

## CONSTRUCTION WORK CONTRACT

This Contract for Professional Work (the "Contract") is by and between the County of Genesee, a Michigan Municipal Corporation, whose principal place of business is located at 1101 Beach Street, Flint, Michigan 48502 (the "County"), and **SmartComm, LLC, a MI LLC**, whose principal place of business is located at **5461 S Luce Ave, Fremont, MI 49412** (the "Contractor") (the County and the Contractor together, the "Parties").

### 1. Agreement and Authority

Execution of this Agreement is authorized by Resolution **#2025-1278** issued by the Genesee County Board of Commissioners.

### 2. Scope of Work

The Contractor agrees to perform the Work described on Exhibit A (the "Work").

### 3. Work Schedule

- 3.1 Within 5 days of execution of this Contract, the County and the Contractor will cooperate to establish a schedule for performance of the Work (the "Work Schedule") indicating the starting and completion dates for each portion of the Work, including any interim contractually required completion dates. The Work shall be scheduled in order to minimize disruption to County operations.
- 3.2 The Work Schedule shall indicate that the Work must be substantially complete within **150 days** of execution of this Contract, with a date of final completion within **45 days** of execution.
- 3.3 The Parties agree that time is of the essence for performance of this Contract, and any unjustified delay by the Contractor will result in damages to the County.

### 4. Compensation

The Contractor shall be paid a lump sum of **\$464,913.42** for the performance of the Work. Upon completion of the Work, the Contractor must provide to the County an invoice in a form acceptable to the County, along with any necessary supporting documentation. The County will pay the Contractor within sixty (60) days of the County's acceptance of the invoice and supporting documentation.

## **5. Taxes**

The County is a Michigan Municipal Corporation. The Contractor acknowledges that the County is exempt from Federal Excise Tax and Michigan Sales and Use Tax.

## **6. Contract Administrator**

The contract administrator for this Contract is **Michael Noonan** (the "Contract Administrator"). The Contractor acknowledges that the Contract Administrator is the primary County contact for notices and instructions related to this Contract. The Contractor agrees to provide a copy of all notices related to this Contract to the Contract Administrator.

## **7. Inspection and Acceptance**

All goods and equipment provided with the Work are received subject to inspection and testing. If goods are defective or fail to meet the specifications, the County shall have the right to reject the goods or to require the Contractor to correct the defects. The Contractor shall correct the defects at no cost to the County or pay the County for expenses incurred by the County in correcting the defects. Rejected goods will be held for forty-five days after delivery awaiting instructions from the Contractor. After the forty-five day period, the County will dispose of the goods and the County shall have no further liability to the Contractor. The Contractor is responsible for the costs of handling, packing, and transportation incurred in returning or disposing of defective or non-conforming goods.

## **8. Condition of Worksite**

The Contractor must keep the worksite clean and free from the accumulation of waste materials and refuse caused by the performance of the Work. Upon completion of the Work, Contractor shall remove all waste materials, refuse, tools, equipment, machinery, and surplus materials, and shall leave the worksite in "broom-clean" condition.

## **9. Prevailing Wage Addendum**

The Contractor acknowledges that Section 3-302(3) of the Genesee County Purchasing Regulations highly recommends the Contractor and its subcontractors to pay laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The Contractor agrees to use its best efforts to comply with the provisions of the Prevailing Wage Addendum attached as Exhibit C to this Contract.

## 10. Warranties

The Contractor warrants that:

- 10.1 The Work will be performed in a good and workmanlike manner and in accordance with generally acceptable practices in the construction industry.
- 10.2 For a period of one (1) year following completion of the Work, the Work and any goods provided with the Work shall conform to the specifications and be free of defects in workmanship or materials.
- 10.3 The Contractor will comply with all federal, state, and local laws in the performance of the Work.
- 10.4 All materials furnished under this Agreement must be new unless otherwise specified in this Agreement.
- 10.5 The Contractor will comply with the requirements of any federal or state grants used to fund or support this Contract. Copies of any applicable grant agreements are available upon request
- 10.6 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Work for the entire term of this Contract.

Breach of any of these warranties is cause for termination of this Contract. The Contractor agrees to indemnify, defend, and hold the County, its officials, officers, agents, and employees harmless from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's breach of these warranties.

## 11. Insurance Requirements and Indemnification

### 11.1 Insurance Requirements

The Contractor shall at all times maintain in full force and effect for duration of the term of this agreement the following insurance coverages. All coverage shall be with insurance companies licensed and admitted to write business in the State of Michigan, having an AM Best rating of at least A- and acceptable to Genesee County. In addition, the County reserves the right to modify or waive at any time any applicable insurance requirements based on the scope of services provided at the discretion of the County's Risk Manager or other authorized representative of the County.

