

Services Contract Lewis County/Millig Design Build 2025

THIS CONTRACT (hereinafter "Contract") is entered into in duplicate originals between LEWIS COUNTY, a municipal corporation, by and through its Capital Facilities Department, with its principal offices at 351 NW North St., Chehalis, WA, 98532 (hereinafter "COUNTY"), and Millig Design Build with its principal offices at _ 10260 SW Greenburg Rd, Ste 400 Portland, OR 97223 (hereinafter "CONSULTANT").

Whereas, the COUNTY desires to accomplish the work referenced in the Scope of Services as detailed in Exhibit A of this agreement and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES.

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Duration of Contract

The term of this Contract shall begin on the date executed below and shall terminate on June 30th, 2025, unless renewed or terminated sooner as provided herein.

2. Services Provided By the Consultant

The CONSULTANT represents that it is qualified and possesses the necessary expertise, knowledge, training, and skills, and has the necessary licenses and/or certification, to perform the services set forth in this Contract.

The CONSULTANT shall perform the following services:

Assess current energy performance of county owned buildings and determine the approximate costs of facility and system upgrades to meet state energy performance standards in chapter 19.27A RCW. This effort will be fully funded by a grant from the Washington State Association of Counties. The grant dollars are to be spent on a specific scope of work defined in the grant documents.

The following is the grant-required scope of work:

- Benchmark current energy use intensity via Energy Star Portfolio Manager.
- Determine a compliance pathway for all buildings subject to tier 1 reporting timelines under the state clean buildings performance standard.
- Conduct a Level 2 ASHRAE energy performance audit to determine Energy Efficiency Measures for county owned buildings.
- Perform cost estimating of measures required for bringing Tier 1 Buildings into compliance with the Clean Building Performance Standard.
- Estimate of the costs of creating Energy Management Plans and Operations and Maintenance Plans and any costs associated with executing them.

- Benchmark current energy use intensity via Energy Star.
- Estimate of the costs of creating Energy Management Plans and Operations and Maintenance Plans and any costs associated with executing them.

In general, Lewis County will work with the selected firm on a task assignment basis to determine the types of services required on a project.

a. A detailed description of the services to be performed by the CONSULTANT is set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

b. The CONSULTANT agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COUNTY.

c. The CONSULTANT shall perform the work specified by this Contract according to standard industry practice.

d. The CONSULTANT shall complete its work in a timely manner and in accordance with the schedule as outlined in the Scope of Services, see Exhibit A.

3. The CONSULTANT shall prepare a monthly progress report, in a form approved by the COUNTY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of SERVICES can easily be evaluated.

4. Services Provided By The County

In order to assist the CONSULTANT in fulfilling its duties under this Contract, the COUNTY shall provide the following:

- a. Coordination with other County Departments or other consultants as necessary for the performance of the CONSULTANT'S services
- b. Documentation, or other information identified in Exhibit A.

5. Contract Representatives

Each party to this Contract shall have a contract representative. Each party may change its contract representative upon providing written notice to the other party. The parties' representatives are as follows:

a. For CONSULTANT:

Name of Representative: Lauren Donley

Title: Vice President

Mailing Address: 10260 SW Greenburg Rd, Ste 400 Portland, OR 97223

Telephone Number: 541.390.2467

E-mail Address: ldonley@milligdb.com

b. For COUNTY:

Name of Representative: Ryan Barrett

Title: County Manager

Mailing Address: 351 NW North St., Chehalis, WA 98532

Telephone Number: (360) 740-2697

E-mail Address: ryan.barrett@lewiscountywa.gov

6. Compensation

a. For the services performed hereunder, COUNTY shall pay the CONSULTANT based upon the mutually agreed rates contained in Exhibit B, which is attached hereto and incorporated by reference. The maximum total amount payable by the COUNTY to the CONSULTANT under this Contract shall not exceed \$73,750, unless otherwise amended. No minimum amount payable is guaranteed under this Contract.

b. No payment shall be made for any work performed by the CONSULTANT except for work identified and set forth in this Contract or supporting exhibits or attachments incorporated by reference into this Contract.

