

Jacobs Civil Inc.
501 North Broadway
St. Louis, Missouri 63102-2121 U.S.A.
1.314.335.4000

January 15, 2003

Mr. R. Earnest Stickler
Utilities Superintendent
City of Mason
3920 St. Rt. 42
Mason, OH 45040

Dear Mr. Stickler:

RE: City of Mason – Construction Management Services Contract

Attached is the fully executed copy of the City of Mason contract for your records. As a part of our final executive review of this contract, we offer the following clarifications to this contract to confirm our expectations and understandings match those of the City of Mason:

Attachment A: "Scope of Services and Schedule of Values" shall govern all project tasks and costs for Phase I.

Attachment C: "Man-hours by Task/Classification" as submitted in our proposal dated 7/19/02 is included only to show staff personnel assigned for specific project tasks, as they relate to Attachment "A's" Scope of Services and Schedule of Values.

Attachment D: "1b. Key Personnel" section of our Proposal dated 7/19/02 specifies the project staff dedicated for both Phase 1 and Phase 2 of this project. Re-location of this staff to Mason will apply only if we provide Construction Management services for Phase 2 of the project.

Please feel free to contact me if you should have any questions regarding the attached information. We look forward to working with you and successfully completing this Project for the City of Mason.

Sincerely,



Wayne Lindsay
Midwest Regional Marketing Director

Attachment (1)

cc: Gary Brassler – Jacobs Civil
John Klepak – Jacobs Civil
Sheryl Hodges – Jacobs Civil

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into this 16th day of January, 2003, by and between CITY OF MASON, Ohio whose address is 202 West Main Street, Mason, Ohio 45040 ("Mason") and Jacobs Civil Inc. whose address is 1880 Waycross Road, Cincinnati, Ohio 45240 ("Jacobs").

SECTION 1. GENERAL DESCRIPTION OF PROJECT

Mason hereby retains Jacobs to perform and Jacobs hereby agrees to perform the professional services described in Section 2 according to the terms and conditions outlined herein. The project for which such services will be provided is generally described as follows:

General Description of Project: Preconstruction Phase Services, Construction Manager At Risk for a New Water Reclamation Plant ("Project")

SECTION 2. GENERAL DESCRIPTION OF PROFESSIONAL SERVICES

The Professional Services to be provided by Jacobs are identified and described in the "Scope of Services" (Attachment A to this Agreement), which is attached to this agreement and incorporated herein by reference (the "Services"). Jacobs shall provide the Professional Services of the personnel whose initials are listed, for the activities listed, on Jacobs' Manhours by Task/Classification, Preconstruction Management Activity (Section III: Preconstruction Services) document dated 7/19/02 and submitted by Jacobs in response to Mason's Request for Proposals. (Attachment C to this Agreement). Jacobs represents that the qualifications of personnel listed in its Proposal, captioned "Ib. Key Personnel" are accurate. (Attachment D to this Agreement).

Any services beyond those identified in this Agreement shall be considered Additional Services as more fully described in Section 6.16 and shall be authorized in writing by an Addendum to this Agreement executed by both parties. The parties contemplate that Mason may elect to negotiate with Jacobs, as part of the services required by this Agreement, the terms upon which Jacobs will furnish further services for the Project as a Construction Manager during the construction phase of the Project.

SECTION 3. CONTACT PERSON

Mason and Jacobs shall each appoint a contact person who shall have the authority to act on behalf of each party, including, by way of illustration and not by way of limitation, to define the scope of the Services, transmit instructions, receive information, and recommend changes in Professional Services. Any additional or revised fees must be approved by City Council. Jacobs shall not be required to perform services for which the City Council has not approved payment. The contact person for Mason shall be R. Ernest Stickler, Public Utilities Superintendent, City of Mason 6000 Mason-Montgomery Road, Mason, Ohio 45040, 513-229-8570 and the contact person for Jacobs shall be Gary E. Brassler, 501 North Broadway, St. Louis, MO. 63102, 314-335-4460.

SECTION 4. DATE OF COMMENCEMENT

The Date of Commencement for Services provided pursuant to this Agreement shall be the date on which the Agreement is fully executed. Jacobs shall perform its services with due and reasonable diligence consistent with sound professional practice.

