

**RESOLUTION NO. 12-2020**

**A RESOLUTION AUTHORIZING THE VILLAGE ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH ARCADIS, INC. FOR THE PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR THE DEVELOPMENT OF A SOURCE WATER PROTECTION PLAN.**

**WHEREAS**, the Council of the Village of Loudonville has determined that it is in the best interests of the Village to develop a source water protection plan; and

**WHEREAS**, the Council of the Village of Loudonville wishes to use the services of Arcadis, Inc. for the development of said plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF LOUDONVILLE, STATE OF OHIO:**

**SECTION 1:** That the Village Administrator of the Village of Loudonville, Ohio is hereby authorized and directed to enter into an agreement with Arcadis, Inc., pursuant to terms and conditions contained in the attached Exhibit "A" incorporated herein by reference.

**SECTION 2:** This Resolution shall take effect and be in force on the earliest date allowed by law.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Stephen Stricklen, Mayor

Attest:

\_\_\_\_\_  
Elaine Van Horn, Fiscal Officer

Approved:

\_\_\_\_\_  
Thomas R. Gilman, Village Solicitor

**EXHIBIT C  
WORK AUTHORIZATION  
NO. 1**

This Work Authorization is entered into by and between Arcadis, Inc., a corporation chartered under the laws of the State of Delaware (“Arcadis”) and the Village of Loudonville (“Client”). This Work Authorization incorporates by reference the Professional Service Agreement entered into by the Parties dated March 5, 2020 (the “Services Agreement”). The Services Agreement is hereby amended and supplemented as follows:

**1. GENERAL DESCRIPTION OF BASIC SERVICES**

Client hereby authorizes Arcadis to perform the following general scope of Basic Services:

- Update and Development of a Source Water Protection Plan for the Village of Loudonville Well Field

1.2 Client authorizes Arcadis to provide the Basic Services described in this Work Authorization in connection with the following Project or Site(s):

- Village of Loudonville Well Field

1.3 The above-described Basic Services shall be provided by Arcadis in phases, as set forth below. (N/A indicates phase is not applicable to services to be provided under this Work Authorization).

**2. STUDY AND REPORT PHASE**

During the Study and Report Phase, Arcadis shall:

- Update the Potential Contaminant Source Inventory for the Well Field and Prioritize the Identified Potential Contaminant Sources
- Develop a Source Water Protection Management Plan including:
  - Assisting the Village in in Forming a Protection Team
  - Developing an Education and Outreach Plan
  - Developing Water Shortage and Emergency Response Plans
  - Developing a Groundwater Monitoring Plan
  - Assisting the Village in Selecting Source Water Protection Strategies
- Present the Source Water Protection Plan to the Protection Team
- Prepare a Plan Summary Document for submission to the Ohio EPA

The number of copies of the Report will be submitted to Client are (3). The Report shall be submitted to Client within 120 calendar days of the effective date of this Work Authorization.

**3. COMPENSATION FOR SERVICES**

**3.1 Lump Sum Method:**

3.1.1 Client shall pay Arcadis a lump sum fee of \$24,900 for Basic Services provided under this Work Authorization, which shall be paid by Client as follows:

- By check or wire transfer

**REMITTANCE INFORMATION**

To pay invoices by ACH or Wire –

**Bank: Bank of America**  
**ACH Bank routing (ABA) number: 071 000 039**

**Wire Transfer routing (ABA) number: 026 009 593**  
**Account number: 8188093937**  
**Account name: Arcadis US, Inc. Lockbox Account**  
**SWIFT Code for international payments: BOFAUS3N**

**Send eMail notifications of payment to:**  
**Remit-Mailbox@Arcadis-us.com**

To pay invoices by check, use the following information (FOR U.S. MAIL and COURIER DELIVERY)

**Please Remit To:**  
**Arcadis US, Inc.**  
**62638 Collections Center Drive**  
**Chicago, IL 60693-0626**

**4. SCHEDULE FOR SERVICES**

Arcadis shall perform the Basic Services described above in accordance with the following schedule:

- The Source Water Protection Plan can be completed within four months of the approval of this Work Authorization.

