

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH DG2 DESIGN FOR THE CITY'S UPDATED LANDSCAPE MANUAL AND SUSTAINABLE PLANTINGS GUIDE.**

**WHEREAS**, since 1996, with the adoption of the Tree Preservation and Restoration Code by the City Council, the City has utilized a Landscape Manual, as a component of its land use activities and infrastructure/park/trail projects, which was supplement some ten (10) years later with the Wildwood Sustainable Plantings Guide; and

**WHEREAS** these documents, once completed, were considered leaders in their respective fields and accurately gauged the community's appreciation and support of tree preservation and a healthy woodlands environment for the Wildwood Area; and

**WHEREAS**, key to updating the manual and guide was the acknowledgement of their respective ages and, with the major revision of the governing regulations that enabled them, changes needed to be made to each of the documents; and

**WHEREAS**, the Planning and Parks Committee was provided a roadmap on an approach to the update of these documents to achieve the goals of improved information, timely design and planting advice, and reliance on experts in the respective areas of landscaping, tree health and protection, and general stewardship rules to enhance growing and maintenance programs of the City; and

**WHEREAS**, with this roadmap, the Planning and Parks Committee agreed to the consultant team and the process to be used to update and consolidate these two (2) documents; and

**WHEREAS**, DG2 Design provided a Scope of Services for these purposes, which is attached hereto, and intended to provide to the City of Wildwood, Missouri the needed assistance and direction in the development of this new document; and

**WHEREAS**, the contractual amount for these skills, per the Scope of Services, is not to exceed an amount of thirty-five thousand dollars (\$35,000.00), which will be partially funded through 2023 General Operating Funds of the Department of Planning and Parks and, thereafter, its 2024 allocation of these same monies from this source; and

**WHEREAS**, this firm has completed projects in the City of Wildwood previously, both for this community (Bellevue Farms Park) and Great Rivers Greenway (GRG), and provided excellent services in these regards; and

**WHEREAS**, the recommendation of the Planning and Parks Committee was then presented to City Council at its meeting on September 19, 2023, where, after discussion among its members, supported such and noted the needed updates would address concerns held by the community regarding the current documents that have been in use for a minimum of ten (10) years and, in the case of the Landscape Manual over twenty-five (25) years; and

**WHEREAS**, the action of the City Council relative to authorizing the consideration of this legislation is undertaken with it being intended to protect the public's health, safety, and general welfare.

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


**Section One.** The City Council of the City of Wildwood, Missouri hereby authorizes the Mayor of the City of Wildwood, Missouri to execute a Consultant/Service Agreement with DG2 Design, L.L.C., in an amount not to exceed thirty-five thousand dollars (\$35,000.00), for professional services relating to the development assistance in the creation of a combined Landscape Manual and Sustainable Plantings Guide.

**Section Two.** The total expenses and liability of the City of Wildwood authorized herein shall be the agreed sum not to exceed thirty-five thousand dollars (\$35,000.00) again to address the Scope of Work and identified items wholly contained in Attachment B of the attached Contract document.

**Section Three.** This Ordinance shall be in full force and effect upon its passage and approval by the City Council of the City of Wildwood, Missouri.

This Bill was passed and approved this 14th day of December, 2023, 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

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

ATTEST:  
  
\_\_\_\_\_  
City Clerk

ATTEST:  
  
\_\_\_\_\_  
City Clerk



**City of Wildwood**  
**CONSULTANT / SERVICES AGREEMENT**

DEPARTMENT: Planning and Parks

DATE: **November 14, 2023**

THIS AGREEMENT, made and effective this 11<sup>th</sup> day of December 2023 by and between the City of Wildwood, Missouri, a municipal corporation hereinafter referred to as "City", and DG2 Design, L.L.C., hereinafter referred to as "Consultant", with a business address of: 4835 State Route 109, Eureka, Missouri 63025.

