

**AGREEMENT FOR SERVICES
BETWEEN CITY OF MORRO BAY AND
BILL GAINES AUDIO, INC.**

THIS AGREEMENT FOR SERVICES (“**Agreement**”) is made and entered into this 11th day of February, 2025 by and between CITY OF MORRO BAY, a California municipal corporation (“**City**”) and Bill Gaines Audio, Inc., a California corporation (“**Consultant**”). City and Consultant may be referred to individually as “**Party**” or collectively as “**Parties**.” In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit A and incorporated herein by this reference, which may be referred to herein as the “**services**” or “**work**” hereunder. As a material inducement to City entering into this Agreement, Consultant represents and warrants: a) all services set forth in the Scope of Services will be performed in a competent and satisfactory manner; b) all materials used for services will be both of good quality as well as fit for the purpose intended; and, c) Consultant shall follow the highest professional standards and practices in performing the services required hereunder.

1.2 Consultant’s Proposal. The Scope of Services shall include the scope of services or work included in Consultant’s proposal or bid, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal or bid, and this Agreement, the terms of this Agreement shall govern. No other terms and conditions from Consultant’s proposal or bid, other than description of scope of services or work, shall apply to this Agreement, unless specifically agreed to by City in writing.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its officers, employees and agents, shall not be liable at law or in equity for failure of Consultant to comply with this Section.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Additional Services and Compensation. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes to the work by altering, adding to

or deducting from said work. No such extra work may be undertaken unless a written order, consistent with both Section 9.4 as well as Morro Bay Municipal Code (“**MBMC**”) section 3.08.060 (and as amended), is first given by City to Consultant, incorporating therein any adjustment in the Contract Sum for the actual costs of the extra work and/or the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants.

1.6 Familiarity with Work. By executing this Agreement, Consultant represents and warrants Consultant: a) has thoroughly investigated and considered services to be performed, b) has carefully considered how services should be performed, and c) fully understands the facilities, difficulties and restrictions attending performance of services under this Agreement.

1.7 Software and Computer Services. If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Consultant represents and warrants that it is familiar with and/or has inspected City’s current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Consultant under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of City. Consultant acknowledges that City is relying on this representation by Consultant as a material consideration in entering into this Agreement.

1.8 Prevailing Wages. If services include any “public work” or “maintenance work,” as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum. Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as **Exhibit C** and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Two Hundred Ninety-Three Thousand One Hundred Dollars (\$293,100.00) (“**Contract Sum**”), unless additional compensation is approved pursuant to Section 1.5. Compensation may include reimbursement, for actual and necessary expenditures, if both specified in the Schedule of Compensation, as well as approved by City in advance. The Contract Sum shall include the attendance of Consultant at all project meetings

reasonably deemed necessary by City. Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

2.2 Invoices. Unless some other method of payment is specified in Exhibit C, Schedule of Compensation, in any month in which Consultant wishes to receive payment, no later than the first business day of such month, Consultant shall submit to City, in a form approved by City's Finance Director, an invoice for services rendered prior to the date of the invoice. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of this Agreement. Except as provided in Sections 7.3, 7.4 and 7.5, City shall pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement generally within thirty (30) days, and City will use its best efforts to make payment no later than forty-five (45) days, from the submission of an invoice in an approved form. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Each invoice is to include (unless otherwise specified by City): 1) line items for all personnel describing the work performed, the number of hours worked, and the hourly rate; 2) line items for all materials and equipment properly charged to the Services; 3) line items for all other approved reimbursable expenses claimed, with supporting documentation; and 4) line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, which shall be no later than December 31, 2025.

3.3 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as **Exhibit D** and incorporated herein by this reference.

3.4 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Consultant shall within ten (10) days of the commencement of such delay notify City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the Parties to this

Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of this Agreement pursuant to this Section.

ARTICLE 4. COORDINATION OF WORK

4.1 Representative of Consultant. The representative of Consultant is Conor Vache, who is authorized to act on Consultant's behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City.