CLIENT	Arcadis
By:	By: <i>James E. Hays</i>
Title:	Title: Vice President
Date:	Date: March 5, 2020

## ARCADIS PROFESSIONAL SERVICES AGREEMENT (UNDER \$25K)

**This PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into and made effective as of this twenty third day of March, 2020 (the "Effective Date").**

### 1. PARTIES (individually a "Party" and collectively the "Parties")

CLIENT	Arcadis
Name: <u>Village of Loudonville</u> (the "Client") Address 1: <u>156 N Water St.</u> Address 2: <u>PO Box 150</u> City: <u>Loudonville</u> State: <u>Ohio</u> Zip: <u>44842</u>	Name: <u>Arcadis, Inc.</u> ("Arcadis") Address 1: <u>630 Plaza Drive</u> Address 2: <u>Suite 200</u> City: <u>Highlands Ranch</u> State: <u>Colorado</u> Zip: <u>80129</u>  The parties hereto acknowledge and agree that when individual Work Authorizations are necessary hereunder, all such Work Authorizations will be issued and executed by the appropriate Arcadis entity authorized and licensed to perform work in the respective state, country or province where the work is being performed.

### 2. PARTY REPRESENTATIVES

CLIENT REPRESENTATIVE	Arcadis REPRESENTATIVE
<b>Mail Originals:</b> <u>Village of Loudonville</u> <u>156 N Water St. PO Box 150</u> <u>Loudonville, OH 44842</u> Attention: <u>Curt Young</u> Telephone: <u>419-994-3214</u>  <b>With Copies To:</b> <u>Village of Loudonville</u> <u>156 N Water St. PO Box 150</u> <u>Loudonville, OH 44842</u> Attention: <u>Thomas Gilman</u> Telephone No.: <u>419-994-4892</u>	<b>Mail Originals:</b> <u>Arcadis</u> <u>100 East Campus View Boulevard, Suite 230</u> <u>Columbus, OH 43235</u> Attention: <u>Scott Nickamp</u> Telephone: <u>614-985-9160</u>  <b>With Copies To:</b>  <u>Arcadis</u> <u>100 East Campus View Boulevard, Suite 230</u> <u>Columbus, OH 43235</u> Attention: <u>Jim Hays</u> Telephone No.: <u>614-985-9204</u>

### 3. GENERAL TYPES OF SERVICES TO BE PERFORMED

Check each appropriate box:

Environmental     Infrastructure     PM/ CM  
 Other: Source Water Protection

The specific Services performed under this Agreement are detailed in the Work Authorizations approved by the Client and Arcadis attached hereto as Exhibit C.

### 4. SPECIAL TYPES OF SERVICES TO BE PERFORMED

Check each appropriate box:

Phase I ESA  
 Asbestos & Other Hazardous Materials  
 PM / CM  
 GPS / REACH

### 5. AGREEMENT

The following documents, as applicable, are attached hereto and are incorporated herein and form part of this Agreement:

- Exhibit C: Work Authorization(s)

### 6. EXECUTION

In witness hereof, and in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the Parties have caused this Agreement to be executed on the day and year first set forth above.

CLIENT	Arcadis
By:	By:
Name:	Name: <u>James E. Hays</u>
Title:	Title: <u>Vice President</u>

