

RESOLUTION #2023-26

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH KELPE CONTRACTING, INC. FOR THE DEMOLITION OF A SINGLE-FAMILY DWELLING AT POERTNER PARK, RELATED IMPROVEMENTS, AND RESTORATION OF THE SITE, WHICH IS A PUBLIC SAFETY CONSIDERATION DUE TO ITS CURRENT CONDITION.

WHEREAS, the City of Wildwood has a responsibility under State Statute and local code to protect the public's health, safety, and general welfare and it exercises this responsibility in many ways, including the repair and replacement of infrastructure, the enforcement of codes, and the control of land disturbance to correspond to land use policies of the City's Master Plan; and

WHEREAS, when the City of Wildwood accepted the generous donation of property and improvements from Ms. Joanna Yost in 2022 for a future park site, it conducted a series of steps determined to be the needed due diligence relative to the conditions associated with them, including an inspection of the dwelling located thereon; and

WHEREAS, this process yielded the results that indicated the property had no environmental history that would create a future issue for the City, but the single family dwelling had a mold infestation that, at that time, appeared to be manageable and able to be remediated at a minimal cost; and

WHEREAS, this mold situation was compounded by the delay in the transfer of the property and improvements to the City due to the trust managing the donation process responding to a family member contesting the bequeath, which during such time, a water leak occurred in the basement and added to the mold problem; and

WHEREAS, the leak was discovered and addressed, but the transfer of the property and improvements was still not finalized, which allowed the mold problem to escalate to a major issue relative to the safety associated with its future use; and

WHEREAS, when the transfer of the property and improvements was completed and the City of Wildwood accepted the donation, it began further analysis of the dwelling and it was determined the mold situation was now a much more significant issue and this matter was presented to the Planning and Parks Commission of City Council for consideration of options, i.e., the demolition or mitigation and restoration of the building; and

WHEREAS, the Planning and Parks Committee of City Council authorized the solicitation of bids from the contracting community for both the removal of the building or its mitigation and restoration; and

WHEREAS, ultimately, the analysis of the bid results indicated a cost well over one hundred fifty thousand dollars (\$150,000.00) to mitigate the mold and then restore the interior to a habitable space, while having no guarantee that even if it is mitigated and restored, it would be

safe for use by the general public, balanced against the demolition being substantially less in terms of cost; and

WHEREAS, with a review of the bid responses, the Planning and Parks Committee of City Council recommended the selection the appropriate contractor for the purposes of this project, i.e. Kelpo Contracting, Inc., for the demolition of the building; and

WHEREAS, the cost of this demolition and restoration of the disturbed site shall not exceed the sum of \$19,704.00; and

WHEREAS, the Planning and Parks Committee forwarded a recommendation in this regard to City Council, which received it at its meeting held on November 9, 2023, heard a presentation about the process and recommendation submitted to it, and authorized the preparation of legislation for this matter.

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

Section One. The City of Wildwood’s City Council hereby authorizes the Mayor of the City of Wildwood to execute an Agreement with Kelpo Contracting, Inc. for the demolition of a single family dwelling, and related accessory structures, with the restoration of all disturbed areas, in accordance with the specifications of St. Louis County and the City of Wildwood in this regard, all being detailed and described in Attachment B of the attached contract. This contract is based upon a not to exceed amount, which is nineteen thousand seven hundred four dollars (\$19,704.00).

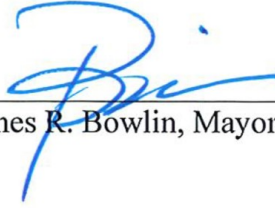
Section Two. The City Council hereby acknowledges the required bidding processes of the Municipal Code was met with the solicitation of bids from the contracting community with expertise in this regard and received three (3) of them in response to the advertisement.

Section Three. Except as expressly set forth herein, nothing contained in this Resolution shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Resolution of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof.

Section Four. If any term, condition, or provision of this Resolution 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 Resolution 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 valid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section Five. This Resolution shall be effective upon passage and approval.

Passed and Resolved by the Council of the City of Wildwood this 14th day of December, 2023.