SECTION 5. COMPENSATION AND DURATION

This Agreement shall remain in effect and Jacobs shall provide all services necessary as provided herein on or before _____, _____, 20____. If Services are not completed by the time required above as a result of unexcused delays within the control of Jacobs, then Jacobs shall be considered to be in default of this Agreement.

For and in consideration of the services rendered by Jacobs, Mason shall pay Jacobs a lump sum fee in the amount of \$148, 943, as invoiced, less amounts withheld by Mason pursuant to the provisions of Attachment B.

SECTION 6. TERMS AND CONDITIONS

6.1 Delayed Services: If Services Provider's Services are delayed for reasons beyond its control, the compensation provided for elsewhere in this Agreement and the time for performance shall be subject to equitable adjustment.

6.2 Invoice Procedures and Payment: Jacobs shall submit an invoice for its services at monthly intervals based on Jacobs' and Mason's estimate of the proportion of total services actually completed during the period for which the invoice is applicable. Invoices shall separately itemize reimbursable expenses. Payments of invoices will be due net 15 days after presentation and shall be made by wire transfer into an account designated by Jacobs. If there are disputed items and/or amounts on any invoice, the balance of such invoice, after deducting any disputed items, shall be paid in full, and the disputed items and amounts shall be presented to Jacobs for resolution as soon as such disputed items have been determined by Mason. Payments due but unpaid more than thirty (30) days after presentation of the invoice, excluding any amounts and items disputed by Mason, shall bear interest at one and one-half percent (1.5%) interest per month (or any lesser legal limit applicable) until paid. If Mason fails to timely pay compensation due to Jacobs, Jacobs may serve written notice thereof upon Mason, and if Mason fails within a period of twenty (20) days thereafter to correct such failure, Jacobs may terminate this Agreement upon written notice to Mason. Upon such termination Jacobs shall cease its performance of this Agreement and when paid the amount due for such work, shall deliver to Mason all completed or partially completed work for the Project.

6.3 Expert Witness Services: It is understood and agreed that Jacobs' services under this Agreement do not include any participation in any litigation. Should such services be required, a Professional Service Agreement Addendum may be negotiated between Mason and Jacobs describing the services desired and providing a basis for compensation to Jacobs.

6.4 Opinion of Probable Construction Cost/Cost Estimates: Mason hereby acknowledges that Jacobs cannot warrant that opinions or estimates of probable construction or operating costs provided by Jacobs will not vary from actual costs incurred by Mason. However, Jacobs shall be bound by and perform this service consistent with sound professional practice.

6.5 Indemnification: Jacobs agrees to provide the reasonable cost of defense, indemnify and hold harmless Mason, its agents, officials and employees, against any and all suits or claims that may be based on any injury to persons or property to the extent that such suits or claims are a result of the negligent acts, errors, or omissions of Jacobs or any person employed by Jacobs in connection with Jacobs' performance of this Agreement. In no event shall Jacobs have any duty to indemnify Mason hereunder against claims arising as a result of Mason's sole or contributing negligence. Jacobs' indemnity obligation does not include any third party claims or suits arising out of errors or omissions in Jacobs' services due to Jacobs being required, directly or indirectly, by Mason to take an action that is contrary to the recommendation of Jacobs or that has the effect of eliminating safety related features in order to meet funding limitations, or both.

When Mason receives a notice of claim for damages that may have been caused by Jacobs in the performance of Services required under this Agreement, Mason will promptly forward the claim to Jacobs. Jacobs and Mason will evaluate the claim and report their findings to each other within seven working days. Mason and Jacobs will jointly discuss options in defending the claim. After reviewing the claim, Mason will determine whether to require the participation of Jacobs in the defense of the claim or to require that Jacobs defend Mason in such claim as described herein. Mason's failure to notify Jacobs of a claim within seven days will not release Jacobs from any of the requirements herein upon subsequent notification by Mason to Jacobs of the claim. Mason and Jacobs will pay their own cost for the evaluation, settlement negotiations and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs, but if the verdict determines that there is joint responsibility, the costs and liability for damages will be shared in the same percentage as that judicially established.

6.5.1: Upon and after final completion of the Project, Mason shall defend, indemnify and hold Jacobs harmless from all claims and suits for damages arising from personal injuries, including death to persons, or to property, and from all judgments recovered therefor, and from all expenses for defending such claim or suit, including court costs and attorney's fees, which result from Mason's negligent use, operation or maintenance of the facilities, equipment or materials designed or provided by Jacobs under this Agreement.

