

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A CITY-CONSULTANT AGREEMENT ON BEHALF OF THE CITY, WITH DAVEY RESOURCE GROUP, INC., FOR 2022 ON-CALL ARBORIST SERVICES.**

**WHEREAS**, the City’s residential public streets are lined with thousands of trees located the public right of way (street trees); and

**WHEREAS**, the City of Wildwood, Missouri (the “City”), has adopted a policy to maintain street trees which are located along residential public streets on the public right of way; and

**WHEREAS**, the maintenance of the City’s street trees requires significant effort and expertise in the field of forestry; and

**WHEREAS**, the City lacks an on-staff arborist or forester, which would provide that expertise; and

**WHEREAS**, the Department of Public Works of the City previously contracted with Davey Resource Group, Inc. to provide on-call arborist services; and

**WHEREAS**, the Department of Public Works requested that Davey Resource Group, Inc., submit a proposal to the City to continue provide on-call arborist services during 2022; and

**WHEREAS**, the Department of Public Works reviewed the Proposal submitted by Davey Resource Group, Inc., and found it to be acceptable; and

**WHEREAS**, the Administration and Public Works Committee of the City, at their January 2022 meeting, reviewed Davey’s proposal and recommended the City enter into a City-Consultant Agreement with Davey Resource Group, Inc. for 2022 on-call arborist services; and

**WHEREAS**, the City Council of the City hereby finds and determines that it is to the benefit of the residents of the City to enter into a City-Consultant Agreement with Davey Resource Group, for 2022 on-call arborist services.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:**

**Section One.** That the form, terms, and provisions of the City-Consultant Agreement by and between the City of Wildwood, Missouri, and Davey Resource Group, Inc., attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and are hereby approved and the City Administrator shall be and is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and

directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

**Section Two.** That the City Administrator shall be and is hereby further authorized and directed, on behalf of and in the name of the City, to agree to do any and all other acts and things and to execute and deliver any and all other agreements, documents, instruments and certificates, all as may be necessary and appropriate to consummate the above mentioned Agreement, and to perform all of the terms, provisions and conditions of the Agreement. The execution by the City Administrator of any agreement, document, instrument, check or certificate referred to in this Ordinance and the Agreement shall be conclusive evidence of the approval thereof and of all of the terms, provisions and conditions contained therein. Any and all acts which the City Administrator may do or perform in conformance with the powers conferred upon them by this Ordinance are hereby expressly authorized, approved, ratified and confirmed.

**Section Three.** The total expenses and liability of the City under the Agreement shall not exceed a contract sum of thirty-nine thousand three hundred dollars (\$39,000).

**Section Four.** Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

**Section Five.** Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

**Section Six.** Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval.

This Bill was passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2022, by the Council of the City of Wildwood, Missouri, after having been read by title or in full two (2) times prior to its passage.

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
James R. Bowlin, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

**Exhibit A**  
[attach Agreement]

City of Wildwood  
**CONSULTANT / SERVICES AGREEMENT**

DEPARTMENT: Public Works

DATE: January 5, 2022

THIS AGREEMENT, made and effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Wildwood, Missouri, a municipal corporation hereinafter referred to as “City”, and Davey Resource Group, Inc., hereinafter referred to as “Consultant”, with a business address of: 3507 Zinnia, Columbia, MO 65202.

WITNESSETH: That the parties hereto, for the considerations hereinafter set forth, agree as follows:

**I. SCOPE OF SERVICES**

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the Consultant services which are particularly described in any attachments incorporated herein and additionally as follows:

Provide on-call arborist services and city-wide street tree inventory for 2022 as further described on Attachment B.

The above services (hereinafter referred to as the “Work”) shall be provided by the Consultant in accordance with all the provisions of this Agreement, including the General Conditions attached hereto as Attachment A, for the project which are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment, or any other documents submitted by Consultant.

**II. COMPENSATION**

**A. Basic Compensation.** The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the Work, and all expenses and costs related thereto:

a sum not to exceed Thirty-Nine Thousand dollars (\$39,000.00), as set forth on an Attachment B attached hereto and incorporated herein.

