

ORDINANCE NO. 99-186

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CDS ASSOCIATES, INC. FOR THE INSPECTION SERVICES NECESSARY TO EXTEND WATER AND SANITARY SEWER LINES UNDER INTERSTATE 71 SOUTH OF WESTERN ROW ROAD**

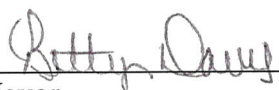
BE IT ORDAINED by the Council of the City of Mason, Ohio, **seven (7)** members elected thereto concurring:

Section 1. That the City Manager is hereby authorized and directed to enter into a contract with CDS Associates, Inc. for the inspection services necessary to extend water and sanitary sewer lines under Interstate 71 south of Western Row Road, in accordance with the proposal submitted by CDS Associates, Inc., which proposal is attached hereto as Exhibit "A", and incorporated herein by reference.

Section 2. That the Finance Director is hereby authorized to pay said CDS Associates, Inc. an amount not to exceed \$48,000.00 for said inspection services.

Section 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 8th day of November, 1999.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Clerk of Council

11/2/99

**CITY OF MASON**  
**PROFESSIONAL SERVICES AGREEMENT**

Professional Services Agreement is made this 8 day of November, 1999, by and between the City of Mason, Ohio, 202 West Main Street, Mason, Ohio 45040, hereinafter referred to as "City," and CDS Associates, Inc., hereinafter referred to as "Consultant."

**RECITALS**

The parties recite and declare:

A. City proposes to retain the professional services of Consultant for the project referred to as Construction Engineering Services to Extend Water & Sanitary Lines Under I-71, hereinafter "Project."

B. Consultant is willing and able to perform these professional services for consideration and upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the above Recitals, and the terms and covenants of this Agreement, the parties agree as follows:

1. Scope of Services.

The scope of services to be provided by Consultant are fully described as engineering construction services including furnishing an inspector to insure contractor compliance with the contract and oversee the daily construction; administer the agreement with the contractor; advise the City on the need for change orders; review shop drawings and applications for payment; attend preconstruction meeting and progress meetings during the contract; and provide record drawings showing "as-builts" conditions at the completion of the project. and CDS's scope of services, November 8, 1999, which are incorporated herein (hereinafter referred to as "Services").

2. Time of Services.

a. Consultant shall begin its Services no later than November 8, 1999, and the scheduled date for substantial completion is when the project is completed, approximately 24 weeks.

3. Fee for Services.

a. Consultant's fee for the Services to be provided for this Agreement shall not exceed \$48,000.00.

b. Consultant shall bill the City on a monthly basis based on the approved schedule of rates.

4. Responsibilities of City.

The City is a duly authorized and existing municipal corporation in the State of Ohio, and it has such power and authority as provided for by the Ohio Constitution, laws of the State of Ohio and by its charter. The City agrees to cooperate with Consultant to provide any available data relative to the Project. The City shall designate a representative to act on its behalf and to render decisions on its behalf concerning submittals by Consultant. The City shall obtain, or cooperate with Consultant to obtain, any approvals necessary for Consultant to enter upon private property.

5. Responsibilities of Consultant.

Consultant shall perform the Services required by this Agreement as expeditiously as possible, and with the professional skill and care ordinarily exercised by members of its profession. Consultant also agrees it shall not enter into any agreements with sub-contractors or sub-consultants to perform any of the work required of Consultant without the prior written consent and approval of the City. Consultant shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, the City of Mason Codified Ordinances and Construction Standards, in its performance under this Agreement.

6. Scope Changes.

Consultant agrees that the Services shall only be changed after the mutual consent of both parties by a written change order, unless this is expressly waived in writing by the City.

7. Confidentiality and Nondisclosure.

Consultant agrees to hold in confidence and not disclose to anyone other than those of its employees required to know and other City officials any and all information and data provided by City which it knows or has reason to know is confidential, without the prior written consent of the City. This provision shall be an ongoing requirement and shall survive the termination and expiration of this Agreement.

8. Independent Contractor.

Consultant agrees it is an independent contractor and is not an employee or agent of the City. The City shall not withhold any federal, state or local taxes from any fee paid to Consultant and Consultant shall be solely liable for all such taxes and withholdings. Consultant shall not be entitled to any employment benefits that employees of the City receive and its sole compensation shall be the fee provided for in this Agreement. Consultant shall not act or attempt to act as an employee or agent of the City and it shall not use the City's name, except as otherwise allowed by this Agreement, without the City's prior written consent.

9. Ownership of Documents.

All drawings, data, reports and other documents prepared by Consultant for the Project shall be the property of the City. Consultant shall provide full access to the work it is preparing to the City during normal business hours.

