

UNIVERSITY OF MAINE SYSTEM  
CONTRACTOR/CONSULTANT AGREEMENT

This Contract entered into this Choose an item. day of Choose an item., 2023, by and between the University of Maine System, acting through the University of Maine; 5765 Service Building; Orono ME 04469; hereinafter “University,” and Choose an item., hereinafter “Contractor”.

WHEREAS, the University desires to enter into a contract for professional services, and the Contractor represents itself as competent and qualified to accomplish the specific requirements of this Contract to the satisfaction of the University to provide Choose an item.;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. **Scope of Work:** The Contractor agrees to perform the Scope of Work as described in Attachment A, which may be amended from time to time by mutual consent of the parties in writing, and is hereby incorporated.
2. **Term:**
  - 2.1 **EFFECTIVE DATES:** This Contract shall commence on Choose an item. , 2023 and shall terminate on Choose an item., 2023 unless terminated earlier as provided in this Contract.
  - 2.2 **TERMINATION BY MUTUAL AGREEMENT OR WITH NOTICE:** This Contract may be terminated by mutual agreement of the parties in writing or by either party upon ten (10) days prior written notice to the other party.
  - 2.3 **TERMINATION FOR BREACH:** Notwithstanding any other provision, this Contract may be terminated immediately, upon written notice, in the event the University or the Contractor determines the other party has materially breached any term or condition of this Contract, provided that the party so notified shall be allowed thirty (30) days to cure any such breach.
  - 2.4 **EFFECT OF TERMINATION:** Upon termination of the Contract neither party shall have any further obligation hereunder except for those obligations which accrued prior to the date of termination, and except for the parties’ indemnification obligations provided for in Section 11 of this Contract.
3. **Payment:**
  - 3.1 The University shall compensate the Contractor under this Contract on an individual project or service basis for actual labor, equipment and materials costs. The total of all payments made under this Contract shall NOT EXCEED Choose an item. Dollars (\$Choose an item.). No payments shall be made over the agreed upon fee without a written Modification to the Contract.
  - 3.2 Payment shall be made within thirty (30) days of approval of each payment requisition, which details the work performed. All requests for payment shall be sent to:

Choose an item.  
Choose an item.  
Office of Facilities Management  
University of Maine  
5765 Service Building  
Orono ME 04469-5765
4. **Conflict of Interest:** No officer or employee of the University shall participate in any decision relating to this Contract which affects his or her personal interest in any entity in which he or she directly or indirectly has interest. No employee of the University shall have any interest, direct or indirect, in this Contract or proceeds thereof.

5. **Modification**: This Contract shall only be modified by a formal written Modification, signed by both parties.
6. **Assignment**: This Contract, or any part thereof, shall not be assigned, transferred or subcontracted by the Contractor without the prior written consent of the University.
7. **Applicable Law**: This Contract shall be governed and interpreted according to the laws of the State of Maine without reference to its conflict of laws principles.
8. **Administration**: The University's authorized representative in all matters pertaining to the administration and day to day operations and activities of this Contract shall be as outlined in Section 20.1.
9. **Clarification of Responsibilities**: Whenever a conflict, contradiction, or discrepancy exists between any statutes, regulations, plans, or specifications, or if the Contractor requests clarification of its responsibilities hereunder, it is the Contractor's responsibility to obtain written clarification from the above named representative or designee prior to deviating from the terms of this Contract.
10. **Non-Discrimination**: In complying with the letter and spirit of applicable laws and pursuing its own goals of diversity, the University of Maine System does not discriminate on the grounds of race, color, religion, sex, sexual orientation, transgender status, gender, gender identity or expression, ethnicity, national origin, citizenship status, familial status, ancestry, age, disability physical or mental, genetic information, veteran or military status in employment, education, and all other programs and activities. The University provides reasonable accommodation to qualified individuals with disabilities upon request. General contractors, subcontractors, and product suppliers bidding on this project must subscribe and adhere to same.
11. **Indemnification**:
  - 11.1 The University agrees to indemnify and hold harmless the Contractor from and against any and all claims, actions, lawsuits, judgments, and costs, including reasonable attorney's fees, that the Contractor may become liable to pay or defend due to bodily injury or property damage caused by the negligent acts or omissions of the University, arising out of or in connection with the University's performance of its obligations under this Contract; PROVIDED that any liability of the University under this Contract shall be limited by the provisions and limitations of the Maine Tort Claims Act, 14 MRSA § 8101, et. seq.
  - 11.2 The Contractor shall indemnify, hold harmless and defend the University, its trustees, officers, employees and agents, from and against any and all losses, expenses, claims, lawsuits, damages, judgments, and costs, including reasonable attorney's fees, suffered or sustained by the University or for which the University may be held or become liable by reason of injury (including death) to persons or property or other causes whatsoever, in connection with the negligent acts, omissions or operations of the Contractor or any subcontractor under this Contract.
12. **Contract Validity**: In the event one or more clauses or sections of this Contract are declared invalid, void, unenforceable, or illegal, that declaration shall not affect the validity of the remaining clauses or sections of this Contract.
13. **Independent Contractor**: The contractor is an independent contractor of the University, not a partner, agent or joint venture of the University and neither party shall hold itself out contrary to these terms by advertising or otherwise, nor shall either party be bound by any representation, act or omission whatsoever of the other. The contractor, its employees and subcontractors, if any, is/are independent contractors for whom no Federal or State Income Tax will be deducted by the University, and for whom no retirement benefits, Social Security benefits, group health or life insurance, vacation or sick leave, Workers' Compensation or similar benefits available to University employees will accrue. The parties further understand that annual information returns as required by the Internal Revenue Code and Maine Income Tax Law will be filed by the University with copies sent to the Contractor. The contractor will be responsible for compliance with all applicable laws, rules and regulations involving, but not limited to, employment, labor, Workers' Compensation, hours of work, working conditions, payment of wages, and payment of taxes, such as unemployment, social security and other payroll taxes, including other applicable contributions from such persons when required by law.