6.6 Insurance: Without limiting its liability hereunder, Jacobs shall maintain during the life of this Agreement the following insurance and furnish Mason, in duplicate, certificates of insurance as evidence thereof. Such certificates shall provide that cancellation of said insurance shall not be effected without thirty (30) days prior written notice to Mason. The certificates shall plainly designate the name of the project for which the certificate is provided.

(1) Workers' Compensation Insurance, providing coverage in compliance with the laws of the state in which any part of the work is to be performed, and Employer's Liability Coverage in the minimum amount of \$100,000 for each occurrence.

(2) Commercial General Liability Insurance written on an occurrence basis with the following limits of liability:

General Aggregate	\$4,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising injury	\$2,000,000
Each occurrence	\$2,000,000
Fire Damage	\$25,000
Medical Expense	\$1,000

(3) Automobile Liability Insurance. Bodily injury and property damage combined single limit - \$1 million each occurrence, \$1 million aggregate.

(4) Architect's and Engineer's Professional Liability Insurance. Bodily injury and property damage combined single limit - \$1 million each occurrence, \$5 million aggregate.

The Commercial General Liability Insurance shall include Contractual Liability Coverage for the liability assumed by Jacobs in Section 6.5 herein. Mason shall be named an additional insured, to the extent of loss caused by the negligence of Jacobs, on the Commercial General Liability Insurance and Automobile Liability Insurance.

6.7 Assignment/Third Parties: Neither Mason nor Jacobs will assign or transfer its interest in this Agreement without the written consent of the other. Jacobs, however, does reserve the right to subcontract any portion of the Services with prior written consent of Mason. Jacobs shall insure and be liable for the work of its subcontractors. Nothing in this Agreement shall be construed as creating any rights or benefits in this Agreement to anyone other than Mason and Jacobs, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Mason and Jacobs and not for the benefit of any other party.

6.8 Suspension, Termination, Cancellation, or Abandonment: Mason may, upon written notice, terminate this agreement at any time for its convenience. In the event the Project identified in this Agreement is suspended, canceled, or abandoned by Mason, thereby suspending, delaying, or terminating the services called for herein, Jacobs shall be given 15 days' prior written notice of such action and shall be compensated for the Services provided and reimbursable expenses incurred up to the date of termination, suspension, cancellation, or abandonment. If Mason delays or suspends Jacobs' services for more than 180 days, then Jacobs may terminate this Agreement upon giving fifteen (15) days' written notice. Either party may terminate this Agreement upon the other's filing for bankruptcy, insolvency, or assignment for the benefit of creditors. Except as provided otherwise in Section 6.2 of this Agreement, either party may terminate this Agreement for cause upon thirty (30) days' written notice of a failure by the other party to comply with any provision of this Agreement. The party receiving such termination notice shall have the right to correct its failure within seven days of receiving said notice, or if it cannot cure the default within seven days, proceeds diligently to cure and does cure within the 30-day notice period.

Pursuant to Section 5 of this Agreement, Jacobs shall not be obligated to commence services until this Agreement is fully executed. If Mason fails to execute this Agreement within 60 days of the date of receipt by Mason, Jacobs shall have the right to revise fees or revoke any proposal related to the services.

6.9 Disputes: If a dispute between the parties arises out of or relates to this Agreement, or the breach thereof, then the parties agree to make a good faith effort to settle the issue through direct discussion between the parties prior to having recourse to a judicial forum. Notwithstanding any other provision of this Agreement, the parties each waive their right against the other, and neither shall be liable to the other, for any punitive damages. In the event of any litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees, reasonable experts' fees, and other expenses of litigation. Excluding Jacobs' liability for bodily or personal injury, death, or damage to tangible property, which is not limited by this sentence, the total aggregate liability of Jacobs arising out of Jacobs' breach or performance of this Agreement shall not exceed an amount equal to the total compensation paid to Jacobs hereunder. Except as excluded by the previous sentence, the limitation and exclusion of liabilities expressed above shall apply to any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including but not limited to Mason's or Jacobs' or its subconsultant(s)' tort (including negligence), errors, omissions, strict liability, breach of contract or breach of warranty.

