

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A MASTER SERVICE CONTRACT WITH LOR ENGINEERING, LLC dba COCHRAN.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS:

Section 1. The Board of Aldermen of the City of Osage Beach hereby authorizes the Mayor to execute a contract with LOR Engineering LLC, dba Cochran form substantially similar in terms and content contained in the engagement letter attached to this ordinance as Exhibit "A."

Section 2 The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 3 This Ordinance shall be in full force and effect upon date of passage.

READ FIRST TIME: April 20, 2023

READ SECOND TIME: May 4, 2023

I hereby certify that the above Ordinance No. 23.28 was duly passed on May 4, 2023, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: 6

Nays: 0

Abstentions: 0

Absent: 0

This Ordinance is hereby transmitted to the Mayor for his signature.

May 4, 2023
Date

Tara Berreth
Tara Berreth, City Clerk

Approved as to form:

Cole Bradbury
Cole Bradbury, City Attorney

I hereby APPROVE Ordinance No. 23.28

May 4, 2023
Date

Michael Harmison
Michael Harmison, Mayor

ATTEST:

Tara Berreth
Tara Berreth, City Clerk

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

This Master Agreement ("Master Agreement") is entered into on 4th May, 2023, by and between **City of Osage Beach** (hereinafter "Client") and **LOR Engineering, LLC d/b/a Cochran** (hereinafter "Cochran").

Client has determined that it would benefit from hiring Cochran to provide Professional Engineering Services ("Engineering Services") on an as-needed or continuing basis for the Client; and

Cochran represents and warrants that Cochran is a registered professional engineering company and is authorized to do business in the State of Missouri; and

Client and Cochran agree that the terms and conditions set forth herein shall govern any and all Engineering Services provided by Cochran for Client unless otherwise specifically agreed in writing by both parties.

The price, scope of work, and other details specific to any Engineering Services to be provided by Cochran for Client shall be set forth in a Work Order, which shall be executed by authorized by representatives of both parties prior to Cochran commencing work under the Work Order.

In the event of any conflict between a Work Order, this Master Agreement, or Cochran's Response to any Request for Proposal, the terms of the Work Order shall control over the other documents, and this Master Agreement shall control over Cochran's Response to any Request for Proposal.

1. Pricing/Invoicing for Engineering Services:

- a. Unless otherwise agreed on any Work Order, Cochran shall be reimbursed for all expenses incurred in performing its work and shall be paid for its services based upon hourly rates for labor pursuant to the Schedule of Hourly Rates and Expenses attached hereto as Exhibit A. In the event that the Work Order provides that Cochran will perform its work for a lump sum amount, Cochran will be paid based upon the percentage of work completed during each pay period.
- b. Cochran may revise the Schedule of Hourly Rates and Expenses on an annual basis effective January 1 of each calendar year. Cochran will submit a revised Exhibit A to Client in December of each year that this Master Agreement is in effect. Unless otherwise covered in a Work Order, the delivery of a revised Exhibit A shall not affect the hourly rates and expenses of any work performed under any existing Work Orders unless the Engineering Services under a Work Order could have been completed prior to the end of the calendar year but for delays attributable to, or the responsibility of, Client.
- c. Actual reasonable expenses incurred by the Cochran directly related to the Engineering Services shall be paid by Client. The expenses may include (but are not limited to):
 - Printing, Plotting, Copying, Mailings (billed at actual cost)
 - Newspaper Advertising (billed at actual cost)
 - Mileage (billed at the then-current IRS rate per mile)

- Geotechnical or other Professional Consulting Services (billed at actual cost plus Cochran's then-standard markup on subconsultant costs)
 - Rental of Special Equipment (billed at actual cost)
 - Permit fees (billed at actual cost)
 - Third-party vendor provided equipment, software and appurtenances (billed at actual cost)
 - Lodging and meals (billed at actual cost)
- d. Cochran will submit its invoices/applications for payment (hereinafter "Invoice") to Client on at least a monthly basis.
- e. In the event of termination of any Work Order for any reason, Cochran will be paid for all Engineering Services performed, and all expenses incurred, through the date of Cochran's receipt of the notice of the termination.

