

RESOLUTION #2024-14

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CITY-CONSULTANT AGREEMENT WITH TSI GLOBAL COMPANIES, LLC, TO PROVIDE UTILITY LOCATING SERVICES FOR CITY STREET LIGHTS AND TRAFFIC SIGNALS ON THE PUBLIC RIGHT-OF-WAY.

WHEREAS, the City of Wildwood (hereinafter “City”) owns and maintains street lights and traffic signals on its public roadways; and

WHEREAS, the Department of Public Works of the City (hereinafter “Department”) is required to maintain the street lights and traffic signals, and to ensure the underground wiring associated with those facilities is located and marked upon request so as to avoid conflicts or damage from companies doing excavation on the public right of way; and

WHEREAS, the Department, in order to operate more efficiently and allow staff the ability to address other more pressing tasks, requested proposals from private utility locating service companies to provide utility services to the City, with those services including the office review and handling of all requests received to the Department through the Missouri One-Call system including the field locating of the City’s underground traffic signal and lighting facilities (hereinafter “Services”); and

WHEREAS, the Department received a proposal to complete the Services from TSI Global Companies, LLC (hereinafter “TSI”) and after reviewing the proposal found it to meet the Department’s requirements to complete the Services; and

WHEREAS, on July 2, 2024, the Administration and Public Works Committee of the City reviewed the proposal and recommended that TSI be selected to enter into a City-Consultant Agreement to complete the Services for the Department; and

WHEREAS, the City Council of the City finds and determines that it is to the benefit of the City to enter into a City-Consultant Agreement with TSI to complete the Services for the Department.

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

Section One. That the form, terms, and provisions of the City-Consultant Agreement by and between the City of Wildwood, Missouri, and TSI Global Companies, LLC, D/B/A TSI, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and are hereby approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Resolution.

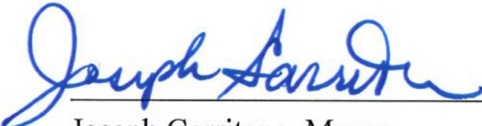
Section Two. The total aggregate expenses and liability of the City under the Agreement authorized pursuant to Section One of this Resolution, shall not exceed a contract amount of Sixteen Thousand Dollars (\$16,000.00), except that the City Council may by resolution, extend the agreement annually, upon recommendation of the City Administrator and the Director of Public Works, for two additional years subject to a 3% annual increase.

Section Three. Savings. Nothing contained herein 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, unless expressly set forth herein.

Section Four. Severability. 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 invalid, 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 in full force and effect from and after its passage and approval.

Passed and resolved by the Council of the City of Wildwood, Missouri this 15th day of JULY, 2024.



Joseph Garritano, Mayor

ATTEST:



City Clerk

City of Wildwood
CONSULTANT / SERVICES AGREEMENT

DEPARTMENT: Public Works

DATE: July 12, 2024

THIS AGREEMENT, made and effective this 15th day of July, 2024, by and between the City of Wildwood, Missouri, a municipal corporation hereinafter referred to as "City", and TSI Global Companies, LLC, hereinafter referred to as "Consultant", with a business address of: 700 Fountain Lakes Blvd., St. Charles, MO 63301.

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

I. SCOPE OF SERVICES

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

Provide utility locating services for the City of Wildwood as further described on Attachment B.

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

II. COMPENSATION

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

a sum not to exceed Sixteen Thousand dollars (\$16,000), 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 term of this contract shall be September 1, 2024, through August 30, 2025, with the City reserving the sole option to renew for two additional consecutive one-year periods subject to a 3% annual increase, subject to the "Multi-year contracts; Non-appropriation" provisions of the attached General Conditions.

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

Consultant

By Timothy D. Agler

Title Director of Locating Services

Joseph Camitano
City of Wildwood

By Joseph Camitano

Title Mayor

ATTEST:

Megan Eldridge

DATE: 7/24/24

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



OSP Locating Service Contract Proposal

The City of Wildwood
Attn: Brendan Maher
16860 Main St.
Wildwood, MO 63040

Mr. Maher,

TSI Global Companies, LLC is pleased to submit a proposal for providing OSP Utility Locating for the City of Wildwood.

TSI will provide all project supervision, labor, materials, equipment, test equipment, project documentation and the following insurance: Workman's Compensation, General Liability, Vehicle and Equipment needed for the successful completion of this project.

