

**I-71/WESTERN ROW ROAD/STATE ROUTE 741 INTERCHANGE
CONCEPTUAL ALTERNATIVES STUDY
REIMBURSEMENT AGREEMENT**

This agreement made and entered into by and between the Warren County Board of County Commissioners (hereinafter referred to as "WARREN COUNTY"), on behalf of the Warren County Engineer (hereinafter referred to as the "COUNTY ENGINEER"), and the City of Mason, an Ohio Municipal Corporation, 6000 Mason-Montgomery Road, Mason, Ohio 45040 (hereinafter referred to as "MASON").

WITNESSETH:

WHEREAS, WARREN COUNTY and MASON desire to expand a partial interchange on I-71 at Western Row Road to a fully operational interchange and to provide interchange improvements on I-71 at State Route 741 (aka Kings Mills Road) that have been identified as high priority projects in the Southwest Warren County Transportation Study adopted by OKI in October 2005; and

WHEREAS, in order to make improvements on the interstate highway system, a process more particularly described as Ohio Department of Transportation 's (ODOT) Project Development Process (PDP) requires a Conceptual Alternatives Study (hereinafter referred to as "STUDY"); and

WHEREAS, WARREN COUNTY and MASON agree to the need for the study and desire to share the costs associated with the STUDY; and

WHEREAS, pursuant to the authority of Ohio Revised Code Section 307.15, WARREN COUNTY and MASON desire to enter into a joint agreement to perform the STUDY; 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 performance of the STUDY by WARREN COUNTY, and the parties further agree to the following obligations:

1. MASON and WARREN COUNTY each will pay 50% of the total cost of the STUDY. WARREN COUNTY hereby agrees that it will not approve any increases to the contract price for the STUDY or any modifications to the scope of services which would increase the overall cost of the STUDY related to STUDY goals and objectives as they relate to road and streets under the jurisdiction of MASON without MASON's prior written consent.
2. MASON AND WARREN COUNTY agree to be active participants in the STUDY and coordinate together all data collection activities with the consultant as necessary, attend meetings with ODOT and the Federal Highway Administration (FHWA), and perform reviews and other activities necessary for the orderly flow of activities necessary for study approval by ODOT and FHWA.
3. MASON and WARREN COUNTY have requested qualification statements, have selected a consultant and received a proposal and scope of services from LJB, Inc. of Dayton, Ohio. The not-to-exceed contract amount is \$298,761.00.
4. MASON agrees to administration of the contract for the STUDY by WARREN COUNTY. WARREN COUNTY agrees to pay the consultant 100% of the contract

amount as invoiced monthly by the consultant. MASON agrees to reimburse WARREN COUNTY for 50% of the contract amount as invoiced monthly by WARREN COUNTY based on the monthly invoices from the consultant. MASON'S not to-exceed share is \$149,380.50 and WARREN COUNTY'S not to-exceed share is \$149,380.50.

5. Upon completion of the STUDY according to the scope of services and completion of the contract in accordance with applicable law, MASON will accept conclusions and recommendations of the STUDY that are designated as MASON'S.
6. 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.

7. 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 (60) 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.
8. 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.
City Engineer
City of Mason
6000 Mason-Montgomery Road
Mason, Ohio 45040

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

{continued on next page}

17. Execution:

IN EXECUTION WHEREOF, upon written recommendation of the Warren County Engineer, the Warren County Board of County Commissioners has caused this Agreement to be executed on the date stated below by C. Michael Kilburn, its President, pursuant to Resolution No. 06-1425, dated 8/24/06; and, upon recommendation of the City of Mason Engineer, the Mason City Council has caused this agreement to be executed on the date stated below by Eric Hansen, its interim City Manager, pursuant to Ordinance No. 2006-90, dated 8/14/06.

RECOMMENDED BY:
WARREN COUNTY ENGINEER

RECOMMENDED BY:
CITY OF MASON ENGINEER

BY: Neil F. Tunison

BY: Richard J. Fair

NAME: Neil F. Tunison, P.E., P.S.

NAME: Richard Fair, P.E.

TITLE: County Engineer

TITLE: City Engineer

DATE: 8/21/06

DATE: 8/15/06

WARREN COUNTY
BOARD OF COMMISSIONERS

CITY OF MASON

BY: C. Michael Kilburn

BY: Eric Hansen

NAME: C. Michael Kilburn

NAME: Eric Hansen

TITLE: President

TITLE: Acting City Manager

DATE: 8/24/06

DATE: 8/15/06

Approved as to Form:

Approved as to Form:

RACHEL HUTZEL,
WARREN COUNTY
PROSECUTING ATTORNEY

KENNETH J. SCHNEIDER,
CITY OF MASON
LAW DIRECTOR

BY: Bruce A. McGary
Bruce A. McGary, Asst. Prosecutor

BY: Kenneth J. Schneider
Kenneth J. Schneider, Law Director