2. Client's Responsibilities:

- a. Provide Cochran with appropriate, written confirmation that Client's execution of this Master Agreement and any Work Orders have been properly authorized as required by law (including, but not limited to, ordinances and statutes with respect to authorization of public entities to enter into contracts, and any applicable public bidding requirements) and/or by Client's applicable governing documents. If Client is a governmental entity, Cochran can require Client to provide this written confirmation from Client's attorney prior to Cochran starting work under this Master Agreement or any Work Order.
- b. If Client is a governmental entity, Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold Cochran and Cochran's consultants, officers, directors, members, managers, employees, insurers, agents and representatives harmless from any and all claims, losses, damages, liabilities, fees, fines, penalties, expenses or costs of any kind or nature (including, but not limited to, reasonable attorney's fees) arising out of or relating to any alleged violation by Client of any public bidding requirements or other legal requirements with respect to this Master Agreement or any Work Order.
- c. Pay Cochran's Invoices within thirty (30) calendar days after delivery of said Invoice to Client. Interest shall accrue on late payment of any Invoice at the rate of 1.5% per month. Client must provide written notice of all reasons why payment in full is not being made against any Invoice or Client shall be deemed to have waived any objection to Invoice. Client shall make payment of the undisputed portion of any Invoice. If Client fails to timely pay in full any Invoice, Cochran may immediately, without waiving any other rights it may have, suspend work pending receipt of payment and/or resolution of the payment dispute.
- d. Designate in writing a person to act as Client's representative with respect to each Work Order. Such person will have complete authority to act on Client's behalf; including, but not limited to, transmit instructions, receive information, interpret and define Client's

design criteria, policies, needs and decisions with respect to the Engineering Services, and to modify the scope of the Engineering Services.

- e. Timely provide all design criteria and information to Cochran with respect to Client's requirements for the Engineering Services under each Work Order; including, but not limited to, design objectives and constraints, space requirements and limitations, capacity and performance requirements, and any budgetary limitations.
- f. Provide all available information to Cochran in Client's possession or control that is pertinent to the Engineering Services to be provided under each Work Order; including, but not limited to, previous engineering reports and analyses, as-built drawings, and prior designs or engineering work product.
- g. Client agrees that Cochran is entitled to rely upon any information provided to Cochran by or on behalf of Client, that Cochran is entitled to assume that any such information is accurate, complete, and in compliance with applicable rules, regulations, codes and laws.
- h. Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold Cochran and Cochran's consultants, officers, directors, members, managers, employees, insurers, agents and representatives harmless from any and all claims, damages, liabilities, fees, fines, penalties, expenses or costs of any kind or nature (including, but not limited to, reasonable attorney's fees) arising out of or relating to any errors, omissions, inaccuracies or code violations contained within the information provided to Cochran by or on behalf of Client, and/or Client's breach of any of its other obligations under this Master Agreement or any Work Order.
- i. Client agrees to arrange for and/or provide access to, and make all necessary provisions for Cochran to enter upon Client's property as reasonably necessary for Cochran to perform the Engineering Services.
- j. Review and timely act upon or approve all designs, plans, estimates, studies, reports and other documents presented to Client by Cochran (including, but not limited to, obtaining the advice of attorneys, insurance representatives and other consultants as Client deems appropriate with respect to such review and consideration).
- k. Attend and participate in any meetings and/or inspections reasonably requested by Cochran.

3. Cochran's Responsibilities:

- a. Provide Engineering Services as more fully identified in any Work Order using the care and skill ordinarily used by members of Cochran's profession practicing under similar conditions at the same time and in the same locality.
- b. Client acknowledges that there may be projects or needs for Engineering Services which are outside Cochran's capability. In such circumstances, Cochran may subcontract for

said services to be performed by a licensed, qualified engineering consultant and Cochran will invoice Client for the amounts due said consultant plus Cochran's then-standard markup on consultant costs. Cochran's role, if any, with respect to such services shall be addressed in any applicable Work Order.