## **1. WARRANTY / CHANGES TO THE SERVICES**

- 1.1 Arcadis shall perform the professional Consulting Services ("Services") required under this Agreement in accordance with standard of care, skill, training, diligence and judgment normally provided by competent professionals who perform work of a similar nature, at the time and in the same geographical regions as the work described in this Agreement and any Work Authorization. Unless Arcadis expressly agrees otherwise in writing, any items not manufactured by Arcadis (including incidental materials and consumables used in the Services) shall carry only the warranty that the original manufacturers provide, and Arcadis gives no warranty on behalf of the manufacturers of such items.
- 1.2 Arcadis agrees to correct, at its own expense, any Service provided under this Agreement that does not conform to the standard of care herein for a period of one (1) year following the completion of that Service.
- 1.3 Services performed under this Agreement may be more fully described in specific detail in individual Work Authorizations, including schedule requirements, approved by the Client and Arcadis and attached hereto, and which shall constitute a part of this Agreement. Arcadis will perform Services using a combination of its own employees and employees of its affiliates, and the use of any such affiliate labor shall not be deemed a subcontract for purposes of this Agreement.
- 1.4 Arcadis shall have no obligation to commence the Services as stipulated in this Agreement and/or any associated Work Authorization until both this Agreement and the applicable Work Authorization are fully executed and delivered to Arcadis.
- 1.5 At any time after execution of this Agreement, Client may order changes in Arcadis Services consisting of additions, deletions, and revisions within the general scope of services being performed by Arcadis under this Agreement. Whenever a change in the scope and/or time for performance of services occurs, or if Client has notified Arcadis of a change, Arcadis shall submit to Client an estimate of the changes in cost and/or schedule, with supporting calculations and pricing. Pricing shall be in accordance with the pricing of this Agreement.

In addition, should Arcadis be obstructed or delayed in the commencement, performance or completion of the Services, without fault on its part, then Arcadis will be entitled to an adjustment in compensation and/or an extension in the completion time requirements.

## **2. TERMINATION OF AGREEMENT**

- 2.1 Either Party may terminate this Agreement without cause and/or for convenience after giving five (5) days' written notice to the other Party. However, Arcadis shall not have the right to terminate this Agreement, without cause, prior to completion by Arcadis of all Services required under the Agreement. In the event Client terminates Arcadis services without cause and/or for Client's convenience, Client shall be liable to promptly pay Arcadis for all work performed through the date of termination, all of Arcadis expenses directly attributable to the termination, including fair and reasonable sums for overhead and profit for work performed, and costs incurred by Arcadis in terminating any contracts entered into in connection with the performance of its Services.

## **3. USE OF DOCUMENTS**

- 3.1 All documents provided by Arcadis pursuant to this Agreement are instruments of service of Arcadis, and Arcadis shall retain an ownership and property interest therein (including the right of reuse) until Client has made full payment to Arcadis for such documents pursuant to this Agreement. All documents generated by Arcadis pursuant to this Agreement are not intended or represented to be suitable for reuse by Client or others on any other project, or for any purposes other than that for which the same were created without the prior written consent of Arcadis. Reuse of said reports or other material by Client for any other purpose or on other projects without written permission or adaptation by Arcadis for the specific purposed then intended shall be at the Client's and user's sole risk, without liability on Arcadis' part, and Client agrees to indemnify and hold harmless Arcadis from all claims, damages and expenses, including attorneys' fees, arising out of such unauthorized reuse by Client.

## **4. INDEMNIFICATION**

- 4.1 ~~The Parties shall at all times remain entirely responsible for the results and consequences of~~

~~their own negligence and agree to indemnify and hold harmless the other Party from and against any and all claims, losses, damages, costs and expenses, including attorneys' fees, which may arise or result from such Party's negligence.~~

## 5. LIMITATION OF LIABILITY

- 5.1 The total liability, in the aggregate, of Arcadis and its directors, officers, or employees, and any of them, to Client or anyone claiming by, under or through the Client for any and all injuries, claims, losses, expenses, and damages whatsoever arising out of or in any way related to Arcadis Services, shall be limited to the total fees paid to Arcadis under this Agreement.
- 5.2 The Client and Arcadis waive incidental, indirect, or consequential damages, loss of revenues or profits from claims, disputes or other matters in question arising out of or relating to this Agreement, whether such claims arise from negligence, breach of contract, or strict liability. This disclaimer and exclusion shall apply even if the express warranty set forth herein fails in its essential purpose.