**B. Additional Compensation.** Any cost not specifically allowed the Consultant pursuant to Paragraph A, Basic Compensation, shall be considered Additional Compensation and must first be authorized by a written Change Order approved by the City and Consultant. If City directs or authorizes additional services not included in this Agreement to be performed, the City and Consultant shall first agree by written Change Order as to how the Consultant is to be paid. Any services provided in addition to the Work shall not entitle Consultant to additional compensation unless approved in advance and by written Change Order executed by the City and the Consultant.

**III. TIME AND MANNER OF PAYMENTS**

All invoices, complete with necessary support documentation, shall be submitted to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory performance of the Work for the fees, prices, rates or schedule of values set forth above. When appropriate due to the nature of the Work of the Agreement, progress payments may be authorized to be made based upon completion of quantifiable/identifiable phases of the Work. If authorized by the City, a schedule of progress payments based on phases of Work completed and in such corresponding amounts as determined to be appropriate shall be set forth in Attachment C attached hereto.

**IV. SCHEDULE OF WORK**

Time is of the essence. The Work to be performed under the Agreement shall be commenced on or before January 1, 2022, shall be completed on or before December 31, 2022, and shall be performed so as not to delay or hinder City’s schedule for the project, if applicable.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

Jacob McMains  
Consultant

\_\_\_\_\_  
City of Wildwood

By Jacob McMains

By \_\_\_\_\_

Title Area Manager

Title \_\_\_\_\_

ATTEST:  
\_\_\_\_\_

DATE: \_\_\_\_\_

- ATTACHMENT A – Consultant/Services Agreement General Conditions
- ATTACHMENT B – Consultant Proposal
- ATTACHMENT C – Progress Payment Schedule (Optional)
- ATTACHMENT D – Consultant Liability Insurance Requirements

## Attachment A

### City of Wildwood CONSULTANT/SERVICES AGREEMENT GENERAL CONDITIONS

- 1. Independent Consultant.** The Consultant shall be and operate as an independent Consultant in the performance of this Agreement. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the City in any respect.
- 2. Assignment; Subcontracts.** This Agreement shall not be assigned to any other parties by the Consultant without the express written consent of the City. In addition, the Consultant shall not subcontract or assign any of the Work to be performed by it hereunder without the express written consent of the City except as may be set forth in Attachment B.
- 3. Proposals for the Work.** If the City issued a request for proposals in connection with the Work, such request for proposals and the proposal of the Consultant in response thereto, are incorporated herein by reference and made a part of this Agreement. In case of any conflicts between the request for proposals and the proposal of the Consultant, the requirements of the executed Consultant/Services Agreement shall control unless a change thereto is specifically stated in this Agreement.
- 4. Changes to Work and/or Compensation.** No change in the Scope of Work, Compensation or terms contained in this Agreement shall be made except as authorized in advance in writing by Change Order approved by the City and Consultant. The Consultant shall make any and all changes in the Work without invalidating this Agreement when specifically ordered to do so by written Change Order approved by the City and Consultant in advance of the Work being performed. Consultant, prior to the commencement of such changed or revised Work or request for compensation in excess of the Basic Compensation, shall promptly submit to the City a written cost or credit proposal for such changed or revised Work or additional compensation. If the City and Consultant shall not be able to agree as to the amount, either in consideration of time or compensation to be allowed or deducted, it shall nevertheless be the duty of Consultant, upon written notice from the City, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Work. The City reserves the right to suspend Work of the Consultant upon written notification from the City if the City and Consultant are not able to agree as to matters of scope and compensation for changes to the Work.
- 5. Indemnification.** To the fullest extent permitted by law, the Consultant agrees to defend, indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, in any way arising from consultant's breach of the Agreement or out of services and/or operations negligently performed hereunder by the Consultant, including the City's reliance on or use of the services or products provided by the Consultant under the terms of this Agreement. The Consultant shall not be liable for any loss or damage attributable solely to the negligence of the City. Consultant's sole remedy against the City for any claimed breach shall be limited to specific performance of the Agreement, including payment not to exceed the lawfully due compensation, but in no event shall the City be liable for or subject to any claim for damages, costs or attorneys' fees arising from this Agreement.
- 6. Insurance.** Consultant shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts stated on Attachment D. The policies of insurance shall be in such form and shall be issued by such company or companies as

may be reasonably satisfactory to the City. The City and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Consultant's Work, as determined by the City, shall be named as additional insured.