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: to provide professional services and landscape architecture expertise in the formulation of the City's updated Landscape Manual and Sustainable Plantings Guide, thereby creating a single document for the purposes of disseminating this information in a more user-friendly and digital formats, all in accordance with the conditions set forth in Attachment B of this Agreement.

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 Five Thousand Dollars and Zero Cents (\$35,000.00), 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 the 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 November 14, 2023, shall be completed on or before May 1, 2024, 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

By: \_\_\_\_\_

Title President, Kristy DeGuire

City of Wildwood

By: \_\_\_\_\_

Title Mayor

ATTEST:

Megan Eldredge

DATE: 12/11/23

- 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



DG2 Design, LLC  
4835 MO 109, Suite 102  
Eureka, MO 63025  
636-549-9007

### Proposal and Agreement for Landscape Architectural Services

Project: Sustainable Planting Guidelines and Tree Planting Guidelines – 2024 Update  
City of Wildwood, Missouri

Client: City of Wildwood, Missouri

Mr. Joe Vujnich  
[joe@cityofwildwood.com](mailto:joe@cityofwildwood.com)  
636-458-0440

Landscape Architect: DG2 Design  
4835 Missouri Highway 109, Suite 102  
Eureka, MO 63025

Kristy DeGuire, PLA, President  
[kdeguire@dg2design.com](mailto:kdeguire@dg2design.com)  
(o) 636-549-9007  
(c) 314-258-2754

Dear Mr. Vujnich

Thank you for giving DG2 Design the opportunity to submit this agreement for professional Landscape Architectural Services (“Agreement”) for the **Wildwood Sustainable Planting Guidelines and Tree Planting Guidelines – 2024 Update** (“Project”). This letter shall act as an agreement between DG2 Design, LLC, hereinafter referred to as DG2, and **The City of Wildwood**, hereinafter referred to as Client for the following scope of work, as outlined herein.

**Effective Date:** This Agreement is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, between the Client and DG2 as provided herein.

**Project:**

**Scope of Work:** The scope of work to be provided by DG2 under this agreement is outlined in Attachment “A” – Scope of Work.

The following Attachments are incorporated in and made a part of this agreement:

“A” Scope of Work / Project Schedule

“B” Compensation

“C” Project Site

**Schedule of Services:** Sustainable Planting Guidelines and Tree Planting Guidelines – 2024 Update is anticipated to be **completed by April 2024**. A specific project schedule is to be determined and mutually agreed upon as identified in the Scope of Work Attachment "A". The Client acknowledges that significant changes to the project schedule, budget or project scope may require Additional Services of DG2. Additional services will not be charged to the Client without the Client's approval in advance.

**Compensation:** Compensation for this Agreement is detailed in Attachment "B". Compensation for DG2's services performed as outlined in Attachment "A" will be on an hourly not to exceed **\$35,000.00**.

DG2 has the right to renegotiate fees if project initiation does not occur within 6 months of the effective date of this Agreement.

If through no fault of DG2 the Scope of Work described in Attachment A has not been completed within the term indicated in the Schedule of Services and/or an agreed-upon modification to this schedule, the compensation for services rendered after that time period shall be renegotiated or shall be on the basis of the hourly rates provided in Attachment "B."

Billing for DG2's compensation will be invoiced monthly according to services performed. Payments are due and payable 30 days from the date of invoice. Invoices 45 days past due shall accrue 1.5% simple interest per month. Past due payments may be grounds for suspension of services or termination of this Agreement.

#### **Client's Responsibilities:**

The Client agrees to provide DG2 with all information, surveys, reports and professional recommendations requested by DG2 to provide its professional services. DG2 may reasonably rely on the accuracy and completeness of these items.

The Client will obtain and pay for all necessary permits from authorities having jurisdiction over the project. DG2 will assist the Client with this obligation by completing and submitting appropriate paperwork and forms to governing authorities as an additional service for a negotiated compensation or on the basis of hourly rates provided in Attachment "B". DG2's assistance, however, shall not include creating additional or special documentation required by such authorities unless stated in Attachment "A".

