

**CONTRACT FOR PROFESSIONAL SERVICES TO PROVIDE SOUND AND STAGE PRODUCTION SERVICES FOR THE HERMOSA BEACH CONCERT SERIES BETWEEN THE CITY OF HERMOSA BEACH AND VOX PRODUCTIONS**

This AGREEMENT is entered into this 23rd day of January 2024, by and between the CITY OF Hermosa Beach, a general law city a municipal corporation ("CITY") and a VOX Productions ("COMPANY").

**RECITALS**

- A. The City desires to enter into an agreement with COMPANY for sound and stage production services for the Hermosa Beach Concert Series (EVENT).
- B. The City does not have the equipment or the personnel able and/or available to perform the services required under this agreement and therefore, the City desires to contract for such services to accomplish this work.
- C. The COMPANY warrants to the City that it has the equipment, qualifications, and experience to perform properly and timely the services under this Agreement.
- D. The City desires to contract with the COMPANY to perform the services as described in Exhibit A of this Agreement.

**NOW, THEREFORE**, based on the foregoing recitals, the City and the COMPANY agree as follows:

1. CONSIDERATION AND COMPENSATION As partial consideration, COMPANY agrees to perform the work listed in the SCOPE OF SERVICES, attached as Exhibit A.

As additional consideration, COMPANY and CITY agree to abide by the terms and conditions contained in this Agreement.

As additional consideration, CITY agrees to pay COMPANY a not-to-exceed amount of \$62,203 for COMPANY's services, unless otherwise specified by written amendment to this Agreement.

No additional compensation shall be paid for any other expenses incurred.

COMPANY shall submit to CITY its invoice for services by the 10<sup>th</sup> day of each month, itemizing the fees and costs incurred during the previous month. CITY shall pay COMPANY all uncontested amounts set forth in COMPANY's invoice within 30 days after it is received.

2. SCOPE OF SERVICES. COMPANY will perform the services and activities set forth in the SCOPE OF SERVICE attached hereto as Exhibit A and incorporated herein by this reference.

Except as herein otherwise expressly specified to be furnished by CITY, COMPANY will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities necessary to perform and complete the work and provide the professional services required of COMPANY by this Agreement.

3. PAYMENTS. For CITY to pay COMPANY as specified by this Agreement, COMPANY must submit an invoice to CITY which lists the reimbursable costs, the specific tasks performed, and, for work that includes deliverables, the percentage of the task completed during the billing period.

4. TIME OF PERFORMANCE. The services of the COMPANY are to commence upon receipt of a notice to proceed from the CITY and shall continue until all authorized work is completed to the CITY's reasonable satisfaction.

5. FAMILIARITY WITH WORK. By executing this Agreement, COMPANY represents that COMPANY has (a) thoroughly investigated and considered the scope of services to be performed; (b) carefully considered how the services should be performed; and (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

6. KEY PERSONNEL. COMPANY's key person assigned to perform work under this Agreement is Shawn Sedlacek. COMPANY shall not assign another person to be in charge of the work contemplated by this Agreement without the prior written authorization of the City.

7. TERM OF AGREEMENT. The term of this Agreement shall commence upon execution by both parties and shall expire on December 31, 2024, unless earlier termination occurs under Section 11 of this Agreement, or this Agreement is extended in writing in advance by both parties. Further, the City Manager shall have the option to extend this Agreement for two additional one-year terms at the same annual not to exceed amount.

8. CHANGES. CITY may order changes in the services within the general scope of this Agreement, consisting of additions, deletions, or other revisions, and the contract sum and the contract time will be adjusted accordingly. All such changes must be authorized in writing, executed by COMPANY and CITY. The cost or credit to CITY resulting from changes in the services will be determined in accordance with written agreement between the parties.

9. TAXPAYER IDENTIFICATION NUMBER. COMPANY will provide CITY with a Taxpayer Identification Number.

10. PERMITS AND LICENSES. COMPANY will obtain and maintain during the term of this Agreement all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

11. TERMINATION. Except as otherwise provided, CITY may terminate this Agreement at any time with or without cause. Notice of termination shall be in writing.