14. **Intellectual Property**: Any information and/or materials, finished or unfinished, produced in performance of this Contract, and all the rights pertaining thereto, are the property of the University and shall be turned over to the University upon request.
15. **Licensing**: The contractor shall secure in its name and at its expense all federal, state and local licenses and permits required for operation under this Contract. Contractor shall provide proof of such licensure or permit to the University prior to commencing work under this Contract.
16. **Recordkeeping, Audit and Inspection of Records**: The Contractor shall maintain books, records and other compilations of data pertaining to the requirements of the Contract to the extent and in such detail as shall properly substantiate claims for payment under this Contract. All such records shall be kept for a period of seven (7) years or for such longer period as specified herein. All retention periods start on the first day after the final payment on this Contract. If a litigation, claim, negotiation, audit, or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The University, the grantor agency (if any), or any of their authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records and other compilations of data of the Contractor pertaining to this Contract. Such access shall include on-site audits.
17. **Publicity, Publications, Reproductions, and Use of Contract's Products or Materials**: Unless otherwise provided by law or the University, title and possession of all data, reports, programs, software, equipment, furnishing, and any other documentation or product paid for with University funds shall vest with the University. The Contractor shall at all times obtain the prior written approval of the University before it or any of its officers, agents, employees, or subcontractors, either during or after termination of this Contract, makes any statement bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium of communication. If the Contractor or any of its subcontractors publishes a work dealing with any aspect of performance under the Contract, or of the results and accomplishments attained in such performance, the University shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the publication.
18. **Confidentiality**: The Contractor shall comply with all laws and regulations relating to confidentiality and privacy including, but not limited to, any rules or regulations of the University.
19. **Force Majeure**: Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, flood, epidemics, strikes, embargoes, or unusually severe weather. Dates or time of performance shall be extended to the extent of delays excused by this section provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
20. **Notices**: Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and addressed to the authorized representative of each party.
  - 20.1 The authorized representative of the University shall be:
    - Choose an item.
    - Choose an item.
  - 20.2 The authorized representative of the Contractor shall be:
    - Choose an item.
    - Choose an item.
21. **Insurance Requirements**: Required insurances shall be in accordance with those outlined in Attachment B, hereby incorporated.

22. **Tobacco Free Campus Policy:** On January 1, 2011 the University adopted a tobacco free campus policy. As of January 1, 2012 compliance with the tobacco free campus policy became mandatory. This Section serves as notification to Contractor of the policy and provides the parameters of compliance enforcement. Contractor shall be responsible for notifying its workers and subcontractors regarding the policy and for enforcement of the policy with same. Noncompliance will be managed as follows:

- a. First offense – counseling of contractor employee.
- b. Second offense – contractor employee removed from campus for the remainder of the Work.

Additional information regarding the tobacco free campus is located at:

<https://umaine.edu/news/blog/2010/02/25/umaine-sets-tobacco-free-campus-date-at-jan-1-2011/>

23. Contractor shall obtain a University of Maine excavation permit for all campus excavation activities through the Office of Facilities Management.

24. Contractor shall have a lockout/tagout program in place prior to starting work that requires lockout/tagout activities.

25. Contractor, and subcontractors, shall comply with the following University of Maine System policies, as they pertain to the Work:

- a. (campus specific)Parking policy: <https://umaine.edu/parking/rules-regulations/>;
- b. Trenching and Excavation policy;
- c. Confined Space policy; and,
- d. (campus specific)Vehicle Idling policy:  
<http://www2.umaine.edu/SEM/Documents/Policy/VehicleIdlePolicy.pdf>.

For copies of these policies please contact the Project representative listed in Article 20.

26. **Multi-Institution Capabilities:**

26.1 The University will have the option to include products and services under this Agreement to additional University institutions, this includes any additional University institutions formed during the term of this agreement, all facilities utilized by an institution including those managed and/or owned by a third party, and additional entities, such as the University College, a division of University of Maine at Augusta.

26.2 The Community College System and Maine Maritime Academy, both public higher education institutions in the state, shall be permitted to piggyback off of the University's contract if they should so desire. The Contractor agrees to further provide the products and services, with all the same terms and conditions applicable, to these additional entities.