c. The COUNTY shall pay the CONSULTANT all services agreed upon once the final report and presentation have been delivered to the COUNTY. The COUNTY will remit payment within thirty (30) days from the date of receipt of the Final billing.

d. COUNTY shall not pay CONSULTANT for services rendered under the CONTRACT unless and until they have been performed to COUNTY's satisfaction. Provided, no such payments shall be deemed to waive any rights COUNTY has to challenge the sufficiency or quality of said services thereafter.

e. In the event the CONSULTANT has failed to perform any substantial obligation to be performed by the CONSULTANT under this Contract and such failure has not been cured within ten (10) days following written notice from the COUNTY, then the COUNTY may, in its sole discretion, withhold any and all monies due and payable to the CONSULTANT without penalty until such failure to perform is cured to COUNTY's satisfaction or otherwise adjudicated. Should COUNTY so withhold any monies, COUNTY shall notify CONSULTANT in writing.

"Substantial" for purposes of this Contract means faithfully fulfilling the terms of the contract with variances only for technical or minor omissions or defects.

f. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, COUNTY shall not pay CONSULTANT for any billings or invoices presented for payment prior to the execution of the Contract or after its termination.

7. Amendments and Changes in Work

a. In the event of any errors or omissions by the CONSULTANT in the performance of any work required under this Contract, the CONSULTANT shall make any and all necessary corrections without additional compensation. All work submitted by the CONSULTANT shall be certified by the CONSULTANT and checked for errors and omissions. The CONSULTANT shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment, modification, or renewal shall be made to this Contract unless set forth in a written Contract Amendment signed by both parties and attached to this Contract. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

8. Hold Harmless and Indemnification

a. The CONSULTANT shall hold harmless, indemnify, and defend (with legal counsel acceptable to and approved by COUNTY in writing) the COUNTY (which for purposes of this Section 7 means the COUNTY as defined above together with its officers, officials, employees, volunteers, and agents) from and against any and all claims, actions, suits, liability, losses, expenses, damages, and judgments of any nature whatsoever, including costs, expenses, expert witness fees, and attorney's fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, caused by or arising out of the CONSULTANT'S acts, errors, or omissions or the acts, errors, or omissions of its employees, agents, subconsultants, or anyone for whose acts any of them may be liable, in the performance of this Contract. Claims shall include, but not be limited to, assertions that information supplied or used by the CONSULTANT or subconsultant infringes any patent, copyright, trademark, trade name, or otherwise results in an unfair trade practice. PROVIDED HOWEVER, that the CONSULTANT'S obligations hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CONSULTANT'S obligations hereunder shall apply only to the percentage of fault attributable to the CONSULTANT and its employees, agents, or subconsultants.

b. In any and all claims against the COUNTY by any employee of the CONSULTANT, subconsultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or subconsultant under Worker's Compensation acts, disability benefits acts, or other employee benefits acts, it being clearly agreed and

understood by the parties hereto that the CONSULTANT expressly waives any immunity the CONSULTANT might have had under Title 51 RCW. By executing the Contract, the CONSULTANT acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONSULTANT makes with any subconsultant or agent performing work hereunder.

c. The CONSULTANT'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONSULTANT, the CONSULTANT'S employees, agents, or subconsultants.

d. COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of CONSULTANT's indemnity, defense, and hold harmless obligations herein.

9. Insurance

a. **Professional Legal Liability:** CONSULTANT shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than **\$1,000,000 each occurrence**, and **\$2,000,000 per aggregate**. When a self-insured retention (SIR) or deductible exceeds \$10,000, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "claims-made" basis, CONSULTANT warrants the Retroactive Date equals or precedes the effective date of this CONTRACT. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the term of this CONTRACT, CONSULTANT shall purchase a SERP with a minimum reporting period not less than three (3) years after the expiration of the CONTRACT term. The requirement to purchase a SERP shall not relieve the CONSULTANT of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims-made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage.

b. **Workers' Compensation (Industrial Insurance):** The CONSULTANT shall maintain workers' compensation insurance as required by Title 51 RCW and shall provide evidence thereof to County within the sooner of two (2) business days after date last executed below or the date CONSULTANT begins work under this CONTRACT.

c. **Commercial General Liability:** At all times during the term of this contract, the CONSULTANT shall maintain Commercial General Liability coverage for bodily injury, personal injury, and property damage, subject to limits of not less than **\$1,000,000 per loss**. The general aggregate limit shall apply separately to this Contract and be no less than **\$2,000,000**.

i. Within the sooner of two (2) business days after date last executed below or the date

CONSULTANT begins work under this CONTRACT, the CONSULTANT shall provide Commercial General Liability coverage which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONSULTANT will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard Commercial General Liability policy, including contractual liability coverage.

