

RESOLUTION NO. 2014- 46

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A 20 YEAR PREVENTIVE MAINTENANCE PLAN CONTRACT WITH COCHRAN ENGINEERING.

WHEREAS, The City of Pacific owns and maintains public infrastructure which includes its streets and roadways, and;

WHEREAS, The Mayor and Board of Alderman, deem it advisable to enter into a contract with Cochran Engineering to identify, map and prepare a 20-year Preventive Pavement Maintenance Plan, and;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN FOR THE CITY OF PACIFIC, MISSOURI AS FOLLOWS:

- Section 1.** The Board of Aldermen hereby approves and authorizes the Mayor to execute on behalf of the City, the Preventive Pavement Maintenance Plan proposed by Cochran Engineering, and;
- Section 2.** A copy of the Preventive Pavement Maintenance Plan in substantially the form of Exhibit A is attached hereto and incorporated by reference, and;
- Section 3.** This Resolution shall be effective upon adoption by the Mayor and Board of Aldermen.

Adopted by the Board of Aldermen and approved by the Mayor on this ____ day of October, 2014.

Jeffrey M. Palmore, Mayor

ATTEST:

City Clerk



September 15, 2014

Jeffrey M. Palmore
Mayor
City of Pacific
300 Hoven Drive
Pacific, MO 63069

RE: Proposal – Preventive Pavement Maintenance Plan

Dear Mayor Palmore:

Thank you for giving Cochran the opportunity to submit this proposal for the above referenced project. In accordance with our previous discussions, we offer the following professional services:

SCOPE OF SERVICES:

1. Identify all streets and roadways maintained by the City of Pacific.
2. Measure lengths and widths of all City owned streets and roadways.
3. Prepare maps to graphically illustrate all City owned streets and roadways for reference purposes in the Preventive Pavement Maintenance Plan.
4. Meet with City staff as necessary to gather background information on previous maintenance activities and history.
5. Quantify surface areas of all City-owned streets.
6. Provide descriptions and justifications for recommended pavement treatments.
7. Rank and set priorities based on existing conditions of pavements.
8. Identify projects by residential subdivision streets, zones, and arterial roadways.
9. Prepare a 20-year preventive pavement maintenance plan. The plan will be prepared in a spreadsheet table format. Rows will identify streets, pavement treatment, and budget. Columns will show pavement treatment by year for the next 20 years. We understand this plan will require several iterations based on the following information:
 - Estimated City expenditure available for roadwork each year.
 - Possible federal funding opportunities for eligible roadways.
 - Recent asphalt pricing in the area.
 - Recommended pavement treatments.

10. The final Preventive Pavement Maintenance Plan will be provided in a report format.

FEE:

1. The total amount of fee to be paid for the "Scope of Services" outlined in this proposal shall be a lump sum fee of \$16,800.00.

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 fifteen (15) days of submission of invoices.
2. Any invoices remaining unpaid beyond fifteen (15) days will accrue interest at the rate of one and one-half (1½%) per month on the unpaid balance.
3. 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.
4. 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:

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 in the attached Exhibit, 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.).

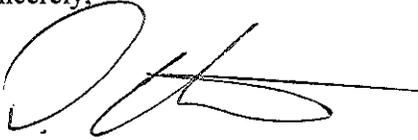
Cochran's reputation is based on understanding and meeting all the project objectives of our clients. We look forward to having an opportunity to demonstrate that responsiveness by providing timely and cost effective professional services.

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 314-220-7016. Thank you.

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

Sincerely,



Dave Christensen, P.E.
Vice President

Acceptance:
City of Pacific

By: _____

Title: _____

Date: _____

Attachments – Cochran Standard Terms & Conditions

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.

CONSEQUENTIAL DAMAGES BOTH PARTIES MUTUALLY WAIVE CONSEQUENTIAL DAMAGES FOR CLAIMS, DISPUTES, OR OTHER MATTERS IN QUESTION ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE PERFORMANCE OF COCHRAN. THIS MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES SHALL INCLUDE, BUT IS NOT LIMITED TO, LOSS OF USE, LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF INCOME, LOSS OF REPUTATION OR ANY OTHER CONSEQUENTIAL DAMAGES THAT EITHER PARTY MAY HAVE INCURRED FROM ANY CAUSE OF ACTION INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT AND/OR BREACH OF WARRANTY.

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 fifteen (15) days of submission of invoices. Any invoices remaining unpaid beyond fifteen (15) days will accrue interest at the rate of one and one-half percent (1 ½%) per month on all invoices unpaid fifteen (15) 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.

LIMIT OF LIABILITY TO THE FULLEST EXTENT PERMITTED BY LAW, COCHRAN'S LIABILITY TO THE CLIENT FOR ANY CLAIMS, LOSSES, EXPENSES, OR OTHER DAMAGES ARISING OUT OF THIS CONTRACT AND/OR COCHRAN'S THEREUNDER PERFORMANCE SHALL NOT EXCEED THE AGREED UPON COMPENSATION FOR BASIC AND ADDITIONAL SERVICES COVERED UNDER THIS CONTRACT.

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 Initials _____