

RESOLUTION #2017-01

**A RESOLUTION AUTHORIZING A CONTRACT WITH NEIL HEWITT, A COUNTRY WESTERN ARTIST, FOR HIS UPCOMING PERFORMANCE, AS PART OF THE 2017 WILDWOOD CONCERT/MUSIC ON MAIN SERIES. (WARDS – ALL)**

**WHEREAS**, the Code of Ordinances, Chapter 145, Purchasing Policy, requires purchases exceeding five thousand dollars (\$5,000.00) to be authorized by the Department Head, City Administrator, and City Council, in the form of a Resolution; and

**WHEREAS**, the expenditure for bands to perform at the planned Wildwood Concert/Music on Main Series shall not exceed the amount of \$5,000.00, except by Resolution, upon recommendation by the City Administrator and Director of Planning and Parks; and

**WHEREAS**, the Director of Planning and Parks is recommending increasing said expenditure by one thousand dollars (\$1,000.00); and

**WHEREAS**, the total expenses and liability associated with this contract to the City of Wildwood, Missouri shall not exceed a total amount of six thousand dollars (\$6,000.00).

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY 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 contract with Neil Hewitt, a County-Western Artist, for his performance, as part of the **2017 Wildwood Concert/Music on Main Series**, for an amount not to exceed a total of six thousand dollars (\$6,000.00).

**SECTION TWO:** This Resolution shall be effective upon passage and approval by the City Council of the City of Wildwood, Missouri.

**PASSED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILDWOOD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017.**

\_\_\_\_\_  
THE HONORABLE JAMES R. BOWLIN, MAYOR

**ATTEST:**

\_\_\_\_\_  
DEPUTY CITY CLERK

City of Wildwood  
CONSULTANT / SERVICES AGREEMENT

DEPARTMENT: Planning and Parks

DATE: December 20, 2016

THIS AGREEMENT, made and effective this 20th day of December, 2016, by and between the City of Wildwood, Missouri, a municipal corporation hereinafter referred to as "City", and Neil Hewitt, hereinafter referred to as "Consultant", with a business address of 17745 600<sup>th</sup> Avenue, Nevada, IA 50201.

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:

**Performance by Neil Hewitt, on Friday, July 14, 2017, as part of the City of Wildwood Concert Series, starting at 6:45 p.m. and concluding at 9:00 p.m. Performance to be held at the Wildwood Town Center Plaza Area, addressed as 16860 Main Street, Wildwood, Missouri, 63040. The City of Wildwood agrees to the requests communicated in the Performance Agreement/Neil Hewitt Booking Contract attached to this document and labeled "Attachment B". A fifteen hundred dollar deposit (\$1,500.00) will be submitted with completely signed contract.**

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 Six Thousand Dollars (\$6,000.00),**

as set forth on an Attachment B attached hereto and incorporated herein.

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

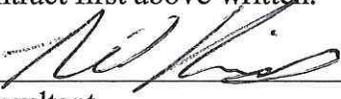
**III. TIME AND MANNER OF PAYMENTS**

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

**IV. SCHEDULE OF WORK**

Time is of the essence. The Work to be performed under the Agreement shall be commenced on or before **July 14, 2017**, shall be completed on or before **July 14, 2017**, and shall be performed so as not to delay or hinder City's schedule for the project, if applicable.

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

  
\_\_\_\_\_  
Consultant

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

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

Attachment A

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

1. **Independent Consultant.** The Consultant shall be and operate as an independent Consultant in the performance of this Agreement. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the City in any respect.
2. **Assignment; Subcontracts.** This Agreement shall not be assigned to any other parties by the Consultant without the express written consent of the City. In addition, the Consultant shall not subcontract or assign any of the Work to be performed by it hereunder without the express written consent of the City except as may be set forth in Attachment B.
3. **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.
4. **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.
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 coverage's 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. **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.
9. **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.
10. **Other Consultants.** The City reserves the right to employ other consultants in connection with the Work.
11. **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.
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. 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.
- 15. 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.
- 16. 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.
- 17. Other Special Provisions.** The special provisions set forth on Attachments C and D are incorporated herein by reference, and made a part hereof.

Neil Hewitt Booking Contract

Attachment B

This Contract, entered into on this 19th day of Dec, 2016 is for the personal service of: Neil Hewitt for the performance described below for Wildwood, Mo (herein referred to as EMPLOYER)

Neil Hewitt and the undersigned Employer agree and contract as follows:

1. NEIL HEWITT

ADDRESS OF ARTIST: 17745 600TH Avenue Nevada, IA 50201

X 2. NAME OF EMPLOYER: City of Wildwood

PHONE #: 636-458-0440

ADDRESS OF EMPLOYER 16800 MAIN STREET Wildwood, MO, 63040

CONTACT: GARY CRAWFORD (314-629-4866)

X 3. NUMBER OF MUSICIANS: 5 (five)

NAME OF PLACE OF PERFORMANCE: WILDWOOD TOWN CENTER PLAZA (MUSIC OR MAIN)

X 4. ADDRESS OF PERFORMANCE & DIRECTIONS: 16800 MAIN STREET Wildwood, MO, 63040

5. DATE(S) OF PERFORMANCE: July 14th, 2017

6. TIME(S) OF PERFORMANCE: 6:45 - 9:00 pm

7. WAGE AGREED UPON: \$6,000.00 (six thousand)

8. DEPOSIT: \$1,500.00

9. PAYMENT OF BALANCE TO: Neil Hewitt

(To be made in U.S. currency of certified check at the beginning or end of performance)

10. ADDITIONAL TERMS: 5 hotel rooms provided by employer. (636-733-9100)

Wildwood Hotel 2801 Fountain Place Wildwood, MO, 63040

- 11. This contract constitutes a complete and binding agreement between the employer and NEIL HEWITT
12. In case of breach of this contract by EMPLOYER, the EMPLOYER agrees to pay the amount stated in Section 7 as mitigated damages, plus reasonable attorney's fees, court costs, and legal interest.
13. The persons signing for EMPLOYER and NEIL HEWITT agree to be personally, jointly and severally liable for the terms of this contract, and has the right to enter into this agreement.
14. This agreement to perform by NEIL HEWITT is subject to cancellation without claim or damages payable by either party because of sickness, accident, riot, strikes, epidemic, acts of God or other legitimate conditions beyond the control of either party. Employer agrees to indemnify and hold Neil Hewitt harmless from any damage to Neil Hewitt's equipment caused by the actions of employer or the actions of employer's patrons.

AGREED AND ACCEPTED BY:

Employer/Purchaser Date

AGREED AND ACCEPTED BY:

Artist/Producer Date 12/19/16

**Attachment C**

(Optional)

**N/A**

**Consultant/Services Agreement  
Progress Payment Schedule**

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

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<u>Phase of Work</u>	<u>% of Total</u>	<u>Progress Payment</u>
Phase I (describe)	_____ %	\$ _____
Phase II (describe)	_____ %	\$ _____
Phase III (describe)	_____ %	\$ _____
Phase IV (describe)	_____ %	\$ _____
Phase V (describe)	_____ %	\$ _____

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

## Attachment D

### **Consultant Liability Insurance Requirements**

The Consultant shall purchase and maintain in full force and effect the following insurance coverage's 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.

## Attachment D

### **Consultant Liability Insurance Requirements**

The Consultant shall purchase and maintain in full force and effect the following insurance coverage's 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.