

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF WILDWOOD, MISSOURI TO EXECUTE A CONTRACT ON BEHALF OF THE CITY OF WILDWOOD WITH COCHRAN ENGINEERING, INC. FOR ENGINEERING SERVICES FOR THE DEVELOPMENT OF A SALT STORAGE FACILITY TO BE LOCATED ADJACENT TO THE INTERSECTION OF MANCHESTER ROAD AND ST. ALBANS ROAD WITHIN THE CITY OF WILDWOOD (Ward 1)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI:

Section 1.

The Mayor of the City of Wildwood is hereby authorized to execute on behalf of the City of Wildwood a contract with Cochran Engineering, Inc. for engineering services for the development of a salt storage facility to be located adjacent to the intersection of Manchester Road and St. Albans Road within the City of Wildwood. A copy of the contract shall be substantially in this form attached hereto and incorporated herein.

Section 2.

The total expenses and liability of the City of Wildwood under the contract shall not exceed \$26,500.00.

Section 3.

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 _____, 20__, by the Council of the City of Wildwood, Missouri, after having been read by title or in full two times prior to passage.

PRESIDING OFFICER

TIMOTHY WOERTHER, MAYOR

ATTEST:

ATTEST:

City Clerk

City Clerk



MEMORANDUM

To: Mayor Timothy Woerther and City Council Members

From: Rick C. Brown, Director of Public Works

Date: January 8, 2016

Re: Salt Storage Building Design Services

As you may recall, a recommendation to approve a contract with Cochran Engineering for design of the new salt storage facility was presented to the City Council at the November 23rd, 2015 Work Session. At that meeting, the Department referenced the fact that the Admin/Public Works Committee previously approved the contract with Cochran conditioned on the City receiving a letter of agreement from Mr. Tom Kelpé to donate the property necessary to construct the facility. Attached to this memo is the letter of agreement that was recently received from Mr. Kelpé.

It should be noted that Mr. Kelpé has generously offered to provide the necessary excavation for the project at no cost to the City. Additionally, Mr. Kelpé has offered to act as General Contractor/Construction Manager for the remaining work for a 3% fee. The Department will be further evaluating Mr. Kelpé's request to perform General Contractor/Construction Manager services as a separate contract for Professional Services. (If we decide to move forward in that regard, it would require a subsequent approval by the City Council.)

I will be available for any questions or comments at the January 11th, 2016 City Council meeting.

RCB

Planning Tomorrow Today™

Agreement to Dedicate Land for the City of Wildwood Salt Dome

Mr. Ryan S. Thomas, P.E.
City Administrator
City of Wildwood
16860 Main Street
Wildwood, MO 63040

Dear Mr. Thomas,

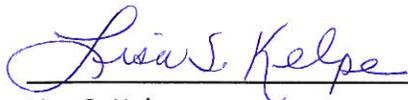
This letter serves as confirmation of our offer for Wildwood Property, LLC (Thomas H. and Lisa S. Kelpé, members) to donate the land necessary for the construction of the salt dome. The said land to be donated is on the south line of our property located at 17955 Manchester Road adjacent to St. Albans Road in Wildwood. The new location is in the same area as the existing "temporary" bin that has been in place since approximately 1998. The agreement also includes permanent ingress and egress from the existing two entrances. The property would be an extension of the current St. Albans Road right of way to the north as necessary for construction.

Included with this is the agreement for Kelpé Contracting, Inc. to excavate as necessary for all structure and roadway work. The structure and all other related materials and work will be paid for by the City of Wildwood. Kelpé Contracting offers and prefers to General Contract/Construction Manage the remaining work for a 3% fee to ensure protection of and interest in our property.

Wildwood Property, LLC



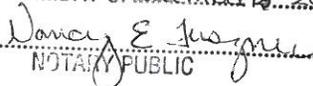
Thomas H. Kelpé



Lisa S. Kelpé

SUBSCRIBED AND SWORN TO BEFORE ME

THIS...15...DAY OF December 19...2015


NOTARY PUBLIC





MEMORANDUM

To: Mayor Timothy Woerther and City Council Members

From: Rick C. Brown, Director of Public Works

Date: November 20, 2015

Re: Salt Storage Building Design Services

Background

In 2012, the Department contracted with Cochran Engineering to provide design services for a new salt storage facility building which was to be located on the Community Park property. Unfortunately, the bids that were received in February 2013 were too high and above the project budget. This led to the decision to cancel construction of the building on the Community Park property. After considering other suitable sites for the facility, the Department would like to proceed with the design of a new facility which would be located on and adjacent to the Kelpel property located on Manchester Road at St. Albans Road.

Recommendation

The Department is recommending approval of a fee proposal received from Cochran Engineering in the amount of \$26,500 to design the facility and develop the necessary plans and specifications to bid the project.

