



AIA[®] Document C103[®] – 2015

Standard Form of Agreement Between Owner and Consultant without a Predefined Scope of Consultant's Services

AGREEMENT made as of the Nineteenth day of May in the year Two Thousand Twenty Three (the "Effective Date").
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Macomb County
One South Main, 8th Floor
Mt. Clemens, MI 48043

and the Consultant:
(Name, legal status, address, and other information)

Metro Technology Services IT, Inc.
59 North Walnut, Suite 202
Mt. Clemens, Michigan 48043
(586) 203-8423

Consultant's discipline:

Technology Designer and Management Consultant

for the following Project:
(Paragraph deleted)
Macomb County - New Central Intake and Assessment Center

The Owner and Consultant agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document does not contain a description of the Consultant's scope of Services. This document is intended to be used in conjunction with AIA Standard Form of Consultant's Services documents.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(Paragraph deleted)

This Agreement is for the Consultant to provide Technology Design and Management services for Macomb County's New Central Intake and Assessment Center as further detailed in Exhibit A, Scope of Services, and as set forth herein.

§ 1.2 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201™-2017, General Conditions of the Contract for Construction.

§ 1.3 The Owner's anticipated Project schedule is as set forth as follows:

- .1 Project Initiation:
June 1, 2023
- .2 Date for commencement of construction:
ARPA Scope of Work: August 26, 2024
Non-ARPA Scope of Work: June 29, 2026
- .3 Substantial Completion date:
ARPA Scope of Work: June 29, 2026
Non-ARPA Scope of Work: September 20, 2027
- .4 Other milestone dates: Closeout and Turnover
May 31, 2028

§ 1.4 The Owner and Consultant may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Consultant may, upon mutual written amendment to this agreement, equitably adjust the schedule, the Consultant's services, or the Consultant's compensation.

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:

Init.

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User Notes:

(1328502099)

(Describe the scope of the Consultant's services or identify an exhibit or scope of services document setting forth the Consultant's services and incorporated into this document in Section 11.2.)

As set forth in Exhibit A – Scope of Services.

§ 2.2 The Consultant shall perform its services consistent with the professional skill, care, and standards ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Consultant identifies the following representative who is authorized to act on behalf of the Consultant with respect to the Project.

(List name, address, and other information.)

Thomas Giachino
Metro Technology Services IT, Inc.
59 North Walnut, Suite 202
Mt. Clemens, Michigan 48043
(586) 203-8423

§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Agreement or shall cause such services to be performed by appropriately licensed professionals.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Owner and the Owner's other consultants, architects, contractors, and construction managers ("Project Team"). The Consultant may communicate with the Project Team for the purposes of performing its services on the Project. The Consultant shall keep the Owner reasonably informed of any such communications. Upon careful examination of such information Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.6 The Consultant shall keep the Owner reasonably informed of the progress of the Consultant's services.

§ 2.7 Insurance. The Consultant shall provide and maintain the following insurance for the duration of this Agreement, and cause each Contractor, Sub-contractor present at the Project, even if only to deliver product (but excluding common couriers), and each Supplier providing goods having a value in the aggregate of more than \$50,000 to provide the following minimum insurance coverage:

§ 2.7.1 Commercial General Liability - on an "occurrence" (not "claims-made") ISO form CG001, 1998 or newer version. The coverage shall insure all operations of the respective Construction Team members. The following minimum limits of insurance can be satisfied through so-called "primary" insurance policies or a combination of both "primary" and so-called "excess" or "umbrella" liability policies: \$1,000,000 Each Occurrence limit, \$1,000,000 Personal and Advertising Injury Limit, \$2,000,000 General Aggregate Limit, and \$2,000,000 Products and Completed Operations Limit.

§ 2.7.2 Automobile Liability - insuring all owned, hired and non-owned automobiles (including trucks and trailers) with coverage not less than that of the commercial Business Auto Policy in limits not less than \$1,000,000 "combined single limit" each occurrence by bodily injury and property damage.

§ 2.7.3 The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2.

§ 2.7.4 Workers' Compensation - insuring all operations in full compliance with the workers' compensation and occupational disease laws of all authorities having jurisdiction in Michigan, with Coverage A in Statutory Limits, and Coverage B Employer's Liability with limits of \$500,000 each Accident for Bodily Injury by Accident, \$500,000 Policy Limit for Bodily Injury by Disease, and \$500,000 each Employee for Bodily Injury by Disease.

Init.

