

**COUNCIL WORKSHOP MEETING
MONDAY, MAY 6, 2024 – 6:00 P.M.
COUNCIL CHAMBER
405 JEFFERSON STREET
WASHINGTON, MO**

INTRODUCTORY ITEMS:

Roll call/Pledge of Allegiance

ACTION:

1. APPROVAL OF MINUTES:

Approval of the April 1, 2024, Workshop minutes

Approve/Mayor

2. PRESENTATIONS:

A. 2023 Annual Comprehensive Financial Report

Discussion

B. Gateway Fiber

Discussion

3. REPORT OF DEPARTMENT HEADS:

A. Administration Department -

a. Main Stage Roof

Discussion

B. Parks Department -

a. Riverfront Trail Connection Project

Discuss-Send to Council

4. EXECUTIVE SESSION:

Public vote on whether or not to hold a closed meeting to discuss personnel, legal or real estate matters pursuant to Section 610.021 RSMo (2000)

ROLL CALL VOTE

5. ADJOURNMENT:

**MINUTES OF THE
CITY OF WASHINGTON, MISSOURI
COUNCIL WORKSHOP MEETING
MONDAY, APRIL 1, 2024**

The Council Workshop Meeting was held on Monday, April 1, 2024, at 5:30 p.m. in the Council Chamber, 405 Jefferson Street, Washington, Missouri. Mayor Hagedorn opened the meeting with roll call and Pledge of Allegiance.

Mayor:	Doug Hagedorn	Present	
Council Members:	Ward I	Al Behr	Present
		Duane Reed	Absent
	Ward II	Mark Hidritch	Present
		Mark Wessels	Present
	Ward III	Chad Briggs	Present
		Jeff Patke	Present
	Ward IV	Mike Coulter	Present
		Joe Holtmeier	Present
	Also Present:	City Attorney	Mark Piontek (6:29 p.m.)
		City Administrator	Darren Lamb
		City Clerk	Sherri Klekamp
		Library Director	Nelson Appell
	Water/Wastewater Superintendent	Kevin Quaethem	
	Street Superintendent	Tony Bonastia	
	City Planner/GIS Specialist	Sarah Skeen	
	City Engineer	Charles Stankovic	
	Economic Development Director	Sal Maniaci	
	Parks Director	Wayne Dunker	
	Emergency Management Director	Justin Frankenberg	
	Fire Chief	Tim Frankenberg	
	Police Chief	Jim Armstrong	

Approval of Minutes

A motion to approve the minutes from the March 4, 2024, Workshop meeting as presented made by Patke seconded by Behr, passed without dissent.

Presentations

A. Sporlan Valve Plant#1 Superfund Site Update

Remedial Project Manager Clint Sperry and Community Involvement Coordinator Amelia Holcomb from the United States Environmental Protection Agency (EPA), Nicole Niehues from the Missouri Department of Health and Senior Services, Tyler Repa and Mihai Lefticariu from the Missouri Department of Natural Resources updated Council on the Sporlan Valve Plant #1 Superfund Site. Topics of discussion were: Community Involvement Program, Site Background, Current Conditions, Upcoming Fieldwork, Timing of Upcoming Fieldwork and Future Actions.

April 1, 2024

Joseph Jasper 615 East Eighth Street, Dennis Kramme 624 East Eighth Street and Stephanie Lane 615 East Eighth Street addressed the EPA. Discussion ensued.

Report of Department Heads

*Parks Director Wayne Dunker discussed the recommendation for a Parks Master Plan. Discussion ensued.

*Economic Development Director Sal Maniaci discussed the Crawford, Murphy and Tilly, Inc. ordinance for Airport Services, Taxable Industrial Revenue Bonds ordinance for Texwrap Packaging Systems LLC Project and the ordinance for the Smoke Free Air Act for Cigar Bars.

*Request made to provide Council monthly information on the number of flights and the amount of fuel that is being used at the Washington Regional Airport.

