



April 5, 2007

Mr. Art Oliver  
City of Mason  
3299 Mason-Morrow-Millgrove Road  
Mason, OH 45040

**Re: Sanitary Sewer for elimination of Bethany at Parkside Lift Station**

Dear Mr. Oliver:

We are pleased to submit this proposal for engineering services related to sanitary sewer design for elimination of the Bethany at Parkside Lift Station.

Understanding of Project

The City of Mason desires to install a new sanitary sewer on Bethany Road that will allow the elimination of at Bethany at Parkside Lift Station.

The Bethany Lift Station at Parkside pumps sewage through a force main to the south. There is an existing 8" sanitary sewer on Heartwood Lane that drains to the north. In 2005, LJB did a feasibility study that determined the sewer a new sewer could flow from the present station to the existing sewer at Oaks of Crooked Tree with a slope of 0.576%. A total of 1400 feet of 8" sewer would be needed. The estimated project cost was estimated to be \$150,000.

The City has received information from a developer that they would like to construct 8 homes in between Parkside and the Oaks of Crooked Tree. The Developer would like to start construction of these 8 homes in the Spring of 2007, with possible completion by the end of 2007. Mason would like to take this opportunity to construct the sanitary sewer on Bethany Road so that this development can connect directly into a gravity sewer rather than extend sanitary sewers to the existing Bethany at Parkside Lift Station.

The Bethany at Parkside Lift station services 256 lots. In 2005, there were about 219 homes contributing to the lift station as there were still 37 undeveloped lots.

There are about 200 homes in the Oaks of Crooked Tree Subdivision. There is concern that if the flow from the Bethany at Parkside Lift Station is added to the existing flow in the Oaks of Crooked Tree Subdivision, the existing sewer system could be overwhelmed. Art Oliver checked the GIS sanitary sewer map of the sewer through the Crooked Tree Golf Course. The GIS map showed there to be 8" sanitary sewers through that area.

Scope of Services

1. Determine existing flow into the existing Bethany at Parkside lift station by examining run times of the existing pumps. Determine the existing flow in the sewers at the Oaks of Crooked Tree Subdivision by installing a flow meter in the existing sanitary sewer for a period of 30 days. Determine the capacity of the existing sewer system by examining the sewer maps of the area and determining the minimum size and slope of the existing sewer system. Determine the likelihood of overwhelming the existing sewer system if the Bethany at Parkside lift station is eliminated. Assuming that the crooked tree sewers are capable of handling the existing flow, LJB will prepare detailed plans for the 1400 feet of sanitary sewer.
2. Contact utilities in the area to determine where existing utilities are located in the area. It is anticipated that the new sanitary sewer line will be located on the south side of Bethany Road within the Right-of-Way. It appears that both Warren County and Cincinnati Water Works have water lines on Bethany Road.
3. Prepare field survey of proposed construction area. The survey will be based on the state plane coordinate system based on existing Warren County benchmarks. LJB has already established survey control when the preliminary study was done in 2005. Survey will include locating visible property pins, but will not include resolution of any boundaries.
4. Prepare 40-scale base plan/profile construction drawings. The drawings will show all known utilities, right-of-way and property lines, topographic features and ground topography. It is anticipated that 2 plan and profile sheets will be needed to show the proposed 1400 feet of sanitary sewer.
5. Coordinate the design of the sanitary sewer drawings with the Developer of the 8 homes. (Bayer-Becker Engineers) It is expected that the construction of the Bethany sewer can be scheduled so that the sanitary sewer from the Development can connect directly into the new Bethany Road Sewer, eliminating the need to extend the Bayer-Becker sewer all the way to the existing lift station.
6. Prepare detailed construction cost estimates and OEPA Permit to Install Application Forms. Submit required drawings, specifications and permit applications to appropriate review agencies and make the modifications necessary to secure all approvals. Permit and plan review fees will be paid by City of Mason.
7. We have included the cost of two soil borings in our proposal. The soil borings are anticipated to be 20 feet in depth. We anticipate using ATC to conduct the soil borings.
8. Easement acquisition is not included in the scope of services. It appears that there may be easement required on the Rausch property at 5405 Bethany Road and at the Gill property at 5341 Bethany Road.

9. There are four properties on the south side of Bethany and six properties on the north side of Bethany that are tributary to the new Bethany Road gravity sewer. Some of these properties are within and some are outside the City Limits. Those properties currently have small-flow onsite sewage treatment systems. It is anticipated that sanitary laterals will be provided for those properties that are in the City of Mason. We will work with the City of Mason whether these property owners will be required or given the option to connect to the new sewer.

