

BILL NO. 52-14

ORDINANCE NO. 2183

AN ORDINANCE TO AUTHORIZE THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN COCHRAN AND THE CITY OF WARRENTON, MISSOURI FOR GENERAL WATER SYSTEM ENGINEERING SERVICES

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON MISSOURI, AS FOLLOWS:

SECTION I: That the Mayor is hereby authorized to execute on behalf of the City of Warrenton an agreement with Cochran for general water system engineering services. A copy of said agreement is attached hereto as Exhibit "A" and made a part hereof by reference.

SECTION II. If any section, subsection, sentence, clause, phrase or portion of this amendment is for any reason held invalid or unconstitutional by a judgment of a court of competent jurisdiction, as to which no further appeal right exists, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity or remaining portions hereof.

SECTION III. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

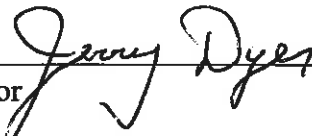
SECTION IV. This Ordinance shall take effect and be in full force from and after passage and approval thereof.

READ TWO TIMES AND PASSED by the Board of Aldermen of the City of Warrenton, Missouri, this 5th day of August, 2014.



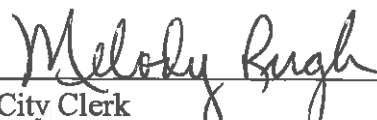
President of the Board of Aldermen

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 5th day of August, 2014.



Mayor

ATTEST:



City Clerk



July 29, 2014

Guy Gevers
Public Works Director
City of Warrenton
200 West Booneslick
Warrenton, MO 63383
Ph: 636-456-3535
Email: ggevers@warrenton-mo.org

RE: Proposal –Water System / Engineering Services
City of Warrenton

Dear Mr. Gevers:

Thank you for giving Cochran the opportunity to submit this proposal to provide professional Engineering Services to the City of Warrenton on an as-needed basis. In accordance with the City's request, we offer the following professional services:

SCOPE OF WORK:

Water System / Engineering Services: Cochran will provide engineering services to the City of Warrenton on an as-needed basis. Any specific Scope of Service will be defined by the City on an approved Task Order on a Time & Materials basis, with "Not-to-Exceed", per Task Order.

SERVICES NOT INCLUDED:

1. Title Report Fees.
2. Recording Fees.
3. All Permit Fees.

OWNER'S RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.
3. General day-to-day review of construction.

FEES:

The total amount of fee to be paid for the professional services outlined in this proposal shall be as described in the Scope of Work.

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- Any tasks in addition to those specifically described in each Task Order, including meeting time, construction coordination/administration, construction inspection, site visits, construction observation reports, etc. will be billed as extras on a time and materials basis.
- Reimbursable Expenses – Mileage, administrative, research/records/recording fees, application processing, courier, in-house and out-of-house printing charges, and postage/shipping, etc. are not included in the above fees and will be billed to the Client at cost. Reimbursable expenses are covered per Task Order.

PAYMENT:

1. An invoice for progress payments will be submitted monthly during the performance period of this contract for professional services rendered. It is agreed that monthly progress payments for fees earned under this agreement are due and payable within thirty (30) days of submission of invoices. Any invoices remaining unpaid beyond thirty (30) days will accrue interest at the rate of one and one-half (1½%) per month on the unpaid balance.
2. It is further understood that if the project is abandoned, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished.
3. In addition, payment will be due for all reimbursable expenses incurred prior to receipt of written notice or such abandonment or suspension.

TIME OF PERFORMANCE:

Cochran and the City of Warrenton will define mutual time of performance for each Task Order.

We will make every effort to complete the project within the Owner's time frame and according to schedule. Cochran will not, however, be responsible for delays caused by events beyond our control.

TERMS AND CONDITIONS:

Attached to this proposal is a copy of the Cochran Standard Terms and Conditions. These terms and conditions shall apply to this proposal for professional services, which can also serve as a letter agreement. This document is enclosed for your review and reference.

GENERAL:

The terms and conditions of this contract shall apply to all work performed for the benefit of the project, including work that affects the property depicted, any contiguous property that may be acquired at a later date, and any work performed off the site that benefits the project (permits, licenses, easements, etc.).

Cochran's reputation is based on understanding and meeting all the project objectives of our clients. We look forward to having an opportunity to demonstrate that responsiveness by providing timely and cost effective professional services.