Executive Session

Public vote on whether or not to hold a closed meeting to discuss personnel, legal or real estate matters pursuant to Section 610.021 RSMo (2000) passed on 6:34 p.m. on the following roll call vote; Behr-aye, Briggs-aye, Coulter-aye, Hidritch-aye, Holtmeier-aye, Patke-aye, Wessels-aye, Reed-absent.

The regular session reconvened at 7:04 p.m.

Adjournment

With no further business to discuss, a motion to adjourn made at 7:04 p.m. by Behr, seconded by Holtmeier passed without dissent.

April 1, 2024



May 6, 2024

Honorable Mayor and City Council
City of Washington
405 Jefferson Street
Washington, MO 63090

RE: Recommendation – Professional Design Services – Riverfront Trail Connection

Honorable Mayor and City Council,

As some of you may remember in November 2023, the City was selected as a 2023 grant recipient of the Recreation Trails Program (RTP) through Missouri State Parks (a division of the MO DNR) for the funding for Phase III of the Rotary Riverfront Trail Expansion. Phase III is the connection of the East & West Rotary Riverfront Trails in Riverfront Park and ADA upgrades to the Waterworks parking lot, flag plaza area and the addition of all season restrooms. For FY2023, 30 grant applications were received, with funding requests totaling over \$5.8 million. Of those 30 applications, only 7 were approved for grant assistance. The maximum grant amount awarded is \$250,000 for trail projects. All applicants must have a minimum 20 percent match and must be open to the public for 25 years. City Council approved the resolution supporting the application for grant assistance on February 6, 2023.

\$200,000 was budgeted in the FY2023/24 Transportation Sales Tax Fund for the City's portion of the project, which is \$172,950. The City will fund approximately 41% of the total cost of the project while the grant will fund the remaining 59% (\$250,000).

Due to the architectural element of the ADA compliant restroom portion of this project, a request for qualifications (RFQ) was issued and one firm responded, Cochran Engineering. Attached is a professional design services proposal from Cochran. Cochran also assisted the City with the RTP grant application, so they are familiar with the project.

Accordingly, staff with the support of the Parks and Recreation Commission, recommends that Council consider Cochran Engineering's Professional Design Services proposal for \$38,450.00 for the services designing the East & West Riverfront Trail Connection in Riverfront Park.

As always, if you have any questions, concerns or would like additional information, please feel free to contact me prior to the City Council Meeting.

Respectfully,

Wayne Dunker

Wayne Dunker, MA, CPRP
Director of Parks and Recreation

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING THE PROPOSAL FROM
COCHRAN ENGINEERING FOR PROFESSIONAL
DESIGN SERVICES FOR THE RIVERFRONT TRAIL
CONNECTION PROJECT

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The Mayor is hereby authorized and directed to accept the proposal from Cochran Engineering for Professional Design Services for the Riverfront Trail Connection Project. A copy of said proposal is attached hereto and marked as Exhibit A.

SECTION 2: Vendor shall meet all specifications as indicated in the specifications.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall take effect and be in full force from and after its passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri



April 22, 2024

Mr. Wayne Dunker
Parks Director
City of Washington
405 Jefferson Street
Washington, MO 63090

SENT VIA: Email
(wdunker@washmo.gov)

RE: Proposal – Professional Design Services
Washington Riverfront Trail
Washington, Missouri

Dear Mr. Dunker:

Thank you for giving Cochran the opportunity to submit this proposal to provide professional design services for the proposed riverfront trail project. It includes the design, bid and construction administration, and construction inspection. In accordance with our discussions we offer the following professional services:

SCOPE OF WORK:

Project consists of the design and construction documents, and bidding and construction administration for the Riverfront Trail Connection project. The design is based on conceptual site design dated 2/23/23 and schematic restroom plan dated 2/23/23, and includes the following:

1. Renovation of upper parking lot.
2. Restroom Addition, and Existing Restrooms Renovation.
3. Trail connection with 10' concrete path connecting east trail with west trail.
4. (2) new concrete stairs down to lower parking lot.
5. Guardrails, safety rails and safety bollards.
6. Retaining wall adjacent to Flag Plaza.
7. NEPA (National Environmental Policy Act) permitting .
8. Federal funds are being used in the project, and all relevant federal, state, and local requirements apply.

