

**RESOLUTION #2024-5**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH FINCH AUDIO, L.L.C., FOR AUDIO AND LIGHTING SERVICES AT SIX CONCERTS SCHEDULED FOR 2024.**

**WHEREAS**, City team members and a group of other volunteers on certain boards and commissions have planned and contracted to hold several concerts and other events in 2024, starting in May; and

**WHEREAS**, Finch Audio, L.L.C, has proven to have the resources and ability to provide unique solutions regarding sound and lighting during City of Wildwood concerts; and

**WHEREAS**, Finch Audio, L.L.C, is familiar with and has a working knowledge of all of the City of Wildwood concerts and the individual purposes, such as the Back-to-School Party; and

**WHEREAS**, the Planning and Parks Committee has reviewed the proposal from this preferred contractor and is recommending a contract with Finch Audio, L.L.C be executed to provide personnel, equipment, lighting, and audio services for the City of Wildwood events during the 2024 Season.

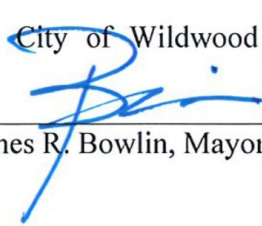
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:**

**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 Finch Audio, L.L.C for professional services relating to audio and lighting in association with the City's events and all of the components identified in the attached contract.

**Section Two.** The amount of this contract is approved on a not-to-exceed basis of twenty thousand dollars (\$20,000.00), consistent with the proposal attached hereto this Resolution. Services of this contractor will only be reimbursed for those events that are held and those activities of such that are herein rendered.

**Section Three.** This Resolution shall be effective upon its passage and approval by the City Council of the City of Wildwood, Missouri.

Passed and Resolved by the Council of the City of Wildwood this 12th day of February, 2024.

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

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

City of Wildwood  
CONSULTANT / SERVICES AGREEMENT

DEPARTMENT: Planning and Parks

DATE: January 2, 2024

THIS AGREEMENT, made and effective this 2nd day of January, 2024, by and between the City of Wildwood, Missouri, a municipal corporation hereinafter referred to as “City”, and Finch Audio, LLC, hereinafter referred to as “Consultant”, with a business address of: 5114 Darren Drive, House Springs, Missouri 63051.

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 equipment and service for six (6) City of Wildwood musical performances during 2024, associated with five (5) City events, covering six (6) days. Finch Audio, LLC will provide sound and lighting services for all musical events, to include three (3) Music on Main Concerts, one (1) concert during the 2024 Back to School Party, and two (2) concerts during the 2024 Celebrate Wildwood Event. The Celebrate Wildwood Event will include one (1) day of set-up (Friday). Finch Audio will also provide arrangements for entertainment interpreters for the hearing impaired. In addition, Finch Audio, LLC will provide a public address system for announcements to be made during the events to attendees. The services are further detailed in Attachment B of this Agreement, along with specifics of responsibilities in this regard.

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

**II. COMPENSATION**

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

**a sum not to exceed Twenty Thousand Dollars (\$20,000.00), 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 **March 1, 2024**, shall be completed on or before **September 30, 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.

Paul B. Finch  
Consultant

By FINCH AUDIO, LLC

Title PRESIDENT

1/1/2024

[Signature]  
City of Wildwood

By Jim Bawlin

Title Mayor

ATTEST:

Megan Eldredge

DATE: 2/19/24

- 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.



**FINCH AUDIO, LLC.**  
**PORTABLE AUDIO EQUIPMENT, LIGHTING EQUIPMENT &  
LABOR  
PROVISION CONTRACT**

**The Parties:** This Portable Audio, Lighting Equipment and Labor Provision Contract (hereinafter “Contract”) is entered into on this 1st day of January of the year 2024 by and between Finch Audio, LLC. (hereinafter “Provider”) and The City of Wildwood: 16860 Main Street, Wildwood, MO 63040 (hereinafter “Customer”) (Hereinafter collectively referred to as the “Parties”).

**The Agreement:** The Parties hereby agree that the Provider shall supply the Customer with the following audio equipment, lighting equipment and labor, or similar equipment under these following terms and conditions:

**Audio Equipment, Lighting Equipment & Labor Supplied:**

<b>ITEMS &amp; LABOR</b>	<b>QUANTITY</b>
<b>Audio Equipment &amp; Lighting Equipment</b>	<b>5 Days</b>
<b>Itemized Per Event</b>	
<b>Labor Personnel</b>	<b>6 Days</b>
<b>Day Rates</b>	



**Contract Service Dates:** Provider shall provide to Customer said Audio Equipment, Lighting Equipment & Labor on these following dates:

DAY	DATE	SET UP	EVENT & COST
Friday	5/17/24	11:00am.	Music on Main #1 = 3,750.00
Friday	6/21/24	11:00am.	Music on Main #2 = 3,750.00
Friday	7/19/24	11:00am.	Music on Main #3 = 3,750.00
Friday	8/16/24	11:00am.	Back to School Party = 3,750.00
Friday	9/20/24	TBD	Celebrate Wildwood / Set Up Day
Saturday	9/21/24	TBD	Celebrate Wildwood / Event Day
			Celebrate Wildwood / = 5,000.00
			Total Estimate = 20,000.00