☐ **COMMERCIAL GENERAL LIABILITY:** Occurrence form, with limits of liability not less than **\$1,000,000** per occurrence/\$2,000,000 aggregate.

Coverage shall include bodily injury, personal injury, property damage (broad form), premises/operations, blanket contractual liability, independent contractors' coverage, products/completed operations, explosion, collapse and underground hazard, if applicable, and a per project aggregate. Limits may be satisfied using primary and excess/umbrella liability policies. The policy shall name Genesee County, including all employees, elected and appointed officials and volunteers, all boards, commissions, and/or authorities, and their board members, employees, and volunteers as additional insureds. Coverage shall be primary and noncontributory with a waiver of subrogation in favor of Genesee County.

☐ **AUTOMOBILE LIABILITY:** Including Michigan No-Fault coverages, with limits of liability not less than **\$1,000,000** per occurrence combined single limit for bodily injury and property damage. Coverage shall include all owned, non-owned, and hired vehicles. Limits may be satisfied using primary and excess/umbrella liability policies. -. The policy shall name Genesee County, including all employees, elected and appointed officials and volunteers, all boards, commissions, and/or authorities, and their board members, employees, and volunteers as additional insureds.

☐ **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY:** as required by and in accordance with all applicable statutes of the State of Michigan, including Employers' Liability Coverage.

Worker's Compensation – Required limits:

Coverage A – Coverage will include statutory requirements.

Coverage B – Employers Liability

\$500,000 each Person

\$500,000 each Person by Disease

\$500,000 Policy Limit - Disease

☐ **PROFESSIONAL LIABILITY (Errors & Omissions):** in an amount not less than **\$1,000,000** per occurrence and **\$1,000,000** aggregate. If this policy is a claims made form, the Contractor shall be required to keep said policy in force, or purchase "tail" coverage for a minimum of three (3) years after the termination of this contract.

☐ **BUILDERS RISK COVERAGE:** is to be purchased to cover subject property for all risks of loss (including theft and sinkhole), subject to a waiver of coinsurance, and covering off-site storage, transit and installation risks as indicated in the Installation Floater and Motor Truck Cargo insurance described hereafter, if such coverages are not separately provided. If flood and/or earthquake risks exist, flood and earthquake insurance are to be purchased. If there is loss of income, extra expense and/or expediting expense exposure, such coverage is to be purchased. If boiler and machinery risks are involved, boiler

and machinery insurance, including coverage for testing, is to be purchased. The Builders Risk insurance is to be endorsed to cover the interests of all parties, including the County and all vendors and subcontractors.

☐ **POLLUTION LIABILITY:** The Contractor shall procure and maintain for the duration of this contract Pollution Liability insurance in an amount not less than one million dollars (\$1,000,000) aggregate. If this policy is on a claims made form, the Contractor shall be required to keep said policy in force, or purchase “tail” coverage for a minimum of 3 years after the termination of this contract.

☐ **OWNERS’ AND CONTRACTORS’ PROTECTIVE (OCP) LIABILITY INSURANCE:** The Contractor shall procure and maintain during the life of this contract, a separate Owners’ and Contractors’ Protective Liability Policy with limits of liability not less than \$1,000,000 per occurrence and aggregate combines single limit for Personal Injury, Bodily Injury, and Property Damage. Genesee County shall be “Named Insured” on said coverage. Thirty (30) days’ Notice of Cancellation shall apply to this policy.

☐ **CONTRACT BOND REQUIREMENTS:** The contractor shall furnish satisfactory performance and/or lien bonds in every contract exceeding \$50,000.00 (Fifty-Thousand Dollars) for the construction, alteration, or repair of any public building or public work or improvement of the County. The contractor shall furnish to the County at their own cost a performance bond and a payment bond which shall become binding upon the award of the contract to the contractor. Such bonds shall be issued by a surety admitted in the state of Michigan and must be acceptable to the County. The penal sum of the bonds shall each be one hundred percent (100%) of the original Contract Price. MCL 129.201 et seq.

### **Required Insurance Documentation**

1. **Certificate of Insurance**

The vendor must provide a Certificate of Insurance evidencing the required insurance set forth above. The Certificate of Insurance must reference the contract/bid number.