- c. Cochran shall disclose in writing to Client any interest that Cochran may have in any of Client's operations or business, and during the term of this Master Agreement Cochran shall not acquire any interest, directly or indirectly, which would conflict with Client's known interests. If Client is a governmental entity, Client acknowledges and agrees that Cochran is free to perform Engineering Services and other work for other clients who live or work within Client's jurisdiction – provided that such Engineering Services and other work are not in conflict with Client's laws or ordinances.
- d. Cochran agrees that it shall not discriminate on the grounds of, or because of, race, creed, color, age, sex, national origin or ancestry, political affiliation or beliefs, religion or handicap.
- e. Cochran shall comply with all applicable Federal, State and local laws and regulations relating to unauthorized aliens. Cochran acknowledges that R.S. Mo. Section 285.530 prohibits any business entity or employer from knowingly employing, hiring for employment or continuing to employ an unauthorized alien to perform work within the State of Missouri. If required by R.S. Mo. Section 285.530(2), Cochran agrees to execute the affidavit attached hereto as Exhibit B.
- f. Cochran agrees, to the fullest extent permitted by law, to defend, indemnify and hold Client and Client's officials, officers, directors, members, managers, employees, insurers, agents and representatives harmless from any and all claims, damages, liabilities, fees, fines, penalties, expenses or costs of any kind or nature (including, but not limited to, reasonable attorney's fees) arising out of or relating to Cochran's breach of its obligations under this Master Agreement or any Work Order.

4. General Terms:

- a. **Term.** This Master Agreement shall be in effect through the end of the calendar year (3) years from the date that this Master Agreement was signed by Client, unless earlier terminated pursuant to the terms of this Master Agreement.
- b. **Termination for Cause.** Either Party may terminate this Master Agreement or any Work Order(s) for cause if: (1) the other Party has materially breached the terms of this Master Agreement or any Work Order; (2) the other Party has failed to take reasonable steps to cure its breach within five (5) working days after receipt of a written Notice of Intent to Terminate from the non-breaching party; and (3) the terminating Party sends written Notice of Termination to the other Party after expiration of the cure period. Any Termination for Cause that is later found to be improper for any reason shall be automatically converted into a Termination for Convenience.

- c. **Confidentiality.** If Client requests Cochran in writing to maintain confidentiality with respect to the Engineering Services, Cochran shall not disclose or otherwise make available to any third-party any reports, data, information or work product (including, but not limited to, any information provided to Cochran by Client) without the prior written consent/approval of Client.
- d. **Ownership of Work Product.** Upon Client's payment to Cochran, all documents (including, but not limited to, plans and specifications – hereinafter collectively "Work Product") prepared by or on behalf of Cochran under this Master Agreement and any Work Orders are, and shall remain, the property of Client. Client may use said Work Product on or for any Project – however, Owner accepts all risks and liabilities when using the Work Product on or for any Project for which the Work Product was not specifically prepared. Cochran shall be permitted to retain copies of all such Work Product, including reproducible copies. Client will defend, indemnify and hold Cochran and Cochran's consultants, officers, directors, members, managers, employees, insurers, agents and representatives harmless from any and all claims, damages, liabilities, fees, fines, penalties, expenses or costs of any kind or nature (including, but not limited to, reasonable attorney's fees) arising out of or relating to Owner's modification or re-use of any Work Product without Cochran's written consent or authorization.
- e. **Professional Liability Insurance.** Cochran shall procure and maintain professional liability insurance to protect Cochran from liability arising out of the negligent acts, errors or omissions of Cochran and anyone for whom Cochran is legally responsible, arising out of the performance of Engineering Services under this Master Agreement or any Work Order. The professional liability insurance coverage shall not be for less than \$2,000,000 for each claim and in the annual aggregate. Cochran shall also procure and maintain at least \$3,000,000 in excess insurance coverage for professional liability claims.
- f. **Other Insurance.** Cochran shall also procure and maintain the following insurance coverages:
1. General Liability Insurance, with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 2. Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$2,000,000 for each accident.
 3. Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
- g. **Governing Law.** The validity, interpretation and performance of this Master Agreement and any Work Orders shall be governed by the laws of the State of Missouri; including,

but not limited to, its statutes of limitation and repose, but without regard to conflicts of laws principles.

