

# LEWIS AND CLARK COUNTY PROFESSIONAL SERVICES CONTRACT

123459 This Contract is entered into between Lewis and Clark County, a political subdivision of the State of Montana, herein "COUNTY", and HULTENG CCM, INC., herein referred to as "HULTENG", whose address is 6417 Trade Center Avenue, Billings, Montana 59101; phone number is (406) 655-1116; and tax identification number is 01-0807465.

THE PARTIES AGREE AS FOLLOWS:

1. EMPLOYMENT OF THE CONSULTANT: The COUNTY hereby employs HULTENG as an independent contractor to complete and perform **owners' construction representative services** needed for the **Detention Center Remodel Project**.
2. SCOPE OF SERVICES: HULTENG will perform owners' construction representative services to include but are not limited to:
  - Providing advisory support for preliminary planning and cost estimating, and the preconstruction, construction and post occupancy phases.
  - Providing guidance on critical time path needs.
  - Meeting with the COUNTY regularly to review and discuss project progress.
  - Attending, conducting and assisting the COUNTY at project meetings.
  - Facilitating open communication among all parties associated with the project; promoting a sense of trust and teamwork in order to accomplish the execution of the project at the lowest possible cost, with the highest degree of quality and workmanship that are consistent with the plans and specifications for the project.
  - Assisting the COUNTY in the procurement of and contract negotiations with consultants and contractors according to state statutes.
  - Assisting the COUNTY, contractor and consultants in obtaining necessary required permits and approvals.
  - Assisting with any Bond related work to include budgeting, sales, investment and/or scheduled expenditures.
  - Assisting with warranty issues, defects or problems following substantial completion.

COUNTY Responsibilities: To complement the owners' construction representative scope of work, and to expedite the overall project, the COUNTY acknowledges that it has certain tasks and responsibilities, including but not limited to:

- Providing to HULTENG complete information regarding the COUNTY's knowledge and requirements for the project. The COUNTY shall be responsible for the accuracy and completeness of all reports, data, and other information furnished. HULTENG may use and rely on information furnished by the COUNTY in performing services under this Contract.
- Examining information submitted by HULTENG and responding promptly so as to not delay critical decisions and impact project time constraints.

- Furnishing required information and approvals and performing responsibilities and activities in a timely manner to facilitate orderly progress of the work in cooperation with HULTENG and consistent with this Contract and in accordance with the planning and scheduling requirements and budgetary constraints.
  - Retaining the services of design professionals whose services, duties and responsibilities shall be described in a written agreement between the COUNTY and the design professionals. The services, duties and responsibilities set out under such agreement shall be compatible with this Contract and the contract documents. The COUNTY shall, in its agreement with the design professionals, require such professionals to perform their services in cooperation with HULTENG consistent with this Contract and in accordance with the planning and scheduling requirements and budgetary constraints of the project as determined by the COUNTY and the design professionals, and the COUNTY represents to HULTENG that the terms of that agreement have been acknowledged by and are acceptable to the design professional.
  - Remediating and dispensation at the site of any asbestos, PCB's, petroleum, hazardous materials and radioactive materials, and the consequences of such hazardous materials if present.
  - Sending HULTENG, and requiring the design professionals to send to HULTENG, copies of all notices and communications sent to or received by the COUNTY or the design professionals relating to the project. During the construction phase of the project, the COUNTY shall require that the contractor submit all notices and communications relating to the project directly to HULTENG.
  - Designating, in writing, an officer, employee or other authorized representative to act on behalf of the COUNTY with respect to the project. This representative shall have the authority to approve changes in the scope of the project and shall be available during working hours and as often as may be required to make decisions and to furnish information in a timely manner.
3. LIMITATIONS: Nothing in this Contract shall be construed to mean that HULTENG assumes any of the responsibilities or duties of the contractors or the design professionals. The contractors will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the project, and for the safety of their personnel, property and operations and for performing in accordance with the contract between the COUNTY and the contractor. The design professionals are solely responsible for the overall design requirements and design criteria of the project and shall perform in accordance with the agreement between themselves and the COUNTY. HULTENG's services shall be rendered compatibly and in cooperation with the services provided by the design professionals under the agreements between the COUNTY and the design professionals. It is not intended that the services of the design professionals and HULTENG be competitive or duplicative, but rather be complementary. HULTENG will be entitled to rely upon the design professionals for the proper performance of services undertaken by the design professionals pursuant to the agreement between the COUNTY and the design professionals.

4. INDEPENDENT CONSULTANT: The parties agree that HULTENG is the independent contractor of the COUNTY and not an employee or agent of the COUNTY and is not entitled to workers compensation or any benefit of employment with the COUNTY. The COUNTY will not have control over the performance of this Contract by HULTENG or its employees, except to specify the time and place of performance. The COUNTY will not be responsible for security or protection of HULTENG'S supplies or equipment.
5. WARRANTY: HULTENG warrants that all services will be performed in a professional manner. HULTENG will hold harmless the COUNTY from any loss or damage resulting from the actions of HULTENG in those phases of the project to which this Contract applies. HULTENG acknowledges that it will be liable for any breach of this warranty.
6. LIAISON: The COUNTY's designated liaison with HULTENG is Audra Zacherl, Assistant Director of Public Works. HULTENG's designated liaison with the COUNTY is Shane Swandal, Principal in Charge and Rich Whitney, Project Manager. Key personnel changes or additions must be agreed to in writing by both parties.
7. EFFECTIVE DATE AND TIME OF PERFORMANCE: HULTENG will commence work on this project upon approval of this Contract by both parties and Contract shall be completed 13 months following substantial completion.
8. COMPENSATION: For services to be performed the COUNTY will pay HULTENG as follows:

Phase I (Preconstruction) - services will be paid at time and materials based on the following:

Shane Swandal, Principal	\$145.00/hour
Senior Project Manager	\$125.00/hour
Project Manager	\$105.00/hour
Project Engineer	\$85.00/hour
Administrative	\$55.00/hour
Reimbursables:	
Mileage	Current IRS Standard Rate
Lodging & Meals	Not to exceed CONUS
Travel	\$85.00/hour portal to portal
Insurance (PL/GL)	1.14%
Telephone	\$40.00/month
Other	At cost

Phase II (Construction) – prior to negotiating a contract with the publicly solicited and selected General Contractor (GCCM), the COUNTY and HULTENG shall negotiate a lump sum price for services rendered during Phase II of the Project. Phase II will be considered complete when the GCCM has completed the punch list generated from the substantial completion walk thru.