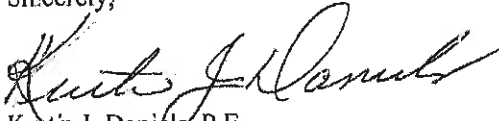
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If you would like to authorize Cochran to perform the professional services outlined in this proposal, please indicate your acceptance of the terms of this letter agreement by signing in the space provided below **AND** initialing **ALL** other pages. Return one (1) copy for our contract files.

If you have any questions or changes regarding this proposal, please contact me at 636-332-4574. Thank you.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.

Sincerely,



Kurtis J. Daniels, P.E.
Vice President
Cochran

Acceptance:
City of Warrenton

By: Jerry Dyer

Title: Mayor

Date: 8-5-14

Attachments: Charge-Out Rates
Cochran Standard Terms & Conditions

CHARGE-OUT RATES
Effective April 1, 2011

<u>TITLE</u>	<u>CHARGE-OUT PER HOUR</u>
Principal	\$135.00
Engineer 1	\$120.00
Engineer 2	\$110.00
Engineer 3	\$100.00
Engineer 4	\$90.00
Engineer 5	\$70.00
Drafter/Tech 1	\$70.00
Drafter/Tech 2	\$60.00
Drafter/Tech 3	\$50.00
Surveyor 1	\$95.00
Surveyor 2	\$80.00
Surveyor 3	\$60.00
Surveyor 4	\$50.00
Surveyor 5	\$45.00
Survey Crew (2 man)	\$140.00
Survey Crew (1 man)	\$115.00

Initials: _____

COCHRAN STANDARD TERMS AND CONDITIONS

AGREEMENT These terms and conditions constitute an agreement between Cochran and the Client addressed in the accompanying proposal letter to which these Terms and Conditions are attached. Such proposal letter, along with these Terms and Conditions, shall constitute the entire contract ("Contract") for services between the two parties unless specifically stated otherwise in the proposal letter or as amended by subsequent agreements for additional services. Any changes, modifications or amendments to the contract (including any agreement for additional services) must be in writing, and must be signed by both parties. Both Cochran and the Client are deemed to have accepted these Terms and Conditions for the project described when acknowledged by signature on the accompanying proposal letter. The terms in this Contract shall have the same meaning as in AIA document A201 General Conditions of the Contract for Construction, 2007 Edition ("A201 General Conditions").

PROFESSIONAL SERVICES Cochran shall provide only those basic services described in the accompanying proposal letter unless additional services are added upon mutual agreement between both parties. Neither party may assign this Contract to a third party without the consent of the other.

COCHRAN will perform all services consistent with the standard of care normally exercised by others in the profession in question and in the same community. Cochran will re-perform any services not meeting this standard caused by the negligent act or omission of Cochran.

Prior to the start of work, the owner/client shall disclose, to the best of their knowledge, hazardous or toxic substances are not present on the site. Also, said owner/client hereby indemnifies Cochran against all claims resulting from the presence of such substances on the site.

If Cochran's scope of work includes construction phase services, the administration of the construction contract shall be pursuant to AIA document A201 General Conditions, unless otherwise agreed to by the parties in writing. To be enforceable against Cochran, any modifications to that document must be consistent with this Contract or approved in writing by Cochran. If there is a conflict between the aforementioned A201 General Conditions and this Agreement, then this Agreement will control.

COCHRAN will not supervise or direct the work activities of the Client's employees or any construction contractors, sub-contractors or any of their employees, or other individuals not employed by Cochran. Cochran will abide by any job-site safety programs identified by the Client but will not be responsible for job-site safety of any workers or persons not employed by Cochran. Cochran will not control or be responsible for the construction means, methods, sequencing or procedures of any construction contractors, sub-contractors or any of their employees. Cochran will not be responsible for the failure of any Contractor to perform the Work in accordance with the Contract Documents. In addition, Cochran will not be responsible for identification of unsafe conditions, nor for the identifications, handling, or removal of hazardous or toxic substances.

When making any interpretation or decision as required by the General Conditions on matters concerning performance under or requirements of the Contract Documents, Cochran will not show partiality to any party, and shall not be liable for the results or interpretations or decisions so rendered in good faith.