James R. Bowlin, Mayor

ATTEST:



City Clerk

City of Wildwood
CONTRACTOR / SERVICES AGREEMENT

DEPARTMENT: Department of Planning and Parks

DATE: December 12, 2023

THIS AGREEMENT, made and effective this 12th day of December 2023 by and between the City of Wildwood, Missouri, a municipal corporation hereinafter referred to as "City", and Kelpe Contracting, Inc., hereinafter referred to as "Contractor", with a business address of 17955 Manchester Road, Wildwood, Missouri 63038.

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

I. SCOPE OF SERVICES

Except as expressly specified herein, Contractor 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 Contractor services which are particularly described in any attachments incorporated herein and additionally as follows: to undertake and complete the demolition of the designated building that is located on property owned by the City of Wildwood, under the terms, conditions, and requirements set forth in Attachment B of this Agreement. Said work will also include the contractor obtaining all necessary permits and authorizations from the City of Wildwood and St. Louis County, the disposal of all demolition debris and materials at a licensed facility, and site restoration.

The above services (hereinafter referred to as the "Work") shall be provided by the Contractor 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 Contractor.

II. COMPENSATION

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

A sum not to exceed nineteen thousand seven hundred four dollars (\$19,704.00), as set forth on an Attachment B attached hereto and incorporated herein.

B. Additional Compensation. Any cost not specifically allowed the Contractor 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 Contractor. If the City directs or authorizes additional services not included in this Agreement to be performed, the City and Contractor shall first agree by written Change Order as to how the Contractor is to be paid. Any services provided in addition to the Work shall not entitle Contractor

to additional compensation unless approved in advance and by written Change Order executed by the City and the Contractor.

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 **December 18, 2023** shall be completed on or before **March 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.

Kelpe Contracting, Inc.

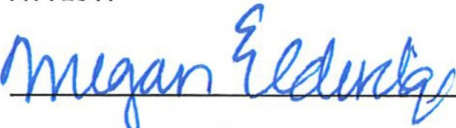
Contractor
Thomas H. Kelpe
By: _____
Title **President**

Digitally signed by Thomas H. Kelpe
DN: O=Kelpe Contracting, Inc., CN=Thomas H. Kelpe, E=thelpe@kelpe.com
Reason: I am the author of this document
Location:
Date: 2023.12.08 07:28:41-06'00'
Foxit PDF Editor Version: 12.0.1



City of Wildwood
By: **Jim Berlin**

Title **Mayor**

ATTEST:


DATE: **12/11/23**

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

Attachment A

City of Wildwood
CONTRACTOR/SERVICES AGREEMENT
GENERAL CONDITIONS

- 1. Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.
- 2. Assignment; Subcontracts.** This Agreement shall not be assigned to any other parties by the Contractor without the express written consent of the City. In addition, the Contractor 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 Contractor 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 Contractor, the requirements of the executed Contractor/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 Contractor. The Contractor 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 Contractor in advance of the Work being performed. Contractor, 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 Contractor 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 Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and Contractor shall be compensated the reasonable value of such Work. The City reserves the right to suspend Work of the Contractor upon written notification from the City if the City and Contractor 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 Contractor 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 Contractor's breach of the Agreement or out of services and/or operations negligently performed hereunder by the Contractor, including the City's

reliance on or use of the services or products provided by the Contractor under the terms of this Agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. Contractor'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. Contractor 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 Contractor's Work, as determined by the City, shall be named as additional insured.

In addition to the foregoing, the Contractor 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 Contractor 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 Contractor 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 Contractor.

9. Reimbursable Expenses. Expenses of the Contractor 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. Contractor 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 Contractor identified in the Contractor's proposal and no other personnel of the Contractor shall perform any of the Work without the express written approval of the City.

11. Other Contractors. The City reserves the right to employ other Contractors in connection with the Work.

12. Project Records and Work Product. The Contractor 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 Contractor created in performance of or relating to this Agreement. Contractor 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 Contractor 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 Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under the Agreement an amount equal to the cost of all Work performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of the Work performed and accepted. The Contractor 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 Contractor 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 Contractor 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 Contractor 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. Contractor 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



Kelpe Contracting, Inc. - Bid Proposal

P.O. Box 100 Wildwood, Missouri 63038-0100

Phone: (636) 458-1400 Fax: (636) 458-1902

Proposal Number:		<i>Enter Job Name and Site Location Below:</i> 4064 Hencken Rd Wildwood, MO House Demolition
Date: 12/6/2023	Plan date:	
Customer Name: City of Wildwood		
Address: 16840 Main Street		
City, State, Zip: Wildwood, MO 63040		
Revision Date:	Prop. Valid Until:	
Terms: Proposal is valid for 60 days		