The Certificate Holder should be listed as follows:

Genesee County  
Attn: Risk Management  
1101 Beach Street, Flint, MI 48502

2. **Endorsements**

The vendor/contractor must also provide the following endorsements, including but not limited to:

- a. An additional insured endorsement (equivalent in coverage to ISO form CG 20 10 and CG 20 37) naming the "Genesee County, including all employees, elected and appointed officials and volunteers, all boards, commissions, and/or authorities, and their board members, employees, and volunteers as additional insureds" as additional insureds under the general liability policy. No person or department should be identified as the additional insured. Coverage afforded shall be considered primary and any other insurance or self- insurance, maintained by or available to the County shall be considered secondary and/or excess.
- b. An endorsement to each policy stating that such policy shall not be cancelled or reduced in coverage except after thirty (30) days prior written notice to County. Cancellation, material restriction, nonrenewal or lapse of any of the required policies shall be grounds for immediate termination of the Agreement by the County. If any of the required coverages expire during the term of the contract, the vendor shall deliver renewal certificates, endorsements, and/or policies to County at least ten (10) days prior to the expiration date.
- c. A primary & noncontributory endorsement (equivalent in coverage to ISO form CG 20 01).
- d. A waiver of subrogation endorsement (equivalent in coverage to ISO form CG 24 04).

*In lieu of required endorsements, a copy of the policy sections, where coverage is provided for additional insured and cancellation notice, may be acceptable. Copies of all policies mentioned above shall be furnished, if so requested.*

## 11.2 Indemnification

The Contractor agrees to indemnify, defend, and hold the County, its officials, officers, agents, and employees harmless from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's performance of the Work or presence on the County's property or worksite.

## 12. Suspension of Work

### 12.1 Order to Suspend Performance

Upon written order of the Contract Administrator, the Contractor agrees to immediately suspend performance of the Work. The Contractor shall not be entitled to compensation for any Work performed during any period in which the Contract Administrator has directed that the Work be suspended.

## 12.2 Necessary Actions Before Suspension

If immediate suspension of the Work would cause harm, injury, or damage to persons or property, the Contractor must immediately notify the Contract Administrator of the nature of such harm, injury, or damage, and obtain written authorization from the Contract Administrator to take such necessary action as to prevent or minimize such harm, injury or damage. Actions authorized by the Contract Administrator pursuant to this paragraph are compensable.

## 13. Bonds

The Contractor must furnish separate performance and payment bonds to the Customer. The performance and payment bonds must set forth a penal sum in an amount not less than 95% of the Contract Sum. Each bond furnished by the Contractor must incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in the bonds. The penal sum of both the performance and payment bonds will be automatically increased in the amount of any increase to the Contract Sum. The performance and payment bonds furnished by the Contractor must be issued by a surety, or sureties acceptable to the County.

## 14. Termination

### 14.1 Termination for Cause

If the Contractor is in breach of any provision of this Contract, and such breach continues for fourteen (14) days after written notice is issued to the Contractor by the County of the breach, the County may terminate this Contract. Such termination for cause is effective upon receipt of the notice of termination by the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

### 14.2 Immediate Termination

If the County, in its discretion, determines that the Contractor's breach of this Contract constitutes a threat to public health, safety, or welfare, the County may terminate this Contract immediately upon notice to the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

#### **14.3 Termination for Convenience**

If the County determines that it is in the County's best interests, the County may terminate this Contract upon thirty (30) days' written notice to the Contractor.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

#### **14.4 Termination for Lack of Funding**

If this Contract is funded by public funds or a grant from a public or private entity, and the funds are not appropriated or the grant is discontinued, the County may terminate this Contract by written notice specifying the date of termination.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

### **15. Nondiscrimination**

The Contractor covenants that it will not discriminate against an employee or applicant of employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, gender identity, gender expression, sexual orientation, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position, and that it will require the same non-discrimination assurances from any subcontractor who may be used to carry out duties described in this contract. Contractor covenants that it will not discriminate against businesses that are owned by women, minorities or persons with disabilities in providing Work covered by this Contract, and that it shall require the same assurances from subcontractors. Breach of this covenant shall be regarded as a material breach of this contract.

### **16. Freedom of Information Act**

This Contract and all attachments, as well as all other information submitted by the Contractor to the County, are subject to disclosure under the provisions of MCL 15.231, *et seq.*, known as the "Freedom of Information Act".

### **17. Intellectual Property**

Any intellectual property created by the Contractor in the performance of the Services shall be considered a work made for hire, and any and all rights in such intellectual property shall belong solely to the County. Upon the County's request, the Contractor agrees to execute any documents necessary to convey ownership of such intellectual property to the County.



## **18. Audit Rights**

### **18.1 Certification of Accurate Information**

Contractor certifies that all information provided to the County by the Contractor relating to the award or modification of this Contract, or any payment or dispute related to this Contract, is true and correct. The Contractor further certifies that its accounting system conforms to generally accepted accounting principles.