Services by the City

Provide historical run times of the pumps at the existing pumps at the Bethany at Parkside Lift Station. Provide sewer maps of the sewers through the Oaks of Crooked Tree. If needed, LJB will visit the existing lift station to determine the pump capacity of the existing pumps.

Engineering Fees

Listed below is our estimated engineering fee for the project. Also listed is an estimated time, in weeks, to complete the project from your notice-to-proceed.

Estimated Engineering Fee:	\$23,200
Estimated Completion Time -	12 weeks


Terms and Conditions

The terms and conditions attached hereto are hereby incorporated into this Proposal.

We appreciate this opportunity to provide engineering design services for the City of Mason. Should you have any questions concerning this proposal, please call. If you find this proposal acceptable, please sign below and return a copy to our office.

Sincerely,

LJB Inc.

  
Larry Kremer  
Project Manager

ACCEPTED

By: \_\_\_\_\_  
City of Mason

Date: \_\_\_\_\_

## Terms And Conditions

### **1. Client's Responsibilities**

- 1.1. Client Representative: Client shall designate in writing a representative authorized to act on behalf of Client with respect to the project and the services rendered by Design Professional. Such representative shall have authority to transmit instructions, receive information, grant approvals, and take such other action as may be necessary to avoid unreasonable delay in the progress of the performance of Design Professional's services.
- 1.2. Client's Requirements: Client shall provide full written information regarding Client's requirements for the project, including design objectives and restraints, schedule, space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Client will furnish to Design Professional copies of all design and construction standards, which Client will require to be included in drawings and specifications prepared by Design Professional.
- 1.3. Ancillary Services: Client will furnish to Design Professional, or allow Design Professional to obtain at Client's expense, such ancillary professional and other services as may be necessary or appropriate to proper performance of Design Professional's services and completion of the project. To the extent not included in the services to be performed by Design Professional, such ancillary services may include, without limitation thereto, those relating to environmental investigation and analysis; traffic flow and control; investigation of subsurface conditions; investigation of surface and subsurface water flow and the impact of the project thereon; and surveying activities and preparation of property descriptions.
- 1.4. Access to Site: Client shall secure rights of access for Design Professional to all property reasonably necessary to the performance of Design Professional's services.
- 1.5. Governmental Permits and Approvals: Client shall obtain (with Design Professional's assistance if so indicated in the description of Design Professional's services) all such governmental and regulatory permits and approvals as may be necessary for completion of the project.
- 1.6. Coordination: Client shall effectively and efficiently coordinate the activities of Client, Design Professional, other consultants, contractors and others involved in the project.
- 1.7. Reliance Upon Client Information: Design Professional shall have the right to rely upon any and all information supplied to Design Professional by or through Client, and Design Professional shall not have a duty to verify the accuracy of such information unless otherwise agreed in writing. Client shall hold harmless, indemnify and defend Design Professional as to any claims, liabilities or expenses related, directly or indirectly to Design Professional's use of or reliance upon such information.
- 1.8. Timely Performance: Client shall discharge its responsibilities, as set forth herein and as otherwise agreed, in a timely manner so as not to delay the services of Design Professional.

2. **Design Professional's Responsibilities**

- 2.1. **Time of Performance**: Design Professional will use its best efforts to complete its services in accordance with the mutually agreed upon schedule and to coordinate its services with other parties involved in the project so as not to cause delay or interference with the work of such other parties. If Client requests modifications or changes in the scope or extent of Design Professional's services, the time of performance of such services shall be appropriately adjusted.
- 2.2. **Additional Services**: Services not expressly included within the description of the services to be rendered by Design Professional are not covered by this agreement. In the event Client desires additional services and Design Professional is willing to provide such services, the parties shall execute a supplement to this agreement describing such services and setting forth Design Professional's compensation for performing such services.
- 2.3. **Standards**: Design Professional will strive to perform services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this agreement, or in any report, opinion, document, or otherwise.
- 2.4. **Insurance**: Design Professional shall maintain the following insurance at all times during Design Professional's performance of services for Client and, upon request by Client, provide certification evidencing such insurance; workers' compensation and employer's liability insurance in conformity with applicable law for its employees; and comprehensive general liability. Any additional insurance for the project obtained by Design Professional at Client's request shall be at Client's expense.
- 2.5. **Record Drawings**: Any record drawings to be prepared by Design Professional will be developed based upon bid specifications and plans as modified by actual construction. Information related to such modifications may be provided by others, including the construction contractors who are to document such modifications as part of their performance. Design Professional may rely upon such information and is not responsible for the accuracy of such information as it affects the record drawings. Record drawings serve to document substantial alterations between bid plans and actual construction and do not document minor alterations.
- 2.6. **Confidentiality**: Design Professional shall use reasonable efforts to preserve the confidentiality of any information identified by Client as confidential.
- 2.7. **Construction Services**: Design Professional is not responsible for the means, methods or sequences of construction or for the safety of workers or others at the construction site. Construction observation services are neither exhaustive nor continuous and consist of periodic visits to the project site intended only to determine whether construction is in general conformance with the construction contract documents. Design Professional is not responsible for the performance or nonperformance of any contractor or other third party involved in the project.
- 2.8. **No Third Party Responsibility**: Design Professional assumes no duty or responsibility, which may be construed as being for the benefit of, and therefore enforceable by, any contractors or subcontractors or their bonding companies. It is understood that Design Professional's obligations are solely to Client.