## 6. PAYMENT TERMS

- 6.1 Client agrees to pay for the Services performed by Arcadis in accordance with this Agreement and any approved Work Authorization. The Work Authorization may also specify any required Mobilization Fee or other Retainer, Lump Sum Fees, then-current Hourly Billing Rates, and Reimbursable Expenses. Arcadis may adjust its rates annually, and at a minimum in accordance with the CPI-U Index plus one percent.
- 6.2 Arcadis shall invoice the Client every thirty (30) days for Services in accordance with Arcadis standard invoicing practices; provided however, Arcadis may in its reasonable discretion, invoice the Client in advance and/or bi-weekly, unless contrary to regulations or the Client's procurement procedures. Invoices are due and payable on receipt and should be remitted by check or wire transfer of immediately available funds as follows:
- Bank: Bank of America  
ACH Bank routing (ABA) number: 071 000 039

Wire Transfer routing (ABA) number: 026 009 593  
Account number: 8188093937  
Account name: Arcadis US, Inc. Lockbox Account  
SWIFT Code for international payments: BOFAUS3N

Send eMail notifications of payment to:  
Remit-Mailbox@Arcadis-us.com

To send a check, use the following information (FOR U.S. MAIL and COURIER DELIVERY)

Please Remit To:  
Arcadis US, Inc.  
62638 Collections Center Drive  
Chicago, IL 60693-0626

- 6.3 If Client fails to make any payment due Arcadis for services and expenses within thirty (30) days after receipt of invoice, the amounts due Arcadis will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from accounts not paid within thirty (30) days.
- 6.4 If Client reasonably objects to any portion of an invoice, Client shall provide written notification to Arcadis of Client's objection and the basis for such objection within fifteen (15) days of the date of receipt of the invoice, and the Parties immediately shall make every effort to settle the *disputed* portion of the invoice. The *undisputed* portion shall be paid immediately and Client shall not offset amounts due Arcadis for any credit or disputes arising under a different agreement or work authorization. Client shall waive any objections to Arcadis invoice if it fails to timely provide such written notice to Arcadis. If payment of invoices by Client is not maintained on a current basis, Arcadis may, after giving seven (7) days' written notice to Client, suspend further performance until such payment is restored to a current basis. All suspensions shall extend the time for performance by a length of time equal to the duration of the suspension, and Arcadis shall be paid for Services performed and charges incurred prior to the suspension date, plus suspension charges. Suspension charges shall include, without limitation, putting of documents and analyses in order, personnel and equipment rescheduling or reassignment adjustments, additional insurance/bonding

coverage, extended overhead and costs, and all other related costs and charges incurred and attributable to suspension.

- 6.5 If Arcadis is required to respond to legal process arising out of a proceeding related to the Services, Client or Site, then Client shall promptly reimburse Arcadis for its reasonable fees and expenses (including without limitation reasonable attorney's fees and other legal costs incurred by Arcadis in response to a subpoena, or request for the production of documents, for appearance of an Arcadis employee and/or agent at a deposition, trial or other legal proceeding) – provided that Arcadis is not a named party to such legal proceeding.

## **7. SITE CONDITIONS**

- 7.1 Arcadis shall not be liable for: (i) damage or injury to any subterranean structures (including, but not limited to, utilities, mains, pipes, tanks, and telephone cables) or any existing subterranean conditions; or the consequences of such damage or injury, if (with respect to this clause (i)) such structures or conditions were unknown and were not identified or shown, or were incorrectly shown, in information or on plans furnished to or obtained by Arcadis in connection with the Services; (ii) concealed conditions encountered in the performance of the Services; (iii) concealed or unknown conditions in an existing structure at variance with the conditions indicated by the Scope of Services; or (iv) unknown physical conditions below the surface of the ground that differ materially from those ordinarily encountered and are generally recognized as inherent in work of the character provided under this Agreement.
- 7.2 Client shall provide to Arcadis all plans, maps, drawings and other documents identifying the location of any subterranean structures on the Site. Prior to location of any drilling or excavation below the ground surface, Arcadis shall obtain the concurrence of the Client as to the location for such drilling or excavation.
- 7.3 Should: (i) concealed conditions be encountered in the performance of the Services; (ii) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Scope of Services; or (iii) unknown physical conditions below the ground differ materially from those ordinarily encountered and generally

recognized as inherent in work of the character provided under this Agreement; then the amount of this Agreement and/or time for performance shall be equitably adjusted by change order upon claim by either Party made within twenty (20) days after the first observance of the conditions.

