place and will continue to be in place as required.

§ 2.2.1 The Owner's Representative on this project will be _____, who is authorized to sign contracts and other legal documents related to this project on behalf of the Owner.

§ 2.2.2 The Owner's Project Manager on this project will be _____.

§ 2.3 Replace existing § 2.3 with the following:

§ 2.3 The Owner shall furnish the services of consultants other than those designated in this agreement or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultant. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 2.6 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.3 Replace existing § 3.3 with the following:

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractor, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce

applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for Owner. If the Architect rightfully terminates this Agreement for cause as provided in Section 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 Add the following: Unless it is determined that the Architect was negligent in the services rendered to the Owner.

§ 4.2.4 Replace existing § 4.2.4 with the following:

§ 4.2.4 If the parties do not resolve a dispute through Mediation pursuant to § 4.2, the method of binding dispute resolution shall be Arbitration pursuant to § 4.3 of this Agreement.

§ 4.3.1 Replace the existing § 4.3.1 with the following:

§ 4.3.1 The parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement, except that the parties shall select only one Arbitrator, and there shall be no discovery. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 5.2 Replace the existing § 5.2 with the following:

§ 5.2 If the project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.6 Replace existing § 5.6 with the following:

§ 5.6 COMPENSATION UPON TERMINATION.

§ 5.6.1 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.

§ 5.6.2 In the event of termination hereunder for any reason, the Architect will not be entitled to special or exemplary damages of any kind, including but not limited to, lost profits, consequential damages, or loss of business.

§ 5.7 Replace the existing § 5.7 with the following:

§ 5.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

§ 6.2 Replace the existing § 6.2 with the following:

§ 6.2 Reimbursable Expenses are in addition to the compensation for the Basic Services and Additional Services, and include actual expenditures made by the Architect, the Architect's employees, or professional consultants solely for the expenses listed as follows:

- .1 With prior written authorization by the Owner, the Architect may be reimbursed for transportation, living and communication expenses incurred by the Architect in the providing of any Additional Services in connection with the work. Transportation, living expenses and telephone expenses will be the responsibility of the Architect;
- .2 Long distance services, dedicated data and communication services, teleconferences, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner,
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner; and
- .8 The Owner shall reimburse Architect for the "net expense" for reproducing, postage and handling of drawings and specifications required for bidding purposes. The "net expense" shall be the difference between the actual cost to the Architect, less any deposits or payments retained.

§ 6.2.1 Replace the existing § 6.2.1 with the following:

§ 6.2.1 Unless otherwise agreed, Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants, plus an administrative fee of ten percent (10%) of the expenses incurred.

§ 6.3 Replace the existing § 6.3 with the following:

§ 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE. If the Owner terminates the Architect for its convenience under § 5.5, or the Architect terminates this Agreement under § 5.3, the Owner shall not pay for the Owner's continued use of the Architect's Instruments of Service solely for the purposes set forth in § 3.3.

§ 6.4.1 Delete this section.

§ 6.4.2 Replace the existing § 6.4.2 with the following:

§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to

services performed. Payments are due and payable upon presentation of the Architect's invoice.

§ 7.6.1 Asbestos The University recognizes the need to identify asbestos-containing materials that may be impacted during renovation or demolition activities. State regulations require asbestos materials to be removed or disturbed by only licensed asbestos abatement companies. The Architect shall discuss with the Project Manager whether any information is available regarding asbestos-containing building materials, scheduled asbestos surveys, or scheduled abatement activities.

If no information is available, Project Manager shall ensure an asbestos inspection is conducted by licensed personnel to determine the location, quantity and condition of any asbestos-containing materials that may be impacted. This information may be useful in developing design approaches or coordinating work schedules with planned asbestos abatement activities. Unless otherwise stated, the University is generally responsible for arranging for removal of friable asbestos, usually under separate contract.

The State of Maine Department of Environmental Protection has allowed properly trained and equipped roofing contractors to remove asbestos-containing materials associated with roofing systems. Where possible, the Architect shall include proper removal of asbestos-containing materials associated with roofs in design documents for normal roof demolition, repair and replacement. This issue should be discussed with the Project Manager. Any air or bulk sample monitoring data acquired in the removal of asbestos-containing roofing materials must be shared with the University.

§ 7.6.2 Lead The University expects lead-containing paint to be associated with existing buildings built before 1980. Generally, the University includes proper removal and disposal of lead-containing paint as part of the general painting specifications, since Maine does not require licensed lead abatement contractors to perform these activities when associated with renovation or construction in commercial buildings.

The Architect shall discuss with the Project Manager whether any testing for lead-containing paints has occurred. If so, any information regarding lead content shall be included in any published design documents. If not, the University and any contractor should assume that lead is present in painted surfaces unless proven otherwise.

In daycare facilities, family housing, and other occupancies where children are present, specialized lead paint testing and abatement may be necessary. The Architect shall discuss with the Project Manager whether these types of occupancies are expected and, where necessary, the University will contract directly with licensed firms to address these issues.

§ 7.6.3 Hazardous Materials Building construction and renovation by its very nature involves the use of hazardous materials. The Architect shall use caution in developing project manuals that require the University to handle all hazardous materials associated with a project. Where appropriate, the University shall address hazardous materials associated with chemical storage, laboratory facilities, or other University operations.