4.2 Contract Officer for City. The Contract Officer for City is Gregory Kwolek (or such person as may be designated by the City Manager). The Contract Officer shall be the primary person on behalf of City responsible for the administration of the Agreement. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of both the progress of the performance of the services as well as any decisions which must be made by City.

4.3 Approvals from City. City approvals or actions, pursuant to the authority of this Agreement, are to be made (unless otherwise specified) either by the City Manager or by their delegate as provided for in writing.

4.4 Independent Contractor. Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Consultant, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Consultant represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Consultant's exclusive control and direction. No City employee benefits shall be available to Consultant, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Consultant or any officer, employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Consultant shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer

contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Consultant, or any officer, employee, agent, or subcontractor Consultant used to provide services under this Agreement, is/are employees of City.

4.5 Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without express written approval of City, Consultant shall not contract with any other entity to perform in whole or in part services required hereunder without express written approval of City, and neither this Agreement nor any interest herein may be transferred or assigned. No approved transfer shall release Consultant, or any surety or insured of Consultant, of any liability hereunder without express written consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. Prior to commencement of any services under this Agreement, and without limiting Consultant's indemnification obligation to City, Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts below, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City, which shall cover all elected and appointed officers, employees and agents of City. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

(a) **Commercial General Liability Insurance.** A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(b) **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) **Automobile Liability.** A policy of comprehensive automobile liability insurance, at least as broad as ISO form CA 00 01, written on a per occurrence basis covering bodily injury and property damage in an amount not less than \$1,000,000 combined single limit

for each accident. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) **Professional Liability.** Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis and must include coverage for contractual liability. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage. Limits shall be no less than \$1,000,000 per claim and no less than \$1,000,000 general aggregate.

(e) **Cyber Liability.** Cyber liability insurance appropriate to Consultant's profession and the services hereunder, written on a per occurrence basis, with limits not less than \$1,000,000 per occurrence/loss, and \$2,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving: infringement of intellectual property; copyright; trademark; invasion of privacy violations; data breach; electronic information theft, loss, damage, destruction, alteration or misuse; release of private information; extortion; and, network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

(f) **Excess Liability Insurance.** Excess liability insurance may be used to satisfy the obligations herein. If excess liability insurance is used then the policy shall meet all the requirements herein and be at least as broad as the primary coverages set forth herein. Such policy shall: 1) include a drop down feature requiring the policy to respond if primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason; 2) be payable on behalf of wording as opposed to reimbursement; 3) have concurrency of effective dates with primary policies; 4) "follow form" to the underlying primary policies; and, 5) provide insureds, under primary policies required herein, shall be insureds under the excess liability policy.

(g) **Subcontractors.** In the event Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, Consultant shall either: 1) include each subcontractor as insureds under its policies of insurance required herein; or, 2) Consultant shall furnish to City all documentation, required in Article 5 for Consultant, for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

5.2 **General Insurance Requirements.**

(a) **Proof of Insurance, Enforcement and Notice.** No work or services under this Agreement shall commence until both Consultant has provided City with insurance certificates, endorsement forms and appropriate insurance binders evidencing the above insurance coverages, as well as said documentation is approved by City. City reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time.

Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to subsection (b) below), or does not comply with Article 5, then: 1) City has the right but not the duty to obtain insurance required herein and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments; or, 2) City, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required insurance policies.

(b) Cancellation/Amendment. All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment) to City. In the event any of said policies of insurance are amended or cancelled, Consultant shall, five (5) business days prior to the cancellation date, submit new evidence of insurance in conformance with this Agreement to City.

(c) Additional Insureds. The commercial general liability policy provided for in Section 5.1(a) and the automobile liability policy provided for in Section 5.1(c) both shall name City and its elected and appointed officers, employees and agents ("**City Parties**") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to City and City Parties. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and policies of insurance shall not contain any cross-liability exclusions.