## **8. ACCESS TO SITE**

- 8.1 During the term of this Agreement, Client shall grant to or cause to be made available to Arcadis reasonable and necessary nonexclusive access to the Site and other Sites, as necessary, for purpose of allowing Arcadis to perform the Services and fulfill its obligations under this Agreement. Arcadis shall comply with generally accepted safety procedures and all other safety procedures that have been communicated to Arcadis or its Personnel by Client. If the Site is sold or otherwise conveyed to a third party, Client shall immediately notify Arcadis if Client is unable to obtain necessary access within a timely manner. Should Arcadis be obstructed or delayed in the commencement, performance or completion of the Work, without fault on its part, by reason of not having full access to the Site, and then Arcadis will be entitled to an adjustment in compensation and/or an extension in the completion time requirements.

## **9. CONSTRUCTION COST ESTIMATES**

- 9.1 The Client shall advise Arcadis in writing before design commencement of any budgetary limitations for the overall cost of construction. Arcadis will endeavor to work within such limitations and will, if requested and included within the scope of services, submit to Client an opinion of probable construction cost. Opinions of probable construction cost will represent Arcadis' reasonable judgment as a design professional familiar with the construction industry, but does not represent that bids or negotiated prices will not vary from budgets or opinions of probable cost. Client acknowledges that neither Arcadis nor Client has control over the cost of labor, materials or methods by which contractors determine prices for construction.

## **10. PLAN INFORMATION**

- 10.1 If the scope of services provide for the preparation of plans or drawings by Arcadis, Arcadis makes no representations that all existing utilities are shown or that any utilities shown thereon are accurately depicted.

## 11. GENERAL PROVISIONS

**11.1 No Third Party Beneficiaries** - The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Client and Arcadis, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Client and Arcadis that sub consultants and any other person other than the Client or Arcadis receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

**11.2 Force Majeure** - Neither Party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by forces beyond its reasonable control, including without limitation, actions or inaction of any governmental agency, changes in law, strikes, lockouts, or other industrial disturbances, acts or omissions of third parties, compliance with any regulations, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics. If a Party is so impacted, in whole or in part, such Party will promptly notify the other Party in writing, explaining the reason for the delay. In the event of a force majeure event the time and costs of performance will be modified.

**11.3 Governing Law.** Arcadis and Client shall comply with all applicable federal, state and local laws, regulations or orders issued under such laws prohibiting any form of kickback, bribery or corrupt practices as defined in the Anti-Kickback Act of 1986, the Foreign Corrupt Practices Act and all other applicable federal, state, local laws, regulations or orders issued under such laws regarding kickbacks, bribery or corrupt practices. In addition, Arcadis and Client shall comply with all laws in effect at the time the Services are performed hereunder, which to the best of their knowledge, information and belief apply to their respective obligations under this Agreement. Client shall cooperate with Arcadis in obtaining any permits or licenses required for the performance of the Services.

**11.4 Excluded Services.** Client acknowledges the Services provided by Arcadis hereunder do not and shall not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) the practice of law or other legal services; (4) nor any form of professional accounting or insurance advisory services.

**11.5 Proprietary Rights.** Client acknowledges that Arcadis has developed proprietary systems, processes, apparatus, analytical tools, models, software, source code, know-how and methods which Arcadis uses in its business. Such systems, processes, apparatus, analytical tools, models, and methods, including all source code, software, patents, copyrights and other intellectual property, and all derivations, enhancements or modifications thereof made by Arcadis, including any made as a result of the Work or Services performed by Arcadis for Client hereunder ("Arcadis Intellectual Property"), shall be and shall remain the sole property of Arcadis. Neither the Client, nor any third party, shall acquire any right, title or interest in Arcadis Intellectual Property, regardless of whether the same was initially created, used or first reduced to practice in tangible or intangible form in the course of the provision of the Work or Services hereunder. In accordance with the terms of any Work Authorization(s) and/or "End-User License Agreement" (EULA), Arcadis hereby grants Client a royalty free, non-exclusive right to use any Arcadis Intellectual Property for its internal business purposes only, and to the fullest extent necessary for Client to enjoy the benefits of the Work or Services.