Behavioral Health Facility Investment
Project Manager Contract
Contract BOI SH-DM-1-2026

THIS AGREEMENT is made and entered into as though it began January 1st, 2026, by and between D&M Development, LLC, "Independent Contractor", and the Montana Board of Investments, "BOI". In the collective, Independent Contractor and BOI are referred to as the "Parties." It replaces all parts of "Preliminary and other Architecture/Engineering for the Investment Project for Leasable Building - Manager Contract - BOI STATE HOSPITAL Phase I-2025" other than the already completed and paid for phase one portion.

BOI has optioned land in Laurel known to both parties as ("Subject Property").

Independent Contractor has agreed to design, manage, construct, sell, and supervise this investment by the management of the construction on the Subject Property under the terms of this contract and the current version of the building management contract as amended.

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Section 1. Appointment of Independent Contractor

The BOI appoints and retains the Independent Contractor as its sole and exclusive manager and supervisor for oversight of the investment and construction of a behavioral health hospital to be built on the Subject Property, upon the conditions, for the term, and at the compensation set forth in this contract.

Section 2. Term of Contract

The term of this Project Management Agreement shall be for a period running from January 1, 2026, through December 31, 2029, unless terminated prior to by the mutual written agreement of the parties. At BOI's sole discretion, this agreement may be renewed for an additional one (1) year period. Notice of termination must be in writing at least 30 days prior to the end of the most current period.

Section 3. Acceptance of Responsibilities and Duties of an Independent Contractor

Independent Contractor hereby accepts project management and supervision of construction on the Subject Property and agrees to perform the following:

a. Ensure that the General Contractor ("GC") and, through them, all subcontractors and suppliers comply with all necessary federal, state, and local laws for securing all governmental permits, authorizations, approvals, inspections, construction of, and certifications for the Subject Property.

b. Oversee the purchase of supplies to ensure those purchases comply with Exhibit A (Plans) and Exhibit B (Budget).

c. To the extent that Independent Contractor and the GC enter a contract(s) (General

Contract), it will not override or modify this contract, but copies of such will be provided to BOI.

d. Ensure that the GC is following all laws related to the GC's management of employees and subcontractors, as agreed to in the GC Contract.

e. At the time of acceptance of the completion of a unit or pad, as defined in the GC Contract, work with the GC to ensure the completion of the portion of the build, including any inspections and completions of punch lists. This includes all reasonable insurances required to protect the investment property during construction.

f. Communicate regularly with the BOI representative regarding construction progress, issues, discussions with the GC, and completions.

g. If the Independent Contractor has employees, fully comply with all applicable laws and regulations having to do with Workers' Compensation, Social Security, Unemployment Insurance, hours of labor, prevailing wages, working conditions, and other employer-employee related subjects.

h. This agreement is not one of agency by the Independent Contractor for BOI, but one with the Independent Contractor engaged independently in the business of managing projects on his own behalf as an independent contractor.

i. Independent Contractor shall, at its own expense, install and maintain for the benefit of the BOI, proper and suitable records and books of account in which Independent Contractor shall properly record documents connected with the project management of the Subject Property. All records shall always be open to the inspection and audit of any officer or duly accredited and authorized representative of BOI, during reasonable business hours. Upon termination of this Agreement, all such records shall be delivered to BOI by the Independent Contractor.

j. Independent Contractor acknowledges that they will negotiate and implement the GC Contract for the Subject Property to ensure compliance with the project management of the construction for the Subject Property.

k. Once structures become available for occupancy, the Independent Contractor will notify the BOI so that proper insurance can be placed on the structure by the BOI prior to the construction insurance lapsing.

l. This project will have substantial completion, not to include commissioning or regulatory approval, 26 months after foundations are in place, which is currently scheduled for April 1, 2027. For each month or part of a month after the allotted 26 months that it is not at substantial completion, BOI will reduce the total amount paid to the Independent Contractor by $124,051.20 per month.

m. The finished project must be consistent with the Exhibit A Plans, including conformity with all approved specifications, applicable building codes, permit requirements, and manufacturer installation instructions. Independent Contactor owes a fiduciary duty to the BOI when supervising this project to ensure the quality of the workmanship of the General Contractor.

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Section 4. Compensation

Compensation will be paid to the Independent Contractor who will be responsible for all payments to other parties for this project, including the GC.

This includes payments to Cushing Terrell for all remaining engineering, architecture, support documents, geo, and other services, up to $4,028,940. These services include, but are not limited to, those under the original contracts phase II, III, and IV, summarized as:

a. Phase II: initially builds designs, engineering, and approvals to meet the requirements and drawings provided by DPHHS, including estimating the cost of the finished project, so that it is ready to be put out for bid.

b. Phase III: any additional design, engineering, and approvals needed after the exact site of the proposed building is known that will impact building and landscaping on the site, and that are required before construction begins.

c. Phase IV: other architecture and engineering work needed to have the building ready for tenants to move in.

No Management Fees will be charged on this amount. Independent Contractor will forward the bills for this portion of the contract to BOI. They will be paid by BOI to the Independent Contractor 30 days after we receive the invoice.

The remainder is for construction and the management fee. The Construction cost may not exceed $42,565,260. The Management fee is based on 4% of the Construction Cost and is a flat fee of $1,702,610.40. Prior to the start of construction, the Independent Contractor has the right to terminate the contract and will not be entitled to any management fee.