DESIGN AND CONSTRUCTION DOCUMENTS

1. We will meet with owner to review conceptual design.
2. Based on approved conceptual design, we will develop construction drawings and full specifications.
3. All current building codes and local ordinances will be reviewed and followed.
4. We will have included meetings with the Owner to review building design.
5. Civil Drawings include the following
 - a. Site Plan - design the site to provide adequate parking and access drives for the facility.
 - b. Grading Plan - design grading to work with existing topography to provide for parking lots and access drives.
 - c. Sanitary Sewer Plan - design gravity on-site sewer lines, laterals and structures as required to provide service on site.
 - d. Storm Sewer Plan - design an on-site storm sewer system to adequately handle the storm water runoff for the site.
 - e. Utility Plan- Design routing of public service connections and on-site utilities (i.e.: water, sewer, electric, gas, etc.)

8 East Main Street
Wentzville, MO 63385
Phone: 636-332-4574
Fax: 636-327-0760

737 Rudder Road
Fenton, MO 63026
Phone: 314-842-4033
Fax: 314-842-5957

530A East Independence Drive
Union, MO 63084
Phone: 636-584-0540
Fax: 636-584-0512

1163 Maple Street
Farmington, MO 63640
Phone: 573-315-4810
Fax: 573-315-4811

2804 N. Blagio Street
Ozark, MO 65721
Phone: 417-595-4108
Fax: 417-595-4109

905 Executive Drive
Osage Beach, MO 65065
Phone: 573-525-0299
Fax: 573-525-0298

- f. Construction Details - provide the necessary construction details for the storm sewers, sanitary sewers, site pavement, erosion control and grading.
 - g. Public meetings will be billed hourly upon request.
 6. Architectural drawings will include the following:
 - a. Cover Sheet
 - b. Restroom Addition & Renovation Drawings.
 - c. Floor Plan & Reflected Ceiling Plans
 - d. Building Elevations & Sections
 - e. Wall Sections
 - f. Partition Types & Details
 - g. Details and Sections as required
 7. Structural Drawings will include the following:
 - a. Foundation Plan and Details
 - b. Roof Framing Plan.
 - c. Retaining Wall adjacent to Flag Plaza.
 8. Clarifications with local and state authorities during permitting.

BIDDING ADMINISTRATION

1. Attendance at pre-bid conference.
2. Questions and answers during the bid process.
3. Preparation and distribution of Addenda as required.
4. Review of bids & recommendation to awarded contractor.

OPTIONAL CONSTRUCTION ADMINISTRATION

1. Preconstruction meeting.
2. Review of shop drawings and submittals.
3. Monthly site visits to review construction progress and approve pay applications.
4. Prepare and distribute clarification documents and interpretations for contractors.
5. (1) Site Visit for Final walk-through and to prepare Punchlist for Contractor.

SERVICES NOT INCLUDED:

1. Geotechnical Design.
2. Landscaping design.
3. Off-site utility extensions.
4. Construction stakeout.
5. Construction Testing & Inspection
6. Flood Certificate or Flood Study.
7. Any zoning or approval process associated with the site or building, or attendance at public meetings.
8. As-built documents of contractor's field markups.*
9. Any items not listed in scope of work.

*Cochran may provide under separate contract.

OWNER'S RESPONSIBILITY:

1. The Owner will provide a geotechnical report that was completed on the original stage design. It is assumed this will be sufficient for use in the project.

Initials _____

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2. 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.
3. Advertisement and receipt of construction bids.
4. General day-to-day review of construction.

FEE:

Based on the included scope of work, the total amount of fee to be paid for the professional services outlined in this proposal shall be billed on a time and materials basis, with a maximum not to exceed fee. This fee is good for a period of thirty (30) days from the date of this proposal.

