

## PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between CITY OF MASON, whose address is 6000 Mason-Montgomery Road, Mason, Ohio 45040 ("Mason") and Dennis R. Dean, dba Construction Management Services ("Service Provider").

### SECTION 1. GENERAL DESCRIPTION OF PROJECT

Mason hereby retains Service Provider to perform and Service Provider 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:

Inspection and construction management services for the Western Row Road and Snider Road Improvement Project.

### SECTION 2. GENERAL DESCRIPTION OF PROFESSIONAL SERVICES

The Professional Services to be provided by Service Provider are identified below:

Construction management services including, but not limited to: review of plans and specifications, inspection of utility installation, trench backfill, grading, paving, pavement marking, signage, detour routes, traffic control, materials, etc.; keeping a daily Journal of work performed, including site conditions, review of pay estimates and change orders; alerting Mason of problems encountered in the field; acting as a liaison between the City of Mason and residents; coordinating relocation of utilities; attending progress meetings; other similar construction management and inspection services. Service Provider shall provide photo documentation of the progress of the work, as directed by Mason and/or at the discretion of Service Provider. Such documentation shall include a videotape record of pre-construction conditions.

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.

### SECTION 3. CONTACT PERSON

Mason and Service Provider 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. The contact person for Mason shall be: Kurt Seiler and the contact person for the Service Provider shall be: Dennis Dean.

#### 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. Notwithstanding, upon execution of said agreement, compensation shall be retroactive to May 28, 2004, the date on which Service Provider actually commenced services. Service Provider 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 the Service Provider shall provide all services necessary as provided herein on an as needed basis. If services are delayed as a result of actions of the Service Provider beyond the above date, Service Provider shall be considered to be in default of the Agreement. Upon any default by the Service Provider, Mason may, at its sole discretion, in addition to any other remedies provided at law or in equity, terminate the Agreement, withhold outstanding compensation, and/or seek reimbursement for cost and time lost as a result of the Service Provider's inability to complete the Services.

The Service Provider shall be entitled to receive an hourly sum of \$50.00 for providing all requested Services as outlined in Section 2.

#### SECTION 6. TERMS AND CONDITIONS

**6.1 Delayed Services:** If services are delayed as a result of the Service Provider, Mason may seek remedial action as described in Section 5.

If services are disrupted or delayed as a result of the actions of Mason, the duration date specified in Section 5 of this Agreement shall be modified. If services are delayed for more than 365 days, the fees may be equitably renegotiated and mutually agreed to by the parties hereto.

If services are delayed as a result of circumstances beyond the control of Mason or the Service Provider for more than 365 days, this contract may be extended upon mutual agreement of the parties hereto.

**6.2 Invoice Procedures and Payment:** Service Provider shall submit invoices to Mason for Services rendered during each invoicing period, which shall generally be on a monthly basis. The amount of each invoice shall be based on hours accumulated during the invoicing period. Such invoices shall also separately list reimbursable expenses, if applicable. Such invoices shall be submitted not more frequently than monthly by Service Provider and shall be due and payable by Mason according to Mason's standard billing procedure.

Mason hereby acknowledges that unpaid invoices shall accrue interest at 1.5 percent per month after such invoices have been outstanding for over 60 days of receipt of the invoice; provided, however, that no interest will be assessed when a valid dispute has arisen between the parties.

**6.3 Expert Witness Services:** It is understood and agreed that Service Provider's 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 Service Provider describing the services desired and providing a basis for compensation to Service Provider.

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

**6.5 Indemnification:** Service Provider agrees to 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 ~~an~~ a negligent or wrongful error, omission or act of Service Provider or any person employed by Service Provider.

**6.6 Insurance:** Service Provider shall be solely responsible to provide for himself any and all medical insurance and/or disability insurance. Service Provider shall also maintain automobile liability insurance at all times.

**6.7 Assignment/Third Parties:** Neither Mason nor Service Provider will assign or transfer its interest in this Agreement without the written consent of the other. Service Provider, however, does reserve the right to subcontract any portion of the Services with prior written consent of Mason. Service Provider shall insure and be liable for the work of its subcontractors. Nothing in this Agreement shall be construed as creating any rights, benefits, or causes of actions for any third party against Mason.

**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 and except as expressly provided otherwise in Section 5, or upon any other default by Service Provider under this agreement, Service Provider shall be compensated for the Services provided and reimbursable expenses incurred up to the date of suspension, cancellation, or abandonment. If Mason delays or suspends Service Provider's services for more than 90 days, then Service Provider may terminate this Agreement upon giving fifteen (15) days' written notice. Mason may terminate this Agreement upon the Service Provider filing for bankruptcy, insolvency, or assignment for the benefit of creditors. Except as expressly provided otherwise in this Agreement, either party may terminate this Agreement for cause upon 30 days' written notice of a substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. The party receiving such termination notice shall have the right to correct its failure within seven days of receiving said notice.

Pursuant to Section 5 of this Agreement, Service Provider 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, Service Provider 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.

**6.10 Standard of Care:** Service Provider agrees to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Service Provider agrees to perform services in accordance with any applicable federal, state, or local law or regulation.

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

**6.12 Relationship:** Service Provider 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 Service Provider 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. Service Provider shall be entitled to rely on any and all information provided pursuant to this provision. Mason shall review Service Provider's 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.

**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 Electronic/CADD Documents:** Service Provider shall not make or permit to be made any copies or any modification to electronic media, plans, and specifications without the prior written authorization of Mason. Mason hereby authorizes Service Provider to make copies or permit its constituents to make copies as contemplated by or in the attached Scope of Services. Mason shall not be liable for any erroneous information supplied by Service Provider or third party that Service Provider relies upon and incorporates into an electronic file, or other documents, plans, and specifications.

**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 require minor variations and deviations in the work or services provided. This work shall not be considered to be additional services outside of the scope of Section 2 work by either party and may be authorized by the City Engineer's approval. 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 \$15,000.00 shall be authorized only in written modifications to the Agreement.

Mason may, at its sole discretion, authorize alterations or modifications in the specifications and plans or eliminate from the Project any portion thereof. Before the Service Provider revises any work or service, the change in price for the revised services shall have been agreed upon in writing.

**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, except that all terms and conditions contained in a Client purchase order or other standard or preprinted work authorization issued by Mason shall be null and void, even if such document is of later date. This Agreement shall be governed by the laws of the state where the services are performed.

**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:** Service Provider 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 it knows or has reason to know is 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 \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SERVICE PROVIDER**

Signed:   
Typed: D.R. DEAN  
Title: OWNER  
Date: July 29, 2004