In addition to the foregoing, the Consultant shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, otherwise as stated on attached Attachment D, but in no event less than the City's sovereign immunity limits as established by RSMo. §537.610, as adjusted from time to time. The City and Consultant waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Nothing in this Agreement, or the provision of insurance, shall be deemed a waiver of sovereign immunity by the City.

**7. Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

**8. Accounting.** During the period of this Agreement, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

**9. Reimbursable Expenses.** Expenses of the Consultant that are directly attributable to the performance of the Agreement that are in addition to the Basic Compensation, such as reproduction charges, travel expenses, long distance phone calls, mileage, and sub-contractors, are to be set forth in a schedule of reimbursable fees and rates as part of the Agreement. Consultant personnel labor rate expenses for time while traveling in performance of the Agreement do not qualify as reimbursable expenses.

**10. Personnel.** The Work shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal and no other personnel of the Consultant shall perform any of the Work without the express written approval of the City.

**11. Other Consultants.** The City reserves the right to employ other consultants in connection with the Work.

**12. Project Records and Work Product.** The Consultant shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and any deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and work product of the Consultant created in performance of or relating to this Agreement. Consultant agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the work product.

**13. Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests and evaluations in connection with the Work.

14. **Termination.** The City shall have the right to terminate the Agreement at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under the Agreement an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Work performed and accepted. The Consultant shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

15. **Compliance with Laws.** The Consultant shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, worker eligibility, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Agreement.

16. **Nondisclosure.** The Consultant agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

17. **Representations.** Consultant agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree the Agreement represents the entire agreement between the parties.

18. **Amendments.** This Agreement may be amended only by written agreement signed by the parties.

19. **Governing Law.** The interpretation of and performance under this Agreement shall be governed by the laws of the state of Missouri, without regard to choice of law principles.

20. **Severability.** If any provisions of this Agreement shall be found to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and be construed to effectuate the intent of the parties.

21. **Notice.** Any notice or written communication required or permitted hereunder shall be sent to the parties via United States mail, certified return receipt requested, or via facsimile, to the respective addresses and numbers on file. Any notice so given shall be deemed effective on the date shown on the receipt thereof.

22. **Good Faith.** The parties shall act in good faith in the performance of their obligations hereunder.

23. **Prevailing Party.** If either party to this Agreement defaults in the performance of its obligation(s) hereunder, the prevailing party in any action to enforce its rights and remedies shall be entitled to obtain its costs and reasonable attorney's fees from the non-prevailing party.

24. **Non-Waiver.** The failure of either party to enforce any of its rights hereunder shall not act as a waiver of that or any other right possessed by such party under this Agreement.

25. **Authorization to Enter into Agreement.** Each party hereunder represents to the other that it is duly organized, validly existing and in good standing under the laws of its state of incorporation or formation; the execution, delivery and performance of this Agreement by such party has been duly authorized by all necessary and appropriate action; and, this Agreement constitutes a valid and binding obligation of such party, enforceable against such party in accordance with the terms hereof.

**26. Execution.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one agreement that is binding upon both parties hereto, notwithstanding that all parties are not signatories to the same counterpart. This Agreement may be delivered by facsimile or electronic mail transmission. This Agreement shall be considered to have been executed by a party, if there exists a photocopy, facsimile copy, electronic copy, or a photocopy of a facsimile or electronic copy of an original hereof or of a counterpart hereof which has been signed by such party. Any photocopy, facsimile copy, electronic copy or photocopy of a facsimile copy of this Agreement or any counterpart hereof shall be admissible into evidence in any proceeding as though the same was an original.

**27. Other Special Provisions.** The special provisions set forth on Attachments C and D are incorporated herein by reference, and made a part hereof.