<i>Design and Construction Documents</i>	
<i>Architectural Design</i>	\$ 18,850.00
<i>Civil Design</i>	\$ 8,000.00
<i>Topographic Survey</i>	\$ 3,000.00
<i>Retaining Wall Design</i>	\$ 1,800.00
<i>Mechanical/Electrical/Plumbing Design</i>	\$ 3,000.00
<i>Bidding Administration</i>	\$ 3,800.00
<hr/>	
<i>Total Architectural & Engineering Fee</i>	\$ 38,450.00
<i>Optional Construction Administration (Estimated)</i>	\$ 7,000.00

1. Reimbursable Expenses – Mileage, long distance telephone calls, courier, in-house and out-of-house printing charges, etc. are not included in the above fees and will be billed to the Client at cost. It is estimated that the reimbursable expenses will not exceed **\$500.00**.
2. Any tasks in addition to those specifically described above, will be billed as extras on a time and materials basis using the attached rates.
3. Billing for Cochran fees and reimbursable expenses will be submitted monthly.

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.

FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

Initials _____

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Mr. Wayne Dunker
City of Washington
Proposal – Washington Riverfront Trail
April 18, 2024

Attached to this proposal is FWHA-1273 Required Contract Provisions for Federal-Aid Construction Contracts. These conditions shall apply to this proposal for professional services. 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, 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** initializing **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 636-584-0540. Thank you.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED AT COCHRAN'S OPTION.

Sincerely,


Joseph A. McGowan
Cochran

Acceptance:
City of Washington

By: _____

Title: _____

Date: _____

Attachments: FWHA-1273
Standard Charge Out Rates
Cochran Terms & Conditions



2024 Hourly Fee Schedule

The following is a list of hourly rates for our Fee Service Contracts.
Effective January 1, 2024, these rates will apply to all projects performed on a time and expense basis.

<u>Title</u>	<u>Charge-Out</u>
Principal/Vice President	\$ 230.00
Department/Division Manager	\$ 195.00
Senior Project Manager	\$ 185.00
Project Manager	\$ 175.00
Project Engineer 1	\$ 160.00
Project Engineer 2	\$ 150.00
Design Engineer 1	\$ 130.00
Design Engineer 2	\$ 120.00
Design Engineer 3	\$ 110.00
Senior Architect	\$ 175.00
Project Architect 1	\$ 160.00
Project Architect 2	\$ 145.00
Design Architect 1	\$ 135.00
Design Architect 2	\$ 120.00
Managing Surveyor	\$ 160.00
Surveyor 1	\$ 150.00
Surveyor 2	\$ 140.00
Surveyor 3	\$ 125.00
Senior Field Manager	\$ 125.00
Field Manager	\$ 85.00
Inspector	\$ 65.00
MoDOT Certified Technician	\$ 70.00
Engineer/Survey Tech 1	\$ 120.00
Engineer/Survey Tech 2	\$ 110.00
Engineer/Survey Tech 3	\$ 100.00
Engineer/Survey Tech 4	\$ 80.00
Secretary	\$ 80.00
One Man Survey Crew	\$ 140.00

Note:

*Survey Field crew prices will vary depending upon the Survey Tech assigned to the project.
*Overtime rate of 1.5 times the regular rate will be charged for hours worked after 8 hours per day, Saturdays, Sundays, or Holidays.

8 East Main Street
Wentzville, MO 63385
Phone: 636-332-4574
Fax: 636-327-0760

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Fenton, MO 63026
Phone: 314-842-4033
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530A East Independence Drive
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1163 Maple Street
Farmington, MO 63640
Phone: 573-315-4810
Fax: 573-315-4811