- ii. The CONSULTANT'S Commercial General Liability insurance shall include the COUNTY and its officers, officials, employees, and agents as additional insureds with respect to performance of services and shall contain no special limitations on the scope of protection afforded to the COUNTY as additional insured.
- iii. Within the sooner of two (2) business days after date last executed below or the date CONSULTANT begins work under this CONTRACT, the CONSULTANT shall furnish the COUNTY with evidence that the additional insured provision required above has been met. An acceptable form of evidence is the endorsement pages of the policy showing the COUNTY as an additional insured.
- iv. If the CONSULTANT'S liability coverage is written as a claims made policy, then the CONSULTANT must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after project completion or otherwise maintain the coverage for the three-year period.
- v. If the Contract is over \$50,000 then the CONSULTANT shall also maintain Employers Liability Coverage with a limit of not less than \$1 million.

d. Automobile Liability: Within the sooner of two (2) business days after date last executed below or the date CONSULTANT begins work under this CONTRACT, the CONSULTANT shall furnish the County proof that CONSULTANT has Business Automobile Liability insurance with a limit of not less than **\$1,000,000** each accident combined Bodily Injury and Property Damages. Coverage shall include owned, hired, and non-owned automobiles. CONSULTANT shall maintain said coverage at all times during the term of this contract.

e. Other Insurance Provisions:

- i. The CONSULTANT'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY and its elected and appointed officers, officials, employees, and agents.
- ii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY and its officers, officials, employees, or agents.

- iii. The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- iv. The CONSULTANT shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants shall be subject to all of the requirements stated herein.
- v. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
- vi. The CONSULTANT shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. Should CONSULTANT fail to so maintain all required policies, said event shall be a material breach of this Contract.

f. Verification of Coverage and Acceptability of Insurers: The CONSULTANT shall place insurance with insurers licensed to do business in the State of Washington with A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

- i. Certificates of Insurance shall show the Certificate Holder as Lewis County and include c/o of the Office or Department issuing the Contract. The address of the Certificate Holder shall be shown as the current address of the Office or Department.
- ii. Written notice of cancellation or change shall be mailed to the COUNTY at the following address:

Name: County Administration
Agency: Lewis County Capital Facilities
Address: 351 NW North St. City: Chehalis State: WA Zip: 98532
Email: becky.butler@lewiscountywa.gov
Phone: 360-740-1198

- iii. The CONSULTANT shall furnish the COUNTY with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled or allowed to expire except on thirty (30) days prior written notice to the COUNTY.

- iv. The CONSULTANT or its broker shall promptly provide a copy to the COUNTY of any and all insurance policies specified in this Contract upon request of Lewis County.

10. Termination

- a. Upon giving ten (10) days written notice by Certified Mail to the CONSULTANT, the COUNTY may terminate this Contract for convenience in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. In that event, the COUNTY shall pay the CONSULTANT for all costs and services incurred by the CONSULTANT in performing the Contract that are satisfactory to the COUNTY, up to the date of such notice. Payment shall be made in accordance with Section 5 of this Contract.
- b. In the event funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision of the Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by the COUNTY to the CONSULTANT. After the effective date, no charges incurred under this Contract are allowable.
- c. If the CONSULTANT breaches any of its obligations hereunder and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONSULTANT only for the costs of services accepted by the COUNTY, in accordance with Section 5 of this Contract, less the costs, if any, to obtain performance of the work elsewhere. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONSULTANT shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONSULTANT'S breach. If, subsequent to termination, it is determined for any reason that (1) the CONSULTANT was not in default, or (2) the CONSULTANT'S failure to perform was not its fault or its subconsultant's fault or negligence, the termination shall be deemed to be a termination under subsection a of this section.

