

## Addendum to Goods/Service Agreement

The Agreements between Alamance County (the “County”) and Municipal Engineering Incorporated (the “Vendor”), each executed on or about July/August 2024 (the “Agreements”), are hereby amended by adding, in their entirety, each of the below terms as an essential term of each Agreement:

1. Annual Appropriations and Funding: The Agreements are subject to the annual appropriation of funds by the Alamance County Board of Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for the Agreements, County shall be entitled to immediately terminate the Agreements, without penalty or liability, except the payment for all Service satisfactorily provided under the Agreement up to and through Vendor’s receipt of notice of termination.
2. Legal Compliance: The parties hereby stipulate that Vendor will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (related to the use of E-Verify), as well as legal prohibitions against unlawful employment/workplace discrimination, and the requirement not to be listed on any divestment list published by the NC State Treasurer and any other Federal or State debarment or suspension lists. Vendor shall maintain records of such compliance and make those records immediately available upon the written request of Alamance County.
3. Governing Law: The Agreements and the rights and obligations to the parties hereunder shall be construed and governed by the laws of the State of North Carolina and venue for any proceedings arising hereunder shall be in the state court of appropriate jurisdiction located in Alamance County, North Carolina.
4. Entire Agreement: The Agreements contains the entire agreement between the parties pertaining to the subject matter of the Agreements. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in the Agreements.
5. Insurance: Vendor shall maintain insurance policies at all times with minimum limits as follows:

<u>Coverage</u>	<u>Limits of Liability</u>
Workers’ Compensation	Statutory Limits
Automobile Liability	\$1,000,000 per occurrence
General Liability	\$1,000,000 per occurrence
	\$2,000,000 aggregate

Property Damage	\$1,000,000 per occurrence
	\$2,000,000 aggregate
Personal Injury	\$500,000 each occurrence
	\$1,000,000 aggregate

All insurance policies shall be issued by companies authorized to do business under the laws of the State of North Carolina and shall be rated not less than “A” by A.M. Best and Company. Vendor shall furnish Certificates of Insurance to County, naming County as an additional insured, prior to the commencement of operations. The certificates shall clearly indicate that Vendor has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days’ prior written notice to the County. Compliance with the foregoing requirements shall not relieve Vendor from any liability or obligations under the Agreements or this Addendum.

6. Termination: The Agreements may be terminated as follows:

- a. Cause: If the services provided by Vendor under the Agreements are not performed as specified herein, the Agreements may be terminated by County for cause. Grounds for termination for cause shall include, but not be limited to, the following:
  - i. Failure to respond to reasonable requests from County to provide the Services covered by the Agreements or this Addendum.
  - ii. Failure to keep and maintain any equipment required for the performance of the Agreement in good working order and in compliance and with all laws.
  - iii. Failure to maintain the insurance required by this Addendum.
  - iv. Charging rates or fees in excess of those permitted under the Agreements.
  - v. Inefficient or unsafe practices in providing Services.
  - vi. The material breach of any provision of the Agreements or this Addendum.
  
- b. Convenience: County reserves the right to terminate the Agreements upon thirty (30) days’ prior written notice to Vendor for any reason deemed by County to serve the public interest. This termination for convenience will not be made when termination is authorized under any other provision of the Agreements. In the event of such termination County shall pay Vendor its costs directly attributable to those Services received by County prior to termination that meet the requirements of the Agreements. Provided, however, that no costs will be paid to Vendor which are recoverable in Vendor’s normal course of doing business. County is not liable for the loss of any profits anticipated to be made hereunder, nor for any special, consequential or similar damage.