### **18.2 Inspection**

The Contractor agrees that the County may inspect the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract and the terms of the applicable grant.

### **18.3 Audit**

The Contractor agrees that the County may examine the Contractor's records to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's records to ensure compliance with the terms of this Contract and the terms of the applicable grant.

### **18.4 Records Retention**

The Contractor agrees to maintain any business records related to this Contract or the Contractor's performance under this Contract for a period of at least three (3) years after final payment.

## **19. Identity Theft Prevention**

19.1 In the event that the Contractor will obtain identifying information during the performance of the Services, the Contractor must take reasonable precautions to ensure that such identifying information is protected from unauthorized disclosure and is used only for the purpose of performing the Services.

19.2 For the purposes of this Paragraph, "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including but not limited to name, address, telephone number, social security number, date of birth,

driver's license number, taxpayer identification number, or routing code.

## **20. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not the employees of the County.

## **21. General Provisions**

### **21.1 Entire Contract**

This Contract, consisting of the following documents and Exhibits, embodies the entire Contract between the Parties.

21.1.1. The Contract – This Professional Services Contract

21.1.2. Exhibit A – Description of the Work

21.1.3. Exhibit B – Payment Schedule

21.1.4. Exhibit C – Prevailing Wage Addendum

There are no promises, terms, conditions, or obligations relating to the Services other than those contained herein. In the event of a conflict between this Contract and any Exhibit, the terms of this Contract shall control.

### **21.2 No Assignment**

The Contractor may not assign or subcontract this Contract without the express written consent of the County.

### **21.3 Modification**

This Contract may be modified only in writing executed with the same formalities as this Contract.

### **21.4 Binding Effect**

The provisions of this Contract shall apply to and bind the heirs, executors, administrators, and assigns all of the parties hereto.

### **21.5 Headings**

The paragraph headings in this Contract are used only for ease of reference, and do not limit, modify, construe, and or interpret any provision of this Contract.

#### 21.6 Governing Law and Venue

This Contract is entered into under the laws of the State of Michigan. Any litigation between the Parties arising out of this Contract must be initiated within two years of the cause of action accruing and must be brought in a court of competent jurisdiction in Genesee County, Michigan.

#### 21.7 Subpoena Power

The Contractor acknowledges and understands that the Chairperson of the Genesee County Board of Commissioners, pursuant to MCL 46.3(5), as amended, has the power to administer oaths, issue subpoenas, and compel a person's attendance in the same manner as a court of law. The Contractor agrees to submit to this power with respect to this Contract.

#### 21.8 Severability and Survival

In the event that any provision of this Contract is deemed by any court of competent jurisdiction to be legally ineffective, such decision shall have no effect on the remaining provisions of this Contract.

#### 21.9 Interpretation

Each Party has had opportunity to have this Contract reviewed by legal counsel and has had equal opportunity to contribute to its contents. In the event of any dispute concerning the interpretation of this Contract, there shall be no presumption in favor of any interpretation solely because the form of this Contract was prepared by the County.

#### 21.10 Remedies

All remedies specified in this Contract are non-exclusive. The County reserves the right to seek any and all remedies available under this Contract and applicable law in the event that the Contractor fails to abide by the terms of this Contract.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized agents.

SmartComm, LLC

GENESEE COUNTY

By: \_\_\_\_\_  
Gerry Rich  
President

By: \_\_\_\_\_  
Delrico Loyd, Chairperson  
Board of Commissioners

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Description of the Work

#### Demolition:

- \*Temporary dust protection and ventilation protection- we will provide plastic as necessary, pulse vacuums for dust control, and cover any local vents as we are performing work to avoid cross contamination
- \*Remove wall towel hangers- We did not see any towel hangers mounted inside the showers on our walk through. In the addendum, the question was asked and answered that exterior mounted towel hangers will not be removed and replaced. We are under the understanding we will not be removing or replacing any towel hangers as part of this project.
- \*Remove plumbing- Our licensed plumber will remove the existing plumbing apparatuses and prep for the new to be installed
- \*Protect items and fixtures that cannot be removed- We will cover and tape any fixtures that will be near the work area, and a potential damage hazard
- \*Prep all walls, ceilings and floors for all locations- We will prep the surfaces by diamond grinding the loose paint off, and bringing the surface to a substrate that will accept and hold the adhesive for the new Stainless steel panels. However, the floor will not be surface grinded, or prepped in any way, as the existing shower pans are not being covered with stainless steel panels. We have included preparing and epoxying the floors along with the walls and ceilings in the epoxy price we provided as an optional bid.