(d) Primary, Subrogation, Contribution and Coverage. All of the above policies of insurance shall be primary insurance. The insurers for above policies, Consultant and any subcontractors are all deemed hereof to waive all rights of subrogation and contribution they may have against City or City Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by City or City Parties will apply in excess of, and not contribute with, Consultant's insurance. If Consultant maintains broader coverage and/or higher limits than the minimum amounts provided herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City and City Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. Requirements of specific coverage features or limits contained herein are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(e) Limitations, Self-Insured Retention and Deductibles. Consultant agrees that requirements of Article 5 shall not be construed as limiting in any way the extent to which

Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant's indemnification liabilities as provided in Section 5.3. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City Parties, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorney's fees, defense expenses and claims.

5.3 Indemnification.

(a) **General Obligations.** Consultant agrees, to the full extent permitted by law, to indemnify, defend and hold harmless City and its elected and appointed officers, employees and agents (each an "**Indemnitee**" and collectively, "**Indemnitees**") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (each an "**Indemnitor**" and collectively, "**Indemnitors**"), or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith: 1) Consultant will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys' fees, incurred by Indemnitee(s) in connection therewith; and, 2) Consultant will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s) harmless therefrom.

(b) **Further Provisions.** The indemnity obligation herein shall be binding on successors, assigns and heirs of Consultant and shall survive termination of this Agreement. Consultant shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Consultant fails to do so Consultant shall be fully responsible to indemnify City hereunder therefor. Failure of City and/or City Parties (collectively "City" for solely this Section 5.3(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of City's sole negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services hereunder. Payment of invoices by City is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence or willful misconduct

of City, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating City as solely negligent or responsible for willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

(c) **Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Indemnitees against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all Claims and Liabilities, consistent with all obligations provided for in this Section 5.3, to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services under this Agreement.

ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION

6.1 Records. Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder ("**books and records**") as shall be necessary to perform the services required by this Agreement and enable City to evaluate the performance of such services. Any and all such books and records shall be maintained in accordance with generally accepted accounting principles, shall be complete and detailed, and shall be readily accessible. City shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained for a period of three (3) years following completion of the services hereunder. City shall have access to such books and records in the event any audit is required. Consultant shall fully cooperate with City in providing access to any and all Consultant records and documents if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials ("**documents and materials**") prepared by Consultant, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of City and/or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Consultant may retain copies of such documents and materials for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents and materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, with respect to any Consultant documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for City.

6.3 Confidentiality and Release of Information. All information gained or work product produced by Consultant in its performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant.

Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from City. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant immediately gives City notice of such court order or subpoena. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct. As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Consultant shall immediately notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party; b) City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding; and, c) Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant, however, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Consultant agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.

7.2 Suspension, or Termination, Prior to Expiration of Term. This Section shall govern any termination of this Agreement except as specifically provided in Section 7.4 for termination for cause. City reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without cause, upon ten (10) days’ notice to Consultant, except that where termination or suspension is due to the fault of Consultant, the period of notice may be such shorter time as determined by City. Upon receipt of any notice of termination or suspension, Consultant shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by City. Upon submittal of an invoice consistent with Section 2.2, Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension and for any services authorized by City thereafter in accordance with the Schedule of Compensation, or such as may be approved by City, except as provided in Section 7.5. In event of termination, or suspension, without cause pursuant to this Section, there is no need to provide opportunity to cure pursuant to Section 7.3.

7.3 Default of Consultant and Opportunity to Cure. In the event that Consultant is

in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively ten (10) days, but may be extended, or reduced, if circumstances warrant, as determined by City. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices, without liability for interest. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default by conclusion of noticed timeframe, City may immediately both terminate this Agreement with notice to Consultant as well as pursue the remedy in Section 7.4, without prejudice to any other remedy to which City may be entitled at law, in equity or under this Agreement. Any failure on the part of City to give notice of Consultant's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

7.4 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed City therefor.