- h. **Attorney's Fees.** The prevailing party in any litigation arising out of or related to this Master Agreement or any Work Order, or the alleged breach thereof, or the Engineering Services, shall be awarded its attorney's fees, expert witness fees, expenses, arbitration fees and expenses, and/or court costs (at the trial and all appellate levels); including costs and attorney's fees related to any collection efforts. Determination of which party prevailed shall be made by the judge. The determination shall be made by reviewing the claims resolved at trial (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 and comparing that amount to the amount requested by that party at the trial. If that party received less than 50% of the amount it sought, then the other party prevailed. If that party receives more than 50% of the amount it sought, then it prevailed. The judge may (but is not required to) 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 may elect to evaluate who is the prevailing party on a claim by claim basis, or in the aggregate as the judge deems appropriate. In making the determination of which party prevailed, the judge shall take into consideration the last settlement offers and settlement demands made prior to the start of the trial.
- i. **Mutual Waiver of Consequential Damages.** Client and Cochran waive any and all claims against each other for consequential damages arising out of or relating to this Master Agreement, any Work Orders, the alleged breach thereof, or the Engineering Services.
- j. **Limitation of Liability.** The total liability of Cochran for any actions, damages, claims, demands, judgments, fines, penalties, losses, costs, or expenses of any kind or nature (including, but not limited to, attorney's fees) arising out of or resulting from Cochran's negligent acts, errors, omissions and/or breaches of this Master Agreement or any Work Orders is limited to the greater of the amount paid to Cochran under any Work Order involved, or the amount of professional liability insurance maintained by Cochran and available to pay said claim as of the date of the determination that Cochran is liable. This limitation of liability is applicable to all claims and causes of action (whether direct claims by Client or claims for contribution or indemnity by Client based upon third party claims against Client) that may be asserted against Cochran arising out of or relating to this Master Agreement, any Work Order, the alleged breach of either of those agreements, or the Engineering Services, whether the claims arise in contract, tort, statute, or otherwise.

5. Miscellaneous:

- a. This Master Agreement, plus any applicable Work Order, contains the entire agreement of the Parties with respect to the Engineering Services to be performed under any Work Order.
- b. No changes, amendments, or clarifications of any of the terms and conditions of this Master Agreement and any Work Orders shall be valid or effective unless in writing and signed by an authorized representative of the Party to be bound.
- c. The failure by either Party to enforce at any time any of the provisions of this Master Agreement or any Work Order, or to exercise any election or option provided therein, shall in no way be construed as a waiver of the right to enforce such provisions or options in the future.
- d. This Master Agreement and any Work Orders are binding upon the Parties and their heirs, representatives, executors, administrators, successors, receivers, and assigns.
- e. Neither Party may assign or transfer any rights or obligations under this Master Agreement or any Work Order without the prior written consent of the other Party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Master Agreement or any Work Order.
- f. Nothing in this Master Agreement or any Work Order shall be construed to create, impose, or give rise to any duty owed by Cochran or Client to any person or entity other than the other Party to this Master Agreement (including, but not limited to, any contractor, subcontractor, supplier, surety or insurer). All duties and responsibilities undertaken pursuant to this Master Agreement and any Work Order will be for the sole and exclusive benefit of Client and Cochran and not for the benefit of any other person or entity. Client agrees that the Contract Documents for any Construction Projects to be performed for Client based upon any Engineering Services to be performed by Cochran shall expressly state that the contractor is not a third-party beneficiary of any agreements between Client and Cochran.
- g. Nothing in this Master Agreement or any Work Order shall be construed to make Cochran an employee of Client. Cochran is an independent contractor and shall not be referred to in any way by Client that suggests that Cochran is an employee, officer, director or official of Client.
- h. Any notice required under this Master Agreement or any Work Order will be in writing, addressed to the appropriate party at the address which appears on the signature page of this Master Agreement (as modified in writing from time to time by such party) and given personally, by registered mail, return receipt requested, or by a nationally recognized overnight courier service, or by email to an authorized representative of the

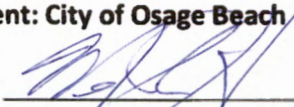
other Party. All notices shall be effective on the date of receipt, if given personally or via email, and on the third day following placing of such notice in the U.S. Mail, or the next business day after delivery of such notice to a nationally recognized overnight courier service.