#### New Construction:

- \*Prep and fill chips, cracks and seal surfaces- We will fill any major voids or holes with a Cementous mixture, to maintain the integrity of the surface for the stainless panel installation
- \*Installation of new stainless steel ceiling panels (seal all joints)- We will template, and have the panels plasma cut by our steel provider, so the panels can be prepared properly to ensure accurate fitting of not only the panels, but the holes necessary for the vents, lights, access panels, etc. in each shower. Then we will seal using an industrial strength caulk, as recommended for this application.
- \*Installation of new stainless steel walls panels (seal all joints)- We will template, and have the panels plasma cut by our steel provider, so the panels can be prepared properly to ensure accurate fitting of not only the panels, but the holes necessary for the vents, lights, access panels, etc. in each shower. Then we will seal using an industrial strength caulk, as recommended for this application.
- \*Installation of new towel hooks must be for correctional facility- We did not see any towel hangers mounted inside the showers on our walk through. In the addendum, the question was asked and answered that exterior mounted towel hangers will not be removed and replaced. We are under the understanding we will not be removing or replacing any towel hangers as part of this project. We can however provide new towel hangers if desired on a per hanger basis if desired.

- \*Installation of new plumbing fixtures- Our licensed plumber will provide and install new shower combo units for each shower. We've attached the cut sheet for the units we are proposing. We have proposed a Willoughby unit, model #WRS-FA using a single temp pneumatic metering valve.
- \*Installation of new lighting fixtures must be LED- We will install new light fixtures to closely match the look of the existing fixtures. Direct fit replacements.

#### Clean up:

- \*Work area must be cleaned daily- We will clean work area daily to ensure area will remain safe and usable for inmates
- \*All tools must be accounted for and removed daily- We will take inventory of tools prior to moving into a unit, then inventory the tools on the way out to ensure none get left behind

## EXHIBIT C

### Prevailing Wage Addendum

1. Contractor and each subcontractor shall pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area as of the date of this Contract. For the purposes of this Addendum, a contractor or subcontractor shall be in compliance if the contractor pays wages consistent with the prevailing wage rates published by the United States Department of Labor as of the effective date of this Contract, which can be found at <https://sam.gov/content/wage-determinations>.
2. The Contractor and each subcontractor shall keep and maintain a daily sign-in sheet for employees present at the worksite. Such sign-in sheet shall record the time each employee arrived at the worksite, and the time each employee left the worksite.
3. The Contractor and each subcontractor shall submit to the County certified payroll records on Form WH-347, with the accompanying payroll certification, within seven (7) days of the end of each pay period.
4. The Contractor shall not misclassify work assignments.
5. The Contractor shall ensure that any persons paid at apprentice rates are properly registered with the US Office of Apprenticeship program.
6. If any person believes that the Contractor or a subcontractor has not paid wages in accordance with the Effective Prevailing Wage Rates for the project, the person must submit a written complaint to the Genesee County Purchasing Director. The written complaint shall state that the complaining party agrees to abide by the provisions of this Addendum.
7. The Purchasing Director will provide a copy of the complaint to the Michigan Fair Contracting Center (the "Auditor"). The Auditor shall conduct an audit of certified payroll and provide a written report to the Purchasing Director when completed. The report shall document whether prevailing wages were paid, and note any deficiencies. The Contractor and all subcontractors shall comply with any requests for information or documentation from the Auditor during the compliance audit. The Auditor may conduct onsite interviews of workers during a compliance audit.
8. If the Auditor determines that the Effective Prevailing Wage Rates were not properly paid, the contractor or subcontractor responsible for the wage payments at issue shall remedy the deficiency. The County may withhold payments to the general contractor until such deficiency is remedied.
9. If the Auditor determines that prevailing wages were not properly paid, the Contractor or the subcontractor responsible for the prevailing wage payments at issue shall compensate the Auditor for the compliance audit at the rates to be specified. The Owner may withhold payments otherwise due under the Contract to enforce this requirement. If the Auditor determines that prevailing wages were properly paid, the complaining party shall compensate the Auditor for the compliance audit at the rates to be specified. The Auditor shall provide the party responsible for payment of the costs of the compliance audit with a written invoice, and the responsible party shall pay all amounts due within thirty (30) days of the date of the invoice. The Auditor shall provide a copy of the invoice to the Purchasing Director.
10. The Contractor shall include this Addendum in each subcontract entered into on this project, and shall furnish a copy of the Effective Prevailing Wage Rates to each subcontractor.