2804 N. Biagio Street
Ozark, MO 65721
Phone: 417-595-4108
Fax: 417-595-4109

905 Executive Drive
Osage Beach, MO 65065
Phone: 573-525-0299
Fax: 573-525-0298

COCHRAN STANDARD TERMS AND CONDITIONS

1. Unless expressly stated in the attached proposal letter (“Proposal”), the Proposal must be accepted in writing within thirty days or the Proposal is void and unenforceable.
2. The acceptance of the Proposal is conditioned upon these Terms and Conditions and the terms of the Proposal, which shall be the only terms and conditions applicable to any agreement between Cochran and Client. Requesting performance of the work by Cochran, sending a notice to proceed with the work, or an acknowledgment of the Proposal by the issuance of a purchase order by Client, notwithstanding any terms additional to or different from those contained herein, shall be deemed to be an acceptance of these Terms and Conditions by Client.
3. The Proposal and these Terms and Conditions constitute the entire agreement (“Contract”) between Cochran and the Client for the services identified in the Proposal. All prior proposals, negotiations, representations, recommendations, statements or agreements made or entered into prior to or contemporaneously with this Contract, whether oral or in writing, are superseded by this Contract unless they are expressly incorporated herein by reference. Any terms contained in any communication from Client which are inconsistent with the Contract shall not be binding upon Cochran.
4. Cochran may submit invoices on not less than a monthly basis. Cochran’s invoices are due and payable within fifteen (15) days of the submission of each invoice. Interest will accrue at the rate of one and one-half percent (1.5%) per month on all unpaid invoices from the date payment was due. In the event that Client disputes an invoice, Client will pay the undisputed portion of the invoice and provide a written explanation to Cochran of the basis for Client’s dispute. If Client fails to pay in full any of Cochran’s invoices, Cochran may immediately, without waiving any other rights it may have, suspend work pending resolution of the payment dispute. Client’s failure to pay any of Cochran’s invoices in full shall be considered a material breach of this Contract.
5. Unless specifically stated to the contrary in the Proposal, reimbursable expenses are in addition to the amounts identified for Cochran’s fees for basic and additional services. Reimbursable expenses shall include, but are not limited to: 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.
6. This Contract is binding upon the heirs, successors and assigns of the parties hereto and may not be assigned by either party without the prior written consent of the other party.
7. Nothing in this Contract is intended to create any enforceable third party rights against Client or Cochran.
8. Cochran will perform all of its services consistent with that degree of skill and learning ordinarily used under the same or similar circumstances by the members of Cochran’s profession working in the same locale.
9. If, and to the extent that Cochran’s scope of work includes construction phase services, any such services shall be provided in accordance with and governed by the applicable terms of AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition (“General Conditions”) If there is a conflict between the General Conditions and this Contract, this Contract will control.
10. When making any interpretation or decision as required by the General Conditions, Cochran will not show partiality to any party, and shall not be liable for interpretations or decisions rendered in good faith.
11. Cochran has no responsibility or obligation to supervise or direct the work activities of the Client’s employees and representatives, or any construction contractors, sub-contractors or any of their employees, or other persons not employed by Cochran.
12. Cochran will abide by any job-site safety programs identified in writing by the Client but will not be responsible for job-site safety of any persons not directly employed by Cochran.
13. Cochran has no responsibility or obligation with respect to the construction means, methods, sequencing or procedures of any construction contractors, sub-contractors or any of their employees.
14. Cochran is not responsible for the failure of any contractor to perform work properly and in accordance with any applicable documents, plans, specifications, codes or standards.
15. Cochran is not responsible for the identification of unsafe conditions, nor for the identification, handling, or removal of hazardous and/or toxic substances found on or brought to the site. Prior to the start of work, the Client shall disclose and identify in writing to Cochran, to the best of Client’s knowledge, all hazardous and/or toxic substances located on the site. Client agrees to defend, indemnify and hold Cochran harmless from and against all claims, demands and liabilities of any kind or nature resulting from any hazardous and/or toxic substances that are found on the site and which were not identified by Client – even if not known by Client.

