IN THE COUNCIL OF THE VILLAGE OF NEW CONCORD, OHIO

RESOLUTION 2025 – 8– 1

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO PARTICIPATION AND SERVICE AGREEMENTS FOR TECHNICAL ASSISTANCE PROJECTS AS DESCRIBED HEREIN AND DECLARING AN EMERGENCY.

WHEREAS the Village of New Concord and thereby the mayor is a member of the Mayors' Partnership for Progress ("MPP"); and the MPP provides technical assistance grants to its members for projects that members are otherwise unable to afford; and

WHEREAS the MPP oversees the technical assistance grant project under the auspices of the Ohio University Voinovich School of Leadership and Public Service ("Voinovich"); and

WHEREAS under special contracted arrangements, payments and receipts for this program bypass municipalities and are undertaken between MPP and contracted vendors, thus relieving member municipalities of administrative and financial burdens.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF NEW CONCORD, OHIO THAT:

Section 1. The Mayor is hereby authorized to enter into Participation and Service Agreements with Voinovich and its contracted vendors (Exhibit A example) when such projects have been approved through this program.

Section 2. It is immediately necessary for the general welfare of the village that the village administration be able to apply for these funds expeditiously, this resolution is hereby declared to be an emergency measure.

PASSED: August 11, 2025

APPROVED: August 11, 2025

ATTEST: Debbra L Whitehair
Debbra Whitehair, Clerk

Robert Dickson, President of Council

Jennifer Lyle, Mayor

I hereby certify that the above legislation was posted per Ordinance No. L-1-84-1.

Debbra L Whitehair Debbra Whitehair, Clerk

E X H I B I T A

PARTICIPATION AND SERVICES AGREEMENT

This Agreement ("Agreement") is made and entered into by and between Ohio University, through its Voinovich School of Leadership and Public Service ("Voinovich") and Arcadis (the "Consultant") and Village of New Concord ("Municipality"), effective as of August 15, 2025 (the "Effective Date").

WHEREAS, pursuant to House Bill 33 of the 135th Ohio General Assembly, appropriation item 195503,Voinovich was allocated $2,000,000 ("Grant Funds") for a special project to assist the Mayor's Partnership for Progress (MPP) and its mission as further described in a certain grant agreement with the State of Ohio, Department of Development ("ODOD") and further identified as ODSA Grant control number GOA-S24-EAR-203520, with the effective date of July 1, 2023, including all exhibits, continuations, substitutions, additions and amendments thereto (the "State Grant Agreement"); and,

WHEREAS, Voinovich, in furtherance of its obligations under the State Grant Agreement, has, through a competitive selection process, identified and selected certain subject matter experts that can assist MPP and Municipality in undertaking various public functions. Consultant was selected in this process; and,

WHEREAS, Voinovich has established a funding program to support payment of Consultant for performance of defined task on behalf of Municipality; and,

WHEREAS, Voinovich now intends to utilize funds from the State Grant Agreement for the benefit of the Municipality in accordance with the terms of the State Grant Agreement and this Agreement in an amount as set forth below; and

WHEREAS, the Municipality intends these funds to be used for the purposes set forth in the Statement of Work and Budget attached as Exhibit A, in compliance with this Agreement and the State Grant Agreement.

WHEREAS, Municipality, Consultant, and Voinovich all mutually desire to set forth the understandings of the parties as set forth herein.

NOW THEREFORE, in consideration of the promises and obligations contained herein, the adequacy and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Voinovich, the Municipality and the Consultant agree as follows:

1. **Services** The Services performed under this Agreement are set out and defined in the attached Statement of Work and Budget (Exhibit A) and shall be provided at times and for periods mutually agreed upon by Voinovich, Consultant and Municipality. The Consultant represents that Consultant is capable undertaking the Services in a professional manner and has the requisite training, education, experience and, if applicable licensure for satisfactorily performing the Services as an independent contractor (using Consultant's own facilities and equipment, except as described in a signed and dated attachment to this

AGREEMENT) for a number of clients, and not as an employee of Voinovich or the Municipality.