**Provider's Financial Compensation:** The Customer shall make a non-refundable (except for the stipulations referred to below in the Cancellation statement) deposit payment of 50% of the event cost as provided on the contract not less than thirty (30) days prior to the event. The 50% deposit shall be cashed upon receipt by Finch Audio LLC. The remainder of the balance due shall be paid in full at the time and date of service. (Waived by Provider)

**Provider's Cancellation Financial Compensation:** The 50% deposit will be held in trust to be applied to any subsequent event if cancellation is due to state or county health mandates. If a cancellation occurs within 24 hours due to the weather, or any act outside of the Providers agreement stated in this contract the 50% deposit is forfeit by the Customer. (Waived by Provider)

**Limitation of Liability:** Finch Audio, LLC can only be held responsible for damages or losses of any kind as a direct result of Finch Audio, LLC's audio equipment, lighting equipment, Finch Audio, LLC's personnel, or transportation vehicles.

**Service Location:** All audio equipment, lighting equipment & labor stipulated will be supplied by Provider to Customer at the following location: The City of Wildwood, MO.

**Set Up & Retrieval:** Customer will ensure that the Provider will have adequate and timely access to the event location, to be determined per event by both Parties. Customer will also ensure Providers necessary parking arrangements for all audio equipment, lighting equipment, and personnel transportation vehicles.

**Electrical Power: Customer will provide adequate electrical power for event set up and execution within 50ft. of event stage at no financial cost to Provider.**

**No Transfer of Ownership: The Parties acknowledge that this contract in no way creates any transfer of ownership of audio equipment, lighting equipment to Customer, This is not a sales contract.**

**Laws, Regulations & Codes: It is both parties' obligation to comply with all applicable laws, regulations, codes which in any way relate to this contract.**

**Security: Customer will provide security personnel to deter theft or damage if audio equipment & lighting equipment are to be set up on any dates before the contracted event date. In addition, security personnel are to be on site at the time of the event.**

**Damage to Rented Equipment: Provider agrees to deliver said equipment to Customer in good working order. Should equipment be damaged while in the Customer's possession, Customer shall pay to Provider the cost of repair by a repair company authorized by the manufacturer of that make and model of the damaged equipment within thirty (30) days of the damage. Customer shall not be entitled to any refunds from Provider and shall not have any claim against Provider for failing to provide equipment. The Provider in good faith will attempt to temporarily replace the damaged equipment. If Provider incurs rental or related expenses for this equipment, Customer shall pay the sum to the Provider within 30 days of invoice.**

**Notification of Termination: The Parties shall not terminate this contract except for serious or repeated breach of obligations. In such case, Parties may terminate this contract by providing written notice and delivered to the addresses stipulated within this contract under the Parties signatures.**

**Additional Provisions: No changes or additions to this contract shall be made except by written agreement between both Parties. If additional provisions are agreed upon, they will be attached to this contract, signed, and dated by both Parties and become part of this Contract.**



This contract and any attachments represent the entire (Portable Audio Equipment, Lighting Equipment & Labor Provision Contract) agreement between both Parties. This contract replaces and supersedes all prior agreements and shall be governed by and construed in accordance with the laws of the State of Missouri.

WHEREFORE, we, the undersigned, agree to this Contract and sign two copies. (One to be kept by Provider and one by Customer),

**PROVIDER & CUSTOMER SIGNATURES**



Provider: Finch Audio, LLC.

Authorized Agent & Representative: Paul B. Finch  
5114 Darren Drive  
House Springs, MO 63051  
636-233-1821  
pbf.audio@gmail.com

1/1/2024  
Date



Customer: Authorized Agent & Representative: (Signature & Address)

City of Wildwood, Jim Berlin Mayor  
10860 main St, Wildwood, MO 63040

2-19-24  
Date

Customer: Authorized Agent & Representative: (Printed Name)

Customer: Authorized Agent & Representative: (Title)

**Attachment C**

(Optional)

**Consultant/Services Agreement**

**Progress Payment Schedule**

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Consultant: Finch Audio, LLC

Date: January 2, 2024

Project: Musical Concerts

Basic Compensation: \$20,000.00

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<u>Phase of Work</u> (Describe)	<u>% of Total</u>	<u>Progress Payment</u>
Summer Concert Series, 5/17/2024	18.75%	\$3,750.00
Summer Concert Series, 6/21/2024	18.75%	\$3,750.00
Summer Concert Series, 7/19/2024	18.75%	\$3,750.00
Back to School Party, 8/16/2024	18.75%	\$3,750.00
Celebrate Wildwood, 9/20 – 9/22/2024	25%	\$5,000.00

Total Basic Compensation: \$20,000.00



## 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:

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.