§ 7.9 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 7.10 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Contract Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 7.11 Additional Services may be provided after execution of this Agreement per § 9.1, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section shall entitle the Architect to compensation pursuant to Article 6.

§ 7.12 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .7 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto.

§ 8.1 DESIGN REQUIREMENTS – NOTE: FOR ADDITIONAL DESIGN CRITERIA SEE § 9.2.3.

§ 8.1.1 Compliance with NFPA 101 Design must comply with the latest adopted edition of NFPA 101 Life Safety Code. Architect is responsible for submission of Contract Documents to the Maine State Fire Marshal for certification of compliance. The Architect shall obtain a certificate of approval prior to the project advertisement for bid. The review application fee is a Reimbursable expense, payable by the University.

§ 8.1.2 Accessibility The entire design shall comply with Federal Section 504 Requirements of The Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) and the Maine Human Rights Act. The design of the project shall comply with the currently adopted ANSI Standard A117.1 and ADA Accessibility Guidelines for Buildings and Facilities. The Architect is responsible for submission of Contract Documents to the Maine State Fire Marshal for certification of compliance. The Architect shall obtain a certificate of approval prior to the project advertisement for bid. The review application fee is a Reimbursable expense, payable by the University. Under current State Law, the Architect must also submit to the University, under the Architect's letterhead, a certification of compliance with the State Accessibility Law prior to the project being advertised.

§ 8.1.3 Sustainability & Energy Conservation Board of Trustees policy requires that the University design and construct facilities in a manner that encourages environmental responsibility and promotes sustainable development on campus properties and in local communities (http://www.maine.edu/system/policy_manual/policy_section1002.php).

By Board of Trustee policy and Governor's Executive Order, the selected design firm will be required to design to green standards compliant with Executive Order 27 FY11/12 when applicable and cost-effective.

.1 The Architect will use LEED standards whenever possible and will keep an accurate accounting of each area of energy conservation concern, with annotation indicating how LEED standards are used or why they were not included. **Any use of LEED must conform with Executive Order 27 FY11/12.** For more information, go to <http://www.usgbc.org>.

.2 New construction or substantial renovation must conform to ASHRAE Standard 62-2001 and ASHRAE Standard 90.1-2001 or current accepted version under any of the compliance methods specified in the standards. For the purpose of this section, "substantial renovation" means any renovation for which the cost exceeds 50% of the building's current value prior to renovation; see Title 10 MRSA 1415-D Mandatory Standards for Commercial Construction, as amended. In addition, design should have an energy-use target that exceeds ASHRAE 90 by at least 20%; see Title 5 MRSA 1764 Life-Cycle Costs, as amended.

.3 The Architect shall prepare a Life Cycle Analysis as required by Title 5 MRSA 1762 No Facility Constructed Without Life-Cycle Costs, as amended, which states (in part):

No public improvement constructed or substantially renovated in whole or in part with public funds or using public loan guarantees, with an area in excess of 5,000 square feet, may be constructed without having secured from the designer a proper evaluation of life-cycle costs, as computed by a qualified architect or engineer. The requirements of this section with respect to substantial renovation shall pertain only to that portion of the building being renovated. Construction shall proceed only upon disclosing, for the design chosen, the life-cycle costs and the capitalization of the initial construction costs of the facility or building. The life-cycle costs shall be a primary consideration in the selection of the design.

Any life-cycle costs must include:

The reasonably expected energy costs over the life of the building, as determined by the Architect, that are required to maintain illumination, power, temperature, humidity and ventilation and all other energy-consuming equipment in a facility;

The reasonable energy-related costs of probable maintenance, including labor and materials and operation of the building, replacement costs over the expected life of the facility and any other ownership cost issues identified by the University; and

A comparison of energy-related and economic-related design alternatives. The University may direct the Architect to select, include and develop life-cycle costs for any viable alternatives that should be considered.

The Life Cycle Analysis must be coordinated with appropriate LEED criteria Final report shall include an executive summary highlighting the analysis. The Architect shall submit during preliminary design phase a preliminary life cycle cost analysis to be reviewed with the University.

.4 Maine law (Title 5 MRSA 1762-A Water Conservation in State Facilities, as amended,) requires all University facilities to be constructed with water conserving fixtures. All designs shall incorporate fixtures meeting Maine law, unless a lower flow rate is required by the University and communicated in writing.

.5 Maine law (Title 5 MRSA 1769) requires all University owned exterior lighting fixtures having an output greater than 1,800 lumens to be full cut-off type which allow no direct light emission above a horizontal plane through the luminaries' lowest light-emitting point.

§ 8.2 OTHER REQUIREMENTS

§ 8.2.1 Sales & Excise Tax The University of Maine System is an Instrumentality and an Agency of the State of Maine and is exempt from State of Maine Sales and Use Tax and by Federal determination from Federal Excise Taxes.

No Sales and Use Tax or Federal Excise Tax should be included for any supplies, material or equipment purchased for permanent inclusion in a University facility.

§ 9.2.3

§ 9.2.3.1 Appendix A - University of Maine System Supplementary Requirements to AIA B102-2007 (dated 10-6-10)

§ 9.2.3.2 Appendix B - University of Maine System Design Criteria (dated 8-6-09)

§ 9.2.3.3 Appendix C - Campus Design Criteria (when available)

§ 9.2.3.4 Others