Phase III (Post-construction/Warranty Period) - services will be paid at time and materials based on the billing rates in Phase I.

HULTENG shall make reasonable effort to be efficient with their time to provide cost savings for the COUNTY where possible. Invoices shall be submitted monthly to the COUNTY based on services provided in the previous month. The COUNTY shall pay invoices within 30 days of invoice date.

9. CONFLICT OF INTEREST: HULTENG covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the project, which would conflict in any manner or degree with the performance its services hereunder. HULTENG further covenants, that in performing this Contract, it will employ no person who has any such interest.
10. MODIFICATION AND ASSIGNABILITY OF CONTRACT: This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. HULTENG may not subcontract or assign its rights, including the right to compensation, or duties arising hereunder without the prior written consent of the COUNTY. Any subcontractor or assignee will be bound by all of the terms and conditions of this contract.
11. OWNERSHIP AND PUBLICATION OF MATERIALS: All reports, information, data, and other materials prepared by HULTENG pursuant to this Contract are the property of the COUNTY which has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by HULTENG for the specific purpose intended will be at the COUNTY's sole risk and without liability or legal exposure to HULTENG. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the COUNTY.
12. INDEMNIFICATION: HULTENG and the COUNTY shall indemnify and hold each other harmless from and against all claims, liabilities, actions, damages and expenses, including reasonable attorneys' fees, related to or arising out of their respective intentional malfeasance or negligent performances in connection with the work described in this Contract.
13. INSURANCE: Prior to commencing work under this Contract, HULTENG shall procure and maintain the insurance coverages listed below. Certificates of insurance must be provided from insurance carriers licensed to do business in the State of Montana. A 30-day notice of cancellation or non-renewal must be provided to the COUNTY prior to any cancellation or non-renewal of HULTENG's insurance policies.
  - a. Commercial General Liability coverage including Premise and Operations Liability; Contractual Liability; Personal and Advertising Injury Liability; and Products and Completed Operations Liability with the COUNTY added as an Additional Insured, including Completed Operations, and a Waiver of Subrogation in favor of the COUNTY. Limits: \$1,000,000 per occurrence/\$2,000,000 general aggregate

- b. Professional Liability coverage. Limits:\$1,000,000 each claim/\$2,000,000 aggregate
- c. Workers Compensation and Employers Liability coverage.
  - Coverage A – Statutory
  - Coverage B – Employers Liability
    - \$1,000,000 each accident
    - \$1,000,000 disease each employee
    - \$1,000,000 disease policy limit
- d. Automobile Liability coverage including owned, hired and non-owned auto coverage.  
Limits: \$1,000,000 each claim/\$2,000,000 aggregate

- 14. COMPLIANCE WITH LAWS: HULTENG agrees to comply with all federal, state, and local laws, rules and regulations.
- 15. NONDISCRIMINATION: HULTENG will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin, or sexual orientation.
- 16. PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE: The parties understand and agree that performance of this contract is in Lewis and Clark County of Montana and that in the event of litigation concerning it, venue is the 1<sup>st</sup> Judicial District in and for the County of Lewis and Clark, State of Montana. This Contract will be construed under and governed by the laws of the State of Montana.
- 17. ATTORNEY FEES: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Contract, the prevailing party, whether plaintiff or defendant, shall be entitled to costs, including reasonable attorneys' fees and expert witness fees. If the court, arbitrator, or mediator awards relief to both parties, each party shall bear its own costs in their entirety.
- 18. TERMINATION: Either party reserves the right to terminate this Contract at any time for the other parties' failure to perform their respective responsibilities. Should either party desire to terminate this Contract for the other parties' failure to perform their responsibilities, the terminating party shall provide a minimum of thirty (30) days written notice to the other party defining the failure of performance. The party receiving written notice of the party electing to terminate the Contract shall have thirty (30) days, or greater time if agreed to in writing by both parties, in which to cure the failure to perform as specified in the written notice to terminate. In the event of termination, HULTENG will be compensated for services performed prior to termination. This does not include any compensation for anticipated profit on the value of services not performed.

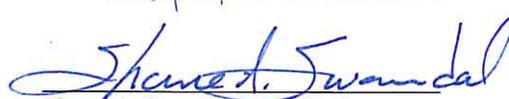
COUNTY:

HULTENG:

Date: 2-27-18

Date: 02/14/18

  
Andy Hunthausen, Chairman  
Board of County Commissioners  
Lewis and Clark County

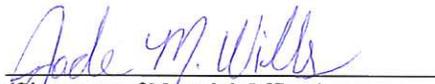
  
Shane A. Swandal, President  
Hulteng CCM, Inc.

ATTEST:

State of Montana  
County of Lewis and Clark

  
Paulette J. DeHart, Clerk and Recorder

This instrument was acknowledged before me on 2/14/18 [date] by Shane A. Swandal as President of Hulteng CCM, Inc.

  
(Signature of Notarial Officer)

(Seal)

(Seal)