Reasons for Recommendation

- Cochran Engineering previously completed the design of the salt storage building when planned for the Community Park property. For this reason, they are very familiar with the requirements of the project. Additionally, they will be able to utilize the previous design plans and specifications as the basis for the development of this project. While we could issue a new Request for Qualifications to interview and select a design consultant, the time necessary would delay the ultimate completion of the project. This delay may not allow us to design and construct the facility next year. In addition, a new consultant would not have the previous experience with the project requirements.
- Cochran's fee of \$26,500 is reasonable in the opinion of Staff, considering the amount of services to be provided to complete the project. The total project budget, including design and construction is \$450,000. Cochran's previous fee to design the facility was \$35,000.

This recommendation was brought to the October 27th Admin/Public Works Committee meeting where it was approved conditioned on the City receiving a letter of agreement from Tom Kelpel to donate the necessary property to construct the facility. It should be noted that the Department has involved Mr. Kelpel in the planning and location of the salt facility. He is agreeable to its construction and with donating the necessary property. We are anticipating receiving the letter of agreement soon and it will be forwarded to Council prior to final approval on this contract.

I will be available for any questions or comments at the November 23rd, 2015 City Council Work Session.

RCB

Planning Tomorrow Today™

City of Wildwood
CONSULTANT / SERVICES AGREEMENT

DEPARTMENT: _____

DATE: _____

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 Cochran Engineering, Inc., hereinafter referred to as “Consultant”, with a business address of: 737 Rudder Road, Fenton, MO 63026.

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:

Engineering Design Services for the development of a Salt Storage Facility, as 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 Twenty Six Thousand, Five Hundred dollars (\$26,500), 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 February 1, 2016, shall be completed on or before June 1, 2016, 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.

Consultant

City of Wildwood

By _____

By _____

Title _____

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.



Architecture
Civil Engineering
Land Surveying
Site Development

ATTACHMENT B

737 Rudder Road
St. Louis, Missouri 63026
Telephone: 314-842-4033
Fax: 314-842-5957
E-Mail: david@cochraneng.com

September 23, 2015

Mr. Ryan Thomas, P.E.
City Administrator
City of Wildwood
16860 Main Street
Wildwood, MO 63040

**RE: Proposal –Engineering Design Services
Salt Storage Facility – Kelp Property**

Dear Mr. Thomas:

Thank you for giving Cochran the opportunity to submit this proposal to provide professional design services for the above referenced project. In accordance with our meeting two weeks ago, we offer the following professional services:

SCOPE OF SERVICES:

A. Architectural and Civil Design phase services will include:

1. Topographic survey covering sufficient area to develop detailed construction plans for the project.
2. Meetings with City staff as needed.
3. Preliminary Site Development and Grading Plan.
4. Create deed plat for transfer of property to City, and access easement.
5. Revisions to architectural drawings as follows:
 - a. Coordinate drawings with structural revisions.
 - b. Review Electrical drawing per new site layout.
 - c. Modify specifications from pre-engineered structure to a conventionally framed one.
 - d. Coordinate value engineering architectural details and design with City.
6. Structural drawings will be modified as follows:
 - a. 10' high concrete foundation walls with spread footing.
 - b. Conventional 2x6 stud wall framing.

- c. Pre-engineered scissor trusses.
7. Estimate of construction cost.
8. Bid Package - a complete set of construction improvement plans, contract documents and technical specifications, including tabulation of bid quantities and current prevailing wage rates.

B. Bidding and Construction phase services will include:

1. Answer contractor's questions during bidding and issue addenda (if required).
2. Attend a preconstruction conference to discuss project details with the successful contractor.
3. Review shop drawings when submitted for compliance with the drawings and specifications.

SERVICES NOT INCLUDED:

1. Construction Administration/Inspection/Testing
2. Environmental reports
3. Construction Stakeout (Note: will be the responsibility of the Contractor)

OWNER'S RESPONSIBILITY:

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

FEE:

1. The total amount of fee to be paid for the scope of services outlined in this proposal shall be a lump sum fee of **\$26,500.00**.

PAYMENT:

1. An invoice for progress payments will be submitted monthly during the performance period of this contract for professional services rendered. It is agreed that monthly progress payments for fees earned under this agreement are due and payable within fifteen (15) days of submission of invoices. 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.

2. It is further understood that if the project is abandoned, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished.
3. In addition, payment will be due for all reimbursable expenses incurred prior to receipt of written notice or such abandonment or suspension.

TIME OF PERFORMANCE:

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

TERMS AND CONDITIONS:

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

GENERAL:

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 returning one (1) copy for our contract files.

If you have any questions or changes regarding this proposal, please contact me at 314-842-4033. Thank you.

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

Sincerely,

Acceptance:
City of Wildwood

Dave Christensen, P.E.
Vice President

By: _____

Title: _____

Date: _____

Attachment C

(Optional)

Consultant/Services Agreement

Progress Payment Schedule

Consultant: _____ Date: _____
Project: _____ Basic Compensation: \$_____

<u>Phase of Work</u> (Describe)	<u>% of Total</u>	<u>Progress Payment</u>
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.