- c. “Claw back” for Non-Performance or Violation: If Vendor fails to perform its obligations under the Agreements, or violates any of the provisions of the Agreements or this Addendum, County shall have the right to repayment of all unexpended funds at the time of such termination, and such funds shall be repaid promptly to County upon demand. Furthermore, County reserves the right to require Vendor to repay funds expended in violation of the terms and conditions of the Agreements or this Addendum.
7. Controlling Document: In the event of any conflict between this Addendum and any document, instrument, or other agreement prepared or provided by Vendor (including, without limitation, Vendor’s purchase orders, invoices and warranties), the terms of this Addendum shall control.
8. Waiver: A waiver of any provision of the Agreements or this Addendum must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of the Agreements or this Addendum shall not operate or be construed as a waiver of any subsequent or other breach thereof.
9. Status of Parties: Nothing contained in this Addendum, or the Agreements, shall be construed as establishing a partnership or joint venture relationship between the Parties. Vendor and its employees and representatives are independent contractors, solely responsible for its or their performance or non-performance under the Agreement and shall have no legal authority to bind County. Furthermore, no employee or contractor of Vendor will be construed as an employee of Alamance County should Vendor fail to maintain workers’ compensation insurance as required by law and/or this Addendum.
10. Confidentiality: All proprietary data and information, if any, furnished to Vendor by County shall be regarded as confidential, shall remain the sole property of County and shall be held in confidence and safekeeping by Vendor for the sole use of County and Vendor. Vendor agrees that its officers, employees, and agents will not disclose to any person, firm, or entity other than County or its designated legal counsel, accountants, or practice management consultants any confidential information about County. Vendor agrees to carry out its obligations to County in compliance with all privacy and security regulations required by law.
11. Quality of Goods and/or Services: All goods and/or services hereunder shall be provided in a competent, professional and workmanlike manner and in strict compliance with these Agreements. The items and/or services hereunder shall be provided according to County’s Specifications and Vendor’s Proposal, which is attached hereto and incorporated herein by reference. Vendor will provide all goods and/or perform all services in accordance with the service levels and performance levels as may be set forth in these Agreements.

12. Intellectual Property Owned by Vendor: These Agreements are subject to the North Carolina public records law, and may be released upon request. Not all “Trade Secrets” will qualify as protected under N.C.G.S. §132-1.2 and 66-152. Vendor should consult legal counsel before signing this document if Vendor is unsure of its intellectual property status under these statutes.
13. Assignment and Subcontracting: Neither these Agreements nor any rights or obligations hereunder shall be subcontracted, assigned, or delegated by Vendor without prior written consent of County, which consent may be withheld in County’s sole discretion.
14. Binding Effect: These Agreements shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns, if such assignment has been approved by the County.
15. Force Majeure: Neither Party shall be liable to the other party for any failure or delay caused by events beyond such party’s control and not due to its own negligence, provided that such party uses commercially reasonable efforts to resume performance as soon as reasonably practicable. The non-performing Party shall notify the other Party of the force majeure event within twenty-four (24) hours of the onset thereof. In the event that a force majeure event precludes Vendor from performing services and/or providing goods for a period of ten (10) consecutive business days, County shall have the right to: (a) procure replacement goods and/or services from an alternative source and/or (b) terminate the Agreements or portion(s) of the Agreements upon written notice to Vendor.
16. Modifications: These Agreements may be amended or modified only by the mutual written consent of the parties. A modification is not enforceable against the County unless it is signed by the County Manager or other duly authorized official.
17. Indemnity: Vendor agrees to indemnify and hold harmless County, its officers, elected officials, agents, servants, and employees from any and all claims, actions, lawsuits, losses, damages, expenses, judgments, or liabilities of any kind whatsoever (including without limitation, cost of defense and attorney fees) suffered by County and proximately caused by an act or omission of Vendor, its subcontractors, agents, or employees.
18. Time is of the Essence: Completion of all services (and supply of all goods required) under these Agreements must be completed in a timely fashion. Failure to act within the time required constitutes a breach of these Agreements.
19. Severability: If any provision of these Agreements is held unenforceable, then it shall be stricken and all remaining provisions of these Agreements shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Addendum in their official capacities with legal authority to do so.

**Alamance County**

By: \_\_\_\_\_

Heidi York, County Manager

**Municipal Engineering Incorporated**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_