7.5 Retention of Funds. Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.6 Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement of this Agreement imposes no additional obligations on

City nor does it waive any rights hereunder. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

7.7 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.8 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

7.9 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Consultant written notice describing the conflict. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects their financial interest or the financial interest of any corporation, partnership or association in which they are, directly or indirectly, interested, in violation of any

State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of City addressed to City Clerk at City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442, and in the case of Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

9.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment. This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Consultant and (consistent with, as amended, Chapter 3.08 of the MBMC) by City.

9.5 Severability. Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid

provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 No Undue Influence. Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to remedies in Section 7.4 and any and all remedies at law or equity.

9.7 Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF MORRO BAY, a California municipal corporation

Yvonne Kimball
City Manager

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

Robert Schultz, Interim City Attorney

CONSULTANT:

Bill Gaines Audio, a California Corporation

By: _____
Bill Gaines
Owner/CEO

By: _____

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT’S BUSINESS ENTITY.

EXHIBIT A

SCOPE OF SERVICES

- I. Consultant will perform services described in Consultant's Proposal attached hereto.**
- II. All work product is subject to review and acceptance by City, and must be revised by Consultant without additional charge to City until found satisfactory and accepted by City.**

-Previous consultation work done with the City of Morro Bay, as well as the “Qualifications and References” section of this RFP demonstrate BGA’s ability to provide the services in a timely manner.

Proposed Scope of Work

Task 1 Project Planning Phase

- 1.1 Kickoff Meeting
 - Prepare for and participate in an in-person Project Kickoff Meeting with the Project Team, which includes City Staff and other Project supporting consultants.
- 1.2 Project Team Meetings
 - Prepare for and participate in (up to weekly) Project Team Meetings with the Project Team, which includes City Staff and other Project supporting consultants.
- 1.3 Documentation
 - Prepare documentation and research to support the Planning Phase and to
 - Make sure all client needs/wants are communicated.

Task 2 Design and Approval Phase

- 2.1. Design Requirements
 - Design and fully price out three A/V system scenarios
 - A fully automated A/V system capable of being operated without a technician
 - A semi-automated A/V system capable of being operated with one technician which has an optional but limited automated system.
 - An upgraded manual system requiring two or more technicians to operate
 - Designs will include the following considerations:
 - Microphone coverage for all seated local positions, as well as wireless microphones for roaming/audience participation
 - Incorporation of existing in room speakers into new system
 - Audio mixing equipment and software with adequate I/O. Shall include digital output for broadcast audio
 - Video recording system that includes adequate static and PTZ cameras to fully record City Council and other public meetings.

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- Video mixing hardware and software
 - Camera control hardware
 - Automation
 - System automation and integration hardware and software
 - Computer system capable of streaming to existing internet connection
 - System for recording meetings as necessary. Both network and physical recording to be included.
- The system shall have a user interface that is accessible from the Council Chamber for staff to control during use of the system. This may be on a tablet/iPad or other similar device.
- Designs shall allow for successful local operation and broadcast (via Zoom, or other digital streaming platform) of audio and visual inputs (both local and remote) during public meetings held by the City.
- Designs shall include recommendations for purchase of new Council Chamber dais, staff seating, and control room furniture. These items are to be procured by the City.
- Designs shall be developed in cooperation with City staff and shall include one site visit with City staff, with an additional optional site visit
- Designs shall be based on current building conditions at the Morro Bay Vets Hall
- 2.2 Documentation
 - Prepare documentation to adequately convey system design and installation requirements for both City Staff and City Council
- 2.3. City Council Approval
 - Assist in preparation of staff report to City Council outlining the three design scenarios with estimated build out costs for each scenario
 - Assist, in person, in the presentation of the staff report to the City Council.

Task 3 Procurement and Installation Phase

- 3.1. Procurement
 - Procure all necessary equipment, hardware, software, components and other peripherals for a fully built out A/V system for the MB Vets Hall as selected and approved by the City Council.
 - Provide all necessary tools and equipment required to execute the installation according to approved plans in a safe and timely manner.
- 3.2. Documentation
 - Prepare Shop Drawings for City Approval prior to commencing work.