2. **Budget**. In consideration of the provision of the Services, Consultant shall be paid a cumulative amount not to exceed $35,200.00 and shall send invoices to Voinovich for payment on a monthly basis, with a copy to Municipality. Such invoices shall detail the date(s) on which services were rendered and the amount claimed. Invoices and back up documentation shall be sent to: Ohio University, Voinovich School, Building 21, Room 205A, The Ridges, Athens, Ohio 45701, Attention Amista Lipot or e-mailed to: lipot@ohio.edu.

3. **Funding.** Voinovich hereby agrees to disburse to the Consultant for the benefit of the Municipality an amount up to thirty-five thousand and two hundred dollars ($35,200.00) (the "Designated Funding") from the Grant Funds.

   Funding Source, limitation. It is understood and agreed that the funding source for disbursements under this agreement are limited to Grant Funds and subject to availability of sufficient Grant Funds. Under no circumstance shall Voinovich be required to expend funds from any other source for Designated Funding pursuant to this Agreement.

   Distribution. Voinovich will disburse specified amounts of the Designated Funding on behalf of the Municipality to Consultant to provide Services furthering the purpose that are satisfactory in form and substance in all respects to Voinovich and Municipality.

4. **Confidentiality.** During the course of this Agreement, Voinovich, Municipality and the Consultant may provide each other with Confidential Information. Confidential Information shall include certain valuable and proprietary information of a party related to the Purpose, and all such Confidential Information hereunder provided shall be designated in writing as such by the discloser. Confidential Information shall not include: (a) information which is, or later becomes, generally available to the public through no fault of the recipient; (b) information which is provided to the recipient by an independent third party having no obligation to keep the information secret; (c) information which the recipient can establish was previously known to it or was independently developed without reference to Confidential Information; and (d) information that is required to be disclosed to comply with applicable law or court order, including Ohio Revised Code Section 149.43, provided that the recipient gives prior notice of the required disclosure to the discloser.

   Voinovich, Municipality and Consultant each intend to maintain the confidential status of their Confidential Information. Each shall exercise reasonable care to protect Confidential Information from disclosure to third parties; no such disclosure shall be made without the other's written permission. Upon termination or expiration of this Agreement, Voinovich, Municipality and Consultant shall comply with the other's written request to discontinue using and/or return all Confidential Information, except that Voinovich may retain one copy of Confidential Information provided to it for archival purposes. This confidentiality provision shall continue for a period of three (3) years following the termination or expiration of this Agreement.

5. **Intellectual Property.**

(a) *Work for Hire.* Consultant agrees that this is a work for hire effort and as such, during the period in which Services are being rendered under this Agreement, or any Statement of Work, any and all Project Intellectual Property and all Technical Information will be promptly reported to Voinovich and Voinovich shall own all right, title and interest to such Project Intellectual Property and Technical Information; provided, that, Consultant's Background Intellectual Property shall be the sole and exclusive property of Consultant.

(b) *License from Consultant.* To the extent that any Consultant Background Intellectual Property is incorporated in or combined with any deliverable or otherwise necessary for the use of any deliverable or any Service, Consultant hereby irrevocably grants to Voinovich and Municipality a royalty-free, full paid-up, perpetual, transferable, sublicensable, worldwide, non-exclusive license to use, perform, display, reproduce, distribute, modify, make derivative works of, make, have made, sell, offer to sell, import, and otherwise exploit such Consultant Background Intellectual Property.

(c) *License from Voinovich.* Voinovich hereby irrevocably grants to Municipality a royalty-free, full paid-up, perpetual, transferable, sublicensable, worldwide, non-exclusive license to use, perform, display, reproduce, distribute, modify, make derivative works of Project Intellectual Property.,

(d) *Definitions.* For purposes of this Section 5, the following definitions apply:

(i) "Background Intellectual Property" shall mean intellectual property owned or controlled by either party that was in existence prior to or first produced outside this Agreement or the Prior Agreements and which are necessary to perform the Services.

(ii) "Project Intellectual Property" shall mean all discoveries, copyrightable works, software, inventions or improvements made, conceived, or first actually reduced to practice by Consultant in performance of the Services.