§ 2.7.5 Professional Liability Insurance - policy limits of not less than the following per claim and in the aggregate: The Consultant shall maintain in force available for this Project professional liability insurance providing at minimum ten percent (10%) of the Cost of the Work of the Project or One Million Dollars (\$ 1,000,000) per occurrence and Two Million Dollars (\$ 2,000,000) General Aggregate, whichever shall be the greater, for liability arising out of any negligent acts, errors and omissions in the Consultant, its employees, agents, and its consultants rendering of or failure to render professional services under this Agreement, and all subsequent addition or additions or amendments thereto. Insurance amount must be maintained in force for a period of not less than the Statue of Limitation and Statue of Repose periods in the state where the Project is located after the Project's relevant date of Substantial Completion or the last day service is rendered by the Consultant on the Project, whichever shall be the later. The Consultant shall notify the Owner if this insurance becomes not available or the required coverage amount is substantially changed from the current coverage carried by the Consultant.

§ 2.7.6 The Owner, and its Owner's Independent Representative Consultant ("Plante Moran Cresa"), shall be an additional insured on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.7.7 The Consultant shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner, and its Owners Representative Consultant, as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies. Such certificates shall provide thirty (30) days written notice to the Owner prior to cancellation thereof.

§ 2.7.8 If the Consultant neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, at its option, either terminate this Agreement or procure such insurance and adjust the Consultants compensation downward by the premiums paid, or to be paid, by Owner.

§ 2.7.9 All required insurance shall be provided by insurance company(s) with an A.M. Best rating of A- or better. Without waiving Consultant's insurance obligations or responsibility for the service of its sub-consultants, Consultant shall require all its sub-consultants to maintain the same insurance coverage as stated above. Consultant shall deliver, within twenty (20) days of issuance and of each renewal or replacement, to Owner certificates evidencing that the foregoing insurance is in full force and effect.

§ 2.7.10 Copies of Consultant's insurance policies, including all exceptions and exclusions, shall be provided to Owner upon Owner's written request.

§ 2.7.11 PERFORMANCE AND PAYMENT BOND (Not Applicable)

§ 2.8 Time. The Consultant shall provide its services within the time limits established in the Project Schedule and in coordination with the Architect and the Construction Manager and the progress of the Work. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.

(Paragraphs deleted)

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement.

§ 3.2 The Consultant shall promptly notify the Owner upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner's written authorization. Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall, subject to mutual agreement of the parties and written amendment, entitle the Consultant to compensation pursuant to Section 8.2.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project.

§ 4.2 Owner's Designated Representative. Owner identifies the following designated representative who is authorized to act on the Owner's behalf with respect to the Project:

(List name, address, and other information.)

Mark Deldin, Chief Deputy County Executive
Macomb County
One South Main, 8th Floor
Mt. Clemens, MI 48043
e-Mail Address: deldin@macombgov.org

§ 4.2.1 Owner's Representative Consultant. The Owner has engaged Plante & Moran Cresa, LLC ("PMC") as an Owner's Representative Consultant on the Project ("Owner's Representative"). The Consultant shall keep PMC informed of matters regarding the Project. Notwithstanding the foregoing, PMC shall not have authority, express or implied, to enter into agreements on behalf of the Owner, modify, or amend this Agreement, or otherwise bind the Owner. Owner identifies the following Owner's Representative Consultant with respect to the Project:

(List name, address, and other information.)

Andy Fountain
Plante & Moran Cresa, LLC
3000 Town Center; Suite 100
Southfield, MI 48075
248 603-5088; andy.fountain@plantemoran.com

§ 4.3 The Owner shall render decisions and approve the Consultant's submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services. Consultant shall provide owner reasonable advance written notice of any decisions or approvals.

§ 4.4 The Owner shall assist the Consultant with coordinating its services with the Owner's other consultants, contractors, and construction manager. The Owner shall provide the Consultant with a list of other consultants on the Project whose services relate to the Consultant's services. The Owner shall also, upon written request, furnish the Consultant with copies of the scope of services in contracts between the Owner and such other consultants. The Owner shall require that its other consultants maintain professional liability insurance as appropriate to the services provided.

§ 4.5 Not Used

§ 4.6 The Owner shall provide prompt written notice to the Consultant if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's Services. This obligation shall in no way be construed as requiring Owner, or any member of the Project Team, to review, inspect, or in any other way provide any quality control or assurance of the Consultant's services. Consultant shall remain responsible to the Owner for the quality, accuracy, and completeness of its services provided under this Agreement.

ARTICLE 5 COPYRIGHTS AND LICENSES

§ 5.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and the Consultant's subconsultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials in digital or physical form.

§ 5.2 The Consultant and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions or comply with protocols established for the Project, if any.