COMPANY may terminate this Agreement. Notice will be in writing at least 30 days before the effective termination date.

In the event of such termination, the COMPANY shall cease services as of the date of termination, and all finished or unfinished documents, data, drawings, maps, and other

materials prepared by COMPANY shall, at CITY's option, become CITY's property, and COMPANY will receive just and equitable compensation for any work satisfactorily completed up to the effective date of notice of termination.

Should the Agreement be terminated pursuant to this Section, CITY may procure on its own terms services similar to those terminated.

12. INDEMNIFICATION. COMPANY shall indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, and cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with COMPANY's performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, regardless of CITY'S passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should CITY in its sole discretion find COMPANY'S legal counsel unacceptable, then COMPANY shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The COMPANY shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

The requirements as to the types and limits of insurance coverage to be maintained by COMPANY as required by Section 17, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by COMPANY pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

Notwithstanding anything in this Agreement to the contrary, no provision of Section 12 shall be deemed effective until such time as COMPANY has been determined by a court or other tribunal of competent jurisdiction in a final judgment or order to have committed an error or act of omission and a claim against COMPANY has been proven. In addition, nothing contained herein shall be deemed to extend the statute of limitations for COMPANY'S professional negligence or willful misconduct. Finally, to the extent any provision of this Agreement has the effect of eliminating or otherwise adversely affecting COMPANY'S professional liability insurance coverage, such provision shall not be enforceable.

13. ASSIGNABILITY. This Agreement is for COMPANY's professional services. COMPANY's attempts to assign the benefits or burdens of this Agreement without CITY's written approval are prohibited and will be null and void.

14. INDEPENDENT CONTRACTOR. CITY and COMPANY agree that COMPANY will act as an independent contractor and will have control of all work and the manner in which it is performed. COMPANY will be free to contract for similar service to be performed for other employers while under contract with CITY. COMPANY is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct COMPANY as to the details of doing the work or

to exercise a measure of control over the work means that COMPANY will follow the direction of the CITY as to end results of the work only.

**15. AUDIT OF RECORDS.** COMPANY agrees that CITY, or designee, has the right to review, obtain, and copy all records pertaining to the performance of this Agreement. COMPANY agrees to provide CITY, or designee, with any relevant information requested and will permit CITY, or designee, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this Agreement. COMPANY further agrees to maintain such records for a period of three (3) years following final payment under this Agreement.

COMPANY will keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.

**16. CORRECTIVE MEASURES.** COMPANY will promptly implement any corrective measures required by CITY regarding the requirements and obligations of this Agreement. COMPANY will be given a reasonable amount of time as determined by the City to implement said corrective measures. Failure of COMPANY to implement required corrective measures shall result in immediate termination of this Agreement.

**17. INSURANCE REQUIREMENTS.**

- a. The COMPANY, at the COMPANY's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:
  - i. Workers Compensation Insurance as required by law. The COMPANY shall require all subcontractors similarly to provide such compensation insurance for their respective employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by the COMPANY for City.
  - ii. General Liability Coverage. The COMPANY shall maintain commercial general liability insurance in an amount of not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
  - iii. Automobile Liability Coverage. The COMPANY shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the COMPANY arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
  - iv. Professional Liability Coverage. The COMPANY shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from the COMPANY'S

operations under this Agreement, whether such operations be by the COMPANY or by its employees, subcontractors, or subCOMPANYs. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single-limit-per-occurrence basis. When coverage is provided on a "claims made basis," COMPANY will continue to renew the insurance for a period of three (3) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover COMPANY for all claims made by CITY arising out of any errors or omissions of COMPANY, or its officers, employees or agents during the time this Agreement was in effect.