The Client shall identify a representative authorized to act on the Client's behalf with respect to the Project. The Client agrees to provide the items described in this Article and to render decisions in a timely manner so as not to delay the orderly and sequential progress of DG2's services. Any such delays on behalf of the Client can result in changes to the Scope of Work, schedule, and/or budget, in which case, additional compensation shall be negotiated or shall be on the basis of the hourly rates provided in Attachment "B".

#### **Ownership and Use of Documents:**

DG2 shall be deemed the author and owner of all deliverables provided to the Client, including but not limited to plans, drawings, narrative documentation, displays, graphic art, photographs, and other



images and devices in any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by DG2 (collectively, the "Landscape Architectural Materials").

Subject to payment by the Client of all Compensation owed to DG2, DG2 grants to the Client an irrevocable, non-exclusive license to reproduce the Landscape Architectural Materials solely for information and reference with respect to the use of the Project. Termination of this Agreement prior to the completion of the Project shall terminate this license; all Planning Materials and copies thereof in the Client's possession or control shall be returned to DG2 within 30 days of the notice of termination.

In the event this Agreement is terminated prior to the completion of the Project, DG2 shall have no liability to the Client or to anyone claiming through the Client for any claims, liabilities, or damages resulting from the use, misuse, or modification of the Landscape Architectural Materials without DG2's approval, and the Client agrees to indemnify and defend DG2 against all such claims.

Unless a non-disclosure agreement is in place, DG2 reserves the right to include representations of the project in its promotional and professional materials.

### **Insurance Coverage**

DG2 shall maintain coverage indicated as follows:

- Professional Liability                      \$2,000,000.00    Agg. \$2,000,000.00
- Commercial General Liability        \$2,000,000.00
- Umbrella Liability                         \$3,000,000.00
- Automobile Liability                     \$1,000,000.00
- Worker's Compensation                \$1,000,000.00

Client agrees to name DG2 as an additional insured on its Commercial General Liability (CGL) insurance policy(ies), if any, applicable to the Project and to provide DG2 with a Certificate of Insurance evidencing compliance with this provision.

### **Indemnification**

DG2 agrees to indemnify and hold harmless the Client, and their respective officers, employees, and representatives, from and against liability for losses, damages, and expenses, including reasonable attorneys' fees as are awarded according to applicable law, to the extent such losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event losses, damages, or expenses are caused by the joint or concurrent negligence of Client and DG2, they shall be borne by each party in proportion to its negligence. Nothing herein is intended to waive sovereign immunity or any other immunities provided to the Client by Missouri law.

If the Client has either refused to authorize or has instructed DG2 not to perform, the Client hereby waives all claims against DG2 allegedly arising from DG2's failure to perform a service that the Client has either refused to authorize or has instructed DG2 not to perform.

### **Dispute Resolution**

If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions between the parties or their representatives who shall have authority to settle the dispute. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation in accordance with the next paragraph.

If the dispute is not settled pursuant to the above paragraph, before recourse to any other dispute resolution procedure, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be the location of the Project unless the parties agree otherwise. A request for mediation may be filed with the American Arbitration Association or any other mediation service acceptable to both parties. The parties agree to conclude the mediation within 60 days of filing the request. Unless otherwise agreed, the cost of mediation shall be shared equally by the parties.

For any claim subject to, but not resolved by, mediation pursuant to the above paragraph, the method of binding dispute resolution shall be as follows:

(If the parties do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to the next paragraph of this Agreement

Litigation in the Circuit Court of **St. Louis County, Missouri**

If the parties have selected arbitration above, claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. All arbitration hearings shall be conducted at the location of the Project unless the parties agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Unless otherwise agreed in writing, DG2 agrees to continue to perform its services during any dispute resolution proceedings. If DG2 continues to perform, the Client shall continue to make payments in accordance with this Agreement for amounts not in dispute.