- i. The Parties agree that this Master Agreement and any Work Orders were jointly drafted and therefore said documents shall be construed neither against nor in favor of either Party, but shall be construed neutrally or as required by the terms of the documents.
- j. This Master Agreement and any Work Orders may be executed in multiple counterparts, each of which will be deemed an original, but all of which together shall constitute one agreement. Signature pages to said documents that are transmitted by facsimile or by e-mail in portable document format will have the same legal effect as original, signed pages.

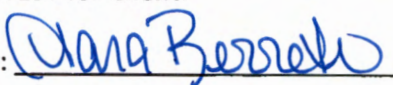
LOR Engineering, LLC d/b/a
Cochran

By: 
Christopher Boone, P.E., President
Printed name, title

Client: City of Osage Beach

By: 
Michael Harrison / Mayor
Printed name, title

If Client is a public entity:
ATTEST for Client:

By: 
Tara Berretto City Clerk
Printed name, title

APPROVED as to form and all legal requirements:

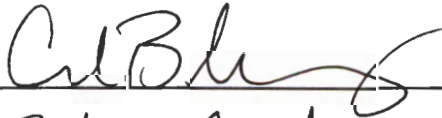
By: 
Cole Bradbury, City Attorney
Printed name, title



EXHIBIT A

Architecture • Civil Engineering • Land Surveying • Site Development • Geotechnical Engineering • Inspection & Materials Testing

2023 Hourly Fee Schedule

The following is a list of hourly rates for our Fee Service Contracts.
Effective January 1, 2023, these rates will apply to all projects performed on a time and expense basis.

<u>Title</u>	<u>Charge-Out</u>
Principal	\$ 200.00
Division Director	\$ 185.00
Managing Engineer	\$ 170.00
Project Manager 1	\$ 160.00
Project Manager 2	\$ 150.00
Engineer 1	\$ 140.00
Engineer 2	\$ 130.00
Engineer 3	\$ 115.00
Engineer 4	\$ 105.00
Engineer 5	\$ 95.00
Senior Architect	\$ 150.00
Architect 1	\$ 125.00
Architect 2	\$ 115.00
Architect 3	\$ 105.00
Managing Surveyor	\$ 140.00
Surveyor 1	\$ 130.00
Surveyor 2	\$ 120.00
Surveyor 3	\$ 110.00
Senior Manager	\$ 110.00
Secretary	\$ 60.00
Field Manager	\$ 75.00
Inspector	\$ 55.00
Engineering Technician	\$ 70.00
MoDOT Certified Technician	\$ 60.00
Drafter/Survey Tech 1	\$ 105.00
Drafter/Survey Tech 2	\$ 95.00
Drafter/Survey Tech 3	\$ 85.00
Drafter/Survey Tech 4	\$ 70.00
One Man Survey Crew	\$ 120.00

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

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. 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

www.cochraneng.com

Initials _____

EXHIBIT B

ANNUAL WORKER ELIGIBILITY VERIFICATION AFFIDAVIT

(As required by Section 285.530 of the Revised Statutes of the State of Missouri, 2016)

STATE OF MISSOURI)
) SS
COUNTY OF FRANKLIN)

On the 14th day of April, 2023, before me appeared Christopher Boone, P.E., personally known to me or proved to me on the basis of satisfactory evidence to be a person whose name is subscribed to this affidavit, who being by me duly sworn, stated as follows:

- I, the Affiant, am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the Client to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.
- I, the Affiant, am the President of LOR Engineering, LLC (dba Cochran), and I am duly
(title) (business name)
authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.
- I, the Affiant, hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security, and the aforementioned business entity shall participate in the said program to verify the employment eligibility of newly hired employees working in connection with any services contracted by the Client of Strafford, Missouri. I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.
- I, the Affiant, am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 through 285.550, RSMo, for subcontractors that knowingly employ or continue to employ any unauthorized alien to work within the State of Missouri.
- I, the Affiant, acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress.

Chad Boone
Affiant Signature

Subscribed and sworn to before me in Union, MO, the day and year first above-written.
(City or County) (State)

Jill Elbert
Notary Public

My commission expires: July 16, 2025

[documentation of enrollment/participation in a federal work authorization program attached]