11. Assignment, Delegation, and Subcontracting

- a. The CONSULTANT shall perform the terms of the Contract using only its bona fide employees or agents who have the qualifications to perform under this Contract. The obligations and duties of the CONSULTANT under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY in its sole discretion. Notwithstanding any assignment or delegation by CONSULTANT concerning this CONTRACT, whether with or without the COUNTY's consent, CONSULTANT shall nevertheless remain primarily liable to COUNTY for all of its obligations hereunder notwithstanding any written provision to the contrary.
- b. The CONSULTANT warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or other consideration

contingent upon or resulting from the award or making of this Contract.

12. Non-Waiver of Rights

The parties agree that the excuse or forgiveness of performance or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

13. Independent Contractor

a. The CONSULTANT'S services shall be furnished by the CONSULTANT as an Independent contractor and not as an agent, employee, nor servant of the COUNTY. The CONSULTANT specifically has the right to direct and control CONSULTANT'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONSULTANT acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the CONSULTANT is not entitled to any County benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Lewis County employees.

c. The CONSULTANT shall have and maintain complete responsibility and control over all its subconsultants, employees, agents, and representatives. No subconsultant, employee, agent, or representative of the CONSULTANT shall be, or be deemed to be, or act or purport to act as an employee, agent, or representative of the COUNTY.

d. The CONSULTANT shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal, or state legislation that are now, or may during the term of this Contract be, enacted as to all persons employed by the CONSULTANT and as to all duties, activities, and requirements by the CONSULTANT in performance of the work on this project and under this Contract. CONSULTANT shall assume exclusive liability therefore and meet all requirements thereunder pursuant to any rules or regulations.

e. The CONSULTANT agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

14. Compliance with Laws

The CONSULTANT shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

15. Inspection of Books and Records

The COUNTY may, at reasonable times, inspect the books and records of the CONSULTANT relating to the performance of this Contract. The CONSULTANT shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

16. Nondiscrimination

The CONSULTANT and its assignees, delegates, or subconsultants shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran status, sexual orientation, or the presence of any disability. CONSULTANT shall include the same anti-discrimination provision in all its contracts concerning this project with its assignees, delegates, or subconsultants. Implementation of this provision shall be consistent with RCW 49.60.400. The CONSULTANT agrees to follow the requirements as dictated in Exhibit C.

17. Ownership of Materials/Work Produced

a. Material produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. This material includes, but is not limited to, books, computer programs, plans, specifications, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONSULTANT for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONSULTANT harmless therefore to the extent such use is agreed to in writing by the CONSULTANT.

b. An electronic copy of all or a portion of material produced shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

18. Disputes

Differences between the CONSULTANT and the COUNTY arising under and by virtue of this Contract shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONSULTANT shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to the CONSULTANT'S right to seek judicial relief pursuant to Section 18.

19. Choice of Law, Jurisdiction and Venue

a. This Contract has been, and shall be, construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Lewis County, Washington.

20. Severability

- a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.
- c. Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exist, the COUNTY may, in its sole discretion, terminate this Contract.

21. Entire Agreement

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

22. Notices

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4. Notice may also be given by email with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served. For service by email, service shall be effective upon receipt during working hours. If an email is sent after working hours, it shall be effective at the beginning of the next working day.

23. Time is of the Essence

Time is of the essence for all terms, conditions, obligations, and duties set forth or referred to in this CONTRACT.

24. Opportunity to Review

The parties hereto acknowledge, represent, warrant, and agree that they have read this CONTRACT, fully understand the terms thereof, and have had the opportunity to seek independent legal counsel with respect thereto before signing. This CONTRACT is executed by the parties without reliance upon any statement or representation by the persons or parties herein, or their attorneys or representatives, if any, other than those set forth in this agreement.