(iii) "Technical Information" shall mean all notes, drawings, designs, computer code, technical data and information generated by Consultant in performance of the Services.

6. **Reporting Requirements.** Both Consultant and Municipality will actively assist Voinovich, during the term of this Agreement and thereafter, in gathering and providing to Voinovich timely information, as reasonably requested on a quarterly or as needed basis, about the Consultant, its services, products, and operations, as Voinovich may reasonably request, including without limitation the information set forth in Exhibit B (the "Reporting Requirements") attached hereto and as amended from time to time in Voinovich's sole discretion. The Consultant and Municipality acknowledge that their timely delivery of true, accurate, and complete information as provided in the Reporting Requirements is essential to this Agreement and to Voinovich's ability to comply with State Grant Agreements.

7. **Notices.** Any notice or other communication required or permitted to be given or made under this Agreement will be in writing and will be deemed effective when sent in a manner that provides confirmation or acknowledgement of delivery to the address listed below. Notices made under this Agreement may be delivered via e-mail provided such notice is confirmed in writing as indicated. The Consultant shall have an obligation to update any changes to the Consultant's contact information within thirty (30) days of any such change.

   If to VOINOVICH:

   Amista Lipot
   Address: 1 Ohio University
   Building 21, The Ridges
   Athens, OH 45701
   lipot@ohio.edu

   If to the Consultant:
   Name: Mitch Altier
   Address:5085 The Plant Road
   City: New Lexington
   Phone: 740-341-6695
   Email: mitch.altier@arcadis.com

   If to Municipality:
   Name: Jennifer Lyle
   Address: 2 W. Main Street
   City: New Concord
   Phone: 740-826-7671
   Email: jlyle@newconcord-oh.gov

8. **Representations and Warranties.** The parties each represent that they have the full corporate power and authority to enter into this Agreement, that this Agreement constitutes the binding legal obligation of them, and that the execution and performance of this Agreement will not violate or conflict with any other agreement to which that party is bound or with any law, rule, or regulation applicable to that party.

9. **Limitation on Warranty.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, VOINOVICH, OHIO UNIVERSITY, THEIR TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND AFFILIATES (collectively the "LIMITED PARTIES") MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, ACCURACY, COMPLETENESS, USEFULNESS AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT DISCOVERABLE. THE LIMITED PARTIES SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER THEY ARE ADVISED, HAVE OTHER REASON TO KNOW, OR IN FACT DO KNOW OF THE POSSIBILITY.

10. **Indemnification.** The Consultant shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold Voinovich and Ohio University, their trustees, directors, officers, employees, agents and affiliates (collectively the "Indemnitees") harmless against all claims, proceedings, demands and liabilities or any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property resulting from any action of Indemnitees pursuant to this Agreement.

11. **Audits.** During performance of this Agreement and for a period of three (3) years after its completion, Municipality and Consultant will maintain records of all charges pertaining to this Agreement in a manner that is properly organized and will make such records available to Voinovich as Voinovich may reasonably require. All audits of Municipality or Consultant by Voinovich will be conducted in a manner that does not unreasonably interfere with the conduct of the audited party's operations. If any such audit discloses a deficiency, the audited party will promptly pay Voinovich any deficiency and, if the deficiency is material, the cost of the audit.

12. **Entire Agreement.** This Agreement and the State Grant Agreement constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement. No prior verbal agreement, conversation, understanding, or representation between any officers, agents, or employees of the parties, either before or after the execution of this Agreement, shall affect or modify any of the terms or conditions of this Agreement

13. **Severability.** Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

14. **Subject to State Grant Agreements.** This Agreement is made subject in all respects to the terms and conditions of the State Grant Agreement and is subject to all conditions set forth or referenced therein, notwithstanding anything in this Agreement to the contrary.

15. **Governing Law, Jurisdiction.** The validity and interpretation of this Agreement and the legal relationship of the Consultant and Voinovich shall be governed by the laws of the State of Ohio, notwithstanding any choice of law or conflict of law principles. All actions regarding this Agreement shall be brought in the Court of Claims of Ohio, and the Consultant agrees that exclusive venue in such court is proper.