27. **Protection of Persons and Property:**

27.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs including all those required by law and the University in connection with performance of the Agreement. The Contractor shall take reasonable precautions to prevent injury to employees on the Work, damage or loss to the Work, material and equipment to be incorporated therein, and other property at or adjacent to the site. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor.

27.2 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the University.

27.3 If the Contractor encounters a suspected hazardous material or substance not addressed in the contract documents, including, but not limited to, asbestos, polychlorinated biphenyl (PCB), or lead paint and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons

resulting from this material or substance, the Contractor shall, upon recognizing the conditions, immediately stop work in the affected area and report the condition to the University in writing.

27.3.1 Upon receipt of the Contractor's written notice concerning the suspected material or substance, the University shall obtain the services of a licensed laboratory to verify the presence or absence of a hazardous material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon notice from the University.

27.4 The University shall not be responsible under this Section for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by this Contract. The University shall be responsible for materials or substances required by this Contract, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

27.5 If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated by the University prior to the start of work or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities for the character of the Work, the Contractor shall promptly provide notice to the University before conditions are disturbed.

28. **Warranty and Repair:** The contractor warrants to the University that: (1) the materials and equipment furnished will be new and of good quality unless otherwise required or permitted by the University; (2) the Work will be free from defects; and (3) the Work will conform to the requirements of the Scope of Work. If, within one year of the date of final completion by the Contractor or within any longer period of time prescribed by law, any of the Work is found by the University to be erroneous, defective or not in conformance with the Scope of Work then, at the University's request, the Contractor shall, at the Contractor's sole expense, promptly remove such non-conforming Work and promptly replace and re-execute all Work in accordance with the Contract Documents, and shall restore any damage resulting from such removal, replacement and re-execution. Notwithstanding the foregoing, neither the University's payment to the Contractor, nor any repair attempts under any warranty or guarantee, nor any provision in this Contract, shall relieve the Contractor of its responsibility to complete all Work in accordance with this Contract and free of any defects in material or workmanship.

29. **Contractor's Responsibilities:**

29.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention to complete the Work in a good and workmanlike manner. The Contractor shall be solely responsible for construction means, methods, scheduling and coordinating all portions of the Work unless otherwise specified.

29.2 The Contractor shall prepare and furnish the University a construction schedule of work and keep it current.

29.3 The Contractor shall acquire all permits applicable for the work not specifically identified as provided by the University. Costs for Contractor-provided permits shall be included in the Contract Sum identified in Article 3 above.

29.4 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Scope of Work.

29.5 The University is committed to a resource management strategy which reduces to a minimum the production of waste material while reusing, recycling or composting as much as possible of the remaining materials. The contractor should strive to identify opportunities to reduce, reuse, or recycle waste from renovations or new construction.

30. **Taxes:** The University of Maine System is exempt from payment of taxes under the Maine Sales and Use Tax Law Title 36 Section 1760 for taxes on materials that are permanently incorporated into the real property belonging to the University of Maine System. The University of Maine System is also exempt from the payment of Federal Excise Taxes on articles not for resale and from the Federal Transportation Tax on all shipments; exemption certificates for these taxes will be furnished when required. All quotations shall be less these taxes. The contractor shall pay all other taxes that have been or are legally enacted.
31. **Entire Contract:** This Contract sets forth the entire agreement between the University and the Contractor on the subject matter hereof and replaces and supersedes any and all prior contracts on the subject matter, whether oral or written, express or implied.
32. **Signatures:**

UNIVERSITY OF MAINE SYSTEM

Choose an item.

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Stewart A. Harvey  
Executive Director of Facilities & Capital  
Management Services

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Choose an item.  
Choose an item.

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Date

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Date

ATTACHMENT A

**Scope of Work:**

ATTACHMENT B  
CONTRACTOR'S LIABILITY INSURANCE

During the term of this agreement, the Contractor shall maintain the following insurance:

<u>Insurance Type</u>	<u>Coverage Limit</u>
1. Commercial General Liability (written on an Occurrence-based form)	\$1,000,000 per occurrence or more (Bodily Injury and Property Damage)
2. Automobile Liability* (including Hired and Non-Owned)	\$1,000,000 per occurrence or more (Bodily Injury and Property Damage)
3. Workers' Compensation	In compliance with applicable state laws
4. Professional Liability (Errors and Omissions)	\$1,000,000 limit or more

All insurance shall be maintained during the term of this 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.

\*Hired and Non-Owned Automobile Liability insurance covers vehicles used by the Contractor that are not owned by the individual or firm. This type of coverage by itself is acceptable if the Contractor does not own any vehicles.

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

Certificates of Insurance for the above insurance coverages shall be submitted prior to the date of performance under this Contract to:

Sandra Binette  
Office of Facilities Management  
University of Maine  
5765 Service Building  
Orono, ME 04469

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:

University of Maine System  
Robinson Hall  
46 University Drive  
Augusta, ME 04330

The Contractor shall not commence work under this contract until the Contractor has obtained all insurance coverages and limits required under this Attachment and such insurance has been approved by the University; nor shall the Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of subcontractor has been so obtained and approved by the Contractor.