

ORDINANCE NO. 2010 - 108

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH KZF FOR DESIGN OF UTILITY RELOCATIONS IN BETHANY ROAD AND DECLARING AN EMERGENCY

WHEREAS, the Warren County Engineer's Office (WCEO) intends to reconstruct Bethany Road from Parkside to Butler-Warren Road in 2011, as designed by KZF; and

WHEREAS, various City of Mason utilities, including sanitary sewer force mains, will be in the area of reconstruction and need to be relocated; and

WHEREAS, KZF was requested to and has submitted a proposal in the total amount of \$19,500.00 for design of the relocation of City of Mason utilities in Bethany Road; and

WHEREAS, this proposal has been reviewed and found to be a reasonable and competitive price for the necessary design.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, seven members elected thereto concurring:

Section 1. That the City Manager is authorized to enter into an agreement with KZF, in an amount not to exceed \$19,500.00, pursuant to the terms of the agreement attached hereto as Exhibit "A" and incorporated herein by reference.


Section 2. That the Finance Director is hereby authorized to pay KZF an amount not to exceed \$19,500.00 pursuant to the terms of the agreement attached hereto.

Section 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need execute the agreement at the earliest possible date.

Passed this 27th day of September, 2010.

Attest:


Clerk of Council


Mayor

NOT FINAL "DRAFT"

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made this 30th day of SEPTEMBER, 2010 by and between KZF DESIGN INC., hereinafter called **KZF**, 655 Eden Park Drive, Cincinnati, Ohio 45202 and CITY OF MASON (**CLIENT**).

The PROJECT shall be described as BETHANY ROAD WATER AND SEWER RELOCATION.

NOW, THEREFORE, for an in consideration of the mutual covenants hereinafter contained, **KZF** and **CLIENT** agree as follows:

I. SCOPE OF SERVICES

KZF shall perform the Professional Services as more fully described in Attachment A - "Scope of Services" which is attached hereto and incorporated herein by reference.

II. TIME OF PERFORMANCE

The services to be performed hereunder shall commence upon receipt by **KZF** of notice to proceed from **CLIENT** and shall be completed in accordance with the schedule outlined in Attachment A.

III. CLIENT RESPONSIBILITIES

A. **CLIENT** designates the following representative authorized to act on **CLIENT's** behalf with respect to the Project:

CLIENT Authorized Representative: [TYPE THE NAME OF THE INDIVIDUAL HERE]

B. The **CLIENT** shall examine the documents submitted by **KZF** and will render decisions pertaining thereto as promptly as possible to avoid unreasonable delay in the progress of **KZF's** services.

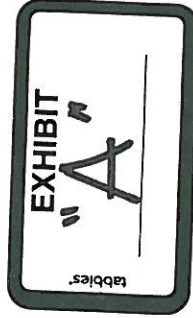
C. **KZF** shall identify the project criteria, reports, surveys, site utility drawings, building plans, and other information required to render the services specified herein. **CLIENT** shall provide such information to **KZF** as is available. The foregoing information, surveys, reports and drawings shall be furnished at the **CLIENT'S** expense, and **KZF** shall be entitled to rely upon the accuracy and completeness thereof.

D. Prompt written notice shall be given by **CLIENT** to **KZF** if **CLIENT** becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.

IV. COMPENSATION

A. For Services described herein Compensation shall be as follows:

1. Stipulated sum of NINETEEN THOUSAND FIVE HUNDRED dollars (\$19,500), plus reimbursable expenses. Preparation of bid documents to bid the project separate from the Bethany Road project by the Warren County Engineer can be provided at the additional sum of \$2,700 if authorized by the **CLIENT**, with the provision that the total compensation shall not exceed TWENTY-TWO THOUSAND TWO HUNDRED dollars (\$22,200) without written authorization by **CLIENT**.



2. **KZF** shall invoice **CLIENT** every four (4) weeks for the amounts due for professional services rendered and expenses incurred to date. **CLIENT** shall pay **KZF** the full amount due within thirty (30) days of receipt of invoice.
3. Progress payments shall be based on the percentage of the work complete at date of invoice.
4. All past due amounts shall bear interest at the rate of one and one-half percent (1-1/2%) per month compounded monthly. All amounts due **KZF** shall be paid whether or not **CLIENT** makes use of the professional services rendered by **KZF**.
5. In addition to the compensation for professional services as provided in this Agreement, **KZF** shall be reimbursed for out-of-pocket expenses according to the attached Schedule HR 1880. Expenses are estimated at TWO HUNDRED FIFTY dollars (\$250).
6. Additional services beyond the Scope of Services for this project will be billed on an hourly rate basis, as per Schedule 1880 (attached). Such services will not be performed without prior written authorization by the **CLIENT**.