TIME OF PERFORMANCE Cochran will commence work immediately after receipt of written notice-to-proceed and receipt of all required information from the Client. Cochran will endeavor to complete the project within the time stated in the proposal, but will not be responsible for delays caused by events beyond Cochran's control. Cochran will also not be responsible for damages (as well as delays) caused by such events.

TERMINATION OF SERVICES This Contract may be terminated by either party upon not less than seven days written notice should the other party fail to substantially perform in accordance with these terms and conditions, which includes the failure to make payments to Cochran in accordance with this Contract. Furthermore, this Contract may be terminated for convenience upon mutual agreement between the parties.

DISPUTE RESOLUTION Any claim, dispute, or other matter in question arising out of this Contract, shall first be submitted to nonbinding mediation in accordance with the Construction Industry Mediation Rules of the American Association ("AAA"). Mediation shall be held where the project is located and both parties shall share equally in the mediator's fees and filing fees.

Any claims, disputes, or other matters in question arising out of or relating to this Contract that are not resolved by mediation shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA. A demand for arbitration must be made within a reasonable time, and before the expiration of the applicable statute of limitations. Unless it consents in writing, Cochran may not be joined in any other arbitration involving the same project. If the parties have to arbitrate their dispute, the prevailing party is entitled to recover attorney's fees and costs. Arbitration shall be held where the project is located.

BOTH PARTIES WAIVE ANY RIGHT TO RECOVERY OF PUNITIVE DAMAGES. THE CITY WAIVES ANY RIGHT TO SEEK REIMBURSEMENT FOR TIME SPENT BY ITS EMPLOYEES RELATED TO ANY CLAIM OR CAUSE OF ACTION.

COMPENSATION The Client agrees to compensate Cochran in the amount stated in the accompanying proposal letter for the basic services described therein and agrees to additional compensation for such additional services as may be subsequently amended to this Contract. Unless stated otherwise in the accompanying letter, the quoted compensation for the services described is fixed for a period of thirty days from the date of the proposal letter.

An invoice for progress payments will be submitted monthly during the performance period of this Contract. It is agreed that monthly progress payments for fees earned under this contract are due and payable within thirty (30) days of submission of invoices. Any invoices remaining unpaid beyond thirty (30) days will accrue interest at the rate of one and one-half percent (1 1/2%) per month on all invoices unpaid thirty (30) days after submission. It is further understood that if the project is terminated, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished. The Client will pay all costs (including legal fees and arbitration and/or court costs) incurred by Cochran in collecting amounts due but unpaid. In the event that the client disputes an invoice, the client will make payment of all amounts of the invoice that are not in dispute. If the project is terminated, the client will pay Cochran's incurred costs related to the termination (e.g., close-out costs, costs of terminating contracts with consultants, etc.) Any changes in laws, codes or regulations after the contract is executed that result in additional services and/or costs shall be paid for by the owner as a change in the work.

Unless specifically itemized in the accompanying letter, reimbursable expenses are in addition to the stated compensation for basic and additional services. Standard reimbursable expenses shall include: Client authorized out-of-town travel, transportation, and subsistence expenses; fees paid for securing approval of jurisdictional authorities; postage, courier, or other delivery fees; material costs for models, mock-ups, or other presentation media; photographic film and development expenses.

The total liability of Cochran for any actions, damages, claims, demands, judgments, losses, costs, or expenses (including attorney's fees and court or arbitration costs and fees) arising out of or resulting from Cochran's or its subconsultants' negligent acts, errors, omissions or breaches of contract is limited to the amount of professional liability insurance maintained by Cochran available to pay said claim. This limitation of liability is applicable to all claims that may be asserted against Cochran arising out of or relating to the Project or this Contract, whether the claims arise in contract, tort, statute, or otherwise.

DOCUMENTS All documents and electronic media produced by Cochran under this Contract ("Instruments of Service") shall remain the property of Cochran, and Cochran shall retain all rights to the same, including copyrights, and they may be used by the Client only for the project stated in the accompanying proposal letter. In the event of the termination of this Contract, the Client shall return the Instruments of Service to Cochran, and they may not be used by the Client or a third party to complete the project without the written consent of Cochran.

MISCELLANEOUS This Contract and the rights of the parties shall be governed by the laws of the State of Missouri. To the extent that property insurance covers a loss during construction, the parties waive all rights against each other, including the rights of subrogation, to the extent of that insurance.

Updated 01/2013

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