

**INTERSECTION IMPROVEMENT
BETHANY RD. AT BUTLER WARREN RD.
WATER MAIN INSTALLATION AGREEMENT**

This agreement made and entered into by and between 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, and the Council of the City of Mason, hereinafter referred to as MASON.

WITNESSETH:

WHEREAS, WARREN COUNTY desires to improve the intersection of Butler Warren Road at Bethany Road and MASON desires to install a water main along Bethany Rd. at Butler Warren Rd., pursuant to the plans attached hereto and incorporated herein, also known as Intersection Improvement Bethany Rd. at Butler Warren Rd., located in Warren County and Deerfield Township, hereinafter referred to as PROJECT; and

WHEREAS, Per Ohio Revised Code Section 6103.26, WARREN COUNTY and MASON desires to enter into a joint agreement to construct the PROJECT; and

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 the PROJECT by WARREN COUNTY with the understanding of the following:

1. WARREN COUNTY will construct a three-lane asphalt roadway, with left turn lanes at each approach of the intersection of Butler-Warren Road and Bethany Road (for WARREN COUNTY) and approximately 453 linear feet of 12" water main (for MASON), in accordance with the plans that are attached hereto and incorporated herein.
2. MASON will pay 100% the cost of the 453 linear feet of 12" water main and WARREN COUNTY will pay 100% the cost of the remaining construction of the PROJECT. MASON shall be invoiced monthly by WARREN COUNTY for the cost of the PROJECT. Mason shall be responsible for the payment of all items associated with the installation of the 12" waterline of any progress payments required by the contractor under the project less any retainage held by WARREN COUNTY to ensure the completion of the Project. WARREN COUNTY hereby agrees that it will not approve any change orders for the Project or any modifications to the approved plans which would increase the overall cost of the Project related to the 12" waterline installation without MASON's prior written consent.
3. WARREN COUNTY will advertise and open bids, review and award bid, enter into contract with successful bidder (the "Contractor") and administer the contract including payment of accepted work to contractor with the approval of MASON.

4. 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 the COUNTY ENGINEER 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 plans.

5. WARREN COUNTY will supervise, monitor and inspect construction of the PROJECT except the portion of the PROJECT including the installation of the 12" waterline and associated items. MASON will supervise, monitor and inspect construction of the 12" waterline and associated items. 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 men on the Project have been paid in full.

6. Upon construction of the PROJECT according to the approved plans and specifications and completion of the contract in accordance with applicable law, MASON will accept all portions of the PROJECT that are designated on the plans as MASON, specifically any water item related to the 12" water main and any connection made there to.

7. Upon acceptance of the Project by MASON and WARREN COUNTY, MASON shall be solely responsible for all maintenance and repairs associated with the 12" water main and any connection made there to. WARREN COUNTY will require the Contractor to submit a maintenance bond for the water mains for a period of one year. Any such maintenance bond shall be issued in the name of WARREN COUNTY and shall be issued in the amount sufficient to address any maintenance and repair requirements during the one year period for both WARREN COUNTY and MASON. In the event that there are any necessary maintenance repairs required by MASON during this period, MASON will immediately notify WARREN COUNTY of the necessary maintenance and repairs. Upon the expiration of the maintenance bond, WARREN COUNTY and MASON shall each be responsible for the maintenance and repairs associated with their respective portions of the Project.

8. MASON shall be listed as a co-insured under any insurance policy provided by the Contractor to WARREN COUNTY for the Project.

9. 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 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 do not have any interest therein, (e) the parties have the right and power to hire, supervise and fire their own employees and contractors, (f) the parties have the function of carrying out and supervising their services under this Contract, and (g) the parties do not control the day-to-day operations and affairs of the other party.

10. 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.

11. 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:

Ernie Stickler
Public Utility Superintendent
City of Mason
3920 N. U.S. 42
Mason, Ohio 45040

12. 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.

13. 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.

14. 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.

15. 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.

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

17. 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.

18. 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.

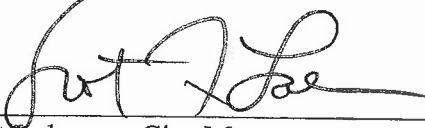
19. The signatures of the parties to this Agreement is certification that the funds required for this Agreement will be available as required herein, for each appropriation period through the end of the term of this Agreement.

IN WITNESS WHEREOF, the Warren County Board of Commissioners, pursuant to Resolution No. _____ and the Mason City Council, pursuant to Ordinance No. 2002-76 have caused this instrument to be executed this day of _____, 2002.

WARREN COUNTY

CITY OF MASON

By: _____
C. Michael Kilburn, President

By: 
Scot Lahrmer, City Manager

APPROVED AS TO FORM

Bruce McGary, Assistant Prosecuting Attorney