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16. Cochran will have no obligation to commence its work until receipt of a written notice-to-proceed from Client and all other information required to be provided by Client. Cochran shall complete its work within any time limits identified in the Proposal. Cochran shall be entitled to an extension of time for performance of its work due to any delays that are due to any cause beyond Cochran's reasonable control. In no event will Client be entitled to any costs, losses, expenses or damages (including, but not limited to, claims or damages attributable to home office overhead costs, loss of profits, loss of business opportunities and/or additional financing costs) as a result of any delay caused or attributable to Cochran.
17. Cochran and Client waive any and all claims against each other for consequential, indirect, incidental and special damages arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work; including, but not limited to, lost profits, loss of business, financing costs, extended home office overhead and similar types of damages.
18. Provided that written notice of a material breach of this Contract has been provided to the defaulting party and the defaulting party has failed to cure or taken reasonable efforts to cure its default within seven (7) calendar days of its receipt of the notice, the non-defaulting party may terminate this Contract by sending notice of termination to the defaulting party.
19. If the Contract is terminated for any reason not attributable to Cochran, Client will pay for the work performed by Cochran up to the date of termination plus all of Cochran's costs related to the termination (e.g., close-out costs, costs of terminating contracts with consultants, etc.).
20. In the event that there are any changes in applicable laws, codes or regulations after the Contract is executed that result in the need for Cochran to perform additional services and/or incur additional costs, Client shall pay Cochran for said services and costs at the rates set forth in the Proposal.
21. 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 identified in the Proposal. In the event of the termination of this Contract, the Client shall return the Instruments of Service to Cochran, and the Instruments of Service may not be used by the Client or a third party to complete the project without the written consent of Cochran.
22. Client and Cochran waive all rights against each other, any contractors and other professionals, and any of their respective consultants, contractors, suppliers, subcontractors, agents and employees, for damages caused by perils to the extent covered by insurance, except such rights as they may have to the insurance proceeds.
23. This Contract and the rights of the parties shall be governed by the laws of the State of Missouri.
24. Any claims, disputes, or other matters in question arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, at Cochran's sole election and discretion, 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. The arbitration shall be held where the project is located.
25. In the event of any dispute, claim, arbitration or litigation arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, the prevailing party shall be awarded its attorney's fees, expert witness fees, expenses, arbitration fees and expenses, and court costs at the trial and all appellate levels; including costs and fees related to collection efforts. Determination of which party prevailed shall be made by the judge or arbitrator(s). The determination shall be made by reviewing the claims resolved at trial or arbitration (which excludes any claims resolved prior to the taking of evidence), and then determining which party achieved the greater success by quantifying the amounts awarded the party recovering damages or obtaining relief and comparing that result to the relief and/or damages requested by that party at the trial or arbitration. If that party received less than 50% of the relief and/or damages it sought, then the other party prevailed. If that party receives more than 50% of the relief and/or damages it sought, then it prevailed. The judge or arbitrator(s) may consider the percentage of recovery when determining the amount of fees and expenses to be awarded to the prevailing party. If more than one claim is presented, then the judge or arbitrator(s) may elect to evaluate who is the prevailing party on a claim by claim basis, or in the aggregate as they deem appropriate. In making the determination of which party prevailed, the judge or arbitrator(s) shall take into consideration any settlement offers or demands made prior to trial or arbitration.
26. **THE TOTAL LIABILITY OF COCHRAN AND ANY OF COCHRAN'S CONSULTANTS 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 CONSULTANTS' NEGLIGENT ACTS, ERRORS, OMISSIONS OR BREACHES OF CONTRACT IS LIMITED TO THE LESSER OF THE CONTRACT PRICE OR THE AMOUNT OF PROFESSIONAL LIABILITY INSURANCE MAINTAINED BY COCHRAN AND AVAILABLE TO PAY SAID CLAIM. THIS LIMITATION OF LIABILITY IS APPLICABLE TO ALL CLAIMS THAT MAY BE ASSERTED AGAINST COCHRAN OR ITS CONSULTANTS ARISING OUT OF OR RELATING TO THE PROJECT OR THIS CONTRACT, WHETHER THE CLAIMS ARISE IN CONTRACT, TORT, STATUTE, OR OTHERWISE.**

Updated 01/2016

Initials _____

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