## Attachment B

**Corporate Headquarters**  
295 South Water Street, Suite 300  
Kent, OH 44240  
800-828-8312

**Local Office**  
3507 Zinnia  
Columbia, MO 65202  
660-287-5773

*December 2, 2021*

Rick Brown  
City of Wildwood  
16860 Main Street  
Wildwood, MO 63040

### **RE: 2022 Consulting & Inventory- Tree Management**

**Dear Mr. Brown,**

Thank you for considering Davey Resource Group, Inc. “DRG” for the City of Wildwood’s 2022 tree management program. In support of your objective to successfully carry out the City’s tree management program, DRG is pleased to present a pricing estimate for the 2022 emerald ash borer (EAB) management program, tree planting assistance, planning & zoning department tasks (such as code review and tree stand delineations/tree preservation plans development/review), and miscellaneous on-call consulting tasks. Through DRG and our dedicated team of arboricultural specialists, you will be assured of quality arborist services and professional assessments to help you achieve your long-term goals.

### **Ash Tree Management**

In 2020 and 2021, Wildwood implemented and completed its first complete round of treatments to all ash species suitable for treatment - Phase 1 and Phase 2. For 2022, DRG will assess the Phase 1 treated trees and determine which of those will be retreated (ideally all of them). DRG will procure a suitable contractor to carry out the treatments, supervise the treatment project, and will update the City’s TreeKeeper system accordingly.

### **Tree Planting Administration**

For 2022, DRG will develop an RFP to seek out a contractor who can provide the best tree planting services for the Town Center tree pits (4x4 sidewalk planters), the City right-of-way “ROW”, and other areas, as needed. DRG, with the help of the City, will evaluate and select a contractor(s) to carry out the work based on the needs and budget of the City. DRG will assist in species selection, nursery selection, and will ensure that any and all trees are installed correctly. This task will include RFP development, addendums (as needed), communication amongst interested parties, pre-bid meetings (as needed), contract award meeting, installation specifications, and any other tree installation-related items that may be related to this project.

### **Planning & Zoning Code Review**

Wildwood is currently seeking input from local experts to assist in the revision and update to their tree code - *Chapter 410 Tree Preservation and Landscape Requirements, Tree Manual, and Sustainable Plantings Guide*. DRG has provided some preliminary comments to these items and is offering further assistance, as needed by the City. DRG will be made available to carry out any requested tasks, provide input and expertise, attend meetings, or anything else that may be needed to successfully carry out this project.

## Tree Stand Delineation & Tree Preservation Plan Review

DRG will be made available to assist Planning & Zoning with tree stand delineation and tree preservation plan development and review. Specifically, this task has been developed from the ongoing effort revolving around The Reserve and the request to re-evaluate the tree stand delineation that has been completed for this property.

## On-Call Consulting

DRG will be made available to the City for on-call consulting services at an hourly rate of \$90/hour, not-to-exceed \$3,500. On-call consulting services will include, but are not limited to:

- Ash tree inspections
- TreeKeeper updates and support
- City Council meetings
- Resident inquiries, meetings, etc.
- Tree risk assessments, appraisals, preservation, etc.
- Any arboricultural, horticultural, etc. technical assistance, as needed

## Tree Inventory

DRG International Society of Arboriculture (ISA) Certified Arborists will inventory up to 6,000 street trees throughout the City of Wildwood, as directed by the City. The arborist will perform a visual assessment and collect all data, as outlined below.

### The data collection will include (but not limited to):

- Location
- Species
- Size (diameter at breast height)
- Multistem
- Condition
- Defects
- Primary Maintenance
- Risk Rating

The arborist will record the above data and place the inventoried trees into your current TreeKeeper program. This data will be added into your existing “Trees” layer and will complete your City tree inventory, minus parks.

## Experience and Expertise

Davey Resource Group, Inc is the arboricultural and horticultural consulting subsidiary to The Davey Tree Expert Company. With extensive experience assisting private and commercial properties and other entities including municipalities and utilities, we work with asset managers around the country and provide customized solutions to managing and tracking vital environmental assets. Our urban forestry services have provided clients nationwide with the ability to accurately and sustainably manage their critical ‘green’ infrastructure.