### 3. Compensation

- 3.1. Progress Payments: Client will be invoiced at the end of the first calendar month following the effective date of this agreement and at the end of each calendar month thereafter. Such invoices shall reflect billing for work performed and reimbursable expenses incurred by Design Professional during the month involved. Payment of an invoice is due upon receipt of the invoice by Client. In the event of a dispute regarding an invoice, Client shall pay all undisputed amounts pending resolution of the dispute.
- 3.2. Reimbursable Expenses: Reimbursable expenses are expenditures made by Design Professional, its employees or consultants in the interest of the project. Reimbursable expenses include, but are not limited to, (i) expense of transportation, subsistence and lodging when traveling in connection with the project; (ii) expense of long distance telephone charges, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the project; (iii) expense of all reproduction, postage and handling of drawings, specifications, reports and other project-related instruments of service; and (iv) expense of preparing perspectives, renderings and models.
- 3.3. Late Payment: Design Professional will assess a carrying charge of 1.5% per month on progress payments not made within 30 days of the date of invoice, which charge is payable by Client upon demand. Design Professional may, in its sole discretion and without notice, suspend or terminate its services in the event Client does not pay any amount invoiced within such 30-day period. Design Professional reserves the right to withhold from Client any drawings, specifications and other instruments of Design Professional's service developed for Client pending payment of Client's outstanding indebtedness.
- 3.4. Estimates: Estimates of construction cost, cost of Design Professional services, material quantities, and construction time provided by Design Professional are estimates only based upon Design Professional's opinion and are subject to change and are contingent upon factors over which Design Professional has no control. Except as may be otherwise specifically agreed in writing with respect to the cost of Design Professional's services, Design Professional does not guarantee the accuracy of such estimates.
- 3.5. Changes: The parties acknowledge that the nature of the project is such that Client may wish to make changes to the project. Client may at any time authorize changes in the services provided by Design Professional, issue additional instructions, request additional services, or direct omission of services previously ordered. After Design Professional reviews each change request made by Client, Design Professional shall advise Client in writing as to any necessary and appropriate fee adjustments for Design Professional's services arising from the change. After Design Professional receives Client's written authorization to proceed with such changes and Client's written approval of the corresponding fee adjustments, if any, Design Professional will proceed to implement such changes. Design Professional shall not be required to make changes to its work that it believes threatens the integrity or safety of such work.
- 3.6. Other Adjustments: Except as may be expressly provided otherwise in this agreement, Client recognizes that Design Professional's compensation for services during construction contemplates one construction contract being let and construction completion within the time contemplated by this agreement. If more than one construction contract is let, or if the period of construction is exceeded through no fault of Design Professional, Design Professional's compensation (including any estimate of such compensation) shall be

appropriately increased for services rendered in relation to such additional contracts or beyond such time period.

- 3.7. Serving as Witness or Consultant: In the event any principal or employee of Design Professional serves or is required to serve as a witness or consultant for Client in any litigation, arbitration or other legal or administrative proceeding involving the project, Client shall compensate Design Professional \_\_\_\_\_ of the standard hourly rates then in effect for hours devoted to giving testimony or providing consultative services and \_\_\_\_\_ of such rates for time devoted to preparation for such testimony or consultation. In addition, Client shall reimburse Design Professional for all related expenses.

