

**BETHANY ROAD WIDENING
UTILITY RELOCATION
REIMBURSEMENT AGREEMENT**

This agreement made and entered into by and between the Council of the City of Mason, hereinafter referred to as MASON, and the Board of Warren County Commissioners, hereinafter referred to as WARREN COUNTY, on behalf of the Warren County Engineer, hereinafter referred to as the COUNTY ENGINEER.

WITNESSETH:

WHEREAS, COUNTY ENGINEER has caused to be designed by KZF a project known as the Bethany Road Widening Project hereinafter referred to as PROJECT; and

WHEREAS, Bethany Road Widening will necessitate relocation of approximately 5,000 linear feet of existing force mains and appurtenant structures owned by MASON and located in the WARREN COUNTY right-of-way for Bethany Road; and

WHEREAS, MASON has previously entered into a separate agreement with KZF for the design of necessary relocation of City-owned force mains and appurtenant structures, hereinafter referred to as FORCE MAIN RELOCATION; and

WHEREAS, KZF has completed the design of relocated City force mains and appurtenant structures and has incorporated the design in the bidding documents prepared by COUNTY ENGINEER for the PROJECT; and

WHEREAS, It is the intent of the parties to this Agreement that MASON reimburse WARREN COUNTY for the actual cost of FORCE MAIN RELOCATION, as documented in approved progress payment requests submitted from time to time by WARREN COUNTY's contractor for the PROJECT, and not to exceed a total amount of \$240,000.00 without prior approval by MASON.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, MASON consents to the construction of FORCE MAIN RELOCATION as part of PROJECT by WARREN COUNTY with the understanding of the following:

1. MASON will pay 100% of the total cost of FORCE MAIN RELOCATION on the basis of invoices submitted by WARREN COUNTY to MASON, as documented in approved payment requests from WARREN COUNTY's contractor.

2. Per WARREN COUNTY bidding requirements, successful bidder will provide a contract bid bond with submission of bid and WARREN COUNTY will hold performance bond equal to the contract amount. The performance bond will not be released until work has been completed and accepted by WARREN COUNTY and MASON. In the event that the Contractor fails to perform the work according to the terms and conditions of the contract and to the satisfaction of WARREN COUNTY and MASON, WARREN COUNTY hereby agrees that it will use any bond proceeds from the Performance Bond to complete the Project according to the approved specifications.

3. WARREN COUNTY will supervise, monitor and inspect construction of the road improvements and bridge replacement portions of the PROJECT. WARREN COUNTY further agrees to ensure that the Contractor complies with all of the terms and conditions of the contract, including, but not limited to any prevailing wage requirements, and any similar requirements. WARREN COUNTY will further require the Contractor to submit affidavits indicating that any subcontractors or material suppliers on the Project have been paid in full.

4. Upon construction of the PROJECT according to the specifications and completion of the contract in accordance with applicable law, MASON will accept all portions of the PROJECT that are designated as MASON.

5. All personnel or agents of WARREN COUNTY and MASON shall, for the purposes of allocation of liability to third parties only, be deemed to be acting under the direction and control of their respective employer or principal and not under the direction and control of any other party to this Contract, and their employer or principal shall assume the risk of any liability to third parties arising from the conduct, acts or omissions of such personnel or agents. In the event of any claim or action arising from any circumstances to which this Contract applies, and whether or not a reservation of rights is made, the parties, as a condition of this Contract, shall give their full cooperation to any party defending such a claim or action.

The parties further recognize that (a) the parties are autonomous organizations (b) the parties have independent and separate boards of elected officials and officers responsible to manage their operations and affairs (c) the parties have their own separate assets, (d) the parties are not affiliated and neither has an interest in the other's organization, (e) the parties have the right and power to hire, supervise and fire their own employees and contractors, (f) the parties are responsible for carrying out and supervising their own services under this Contract, and (g) the parties do not control the day-to-day operations and affairs of the other party.

6. This Agreement may only be terminated by either party in the event of a material breach of this Contract, when the material breach remains uncured sixty days after written notice is given to the breaching party specifying the breach. A "material breach" is any failure of either party to fully comply with and perform any and all terms and conditions of the Agreement.

7. All notices required to be given hereunder shall be in writing and shall be sent to the following addresses:

If to WARREN COUNTY:
Neil F. Tunison, P.E., P.S.
Warren County Engineer
105 Markey Road
Lebanon, Ohio 45036

If to MASON:
Richard Fair, P.E.
Service Director
City of Mason
6000 Mason-Montgomery Road
Mason, Ohio 45040

8. Whenever the terms "WARREN COUNTY" and "MASON" are used herein, these terms shall include, without exception, the employees, agents, elected officials, successors, assigns and/or authorized representatives of MASON and WARREN COUNTY.

9. Neither party shall assign any of its rights or delegate any of its duties under this Contract without written consent of the other. Subject to the above provision, this Contract shall be binding on the successors and assigns of the parties.

10. This Agreement contains the entire Agreement between WARREN COUNTY and MASON with respect to the subject matter hereof and supersedes all prior written or oral contracts between the parties. No representations, promises, understandings, contracts or otherwise, not herein contained shall be of any force or effect.

11. No modification or amendment of any provisions of the Agreement shall be effective unless made by a written instrument duly executed by the party to be bound thereby, which refers specifically to this Agreement and the amendment of modification being made.

12. Should any judicial officer or tribunal of competent jurisdiction deem any portion of this Agreement unenforceable, the balance of this Agreement shall remain in full force and effect unless revised or terminated pursuant to any other section of this Agreement.

13. No waiver by either party by any breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of any breach of any other provision of this Agreement. The failure of either party at any time or times to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce the same at a later time.

14. This Agreement shall be construed in accordance with, and the legal relations between the parties shall be governed by, the laws of the State of Ohio as applicable to contracts executed and fully performed in the State of Ohio.

15. The signatures of the parties to this Agreement constitutes certification that the funds required for this Agreement will be available as required herein, for each appropriation period through the end of the term of this Agreement.

IN WITNESS WHEREOF, the Warren County Board of Commissioners, pursuant to Resolution No. _____, and the Mason City Council, pursuant to Ordinance No. _____, have caused this instrument to be executed this ____ day of _____, 2011.

Recommended by:

Recommended by:

Neil F. Tunison, Warren County Engineer

Richard Fair, City of Mason Service Director

**BOARD OF COMMISSIONERS OF
WARREN COUNTY, OHIO**

CITY OF MASON

By: _____
Pat Arnold South, President

By: _____
Eric Hansen, City Manager

Approved as to Form:

DAVID P. FORNSHELL,
WARREN COUNTY PROSECUTOR

By: Roger Sorey, Assistant Prosecutor

Approved as to Form:

JEFFREY D. FORBES,
MASON LAW DIRECTOR