# Authorization to Proceed

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The following pricing options have been developed for the various tasks for the City of Wildwood. Any additional projects that may arise in 2022 outside the scope of these tasks will require a new proposal.

## Wildwood Consulting 2022

Ash Tree Management ( <i>\$90/hour not-to-exceed \$2,500</i> )	\$2,500
Tree Planting Administration( <i>\$90/hour not-to-exceed \$4,000</i> )	\$4,000
Planning & Zoning Code Review ( <i>\$90/hour not-to-exceed \$3,500</i> )	\$3,500
Tree Stand Delineation & Tree Preservation Plan Review ( <i>\$90/hour not-to-exceed \$3,500</i> )	\$3,500
On-Call Consulting ( <i>\$90/hour not-to-exceed \$3,500</i> )	\$3,500
<b>Consulting Task Total (<i>\$90/hour not-to-exceed \$17,000</i>)</b>	<b>\$17,000</b>

## Wildwood Street Tree Inventory

Tree Inventory (up to 6,000 trees)	\$22,000 lump sum
Tree Inventory (any trees collected after 6,000)	\$3.65/tree

**By signing this form, I do hereby acknowledge acceptance of the terms described below and authorize work to be performed.**

Client Name:

Authorizing Signature:

Title:

Date:

The DRG team is devoted to providing excellent customer service through our technical expertise and our passion for innovative solutions. We recognize that our success depends on meeting your needs and we are excited about the opportunity to collaborate with you on your project. Please feel free to contact me with any questions.

Sincerely,



Jacob McMains, *Urban Forestry Consultant*  
ISA Certified Arborist, MW-5328A  
Davey Resource Group, Inc.  
[www.daveyresourcegroup.com](http://www.daveyresourcegroup.com)

## TERMS AND CONDITIONS

- All pricing is valid for six months from the date of this proposal.
- Time and materials (T&M) estimates may fluctuate and will be billed accordingly. Fixed fee contract prices will be billed as shown.
- Invoicing will be submitted monthly for work performed, unless otherwise agreed upon.
- Payment terms are net 30 days.
- If prevailing wage requirements are discovered after the date of this proposal, we reserve the right to negotiate our fees.
- The client is responsible for any permit fees, taxes, and other related expenses, unless noted as being included in our proposal.
- The client shall provide 48 hours' notice of any meetings where the consultant's attendance is required.
- Unless otherwise stated, one round of revisions to deliverables is included in our base fee. Additional edits or revisions will be billed on a time and material (T&M) basis.
- All reports are provided only to the client unless otherwise directed.

## LIMITED WARRANTY

Davey Resource Group, Inc. ("DRG") provides this limited warranty ("Limited Warranty") in connection with the provision of services by DRG (collectively the "Services") under the agreement between the parties, including any bids, orders, contracts, or understandings between the parties (collectively the "Agreement").

Notwithstanding anything to the contrary in the Agreement, this Limited Warranty will apply to all Services rendered by DRG and supersedes all other warranties in the Agreement and all other terms and conditions in the Agreement that conflict with the provisions of this Limited Warranty. Any terms or conditions contained in any other agreement, instrument, or document between the parties, or any document or

communication from you, that in any way modifies the provisions in this Limited Warranty, will not modify this Limited Warranty nor be binding on the parties unless such terms and conditions are approved in a writing signed by both parties that specifically references this Limited Warranty.

Subject to the terms and conditions set forth in this Limited Warranty, for a period of ninety (90) days from the date Services are performed (the “Warranty Period”), DRG warrants to Customer that the Services will be performed in a timely, professional and workmanlike manner by qualified personnel.