§ 5.3 Owner shall be deemed the exclusive property owners of the Instruments of Service. Owner shall be the owner of all right in the Instruments of Service including, but not limited to, drawings, specifications, models, renderings, reports, domain names, trade names, service marks, copyrights, patents, and other work product, both as works in progress and as finished products. No such Instruments of Service shall contain any third party proprietary software or other intellectual property rights without Owner's prior written consent. The parties acknowledge and agree that Consultant shall retain ownership and copyright in all pre-existing materials, proprietary methodologies and other

creative tangible forms of expression created or owned by Consultant prior to the commencement of services under this Agreement.

(Paragraphs deleted)

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

§ 6.1.1 The Owner and Consultant shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than ten (10) years after the date the Project is sufficiently complete so that the Owner can utilize it for its intended use. The Owner and Consultant waive all claims and causes of action not commenced in accordance with this Section 6.1.1.

§ 6.1.2 To the extent damages are covered by property insurance, the Owner and Consultant waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Consultant, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 6.1.3 The Consultant and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 7.7.

§ 6.2 Mediation

§ 6.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 6.2.2 The Owner and Consultant shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 6.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 6.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Consultant do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 6.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

Init.

§ 6.3 Arbitration

§ 6.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question, arising out of or related to this Agreement, subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 6.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question.

§ 6.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.4 Consolidation or Joinder

§ 6.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 6.3.4.2 Either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 6.3.4.3 The Owner and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Consultant under this Agreement.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 If the Owner fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give fourteen (14) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 7.2 If the Owner suspends the Project or the Consultant's services, the Consultant shall be compensated for services performed prior to notice of such suspension.

§ 7.3 If the Owner suspends the Project or the Consultant's services for more than 90 cumulative days for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than fourteen (14) days' written notice.

§ 7.4 Should the Consultant breach any provision of this Agreement, Owner may declare Consultant in to be in default. Should Consultant fail to cure any default within fourteen (14) days after written request by Owner, then Owner may terminate this Agreement in whole or in part. Nothing herein shall waive Owner's rights to pursue any other remedy provided in law or in equity.

Init.

§ 7.5 The Owner may terminate this Agreement at any time for the Owner’s convenience and without cause. Owner’s sole responsibility shall be to pay Consultant for services performed and accepted prior to termination, without any profit and without waiver of damages, if any, flowing from Consultant’s acts or omissions.

§ 7.6 Upon termination, Consultant shall discontinue performance, cease placing all future orders, and promptly cancel all orders to its sub-consultants.

(Paragraphs deleted)

ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for services described in Article 2 as follows:

(Insert amount of, or basis for, compensation.)

Based on the Consultant’s Hourly Rate Schedule attached hereto as Exhibit B, a Not-to-Exceed amount of One Million Fourteen Thousand Three Hundred Eighty Dollars (\$1,014,380), which is based on seven percent (7%) of the Owner’s Technology Budget of Fourteen Million Four Hundred Ninety One Thousand One Hundred Forty Dollars (\$14,491,140). The Consultant’s Not-to-Exceed compensation is inclusive of all Reimbursable Expenses and shall not be adjusted without prior written authorization by the Owner. The Consultant’s Compensation shall not exceed the not to exceed amount for the duration of this Agreement.

The aforementioned compensation is inclusive of all taxes and fee, including permitting fees, due under this Agreement or related to the services provided herein. Consultant shall be solely responsible for remitting any such taxes to the appropriate government agency.

§ 8.2 The Owner shall compensate the Consultant for Additional

(Paragraphs deleted)

Services, that are approved by mutual agreement and executed written amendment, as set forth in such written amendment.

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant’s subconsultants, if any, are set forth

(Paragraphs deleted)

in Exhibit B. Notwithstanding anything provided in Exhibit B, these rates shall remain in place for the duration of this Agreement.

(Table deleted)

§ 8.4 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Consultant shall provide reasonable backup as requested by Owner. Consultant shall submit with each invoice unconditional lien waivers for all the past payments received along with each of the payment invoices. Payments are due and payable upon presentation of the Consultant’s invoice. Amounts unpaid thirty (30) days after the invoice has been recommended for payment by the Owner, shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Consultant.

(Insert rate of monthly or annual interest agreed upon.)

Zero percent (0 %)

§ 8.5 Owner shall be entitled to withhold any portion of any payment it disputes in good faith until final resolution of such dispute is resolved in accordance with this Agreement. Owner shall notify Consultant in writing, with reasonably detailed explanation, of such withholding no later than the date payment of the withheld portion is due.

§ 8.6 Reimbursable Expenses

§ 8.6.1 Reimbursable Expenses are included in the compensation for the Consultant’s professional services and include expenses incurred by the Consultant directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;

Init.

- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Consultant's subconsultants expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Consultant's subconsultants;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Other similar Project-related expenditures, if authorized in advance by the Owner.