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- Prepare As Built drawings at completion of work
- Prepare custom Maintenance and Operations manual for system.
- 3.3. Installation
 - Install all new equipment in scope of work
 - Configure and setup the system to the satisfaction of the City to ensure camera angles, microphone locations, and settings are optimized for the City's purposes.
 - Provide to the City any removed hardware and/or equipment
- 3.4 Programming/Integration
 - Configure and program all equipment to ensure operation that meets or exceeds design requirements.
 - Configure user interface(s) to support level of control required by the selected design.
 - Test and validate system performance

Task 4: Training and Support

- 4.1 Training
 - Support city staff with adequate initial training for everyone expected to use system.
 - Provide continuing training as necessary for 1 year from date of install
- 4.2 Support/Service
 - Provide comprehensive system maintenance and operations manual
 - Provide complimentary system service at (6) months and (1) year
 - Includes system cleaning, and confirmation of system operation
 - 1 hour of programming changes as requested
 - Provide complimentary service with maximum 48 hour response time for 1 year for all system problems or issues
 - Opportunity for extended service contracts available

In general, the City will be responsible for the following items:

- Providing copies of available plans, reports, and existing documentation on file in the Public Works Department for the Consultant's reference.
- Designating a City staff person as the primary point of contact for the project.
- Complete/Contract all necessary construction tasks of trades other than Low Voltage Installation to support AV process

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EXHIBIT B
SPECIAL REQUIREMENTS
(Superseding Agreement Boilerplate)

Not Applicable

EXHIBIT C

SCHEDULE OF COMPENSATION

- I. Consultant will be compensated for Services provided under this Agreement in accordance with description in Consultant's Proposal attached hereto.**
- II. City will compensate Consultant for the Services performed upon submission of a valid invoice, as described in Section 2.2.**
- III. The total compensation for the Services shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

Task	Subtask	Overhead	Equipment Costs	Office Administration		CAD Designer		Project Manager		Lead Installer		Installer		Programmer		Total "Not to Exceed" Amount
				Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	
Project Planning	Project Team Meetings									16	\$ 175.00					\$ 2,800.00
	Documetation					2	\$ 150.00									\$ 300.00
Design and Approval	Design Requirements			20	\$ 125.00			60	\$ 175.00							\$ 13,000.00
	Documentation					20	\$ 150.00									\$ 3,000.00
	City Council Approval							20	\$ 175.00							\$ 3,500.00
Procurement and Install	Procurement		\$ 185,000.00													\$ 185,000.00
	Documentation			4	\$ 125.00	20	\$ 150.00									\$ 3,500.00
	Installation							40	\$ 175.00	80	\$ 175.00	200	\$ 150.00			\$ 51,000.00
	Programming/Integration							20	\$ 175.00					120	\$ 150.00	\$ 21,500.00
Training/Support	Training							4	\$ 175.00							\$ 700.00
	Support/Service			4	\$ 125.00			16	\$ 175.00							\$ 3,300.00
Admin	Prevailing Wage Support	\$ 2,500.00		24	\$ 125.00											\$ 5,500.00

Total "Not To Exceed" for Project:	\$ 293,100.00
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EXHIBIT D

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services and deliver all work products timely in accordance with the schedule described in Consultant's Proposal attached hereto.**

Project Schedule/Work Plan

City of MB Vets Hall

ACTIVITY	PLAN START	PLAN DURATION	PERCENT COMPLETE
Award of Contract	0	0	0%
Meet with City and develop initial designs	1	30	0%
Finalize designs and take to City Council	30	30	0%
Receive Council Approval	60	1	0%
Order Equipment for Installation	60	30	0%
Produce Shop Drawings	60	10	0%
Begin installation based on approved shop drawings	80	40	0%
Program and integrate system components	110	20	0%
End User Training	130	1	0%
System sign-off	130	1	0%
O&M Manual Delivered	130	10	0%

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City of MB Vets Hall