To the extent the Services involve the evaluation or documentation (“Observational Data”) of trees, tree inventories, natural areas, wetlands and other water features, animal or plant species, or other subjects (collectively, “Subjects”), the Observational Data will pertain only to the specific point in time it is collected (the “Time of Collection”). DRG will not be responsible nor in any way liable for (a) any conditions not discoverable using the agreed upon means and methods used to perform the Services, (b) updating any Observational Data, (c) any changes in the Subjects after the Time of Collection (including, but not limited to, decay or damage by the elements, persons or implements; insect infestation; deterioration; or acts of God or nature [collectively, “Changes”]), (d) performing services that are in addition to or different from the originally agreed upon Services in response to Changes, or (e) any actions or inactions of you or any third party in connection with or in response to the Observational Data. If a visual inspection is utilized, visual inspection does not include aerial or subterranean inspection, testing, or analysis unless stated in the scope of work. DRG will not be liable for the discovery or identification of non-visually observable, latent, dormant, or hidden conditions or hazards, and does not guarantee that Subjects will be healthy or safe under all circumstances or for a specified period of time, or that remedial treatments will remedy a defect or condition.

To the extent you request DRG’s guidance on your permitting and license requirements, DRG’s guidance represents its recommendations based on its understanding of and experience in the industry and does not guarantee your compliance with any particular federal, state or local law, code or regulation.

DRG may review information provided by or on behalf of you, including, without limitation, paper and digital GIS databases, maps, and other information publicly available or other third-party records or conducted interviews (collectively, “Source Information”). DRG assumes the genuineness of all Source Information. DRG disclaims any liability for errors, omissions, or inaccuracies resulting from or contained in any Source Information.

If it is determined that DRG has breached this Limited Warranty, DRG will, in its reasonable discretion, either: (i) re-perform the defective part of the Services or (ii) credit or refund the fees paid for the defective part of the Services. This remedy will be your sole and exclusive remedy and DRG’s entire liability for any breach of this Limited Warranty. You will be deemed to have accepted all of the Services if written notice of an alleged breach of this Limited Warranty is not delivered to DRG prior to the expiration of the Warranty Period.

To the greatest extent permitted by law, except for this Limited Warranty, DRG makes no warranty whatsoever, including, without limitation, any warranty of merchantability or fitness for a particular purpose, whether express or implied, by law, course of dealing, course of performance, usage of trade or otherwise.

**Attachment C**

(Optional)

**Consultant/Services Agreement**

**Progress Payment Schedule**

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Consultant: \_\_\_\_\_

Date: \_\_\_\_\_

Project: \_\_\_\_\_

Basic Compensation: \$\_\_\_\_\_

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Phase of Work (Describe)

% of Total

Progress Payment

Phase I:

\_\_\_\_\_%

\$\_\_\_\_\_

Phase II:

\_\_\_\_\_%

\$\_\_\_\_\_

Phase III:

\_\_\_\_\_%

\$\_\_\_\_\_

Phase IV:

\_\_\_\_\_%

\$\_\_\_\_\_

Phase V:

\_\_\_\_\_%

\$\_\_\_\_\_

Total Basic Compensation: \$\_\_\_\_\_

## Attachment D

### **Consultant Liability Insurance Requirements**

The Consultant shall purchase and maintain in full force and effect the following insurance coverages with an insurance carrier acceptable to the City:

The policy(ies) shall be endorsed to cover the contractual liability of the Consultant under the General Conditions.

The Consultant and its Sub-consultants shall procure and maintain during the life of this Agreement insurance of the types and minimum amounts as follows:

- (a) Workers' Compensation in full compliance with statutory requirements of Federal and State of Missouri law and Employers' Liability coverage in the amount of \$1,000,000\*.
- (b) Comprehensive General Liability and Bodily Injury
  - Including Death: \$500,000 each person\*
  - \$3,000,000 each occurrence\*
  - Property Damage: \$3,000,000 each occurrence\*
  - \$3,000,000 aggregate\*
- (c) Comprehensive Automobile Liability, Bodily Injury
  - Including Death: \$500,000 each person\*
  - \$3,000,000 each occurrence\*
  - Property Damage: \$3,000,000 each accident\*
- (d) Professional Liability
  - Including Death: \$500,000 each person\*
  - \$3,000,000 each occurrence\*
  - Property Damage: \$3,000,000 each occurrence\*
  - \$3,000,000 aggregate\*

The City's Protective policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished the City prior to Consultant commencing the Work on this project. The certificates must state "The City of Wildwood is an additional insured."

\* but not less than the sovereign immunity limits established by RSMo. 537.610 et seq.