16. **Assignment**. This Agreement shall not be assigned by the Municipality or the Consultant without the prior written consent of Voinovich. Any assignment not made in accordance with this provision shall be void.

17. **Use of Names.** The Consultant shall not use, either directly or indirectly, the name of Voinovich, Ohio University, or any of their directors, officers, employees, affiliates,

agents, students or board members in any publicity or advertising unless a copy is submitted to and approved in writing by Voinovich.

18. **Publications.** Any work arising from services rendered under this Agreement shall not be published or otherwise disclosed by the Consultant to third parties without first obtaining written approval from Voinovich.

19. **Headings**. Section headings are provided for convenience of reference only and are not to be used in construing the Agreement.

20. **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by the Consultant of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Voinovich of any of its rights hereunder.

21. **Relationship of Parties**. The parties each expressly acknowledge that nothing in this Agreement is intended to nor shall be construed to create an employer-employee, principal-agent, or joint venture relationship such that either party may exercise factual or legal control or discretion over the manner or method by which the other party performs its duties.

22. **Amendment.** This Agreement may only be amended in writing signed by the parties hereto, except that Voinovich may amend Exhibit B in its discretion to comply with reporting requirements of the State Grant Agreement.

23. **Further Action.** All parties agree to do, execute, acknowledge, and deliver all contracts, agreements, and other documents and to take all actions reasonably necessary or desirable to comply with the provisions of this Agreement and the intent thereof.

24. **Ethics Law**. In accordance with Executive Order 2019-11D, Consultant and Municipality certify that each: (1) has reviewed and understands Executive Order 2019-11D, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, including, without limitation, Ohio Revised Code 102.01 et seq., 2921.01, 2921.42, 2921.421 and 2921.43, and 3517.13 (I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time.

25. **Open Trade**. ORC 9.76 (B) Pursuant to R.C 9.76 (B) Consultant warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the period of this Agreement.

26. **No Findings for Recovery**. Consultant warrants that it is not subject to an unresolved Finding for Recovery under Ohio Revised Code Section 9.24. Supplier agrees that if this representation is deemed to be false, this Agreement will be void ab initio, and Supplier must immediately repay all funds paid under this Agreement.

27. **Debarment.** Consultant certifies that it is not currently now nor will be during the term of this Agreement suspended or debarred by the federal government or State of Ohio from participating in federal or state funded projects.

28. **Executive Order 2022-02D**. No State educational institution will make any purchase from or investment in any Russian institution or company. Consultant affirms they understand the requirements of this prohibition and agree to comply with Executive Order 2022-02D to the extent applicable under this Agreement.

29. **Termination of this Agreement.** This Agreement is effective when signed by all parties and shall extend for a period of six (6) months from the effective date of August 15, 2025, ending on February 28, 2026, unless sooner terminated as provided herein. Voinovich may terminate this Agreement at any time, with or without cause, immediately upon providing written notice of such termination to the Consultant and Municipality, provided that upon such termination Voinovich shall remain obligated to transfer and pay such Designated Funding on behalf of the Municipality to Consultant for work actually and satisfactorily performed up to the date of termination of this Agreement. Except as set forth herein, Voinovich will have no further obligation to Municipality or Consultant after termination.

30. **Survival.** Sections 4, 6, 7, 8, 11, 12 18, 19 and any other provision which by its terms so provides shall survive termination.

31. **Conflict of Documents**. In the event of a conflict between the terms and provisions of this Agreement and any Statement of Work or Current Statement of Work, the parties' rights and obligations shall be controlled by the terms of this Agreement, unless such Statement of Work or other properly-executed document expressly states the parties' mutual intent to amend this Agreement.

The authorized signatures of Ohio University on behalf of Voinovich, the Municipality and the Consultant below signify their acceptance of the terms of this Agreement.

