

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
DESIGN PROFESSIONAL SERVICE AGREEMENT FOR CONSTRUCTION
PROJECT**

This Design Professional Service Agreement (“Agreement”) for Construction Project (“Project”), is made and effective as of April 11, 2019, by and between Monterey Peninsula Regional Park District, a special district sub-division of the State of California (“DISTRICT”) and Ten Over Studio, Inc., a corporation (“CONSULTANT”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

This Agreement shall commence on April 11, 2019 and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

II. SERVICES

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

III. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this Agreement.

IV. DISTRICT MANAGEMENT

DISTRICT’s Finance Manager shall represent DISTRICT in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT. DISTRICT’s General Manager shall be authorized to act on DISTRICT's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

V. PAYMENT

(a) The DISTRICT agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Seventy-Nine Thousand Six Hundred and Ten dollars (\$79,610) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the DISTRICT General Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by DISTRICT Manager and CONSULTANT at the time DISTRICT's written authorization is given to CONSULTANT for the performance of said services. The DISTRICT Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed Seven Thousand Nine Hundred Sixty-one dollars (\$7,961). Any additional work in excess of this amount shall be approved by the Governing Board.

(c) CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the DISTRICT disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The DISTRICT may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the DISTRICT suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the DISTRICT shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the DISTRICT. Upon termination of the Agreement pursuant to this Section, the CONSULTANT will submit an invoice to the DISTRICT pursuant to Section 3.

VII. DEFAULT OF CONSULTANT

(a) The CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, DISTRICT shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.

(b) If the DISTRICT Manager or his/her delegate determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. If the CONSULTANT fails to cure its default within such period of time, the DISTRICT shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

VIII. OWNERSHIP OF DOCUMENTS

(a) CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by DISTRICT that relate to the performance of services under this Agreement. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of DISTRICT or its designees at reasonable times to such books and records; shall give DISTRICT the right to examine and audit said books and records; shall permit DISTRICT to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the DISTRICT and may be used, reused, or otherwise disposed of by the DISTRICT

without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the DISTRICT, at the CONSULTANT's office and upon reasonable written request by the DISTRICT, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

IX. INDEMNITY AND DEFENSE

(a) Indemnification and Defense for Professional Services

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless DISTRICT and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by DISTRICT in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. If any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the DISTRICT.

(b) For All Other Liabilities

Notwithstanding the foregoing and without diminishing any rights of DISTRICT under Section 9.A, for any liability, claim, demand, allegation against DISTRICT arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless DISTRICT, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the DISTRICT, except for the sole or active negligence of, or willful misconduct of the DISTRICT.

X. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this Agreement.

XI. INDEPENDENT CONSULTANT

(a) CONSULTANT is and shall at all times remain as to the DISTRICT a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither DISTRICT nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the DISTRICT. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against DISTRICT, or bind DISTRICT in any manner.

(b) No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except for the fees paid to CONSULTANT as provided in the Agreement, DISTRICT shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for DISTRICT. DISTRICT shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The DISTRICT, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

XIII. UNDUE INFLUENCE

CONSULTANT declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the DISTRICT 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 the DISTRICT 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 the DISTRICT to any and all remedies at law or in equity.

XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of DISTRICT, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without DISTRICT's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the DISTRICT Manager or unless requested by the DISTRICT Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the DISTRICT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives DISTRICT notice of such court order or subpoena.

(b) CONSULTANT shall promptly notify DISTRICT should CONSULTANT, its officers, employees, agents, or subconsultants 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 person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the DISTRICT. DISTRICT retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding. CONSULTANT agrees to cooperate fully with DISTRICT and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, DISTRICT's right to review any such response does not imply or mean the right by DISTRICT to control, direct, or rewrite said response.

XVI. NOTICES

Any notices which either party may desire to give to the other party under 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, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To DISTRICT: Monterey Peninsula Regional Park District
P.O. Box 223340
Carmel, CA 93922

4860 Carmel Valley Rd.
Carmel, CA 93923

Attention: Finance Manager

To CONSULTANT: Ten Over Studio, Inc.
539 March St.
San Luis Obispo, CA 93923
Attn: Jim Duffy

XVII. ASSIGNMENT

A. The CONSULTANT shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the DISTRICT. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Ten Over Studio, Inc. shall perform the services described in this Agreement.

XVIII. LICENSES

At all times during the term of this Agreement, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

XIX. GOVERNING LAW

The DISTRICT and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the DISTRICT and within Monterey County.

XX. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no

further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

XXI. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONSULTANT is bound by the contents of DISTRICT's Request for Proposals, Exhibit D hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit E hereto. In the event of conflict, the requirements of DISTRICT's Request for Proposals and this Agreement shall take precedence over those contained in the CONSULTANT's proposal. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this Agreement or the relationship between CONSULTANT and/or DISTRICT, unless expressly agreed to in writing.

XXII. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this Agreement on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CONTRACTOR:

Ten Over Studio, Inc.
a, corporation

By: _____
Jim Duffy, President

Date: _____

DISTRICT:

MONTEREY PENINSULA REGIONAL PARK DISTRICT,
a, special district sub-division of the State of California

By: _____
Kelly Sorenson, Board President

Date: _____

Approved as to form:

Michael J. Whilden,
District Legal Counsel

EXHIBIT A

TASKS TO BE PERFORMED & PERFORMANCE SCHEDULE

See attached Ten Over Studio, Inc., Proposal

EXHIBIT B

PAYMENT SCHEDULE

Invoices will be submitted monthly and all undisputed amounts will be paid on net 30 terms.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of DISTRICT, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to DISTRICT.

General Liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile Liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Professional Liability (Errors & Omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

Workers' Compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Umbrella or Excess Liability insurance. *[Optional depending on limits required]*. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;

- Concurrency of effective dates with primary policies;
- Policies shall “follow form” to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to DISTRICT as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement in favor of DISTRICT, its elected or appointed officers, agents, officials, employees and volunteers for workers’ compensation. Insurance certificates and endorsements must be approved by DISTRICT’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with DISTRICT at all times during the term of this contract. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by DISTRICT shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of DISTRICT before the DISTRICT’s own insurance or self-insurance shall be called upon to protect it as a named insured.

DISTRICT’s rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, DISTRICT has the right but not the duty to obtain the insurance it deems necessary and any premium paid by DISTRICT will be promptly reimbursed by CONSULTANT or DISTRICT will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, DISTRICT may cancel this Agreement.

Acceptable insurers. All insurance policies shall be 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 VI (or larger) in accordance with the latest edition of Best’s Key Rating Guide, unless otherwise approved by the DISTRICT’s Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against DISTRICT, its elected or

appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against DISTRICT, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non-estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the DISTRICT to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the DISTRICT nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section 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. If the CONSULTANT maintains higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

Notice of cancellation. CONSULTANT agrees to oblige its insurance agent or broker and insurers to provide to DISTRICT with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that DISTRICT and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to DISTRICT and approved of in writing.

Separation of insureds. 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 insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to

monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with CONSULTANTS, subcontractors, and others engaged in the project will be submitted to DISTRICT for review.

DISTRICT's right to revise specifications. The DISTRICT reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the DISTRICT and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by DISTRICT. DISTRICT reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by DISTRICT.

Timely notice of claims. CONSULTANT shall give DISTRICT 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 liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

EXHIBIT D

REQUEST FOR PROPOSALS

See attached Request for Proposal

EXHIBIT E
CONSULTANT'S PROPOSAL

See attached Consultant Proposal