Joe,
 The following is our proposal for the demolition of 4064 Hencken Road, the pump down and collapse of the septic tank, and the electric service disconnect. All construction debris to be hauled off site, foundation to be broken up and backfilled into the foundation hole, and covered with dirt. Thanks! Ed VonGruben

Qty.	Unit	Description	Unit Price	Ext. Price
1	LS	Permits, Utility Disconnects & Mobilization	3,800.00	3,800.00
1	DAYS	308 Excavator with Thumb & Operator	1,888.00	1,888.00
2	DAYS	963 Track Loader & Operator	1,774.00	3,548.00
1	DAYS	Compact Track Loader & Operator	1,168.00	1,168.00
1	LS	Removal of Home Demo Debris in 30CY Dumpsters	7,800.00	7,800.00
1	LS	Seed and Straw Restoration	1,500.00	1,500.00

PROPOSAL TOTAL \$19,704.00

T.H.K.

 INITIAL ABOVE

Total Base Bid: \$19,704.00

Additional Pricing

Spoils Removal

Layout Staking

Rock Excavation

Class A Mechanical	_____	per cubic yard
Class A Blasting	_____	per cubic yard
Class B	_____	per cubic yard



Qualifications: (if applicable, see attached alternate bids):

- *Asbestos Survey and Removals are Excluded from this Proposal
- *Mold Survey and Removal/Remediation is excluded from this proposal
- *Septic Tank to Be Pumped Down, collapsed and filled with dirt and/or clean rock
- *Well to be disconnected from the home and left in place for future use. Will provide LOI to STL County.
- *Ameren to Disconnect Electric Service, Kelpel can Initiate this if we receive the job
- *Driveway Removal not included in this proposal, if STL County Requires Removal, will be done at T&M Rates

- *If a conflict with existing utilities or others are encountered, the resolution will be at time and material rates.
- *Granular fill quantities are guaranteed unless poor soil conditions (I.E. rock or unstable soil) are encountered. Sheet piling and de-watering are excluded.
- *Private utilities must be located by the owner within 2' of the actual location or Kelpel Contracting, Inc. will not be responsible for damage to same. Kelpel Contracting, Inc. will have all public utilities located.
- *All easements must provide working room for construction.
- *Owner or developer is responsible for all structure top elevations and face stake verification or assume responsibility of adjustment.
- *If owner or developer requests overtime, additional overtime premium rates will be charged.
- *Interest of 1% will be charged on all invoices over 30 days.

This contract is entered into by and between Kelpel Contracting, Inc. and The City of Wildwood, whose address is 16840 Main Street Wildwood, MO 63040.

City of Wildwood

Kelpel Contracting, Inc.

Thomas H. Kelpel

Digitally signed by Thomas H. Kelpel, DN: cn=Kelpel Contracting, Inc., o=Thomas H. Kelpel, e=thk@kelpe.com, c=US, Reason: I am the author of the document. Date: 2023.12.08 16:01:40-0500

***Sign and Date on the line above**

Buyer Phone Number: 636-458-0440

***Sign and Date on line above**

Kelpel Contracting, Inc. (636) 458-1400

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIALS OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LEIN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMo. TO AVOID THIS RESULT YOU MAY ASK THE CONTRACTOR FOR "LEIN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LEIN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIALS TWICE.

T.H.K.

INITIAL ABOVE

Attachment C

Contractor/Services Agreement Progress Payment Schedule

Contractor Name: Kelpo Contracting, Inc.

Date: December 12, 2023

Project: Poërtner Park - Building Demolition

Basic Compensation: Nineteen thousand seven hundred four dollars (\$19,704.00)

Services Rendered and Invoice Billings (Progress Payments)

(In payment applications for services rendered will be processed, with such being consistent with the accepted Scope of Work)

Total Basic Compensation: Not to Exceed \$19,704.00

Attachment D

Contractor Liability Insurance Requirements

The Contractor 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 Contractor under the General Conditions.
2. The Contractor and its Sub-contractors 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 Contractor 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.