6.10 Standard of Care: Jacobs agrees to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the water reclamation plant engineering and pre-construction consulting and engineering services profession currently practicing under similar circumstances. If the failure to meet these standards results in deficiencies in its services, Jacobs shall furnish at its own cost and expense, the additional services necessary to correct such deficiencies. Jacobs agrees to perform the Services in accordance with any applicable federal, state, or local law or regulation.

6.11 Waiver: Any failure by Jacobs or Mason to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Jacobs or Mason may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

6.12 Relationship: Jacobs is an independent contractor to Mason in performing its Services under this Agreement and is not an employee, agent, joint-venturer, or partner of Mason.

6.13 Mason's Responsibilities: Mason shall provide Jacobs all pertinent data, criteria, and information including but not limited to design objectives and constraints, space and use requirements, operational information, budgetary limits, flexibility and expandability requirements, and any other available project data such as sketches, reports, prior designs, soil tests, surveys, and plans. Jacobs shall be entitled to rely on any and all information provided pursuant to this provision. Mason shall review Jacobs' work thoroughly and promptly, provide direction as necessary, and, if Mason at any time becomes aware of any defect, shall give notice of such defect in the work or services provided. Mason shall provide access to the project site. Mason shall, at the request of Jacobs, provide a statement of funds available for the Project, and their source.

6.14 Severability: Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

6.15 Use of Documents: All documents including electronic files thereof prepared or furnished by Jacobs pursuant to this Agreement are instruments of service with respect to the Project and Jacobs shall retain an ownership and property interest therein whether or not the Project is completed. Mason may make and retain copies for information and reference in connection with the use and occupancy of the Project by Mason and others; however, such materials are not intended or represented to be suitable for reuse by Mason or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Mason for the specific purpose intended will be at Mason's sole risk and without liability or legal exposure to Jacobs, and Mason shall indemnify and hold harmless Jacobs from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Jacobs to further compensation at rates to be agreed upon by Mason and Jacobs.

6.16 Addendum/Additional Services: Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. The Agreement also may be modified by a formal, written amendment, change order or work change directive.

In addition, the requirements of this Agreement may be supplemented in minor variations and deviations and the work may be authorized by either the City Engineer's written approval or the City Engineer's written interpretation or clarification. Notwithstanding the foregoing, items of work and additional materials not included in the estimate of the original Agreement and in an amount in excess of \$10,000.00 shall be authorized only in written modifications to the Agreement.

Mason reserves the right, without impairing this Agreement, to order changes or alterations in the work to be performed hereunder by Jacobs. If changes or alterations ordered affect the cost or progress of the work, adjustment shall be made in the time for performance of the work and compensation owing to Jacobs, as the case may be. Mason may, at its sole discretion, authorize alterations or modifications in the specifications and plans or eliminate from the Project any portion thereof. Before Jacobs revises any work or service, the change in price for the revised services shall have been agreed upon in writing.

Jacobs hereby agrees to prepare and furnish as additional services, at Mason's option, and when authorized or confirmed in writing by Mason, an estimate of construction cost for the Project based on 100% complete construction documents, for the lump sum price of \$101,057.

6.17 Entirety of Agreement: This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto. If Mason issues a purchase order for the services provided by this Agreement according to Mason's purchasing procedures, the terms and conditions printed on such purchase order and its supplements or amendments are superseded by this Agreement, and are not applicable to the work. This Agreement shall be

governed by the laws of the state where the Project is located. This Agreement includes this document and, by this reference, incorporates the following as if fully set forth herein:

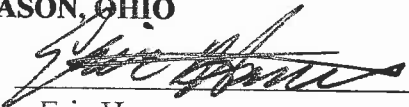
- Attachment A: Scope of Services and Schedule of Values
- Attachment B: Performance Incentive Provisions
- Attachment C: "Jacobs Manhours by Task/Classification, Preconstruction Management Activity (Section III: Preconstruction Services)" dated 7/19/02 and submitted by Jacobs in response to Mason's Request for Proposals
- Attachment D: "1b Key Personnel"
- Attachment E: Certificate by City of Mason Fiscal Officer

6.18 Notices: Any notice required hereunder shall be sufficiently given when sent to the signatories hereunder or to the above-named contact person via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

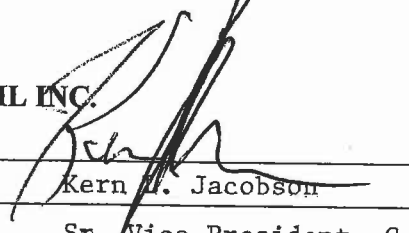
6.19 Confidentiality: Jacobs agrees to hold in confidence and not disclose to anyone other than (i) those of its employees required to know; and (ii) other City Staff any and all information and data provided by Mason which Mason designates in writing as confidential, without the prior written consent of Mason. This provision shall be an ongoing requirement and shall survive the termination and expiration of this Agreement.