Appropriate provisions for consolidation shall be included in other contracts relating to the Project so that all parties necessary to resolving a claim can be made parties to the same dispute resolution proceeding.

Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

### **Termination / Suspension**

This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

Client's failure to make payments to DG2 in accordance with the provisions of this Agreement shall be deemed a substantial failure to perform and a cause for termination; however, in this circumstance DG2, at its option, may elect to suspend its services on seven (7) days' written notice to the Client. DG2 shall have no liability to the Client for any delays caused by a suspension under this provision.

If the Client suspends DG2's services for any reason, DG2 shall be compensated for all Services performed to that date, and DG2 shall have no liability to the Client for any delays caused by the Client's decision to suspend the Services.

When suspended Services are resumed, DG2 shall be compensated for expenses incurred due to the interruption and resumption of the Services, and the Compensation and the Schedule of Services for the Services remaining to be performed shall be equitably adjusted.

A suspension of Services by either party for more than sixty (60) days may, at Client or DG2's option, be deemed grounds for termination of the Agreement.

If termination is not due to the fault of DG2, the Client shall pay, in addition to total Compensation due at the time of the termination, all actual costs and expenses reasonably incurred by DG2 in connection with such termination.

This Agreement represents the entire understanding between the Client and DG2 and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement only may be amended in writing signed by both the Client and DG2.

If the foregoing meets with your approval, please indicate this approval by signing and returning one original copy for our records. If this agreement is not accepted within 30 days, the offer to perform the described services is withdrawn and shall be null and void.

Sincerely,

Kristy DeGuire, PLA, ASLA  
DG2 Design, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Client:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date



## Attachment "A"- Scope of Work

DG2 Design LLC is pleased to submit this proposal for landscape architectural services to the City of Wildwood. Our firm has over 10 years of experience in master planning, landscape design, and sustainable planting guidelines. We are excited by the opportunity to collaborate with the City's working group, arborist, and graphic design team to update these valuable resources for the community.

### Project Background

The City of Wildwood's Tree Manual from 1996 and Sustainable Planting Guide from 2009 have provided useful guidance to residents on planting best practices. However, an update is needed to bring the documents up to current sustainability standards and make them more user-friendly.

Today, conversations revolving around native plants, habitat creation, carbon sequestration and heat island effect have taken predominance, in addition to other crucial considerations like water conservation and stormwater runoff prevention. The City and the Planting Committee working group acknowledge that the two guides need updating to reflect these sustainability topics and make them more accessible.

DG2 Design has been engaged to work with City staff and the Planting Committee to update the Sustainable Planting Guidelines and Tree Planting Guidelines with the goal of incorporating broader sustainability principles including:

- Native plants and habitat creation
- Carbon sequestration
- Mitigating heat island effect
- Water conservation and stormwater management
- Other emerging best practices

The target completion date for the updated guidelines is Spring 2024. We look forward to collaborating with the City's team on this meaningful sustainability project.

### Sustainable Planting Guidelines

Through conversation with key staff members and the working group, DG2 will review and update the Sustainable Planting Guidelines focusing on the following sections:

1. Introduction
2. Place (Context, Planning, Design)
3. Soil
4. Mulch
5. Plants
  - a. Right Plant, Right Place
  - b. Micro-Climate
  - c. Hydrozones
  - d. Lawn
  - e. Groundcover
  - f. Invasives
  - g. Slopes and Hillsides
  - h. Trees, Shrubs, Perennials

- i. Plant Communities
- j. Biocentric Landscape: Habitat, Carbon Sequestration, Heat Island Mitigation, other
- k. Planting Plan
- 6. Water
  - a. Irrigation
- 7. Project
  - a. Step by Step Implementation
  - b. Maintenance

### **Tree Planting Guidelines**

DG2 will also review and coordinate with the Arborist to update the Tree Planting Guidelines, anticipated sections include:

- 1. Tips for Planting
  - a. Before Digging
  - b. Choosing the Right Place and Tree
  - c. Planting Steps
- 2. After Planting
  - a. Mulch
  - b. Water
  - c. Maintenance

### **Scope of Work**

DG2 Design will provide the following services divided into 4 phases:

Collecting (Completion: week of November 27, 2023)

- 1 in-person presentation summarizing findings and outline
- 2 virtual meetings with staff and working group
- Review of existing guidelines, case studies, and regulations

Envisioning (Completion: week of January 1, 2024)

- 1 virtual presentation of draft framework and visuals
- 2 virtual meetings with staff and working group
- Develop structure and preliminary visuals for updated documents

Synthesizing (Completion: week of February 12, 2024)

- 1 in-person presentation of draft with graphics
- 2 virtual meetings with staff and working group
- Create draft documents collaborating with City graphic designers

Documentation (Completion: week of March 25, 2024)

- Final digital files of Sustainable Planting Guidelines and Tree Planting Guidelines
- Availability for minor edits and revisions after final documentation

The scope includes 4 presentation deliverables, 8 working meetings, and the final updated guidelines documents.



**Attachment "B" - Compensation**

Compensation for DG2's services performed as outlined in Attachment "A" Scope of Work will be hourly not to exceed **\$35,000.00**. The project will be billed hourly, once per month per task as follows:

<b>Task 1 Collecting Phase:</b>	<b>Estimated \$8,000</b>
<b>Task 2 Envisioning Phase</b>	<b>Estimated \$8,000</b>
<b>Task 3 Synthesizing Phase</b>	<b>Estimated \$8,000</b>
<b>Task 4 Documentation Phase</b>	<b>Estimated \$9,000</b>
<b>Reimbursable Expenses</b>	<b>\$2,000</b>
<b>Estimated Project Total</b>	<b>\$35,000.00</b>

Reimbursable Expenses are expenditures as made by DG2, its employees, and consultants in the interest of the Project. Reimbursable Expenses include, but are not limited to the following:

- Travel expenses (local and long-distance) in connection with the Project; meals and living expenses in connection with local and out-of-town travel; Personal car mileage will be billed at the prevailing rate established by the IRS.
- Meals associated during project travel, site visits, and meetings.
- Costs of reproductions, postage and handling of documents, messenger and delivery services;
- Costs of renderings, professional photographs, drone photos and videos, models, and mock-ups requested by the Client;
- Expense of professional liability insurance dedicated exclusively to the Project, or additional insurance coverage or limits requested by the Client in excess of that normally carried by DG2 and its consultants;
- Costs of printing and delivering bid packages;
- Fees paid for securing approval of authorities having jurisdiction over the Project.
- Other, similar direct Project-related expenditures.

Reimbursable expenses shall not exceed **\$2000.00** without mutual agreement between DG2 and the Client. If sub-consultants are needed for additional work items, DG2 and the Client will mutually agree.

Additional Services: If additional services not included in Attachment "A" Scope of Work are requested of DG2, Client will be billed on an hourly basis at the following rates:

**2023 Rates**

<b>DG2 Design Rates</b>				
Principal / PM/ QC	\$160			
Landscape Architect	\$135			
Landscape Designer	\$115			
JR Designer	\$95			

## Attachment C

### Consultant/Services Agreement Progress Payment Schedule

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**Consultant:** DG2 Design, L.L.C.  
**Date:** December 11, 2023  
**Project:** Update of City's Landscape Manual and Sustainable Plantings Guide  
**Basic Compensation:** Not to Exceed Thirty Five Thousand Dollars and Zero Cents (\$35,000.00)

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Services Rendered and Invoice Billings (Progress Payments) ..... **\$35,000.00**  
(In Payment Applications for Services Rendered, Such being Consistent with the Accepted Scope of Work)

**Total Basic Compensation: Not to Exceed \$35,000.00**



## 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:

1. The policy(ies) shall be endorsed to cover the contractual liability of the Consultant under the General Conditions.
2. 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.