#### 4. Design Professional's Liability

- 4.1. Limitation on Liability: Design Professional's liability to Client which may arise from or be due directly or indirectly to the professional acts, errors and/or omissions, including negligence, of Design Professional, its agents, employees or consultants shall be limited so as not to exceed the portion of Design Professional's fees (as indicated in this Agreement) applicable to that segment of Design Professional's services to which the act, error, omission or negligence relates. If Design Professional's fees are not broken down by segment in this agreement, Design Professional's liability shall not exceed the aggregate fees paid to Design Professional under this agreement.

#### 5. General

- 5.1. Ownership of Documents: All original tracings, notes, data and other documents prepared or furnished by Design Professional are instruments of professional service and shall be the property of Design Professional. Such instruments are prepared and intended only for use as an integrated set on the particular project and for the limited purposes specified. Modifications, or use on other projects, of such instruments of service, or copies thereof, without Design Professional's prior written consent shall be at Client's sole risk. Client shall hold harmless, indemnify and defend Design Professional as to any and all claims, damages, losses and expenses, including attorney's fees, arising out of any such modification or use.
- 5.2. Disputes Resolution: All claims, disputes, and other matters in controversy between Design Professional and Client arising out of or in any way related to this agreement will be submitted to alternative dispute resolution (ADR) before and as a condition precedent to other remedies provided by law. If and to the extent Client and Design Professional have agreed on methods for resolving such disputes, then such methods will be set forth in the alternative dispute resolution agreement which, if attached, is incorporated into and made a part of this agreement. If no specific ADR procedures are set forth in this agreement, then it shall be understood that the parties shall submit disputes to mediation as a condition precedent to litigation.

If a dispute at law arises from matters related to the services provided under this agreement and that dispute requires litigation instead of ADR as provided above, then:

- 5.2.1. The claim will be brought and tried in judicial jurisdiction of the court of the county where Design Professional's principal place of business is located and Client waives the right to remove the action to any other county or judicial jurisdiction, and
- 5.2.2. The prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, and other claim related expenses.
- 5.3. Termination: This agreement may be terminated by Client upon at least seven days written notice to Design Professional in the event that the project is permanently abandoned. In the event that either party (the defaulting party) shall breach or fail to comply with any provision of this agreement and such breach or failure shall continue for a period of seven days after the giving of written notice thereof by the other party, such other party may terminate this agreement immediately upon the giving of notice of such termination to the defaulting party. If this agreement is terminated through no fault of Design Professional, Client shall pay Design Professional for services performed and reimbursable expenses incurred in accordance with this agreement and, upon request, a termination adjustment equal to 15% of the estimated fee remaining to be earned at the time of termination to account for Design Professional's rescheduling adjustments, reassignment of personnel, and related costs due to termination.
- 5.4. Insolvency of Client: In the event client becomes involved as a debtor, in any bankruptcy, insolvency, receivership or other similar proceedings, Design Professional may, at its discretion, suspend performance of its obligations under this agreement.
- 5.5. Assignment – Subcontracting: Neither Client nor Design Professional shall assign its interest in this agreement without the written consent of the other, except that Design Professional may subcontract any portion of its services without such consent.
- 5.6. Force Majeure: Any delay or default in the performance of any obligation of either party under this agreement resulting from any cause(s) beyond such party's reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligations of such party as long as performance is delayed or prevented thereby.
- 5.7. Attorney's Fees: In the event of default hereunder, the defaulting party shall pay all costs incurred by the non-defaulting party in enforcing this agreement, including reasonable attorneys' fees whether incurred in connection with initiation of legal proceedings or otherwise.
- 5.8. Miscellaneous: This agreement shall be interpreted and enforced according to the laws of the State of Ohio as applicable to agreements executed and entirely performed within the State of Ohio. The captioned headings contained in this agreement are for convenience of reference only and shall in no way affect the meaning or interpretation of this agreement. The invalidity of any clause or provision of this agreement shall not affect the validity or enforceability of any other clause or provision contained herein. This agreement supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. No oral representation, promise, inducement or statement of intention has been made by either party, which is not embodied in this agreement or in the other documents delivered pursuant hereto. This agreement may be amended, modified, superseded or canceled only by a written instrument executed by both parties hereto. The failure of either party at any time or times to require performance of any provision of this agreement shall in no manner affect the right at a later time to enforce the same. No



waiver by either party of the breach of any term contained in this agreement, whether by conduct or otherwise, shall be deemed to be or construed as a further or continuing waiver of such breach.

End of Terms and Conditions