IN WITNESS WHEREOF, this Agreement, which is subject to the terms and conditions of Sections 1 through 6 and Attachment(s), is accepted as of the date first written above.

CITY OF MASON, OHIO

Signed: 
 Typed: Eric Hansen
 Title: Asst. City Manager
 Date: January 8, 2003

JACOBS CIVIL INC.

Signed: 
 Typed: Kern L. Jacobson
 Title: Sr. Vice President, Central Region 1
 Date: 1/16/03

Attachment A

SCOPE OF SERVICES AND SCHEDULE OF VALUES

<u>Item No.</u>	<u>Description of Service</u>	<u>Cost</u>
1.	Review initial Project program, schedule and budget.	\$13,776.
2.	Conduct value engineering workshop and submit value engineering recommendations.	30,589
3.	Constructability Study: Review project progress and advise Owner regarding feasibility, materials, building systems, construction methods, availability of labor, and materials.	39,014
4.	Assess design schedule and recommend revisions, if appropriate.	5,061
5.	Review design engineer's estimate of construction cost.	26,610
6.	Advise designer regarding construction bid packages.	10,266
7.	Prepare estimated construction schedule.	8,544
8.	All other direct costs.	<u>15,083</u>
<u>Total Professional Services and Cost</u>		<u>\$148,943 Lump Sum</u>

Attachment B

Performance Incentive Provisions

Mason and Jacobs agree that Thirty-Seven Thousand Two Hundred and Thirty-Five Dollars (\$37,235) of the lump sum fee (the "at risk amount") will be placed "at risk" and paid to Jacobs only if Jacobs meets the performance standards described in this Attachment B. No more than the risk amount specified for each performance standard shall be withheld as a result of Jacobs' failure to meet the pertinent standard. The at risk amount is allocated to performance standards as follows: timely completion of value engineering – 30% (Item 1, below); amount of probable construction cost savings associated with value engineering – 30% (Item 2, below); and client satisfaction – 40% (Item 3, below).

The parties further agree that any portions of the lump sum fee that are not paid to Jacobs pursuant to these provisions will be reserved for possible future "risk" payments in the event that the parties agree to extend this Agreement to future phases of the Project. Mason may withhold payment to Jacobs to the extent provided and on the conditions set forth as follows:

1. Mason may withhold an amount not to exceed \$11,170 of payment for Work Item No. 2 if Jacobs fails to submit value engineering recommendations within twenty (20) business days (days other than weekends and legal holidays) of receiving the design engineer's cost estimate, plans and specifications, and being briefed thereon by the design engineer.

2. If Jacobs fails to recommend value engineering changes to the Project design, as depicted on the date of Mason's Request for Proposals for the Project, that result in probable cost savings of \$1,000,000 or more, then Mason may withhold from payment to Jacobs an amount equal to the product of \$11,170 and a fraction, the numerator of which is the difference between \$1,000,000 and the probable cost savings resulting from Jacobs' value engineering recommendations (but only if such probable cost savings are less than \$1,000,000) and the denominator of which is \$1,000,000. This amount may be expressed as follows:

$$\frac{\$11,170 \times (1,000,000 - \text{probable cost savings})}{1,000,000}$$

3. Mason shall respond in good faith to Jacobs' client survey at both the mid-point and conclusion of the preconstruction services furnished under this Agreement. Mason may withhold from payments otherwise due to Jacobs, for each survey on which Jacobs fails to receive 100%, an amount equal to the product of \$14,885 and a fraction, the numerator of which is the difference between 100 and the score actually received on the survey, and the denominator of which is 100.

Attachment E

Certificate

The undersigned Fiscal Officer of the City of Mason, Ohio hereby certifies that the monies required to meet the obligations of the City of Mason during the year 2003 under the aforesaid Agreement have been lawfully appropriated by the City Council of the City of Mason, Ohio for such purposes and are in the treasury of the City or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

January 08, 2003

Finance Director