- b. Endorsements. Each general liability, automobile liability and professional liability insurance policy shall be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California, or which is approved in writing by City, and shall be endorsed as follows. COMPANY also agrees to require all contractors, and subcontractors to do likewise.
  - i. "The CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the COMPANY, including materials, parts, or equipment furnished in connection with such work or operations."
  - ii. This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with this policy.
  - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - iv. The insurer waives all rights of subrogation against the CITY, its elected or appointed officers, officials, employees, or agents.
  - v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.
  - vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.
- c. COMPANY agrees to provide immediate notice to CITY of any claim or loss against Contractor arising out of the work performed under this agreement. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.
- d. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, the COMPANY shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

- e. The COMPANY shall provide certificates of insurance with original endorsements to the CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the CITY at all times during the term of this Agreement.
- f. Failure on the part of the COMPANY to procure or maintain required insurance shall constitute a material breach of contract under which the CITY may terminate this Agreement pursuant to Section 11 above.
- g. The commercial general and automobile liability policies required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the COMPANY (as the named insured) should COMPANY fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. COMPANY understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by COMPANY as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on COMPANY's behalf upon the COMPANY's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against COMPANY for breach of this Agreement in addition to any other damages incurred by City due to the breach.

18. USE OF OTHER COMPANYS. COMPANY must obtain CITY's prior written approval to use any sub-COMPANYS while performing any portion of this Agreement. Such approval must include approval of the proposed COMPANY and the terms of compensation.

19. FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE. The acceptance by the COMPANY of the final payment made under this Agreement shall operate as and be a release of the CITY from all claims and liabilities for compensation to the COMPANY for anything done, furnished or relating to the COMPANY'S work or services. Acceptance of payment shall be any negotiation of the CITY'S check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the CITY shall not constitute, nor be deemed, a release of the responsibility and liability of the COMPANY, its employees, sub-COMPANYS and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the CITY for any defect or error in the work prepared by the COMPANY, its employees, sub-COMPANYS and agents.

20. CORRECTIONS. In addition to the above indemnification obligations, the COMPANY shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the COMPANY's report or plans. Should the COMPANY fail to make such correction in a reasonably timely manner, such correction shall be made by the CITY, and the cost thereof shall be charged to the COMPANY. In addition to all other available remedies, the City may deduct the cost of such correction from any retention amount

held by the City or may withhold payment otherwise owed COMPANY under this Agreement up to the amount of the cost of correction.

21. NON-APPROPRIATION OF FUNDS. Payments to be made to COMPANY by CITY for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that CITY does not appropriate sufficient funds for payment of COMPANY'S services beyond the current fiscal year, the Agreement shall cover payment for COMPANY'S services only to the conclusion of the last fiscal year in which CITY appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

22. NOTICES. All communications to either party by the other party will be deemed made when received by such party at its respective name and address as follows:

CITY	COMPANY
City of Hermosa Beach 1315 Valley Drive Hermosa Beach, CA 90254 ATTN: Lisa Nichols, Community Resources Manager	Vox Productions 1324 Cypress Avenue Los Angeles, CA 90065 ATTN: Shawn Sedlacek, Production Manager

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph. Courtesy copies of notices may be sent via electronic mail, provided that the original notice is deposited in the U.S. mail or personally delivered as specified in this Section.

- a. SOLICITATION. COMPANY maintains and warrants that it has not employed nor retained any company or person, other than COMPANY's bona fide employee, to solicit or secure this Agreement. Further, COMPANY warrants that it has not paid nor has it agreed to pay any company or person, other than COMPANY's bona fide employee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Should COMPANY breach or violate this warranty, CITY may rescind this Agreement without liability.
- b. THIRD PARTY BENEFICIARIES. This Agreement and every provision herein is generally for the exclusive benefit of COMPANY and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of COMPANY's or CITY's obligations under this Agreement.
- c. INTERPRETATION. This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.

- d. ENTIRE AGREEMENT. This Agreement, and its Attachments, sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written.
- e. RULES OF CONSTRUCTION. Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.
- f. AUTHORITY/MODIFICATION. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment with signatures of all parties to this Agreement. CITY's city manager, or designee, may execute any such amendment on behalf of CITY.

23. ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

24. FORCE MAJEURE. Should performance of this Agreement be impossible due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then the Agreement will immediately terminate without obligation of either party to the other.

25. TIME IS OF ESSENCE. Time is of the essence to comply with dates and schedules to be provided.

26. ATTORNEY'S FEES. The parties hereto acknowledge and agree that each will bear his or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

27. STATEMENT OF EXPERIENCE. By executing this Agreement, COMPANY represents that it has demonstrated trustworthiness and possesses the quality, fitness and capacity to perform the Agreement in a manner satisfactory to CITY. COMPANY represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private COMPANYS, and experience in dealing with public agencies all suggest that COMPANY is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

28. OWNERSHIP OF DOCUMENTS. It is understood and agreed that the City shall own all documents and other work product of the COMPANY, except the COMPANY's notes and workpapers, which pertain to the work performed under this Agreement. The City shall have the sole right to use such materials in its discretion and without further compensation to the COMPANY, but any re-use of such documents by the City on any other project without prior written consent of the COMPANY shall be at the sole risk of the City.

29. USE OF LOGO. The City grants the COMPANY permission to use its name, logo and/or trademark in deliverables produced by the COMPANY on the behalf of the City, such as written reports, presentation slides, press releases, social media graphics, and other public outreach materials. The CITY's prior review of artwork and written approval is required for any use of CITY logo. CITY will provide an electronic copy of the most current logo to the CONTRACTOR for use in materials. The CONTRACTOR will, in turn, only use the most current logo of the CITY.

30. DISCLOSURE REQUIRED. (City and COMPANY initials required at one of the following paragraphs)

By their respective initials next to this paragraph, City and COMPANY hereby acknowledge that COMPANY is a "COMPANY" for the purposes of the California Political Reform Act because COMPANY's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were COMPANY employed by the City. COMPANY hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to COMPANY commencing services hereunder, the City's Manager shall prepare and deliver to COMPANY a memorandum detailing the extent of COMPANY's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

COMPANY Initials \_\_\_\_\_

**OR**

By their initials next to this paragraph, City and COMPANY hereby acknowledge that COMPANY is not a "COMPANY" for the purpose of the California Political Reform Act because COMPANY's duties and responsibilities are not within the scope of the definition of COMPANY in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

COMPANY Initials \_\_\_\_\_

31. COMPLIANCE WITH COVID-19 VACCINATION POLICY. All COMPANY'S employees, agents, officers and subcontractors who will be physically present in the City and have contact with City officials and employees or with the public shall be fully vaccinated from COVID-19. COMPANY agrees to certify in writing to CITY that it complies with the foregoing.

**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF HERMOSA BEACH

COMPANY

\_\_\_\_\_  
Suja Lowenthal, City Manager

\_\_\_\_\_  
Shawn Sedlacek, Production Manager

ATTEST:

\_\_\_\_\_  
Myra Maravilla, City Clerk

\_\_\_\_\_  
Taxpayer ID No.

APPROVED AS TO FORM:

\_\_\_\_\_  
Patrick Donegan, City Attorney

## **Exhibit A: Scope of Work**

The equipment and staffing to execute the work described below for the Hermosa Beach Concert Series scheduled for the two Sundays following Labor Day from 4:00-7:00pm on the beach south of Pier featuring up to three talent acts per event day.

- Construction and installation of one main covered concert stage with professional quality lighting and a sound system;
- Fencing for the equipment and stage to secure and protect the stage and any support equipment throughout nonperformance days;
- Audio support equipment to produce clear, professional quality sound for an outdoor audience of up to 5,000 people;
- An experienced point of contact to work with City staff in the coordination, logistical planning, and implementation of the concerts;
- An experienced point of contact to work with selected talent in the coordination, logistical planning, and implementation of the selected talent's set;
- All staffing necessary to successfully and professionally operate associated equipment; and
- Oversight of general concert production.