10. Insurance and Indemnification.

a. Consultant will purchase and maintain insurance coverage that will satisfactorily insure Consultant against claims and liabilities that could arise because of the execution of this Agreement. The insurance coverage shall include, but is not limited to, workers' compensation, general liability, automobile insurance and professional liability insurance.

b. Consultant agrees to indemnify and save harmless the City, its agents, officials, and employees, against any and all suits or claims that may be based on any injury to persons or property that is the result of an error, omission or negligent act of Consultant or any person employed by Consultant, except as is shown to be a direct result of City's ~~negligence~~ negligence.

11. Termination.

a. If Consultant defaults in the performance of this Agreement by failing to comply with the terms and conditions herein, and has failed to cure such default within ten (10) days after receipt of notice from the City, the City may immediately terminate this Agreement. In the event of such termination, the City shall take over the work and Consultant shall be liable to the City for any excess costs caused to the City by reason of such default. Further, in the event of such a termination, Consultant shall deliver to City all finished and unfinished documents, data and reports prepared by Consultant under this Agreement.

b. The City or Consultant may terminate this Agreement for convenience at any time by giving forty-five (45) days notice in writing to the other party. In the event of such a termination, Consultant shall deliver to City all finished and unfinished documents, data and reports prepared by Consultant, and Consultant shall be entitled to compensation for Services performed through the date of termination.

c. The City may terminate this Agreement immediately upon written notice to Consultant if it determines the information provided by Consultant and relied on by City in awarding this contract is false or incomplete, if Consultant is or becomes insolvent, enters into an agreement with its creditors, if a receiver is appointed for it or if it, or a third-party, files any petition or application under any bankruptcy laws, involuntary or voluntary, or is adjudicated a bankrupt. In the event of such a termination, Consultant shall deliver to City all finished and unfinished documents, data and reports prepared by Consultant.

d. Consultant, if not itself in default, may terminate this Agreement if the City does not authorize funds to pay for its Services or if a prior authorization is revoked. In the event of such a termination, Consultant shall be entitled to compensation for the Services it did perform and it shall deliver to City all finished and unfinished documents, data and reports prepared by Consultant.

e. If by reason of force majeure, defined as an act of God, strikes and lockouts, acts of public enemies, riots, earthquake, flood, war, fire or similar events, either party to this Agreement is unable to perform for at least thirty (30) days, the other party shall have the right to terminate this Agreement.

#### 12. Claims Between the Parties.

Any and all claims, disputes or other matters in question between the parties which arise out of this Agreement or the breach thereof, may be settled by arbitration in accordance with the Construction Industry Arbitration Rules of American Arbitration Association upon the mutual written consent of both parties. If both parties do not mutually consent in writing to arbitrate the claims, the parties retain their right to any and all legal remedies provided by law. In any event, the successful party shall be entitled to recover from the other party its expense, including reasonable attorneys fees, incurred in bringing or defending a claim.

#### 13. Miscellaneous.


a. This Agreement shall be governed by the laws of the State of Ohio, and any legal action shall be commenced in Warren County, Ohio.

b. The City and Consultant, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement, its successors, assigns and legal representatives, to all covenants and conditions of this Agreement. Neither party shall assign this Agreement without the written consent of the other.

c. This Agreement represents the entire agreement between the parties. This Agreement may only be amended by a written instrument signed by both parties.

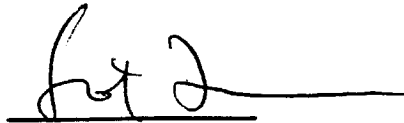
d. Nothing contained within this Agreement shall create a contractual relationship with or in favor of a third-party against either the City or Consultant.

Disclaimer: Asbestos & Hazardous Waste/Pollution

The ENGINEER/ARCHITECT hereby states, and the OWNER acknowledges, that the ENGINEER/ARCHITECT has no professional liability (errors and omissions) or other insurance, and is unable to reasonably obtain such insurance, for claims arising out of the performance of or failure to perform professional services related to asbestos or to hazardous wastes. The ENGINEER/ARCHITECT further acknowledges he will not perform work in these areas and if an asbestos, hazardous waste or pollution problem is identified on the OWNER'S site, a qualified consultant will be required. Accordingly, the OWNER hereby agrees to bring no claim for negligence or breach of contract against the ENGINEER/ARCHITECT. 

This Agreement is entered into as of the day and year first written above.

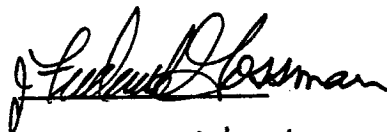
CITY OF MASON

By: 

Its: City Manager

CONSULTANT:

CDS Associates, Inc.

By: 

Its: Vice President