V. INDEMNIFICATION AND INSURANCE

- A. **KZF** and **CLIENT** shall mutually indemnify and hold harmless the other party and their representatives, associates and employees from and against all claims and liability due to activities of the other party, its agents or employees which result from any intentionally wrongful or negligent act, error, or omission of the other party or any person employed by the other party. **KZF** and **CLIENT** shall also hold harmless the other party and their representatives, associates and employees from and against any and all expenses, including attorney's fees, which might be incurred in litigation or otherwise from claims or liabilities which might be imposed as the result of such activities by the other party, its agent or employees.
- B. **KZF** shall, during the performance of Professional Services, maintain the following insurance:
 1. Professional Liability for the period of design and construction of the Project. Policy limits shall be \$2,000,000 per claim with a \$2,000,000 policy term aggregate.
 2. Workers' Compensation and Employers' Liability per the statutory requirements of the State of Ohio.
 3. Employer's Liability coverage in the following amounts:
 - a. \$1,000,000 each accident
 - b. \$1,000,000 Disease (Policy Limit)
 - c. \$1,000,000 Disease (each employee)
 4. Commercial General Liability coverage in the following amounts:
 - a. \$1,000,000 Personal Injury
 - b. \$1,000,000 Each Occurrence
 - c. \$2,000,000 General Aggregate
 - d. \$2,000,000 Products – Comp/OP Aggregate

5. Automobile Liability coverage of \$1,000,000 combined single limit per occurrence.

VI. RISK ALLOCATION

A. **CLIENT** agrees that to the fullest extent permitted by law, **KZF's** total liability to **CLIENT** for any and all injuries, claims, losses, expenses, damages, arising out of this Agreement from any cause or causes shall not exceed \$50,000 or the amount of **KZF's** fee, whichever is greater.

VII. TERMINATION FOR CONVENIENCE

- A. This Agreement may be terminated by either party upon seven (7) calendar days written notice.
- B. In the event of termination, **KZF** shall be paid by the **CLIENT** for all services performed to the date of termination. All documents and drawings developed on behalf of the **CLIENT** shall remain the property of **KZF**. Copies of all documents, including reproducible, shall be furnished to the **CLIENT** at cost.

VIII. MISCELLANEOUS PROVISIONS

- A. This Agreement shall be governed by the laws of the State of Ohio.
- B. **CLIENT** and **KZF**, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither **CLIENT** nor **KZF** shall assign this Agreement without the written consent of the other.
- C. This Agreement represents the entire and integrated agreement between the **CLIENT** and **KZF** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both **CLIENT** and **KZF**.
- D. **KZF** shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to mold, asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances. **CLIENT** waives any claim against **KZF** and agrees to indemnify, defend and hold **KZF** harmless from any claim or liability for injury or loss arising from hazardous materials. Hazardous materials include, but are not limited to, any materials that are known or suspected to jeopardize human health or safety (including mold), through exposure of any kind. Such materials shall include but not be limited to those listed in various Federal, state and local laws and regulations.
- E. If any provision of this Agreement is held invalid by a court of competent jurisdiction, it shall be considered deleted from the Agreement, but such invalidity shall not affect other provisions that can be given effect without the invalid provisions.

F. All reports, drawings, specifications, field data, calculations, estimates and other documents prepared by **KZF** for this Project shall remain the property of **KZF**. **CLIENT** shall be permitted to retain copies, including reproducible copies of the drawings, specifications and other documents for information and reference in connection with the **CLIENT's** use and occupancy of the Project.

G. Notice given hereunder shall be deemed served when in writing and personally delivered to an officer or other duly appointed representative of the party to whom the notice is directed, or if sent by registered mail to the addresses set forth in this Agreement.

H. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

I. It is recognized that neither **KZF** nor the **CLIENT** has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, **KZF** cannot and does not warrant or represent that bids or negotiated prices will not vary from any estimate of Construction Cost or evaluation prepared or agreed to by **KZF**.

k. **KZF** has not been retained or compensated to provide design and construction review services related to the Contractor's safety precautions or to means, methods, techniques, sequences or procedures required for the Contractor to perform his work but not relating to the final or completed structure; omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the day and year first above written.

KZF DESIGN

CITY OF MASON

By: _____ By: _____

Name: Bradley A. Ackel Name: _____

Title: Director of Civil Eng. Services Title: _____