Quarterly payments starting on December 31, 2026, as follows:

December 31, 2026	$ 4,426,787.04
March 31, 2027	$ 4,426,787.04
June 30, 2027	$ 4,426,787.04
September 30, 2027	$ 4,426,787.04
December 31, 2027	$ 4,426,787.04
March 31, 2028	$ 4,426,787.04
June 30, 2028	$ 4,426,787.04
September 30, 2028	$ 4,426,787.04
December 31, 2028	$ 4,426,787.04
March 31, 2029	$ 4,426,787.04
Total for Construction and Management	$44,267,870.40
Passthrough Payments to Cushing Terrell	$ 4,028,940.00

Under no circumstances will the BOI under this contract owe more than the $48,296,810.40 minus any late charges.

Section 5. Insurance

Independent Contractor will be responsible for making sure all commercially reasonable insurances are maintained on the property during construction and until such time as the BOI

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has proper notice to place insurance on units that are available for occupancy.

Section 6. Indemnification

Independent Contractor agrees to indemnify the BOI, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against allclaims, demands, and causes of action, including the cost of defense, arising in favor of the Independent Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of negligent maintenance, or acts/omissions of the Independent Contractor and/or its agents, employees, subcontractors, or its representatives under this agreement.

Section 7. Contractor Insurance

The Independent Contractor shall maintain for the duration of the Contract, at its cost,insurance coverage against claims for injuries to persons or damages to property, including contractual liability which may arise from work performed by the Independent Contractor, his agents, representatives, employees, or assigns under the contract.

The Independent Contractor's insurance coverage shall be primary coverage with respect to the BOI. Any insurance maintained by the BOI shall be in excess of the Independent Contractor's insurance and shall not contribute with it. The Independent Contractor's insurance shall cover such claims as may be caused by any act, omission, or negligence of the Independent Contractor orits officers, agents, representatives, assigns, or servants.

Independent Contractor shall maintain Workers' compensation insurance as required by the State of Montana. The Independent Contractor will always comply with applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. All certificates, indicating compliance with the required coverage, must be filed with the BOI within ten (10) working days after execution of this Agreement. The certificates and/or endorsements shall evidence that coverage is provided for the duration of the Contract.

Section 8. Termination

Notwithstanding other provisions of the Project Management Agreement, the Agreements herein contained shall be terminated, and the obligations of the parties hereto shall thereupon cease, except as to any obligations or liabilities arising or occurring prior to termination, and an accounting to be made by Independent Contractor to BOI upon the occurrence of any of the following circumstances or events:

a. Destruction or condemnation of the Subject Property.

b. Upon the agreement of BOI and Independent Contractor expressed in writing

c. For cause after thirty (30) days' notice and failure of Independent Contractor to cure a default within 30-day period or to diligently commence to cure such default if it reasonably shall take longer than 30-days to cure such default; or

d. Notice to not proceed is provided by BOI prior to July 17, 2026.

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Section 9. Limitation of Liability

BOI's liability shall be limited to its interest in the Subject Property and shall not exceed the compensation agreed to in Section 4.

Section 10. Consents and Approvals

In any instance under this Project Management Agreement in which the consent or approval of BOI to any proposed action is required, Independent Contractor must secure BOI's consent or approval.

Section 11. Waiver of Subrogation

BOI and Independent Contractor hereby waive their respective rights of recovery against each other for any loss insured or insurable against under fire, extended coverage, or all risk insurance policies, and shall cause their respective insurers to waive their rights of subrogation.

Section 12. Notices

Notices to Designate Persons hereunder shall be valid if mailed by registered or certified mail, postage prepaid, or by overnight express mail, addressed as follows:

If to BOI:

Peg MacEwen
Montana Board of Investments
2401 Colonial Drive, 3rd Floor
Helena, MT 59601

If to Independent Contractor:

Mark Esponda
D&M Development, LLC 3424 E
U.S. Highway 12
Helena, MT 59601

or to such other address, with respect to either party, as such party shall notify the other party hereto in writing, as above provided.

Section 13. Assignment

Independent Contractor shall be prohibited from assigning its interest in this Project Management Agreement without the written consent of BOI. BOI may assign its interest in this Project Management Agreement to any purchaser of the building(s) or real estate.

Section 14. Venue

In the event of litigation concerning this contract, venue shall be the First Judicial District in the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the laws of the State of Montana.

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Section 15. Entire Agreement and Modification

This contract, consisting of this document, constitutes the entire agreement between the parties and may be modified only by a written document signed by both parties. Exhibits A and B are illustrative and are not part of the agreement between the parties. If new versions that more reflect the project are updated, they should be numbered sequentially (A.1, A 2, A 3…). For them to have any material effect on the contract, a separate signed agreement by both parties specifying the exact change(s) is required.

Section 16. Signatures

IN WITNESS WHEREOF**,** the parties hereto have executed this Agreement on the day and year first above written.

Independent Contractor: D&M, LLC

By: _____ Date: _____
Mark Esponda, Vice President

BOI: MONTANA BOARD OF INVESTMENTS

By: _____ Date: _____
DAN VILLA, Executive Director

Approved as to Legal Content:

By: _____ Date: _____
Cort Jensen, Chief Legal Counsel

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Exhibit A


Cushing Terrell.
DLRGROUP
OVERALL PROGRAM PIECES - SINGLE STORY OPTION
TOTAL AREA: 32,300 SF
HOUSING
STAFF
PUBLIC
BUILDING SUPPORT
ADMIN
MEDICAL
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Exhibit B

	Expense
Building Construction/Site Prep	$ 42,565,260.00
DM	$ 1,702,610.40
CT	$ 4,028,940.00
TOTAL	$ 48,296,810.40

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