25. Authority

The parties each acknowledge, represent, and warrant that they have the full right, power, and authority to enter into this CONTRACT. Each person signing this agreement on behalf of

an entity represents and warrants that he or she has the full right, power, and authority to bind their respective entity, their respective entity has approved this CONTRACT and authorized them to sign it, and their respective entity is duly formed and in good standing.

26. Jointly Drafted

This CONTRACT was negotiated and drafted jointly by the parties, and it shall not be construed against either party in case of any dispute.

27. Survival of Contract

This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and all of their respective heirs, successors, and assigns. The terms, conditions, and warranties contained in this CONTRACT that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this CONTRACT shall so survive.

28. Confidentiality

In the event that the CONSULTANT comes in contact with or obtains knowledge of confidential information, the CONSULTANT shall maintain the confidentiality of all obtained information provided by the COUNTY or acquired by the CONSULTANT in performance of this CONTRACT, except upon the prior written consent of the Lewis County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the COUNTY. CONSULTANT shall immediately give to the COUNTY notice of any judicial proceeding seeking disclosure of such information. CONSULTANT shall indemnify and hold harmless the COUNTY, its officials, agents, or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorney's fees and costs resulting from CONSULTANT's breach of this provision.

29. Attorney's Fees

Should any legal proceeding be commenced between or by the Parties concerning or related to this CONTRACT or the rights and duties of either in relation to this CONTRACT, the Party prevailing in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for such Party's reasonable attorneys' fees, expenses, and costs actually incurred and paid.

30. Public Records Act

The CONSULTANT shall assist the County in timely and fully fulfilling all of County's obligations under the Washington Public Records Act and/or any other authority by timely and fully responding and providing documents and records in response to County's request for the same. In the event that CONSULTANT fails to fully fulfill its obligations pursuant to this section and should a court impose a fine, penalty, sanction, and/or judgment against County for violation of said law, CONSULTANT shall indemnify the County for the same, immediately pay County to satisfy the same together with all costs and attorney's fees incurred by County. The obligations created by this section shall survive the termination of this agreement.

The CONSULTANT shall keep and maintain all books, records, documents, data, and other

evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract ("Records"). CONSULTANT shall permit County to review the Records at CONSULTANT's place of business during normal working hours. CONSULTANT shall retain such Records for a period of seven (7) years following the date of final payment.

If any litigation, claim, or audit is commenced, CONSULTANT shall cooperate with County and assist in the production of all such Records. If any litigation, claim, or audit is started before the expiration of the seven- (7) year period, CONSULTANT shall retain the Records for a period of seven (7) years after all litigation, claims, or audit findings involving the Records have been finally resolved.

For purposes of this AGREEMENT, Records includes every writing or record of every type and description including electronically stored information ("ESI") that is in CONSULTANT's possession, control, or custody, including, without limitation, any and all correspondences, contracts, agreements, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, telephone conversations, and any and all other taped, recorded, written, printed, or typed matters of any kind or description; and every copy of the foregoing whether or not the original is in CONSULTANT's possession, custody, or control, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops, or any other electronic device that CONSULTANT uses in the performance of its work or services hereunder, including any personal devices used by the CONSULTANT or any sub-CONSULTANT at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified CONSULTANT shall include this section "Records Maintenance" in every subcontract it enters into in relation to this Agreement and bind the sub-contract to its terms.

31. Workplace Safety

This paragraph applies if CONSULTANT or any of its agents, employees, subconsultants, or anyone on its behalf performs any work under or related to this CONTRACT upon COUNTY's property. COUNTY delegates to CONSULTANT, and CONSULTANT agrees to assume, any duty COUNTY has to exercise reasonable care to make the premises and work area safe, and CONSULTANT agrees to abide by all applicable laws, be solely responsible for health and safety of all persons providing service, and create and post a site-specific worker safety plan in advance of gaining access to the work area. CONSULTANT represents that it is a professional company with the knowledge and experience to reasonably assume such a delegation and to work in the presence of any known or obvious dangers by taking appropriate precautions and by using and providing proper equipment for itself and its employees.