On Behalf of the Consultant:

_____
Name: _Mitch Altier_____
Title: _ Associate Principal_____
Date: _____

On behalf of the Municipality:

_____
Name: Jennifer Lyle_____
Title: _Mayor_____
Date:_____

On Behalf of Ohio University:

_____
Name:_Julie Allison_____
Title: Assoc. VP for Finance___
Date:_____

EXHIBIT A
Scope of Work/Budget

As requested, I have looked at the slip area along North Crooked Creek at the Village's wastewater treatment plant. Limited access and space between the plant and the creek will impact the type of retaining wall that can feasibly be constructed. If suitable foundation materials are present, the most cost-effective solution would probably be a pre- cast gravity retaining wall. Other potential options include cast in place concrete and auger cast H piles. The final wall design will be based on the soil boring results. Regardless of the wall type, permits will need to be obtained from the Army Corps of Engineers and Ohio EPA. Based on our site review, we propose completing the following:

1. Complete a soil boring at the site to determine the existing soil characteristics and subsurface conditions.
2. Complete a topographic survey of the site including all field located utilities.
3. Design approximately 100 feet of retaining wall.
4. Complete a Nationwide Permit for the Army Corps of Engineers and Ohio EPA. The completed Nationwide permit will include the following required items:
    a. Delineation of environmental features including water bodies and wetlands and establish the ordinary high-water mark.
    b. Complete a desktop cultural resources assessment to identify any potential effects on historic properties.
    c. Complete rare, threatened, and endangered species coordination through a US fish and wildlife database request to determine threatened and endangered species that may occur in the project area.

Arcadis will complete the above scope of work for the following fees:

Item 1	$10,120
Item 2 & 3	$9,060
Item 4	$16,020
Total	$35,200

EXHIBIT B

REPORTING REQUIREMENTS

Consultant Reporting Requirements:

1. The Ohio University Voinovich School of Leadership and Public Service ("Voinovich") requires the Consultant to submit Progress Reports every 90 days (three months) from the effective date of this agreement, and a Final Report that covers the entire contract period of performance, which should also include an invoice for payment. Should the period of performance be shorter than 90 days, a Final Report and invoice is all that is required. This report is essential for maintaining compliance with grant regulations and ensuring transparency.

Please include the following in all Reports:

PROJECT TILE
Consultant Name:
Project Start Date:
Project Expected End Date:
Project Director/Point of Contact:
Name, Phone Number, Email of individual completing this report:
Reporting Period:
Progress Report Y/N or Final Report Y/N:

PROJECT OVERVIEW:

- Briefly describe the project's purpose, goals, and objectives.

ACCOMPLISHMENTS & ACTIVITIES <insert dates of reporting period>:

- Detail the specific activities carried out during the reporting period/project.
- Include a copy of the final product/deliverable.

CHALLENGES AND INSIGHTS:

- Discuss any challenges faced during project implementation.
- Share insights and lessons learned that can benefit future projects.

FINANCIAL SUMMARY:

- Break down project expenditures, including personnel costs, equipment, supplies, and other expenses.

NEXT STEPS & RECOMMENDATIONS:

• Outline future plans/next steps Voinovich or municipality should consider related to project.

CERTIFICATION:

Consultant signs to certify accuracy and completeness – Example:
I certify that the information provided in this report is accurate and complete to the best of my knowledge.

Signature _____ Date _____

2. The Ohio University Voinovich School of Leadership and Public Service ("Voinovich") requires the Consultant to complete a satisfaction survey. The survey will be sent electronically to mitch.altier@arcadis.com and will include the following three questions:

1. How would you rate your experience engaging with the Municipality to complete your scope of work?
2. How would you rate your experience engaging with the Mayors' Partnership for Progress staff, from contract/engagement through the period of performance?
3. What other information would you like to provide about your experience?

Municipality Reporting Requirements:

The Ohio University Voinovich School of Leadership and Public Service ("Voinovich") requires the Municipality to complete a satisfaction survey. The survey will be sent electronically to jlyle@newconcord-oh.gov and will include the following four questions:

1. How satisfied are you with the consultant selected to work on your project?
2. How would you rate the experience of working with the consultant?
3. How would you rate the quality of the final product received from the consulting firm?
4. How would you rate the quality of service you received from the Mayors' Partnership for Progress staff?
5. What other information would you like to provide about your experience?

Voinovich reserves the right to determine the content and format of all reports required by this Agreement to be delivered by the Consultant and/or the Municipality and to modify the form and content from time to time during this Agreement.