Base Bid: *Scopes of Work for services provided:*

- Field all incoming daily ticket loads through the ISITE software- including ticket statusing, contractor notes and dispatch routing.
- TSI will supply a utility locator to locate general utilities for proposed work on ticket, locating The City of Wildwood's utilities using radio detection equipment.
- Locates will be performed with paint, flags, and pictures will be recorded for prosperity.
- The City of Wildwood's "Route" will be driven periodically to monitor ongoing work and to mitigate contractors working without a proper ticket.
- 24 hr. response time on all tickets requiring a 2hr response time- Emergencies, Dig-Up, Non-Compliance, Incorrect Locate, Etc.

Time & Material Pricing Summary:

<i>Standard Labor Rate</i>	<i>\$16,000/ yr.- \$1333/ monthly</i>
<i>Consumable Materials</i>	<i>\$Included</i>
<i>Total Charges</i>	<i>\$16,000 per year- \$1333.00 per month</i>

Pricing Notes:

- 1) *Pricing includes all service vehicles; locate equipment, insurance and consumable materials*
- 2) *Standard rates cover labor during normal working hours of 8am to 5pm*
- 3) *24 Hr. response time for specialty ticket transmissions*



Customer requirements

- Provide site contact with authorization to engage in service agreement.
- Provide drawings of all private owned OSP infrastructures requiring locating during this "project".

General Assumptions & Conditions

- This quotation is based on all work performed during normal working hours, Monday through Friday, 8:00 AM to 5:00 PM. Including 24 hr. response to specialty tickets (M-S)
- All quotations, unless otherwise noted, are valid for a period of 30 days.
- TSI shall work in harmony with the other building trades on site in the attempt to minimize disruption to schedules and coordinate efforts which coincide with other construction or activities.

Thank you for considering TSI for your installation and locating needs. We are looking forward to working with you on this and future projects. Should you have any questions or require further assistance, please contact me at 314-220-2768

The above pricing data is in agreement with both parties. In witness thereof, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

TSI Global Companies, LLC

By: ___Tim Agler___

Title: _Dir. Of Locating Services__

Date: ___6/12/24___

Contracting Company

By: _____

Title: _____



Terms

1)The Customer agrees to assume responsibility and satisfy the total amount of said damages that is determined in any trial or other disposition.

2)To the fullest extent permitted by law, the Customer shall indemnify, hold harmless and defend the Locator, consultants, and agents and employees of any of them from and against all injuries, claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the work, to the extent caused by the negligent acts or omissions of Customer, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, except to the extent such injury, claim, damage loss or expense is caused by a party indemnified hereunder. Such obligation shall not negate abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.

3)Locator shall indemnify and hold harmless the Customer from and against all injuries, claims, damages, losses and expenses, including but not limited to attorney's fees, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Locator, the Locator's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; provided, however, that as an express condition precedent to Locator's obligation under this paragraph Customer must (a) notify Locator of any claim, damage, or loss promptly upon Customer being notified of a claim; and (b) provide Locator access to the site, and the first opportunity to repair any damage with Locator's forces or otherwise.

4)Notwithstanding anything to the contrary herein: (a) in recognition of the relative risks and benefits of the project to both the Customer and the Locator, the risks have been allocated such that the Customer agrees, to the fullest extent permitted by law, to limit the liability of the Locator to the Customer for any and all injuries, claims, losses, expenses (including attorney's and expert's fees and dispute resolution costs), damages of any nature whatsoever, from any cause or causes, so that the total aggregate liability of the Locator to Customer shall not exceed an amount equal to the total of all insurance proceeds actually received by Locator or Customer from insurance purchased by Locator; (b) Except for indemnification obligations with respect to third party claims, Customer and Locator hereby waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement; (c) if Locator's inspection of the damage reveals that Locator's markings were no longer discernable when work was performed Customer waives all claims against Locator and Locator shall not be responsible for any liability to Customer; and (d) if non-traditional locating methods are required, Locator shall make that known to Customer and, in such events, Customer waives all claims against Locator and Locator shall not be responsible for any liability to Customer.

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>
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Phase I:	_____ %	\$ _____
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Phase II:	_____ %	\$ _____
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Phase III:	_____ %	\$ _____
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Phase IV:	_____ %	\$ _____
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Phase V:	_____ %	\$ _____
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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.