32. Safety: Familiarity with Site

CONSULTANT understands that safety is a high priority. Prior to the commencement of work or providing services, CONSULTANT will, at its own expense and to the extent it determines is necessary to safeguard itself and its employees and agents, become familiar with the site, its operations, and any safety rules or guidelines. In addition, CONSULTANT will meet all OSHA, WISHA, and other applicable Federal and State requirements regarding safety. County shall not be responsible for the manner in which CONSULTANT (1) provides and completes its work; and (2) analyzes the need for and implements safety procedures. COUNTY delegates to CONSULTANT, and CONSULTANT agrees to assume, any duty COUNTY has to exercise reasonable care to make the premises and work area safe.

33. Debarment and Suspension

CONSULTANT represents and warrants that, as of the execution of this Contract, neither CONSULTANT nor any subcontractor or sub-consultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during Contract's term CONSULTANT or any subcontractor or sub-consultant performing work at any tier is included on the federally debarred bidder's list, CONSULTANT shall notify the COUNTY immediately. CONSULTANT's completed Vendor Debarment Certification is attached hereto and incorporated herein.

The parties hereto acknowledge that the waiver of immunity set out in Section 7.b. was mutually negotiated and specifically agreed to by the parties herein.

For the County

For the Contractor

Ryan Barrett

FULL NAME

County Manager

TITLE


SIGNATURE

6/6/25
DATE SIGNED

Lauren Donley

FULL NAME

Vice President, Millig Design Build

TITLE


SIGNATURE

06/04/2025
DATE SIGNED

EXHIBIT A

1. SCOPE OF SERVICES AND BUDGET

Millig agrees to perform the Services, as hereinafter defined, at the buildings owned by the Customer located at:

Courthouse - 351 NW North Street, Chehalis, WA 98532

Law and Justice Center - 345 W Main Street, Chehalis, WA 98532

Jail - 28 SW Chehalis Avenue, Chehalis, WA 98532

The purpose of the audits is to assess current energy performance of county owned buildings and determine the approximate costs of facility and system upgrades to meet state energy performance standards in chapter 19.27A RCW. This effort will be fully funded by a grant from the Washington State Association of Counties. The grant dollars are to be spent on a specific scope of work defined in the grant documents. The following is the grant-required scope of work:

Law and Justice and Courthouse:

- Benchmark current energy use intensity via Energy Star Portfolio Manager.
- Determine a compliance pathway for all buildings subject to tier 1 reporting timelines under the state clean buildings performance standard.
- Conduct a Level 2 ASHRAE energy performance audit to determine Energy Efficiency Measures for county owned buildings.
- Perform cost estimating of measures required for bringing Tier 1 Buildings into compliance with the Clean Building Performance Standard.
- Estimate of the costs of creating Energy Management Plans and Operations and Maintenance Plans and any costs associated with executing them.
- Benchmark current energy use intensity via Energy Star.
- Estimate of the costs of creating Energy Management Plans and Operations and Maintenance Plans and any costs associated with executing them.

In general, Lewis County will work with CONSULTANT to determine the types of services required for a given task. Work will be conducted on an individual task order basis, according to each project scope.

EXHIBIT B

1. COMPENSATION

The CONSULTANT'S compensation under this Contract, which is described in Section 6 of the Contract (COMPENSATION), is set forth as follows:

Compensation will be made in the amount of \$73,750.00 plus Washington State Sales Tax and applicable permit fees upon completion of contract. Progress payments may be made at County's discretion upon County's approval of Contractor's invoices, to the extent that said invoices reflect the completion of project milestones by the Contractor (milestones are points at which significant components of the project have been completed and at which tangible project deliverables of material value have been received by the County).

EXHIBIT C

1. TITLE VI ASSURANCES

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

- A. **Nondiscrimination:** The CONSULTANT, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of consultants, including procurement of materials and leases of equipment.
- B. **Solicitations for Subcontracts, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex or national origin.
- C. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Lewis County or the Washington State Department of Commerce to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to Lewis County or the Washington State Dept. Of Commerce as appropriate and shall set forth what efforts it has made to obtain the information.
- D. **Sanctions for Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, Lewis County and the Washington State Department of Commerce shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or;
 - 2. Cancellation, termination, or suspension of the contract, in whole or in part.
- G. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement

as Lewis County may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request Lewis County enter into such litigation to protect the interests of the Agency.