§ 8.6.2 NOT USED

§ 8.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Consultant normally maintains and the Consultant incurred or will incur additional costs to satisfy such requirements, the Owner shall reimburse the Consultant for such costs as set forth below:

Not Applicable.

§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall submitted with each invoice.

(Paragraphs deleted)

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 6.3.

§ 9.2 The Owner and Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 9.3 If the Owner requests the Consultant to execute certificates, the proposed language of such certificates shall be submitted to the Consultant for review at least 14 days prior to the requested dates of execution. If the Owner requests the Consultant to execute consents reasonably required to facilitate assignment to a lender, the Consultant shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Consultant for review at least 14 days prior to execution. The Consultant shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 9.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

§ 9.5 Unless otherwise required in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 9.6 Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.6.1.

§ 9.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Agreement.

§ 9.7 The Owner plans to utilize a web-based collaborative program management project software to assist in the efficient communication of all Project information to pertinent team members. The selected e-Builder platform will be utilized for storage of all pertinent Project correspondence (Meeting Minutes, RFI's, Submittals, Drawing set issuances, Bulletins, etc.), as well as for payment application and invoice processing, and change management approvals. All firms will be required to participate in e-Builder platform training and subsequent utilization of the software for their role and information transfer throughout the Project. The Owner will pay for up to one (1) collaborative licenses for each vendor.

§ 9.8 The Agreement shall not render Consultant an employee, partner, agent of, or joint venture with Owner for purpose. Consultant is and will remain an independent contractor in relationship to Owner. Owner shall not be responsible for withholding taxes with respect to the compensation of the Consultant hereunder. Consultant shall have no claim against health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

§ 9.9 If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and affect, and shall in no way be affected, impaired or invalidated thereby.

§ 9.10 Headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

§ 9.11 Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing wavier.

§ 9.12 Prior to the award of any sub-consultant subcontract, the Consultant shall consult with the Owner and shall submit the name of the proposed sub-consultant and proposed subcontract form to the Owner for review. The Owner reserves the right to disapprove any proposed sub-consultant for any reason. Copies of executed sub-consultant subcontracts shall be provided to Owner.

The Consultant shall bind each and every sub-consultant to the terms stated herein and shall require that all persons rendering Services under this Agreement are properly licensed to provide such Services in the locale in which the Project is located.

The Consultant hereby agrees to include a provision in all subcontracts issued for Services hereunder allowing the Consultant to assign said subcontract to the Owner or Owner's designee without the sub-consultant's consent. The Consultant shall require all sub-consultants to include a similar assignment provision in each and every subcontract sub-consultant issues for Services hereunder.

The Consultant shall coordinate its Services with all other sub-consultants and with the Owner.

The Consultant shall be responsible for and shall include in its compensation, as set forth in Article 8 of this Agreement, the cost of the services of all sub-consultants retained or to be retained by the Consultant, unless specifically stated otherwise and approved in writing by the Owner.

§ 9.13 The Consultant agrees to protect, defend, indemnify and hold the Owner and its commissioners, officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, legal fees, liens, demands, court costs, obligations, actions, proceedings, or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims, etc. relating to personal injury, death, damage to property, defects in materials or workmanship, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder.

The Consultant further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc. at his sole expense and agrees to bear all other costs and expenses related hereto, even if it (claims, etc.) is groundless, false or fraudulent. In any case in which this indemnification would violate legal prohibition, the foregoing provision concerning indemnification shall not be construed to identify the Owner for damage arising out of bodily injury to

persons or damage to property caused by or resulting from the sole negligence of the Owner, its commissioners, officers, employees or agents.

ARTICLE 10 SCOPE OF THE AGREEMENT

§ 10.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. In the event of a conflict between the terms and conditions of this C103™–2015, Standard Form Agreement between Owner and Consultant and an attached exhibit, the terms and conditions of the C103–2015, Standard Form Agreement between Owner and Consultant shall take precedence.

§ 10.2 This Agreement is comprised of the following documents listed below:

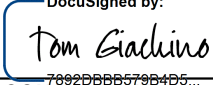
- .1 AIA Document C103™–2015, Standard Form of Agreement Between Owner and Consultant.
- .2 Other documents:
(List other documents hereby incorporated into the Agreement.)
 Exhibit A – Scope of Services
 Exhibit B – Consultant’s Hourly Billing Rates and Unit Prices
 Exhibit C – Consultant’s Insurance Certificate(s)

This Agreement entered into as of the Effective Date as first written above.

MACOMB COUNTY

METRO TECHNOLOGY SERVICES IT, INC.

OWNER *(Signature)*
 Mark Deldin, Chief Deputy County Executive
(Printed name and title)

DocuSigned by:


CONSULTANT *(Signature)*
 Thomas A. Giachino, President
(Printed name and title)