

EXHIBIT 3-A

**AGREEMENT BETWEEN THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND
RIGHT ON Q, INC.**

**FOR PROFESSIONAL SERVICES TO PROVIDE ASSISTANCE TO COMPLETE THE
TULARCITOS AQUIFER STORAGE AND RECOVERY FEASIBILITY ANALYSIS**

THIS AGREEMENT is entered into this ____ day of _____ 20__, by and between Right on Q, Inc., hereinafter called "Consultant," and the Monterey Peninsula Water Management District, hereinafter called "MPWMD".

SECTION I
SCOPE OF SERVICES

MPWMD hereby engages Consultant for services as set forth in **Exhibit A**, Scope of Services.

SECTION II
COMPENSATION

A. FEE SCHEDULE

Fees payable to Consultant for services specified herein shall be in accordance with the Fee Schedule in **Exhibit B**.

B. METHOD OF PAYMENT

Payment of fees shall be based on work completed, as documented in monthly billings submitted by Consultant. Work reports shall be rendered in accordance with the schedule shown in **Exhibit C**, Work Schedule. Payments are due and payable within thirty (30) days after receipt of each invoice subject to a finding by MPWMD that work performed has been satisfactory and that payment is for the work specified in **Exhibit A**, Scope of Services. Where MPWMD finds the work to be unsatisfactory, MPWMD shall describe deficiencies in writing to Consultant within ten (10) days.

C. MAXIMUM PAYMENT

Payments to Consultant for services rendered and expenses incurred under this Agreement **shall not exceed \$ 27,000 without written authorization from MPWMD.**

SECTION III
INSPECTION OF WORK

The books, papers, records and accounts of Consultant or any subconsultants retained by Consultant insofar as they relate to charges for services, or are in any way connected with the work herein contemplated, shall be open at all reasonable times to inspection and audit by the agents and authorized representatives of MPWMD. Said records shall be retained for a minimum of five (5) years after completion of services.

SECTION IV OWNERSHIP OF PROJECT REPORT AND EQUIPMENT PURCHASED

All original documents, explanations of methods, maps, tables, computer programs, reports and other documents prepared under this Agreement and equipment purchased specifically for the project shall become the exclusive property of MPWMD.

Digital data used to generate tables, figures, diagrams, images, Geographical Information System (GIS) or Computer Aided Design (CAD) layers shall be considered separate deliverables and shall be provided to MPWMD after acceptance by MPWMD of the final work product(s).

Global Positioning System (GPS) data deliverables shall include the following:

- Original rover files, unless otherwise specified by MPWMD
- Base station correction files, unless otherwise specified by MPWMD
- Differentially corrected GPS files, if requested by MPWMD
- Copies of field data collection notes
- Completed documentation sheet for each collection event
- Almanac files are optional

GIS deliverables shall include the following:

- Geospatial dataset [generated from GPS data] in Environmental Systems Research Institute, Inc.'s (ESRI) shapefile format, including a projection file. In this regard, point features shall be generated as point shapefiles, linear features shall be generated as line shapefiles, and area features shall be generated as polygon shapefiles.
- Each geospatial dataset shall be accompanied by documentation sufficient to meet the Content Standard for Digital Geospatial Metadata (CSDGM), Vers. 2 (FGDC-STD-001-1998), dated June 1998.
- Any geospatial dataset derived from new or existing geospatial data in shapefile format, along with an explanation of the methodology used to generate the derived geospatial data.

Consultant may retain copies for his/her own use. Consultant shall not be held liable for reuse of documents or modifications of the subject data thereof, including documents on electronic media, by MPWMD, or its representatives, for any purpose other than the original intent of this Agreement.

SECTION V TIME OF PERFORMANCE

Consultant shall begin work upon the effective date of this Agreement and shall complete all tasks described herein according to the schedule shown in **Exhibit C**, Work Schedule.

SECTION VI RESPONSIBILITIES

- A. Consultant represents that he has or will secure at his own expense all personnel, materials, and related services required to perform the services under this Agreement. Consultant shall act as an independent consultant and not as an agent or employee of MPWMD. Consultant shall have exclusive and complete control over his employees and subcontractors, and shall determine the method of performing the services hereunder.
- B. MPWMD shall provide Consultant with all relevant data and studies in its possession without charge. Consultant represents that he/she is familiar with such materials in the possession of MPWMD and that they are sufficient to discharge MPWMD's obligation hereunder.
- C. MPWMD shall coordinate and arrange for all meetings required to be held with other agencies or persons hereunder, unless otherwise specified in **Exhibit A**, Scope of Services.
- D. Consultant shall be responsible for the reproduction of work produced by Consultant hereunder.
- E. The officers, agents, and employees of MPWMD shall cooperate with Consultant in the performance of services under this agreement without charge to Consultant. Consultant agrees to use such services insofar as feasible in order to effectively discharge his/her obligations hereunder and further agrees to cooperate with MPWMD's officers, agents and employees.
- F. The Consultant agrees to indemnify, defend and save harmless MPWMD, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all consultants, subcontractors, materialmen, laborers and any other person, firm or corporation who may be injured or damaged by the negligent acts, errors, and/or omissions of the Consultant, Consultant's employees, or Consultant's subcontractors or subconsultants in the performance of this Agreement.
- G. Consultant shall comply with all applicable laws, ordinances and codes of the federal, California, and local governments.

SECTION VII INSURANCE

- A. Consultant shall obtain and keep insurance policies in full force and effect for the following forms of coverage as shown in **Exhibit D**, Insurance Requirements.

SECTION VIII CHANGES AND CHANGED CONDITIONS

- A. If, during the course of the work herein contemplated, the need to change the Scope of Services should arise, for whatever reasons, whichever party first identifies such need to change shall notify the other party in writing. The representatives of the parties shall meet

within seven (7) working days of the date of such notice to discuss the need for change so identified and to set the proposed action to be taken by the parties. A change in the Scope of Services may also result in a change in the compensation amount. Compensation changes shall be based upon the Consultant Fee Schedule (**Exhibit B**) attached hereto. Any changes agreed to shall be documented by duly executed amendments to this Agreement.

- B. MPWMD reserves the right to specify individual employees, subconsultants or agents of Consultant who shall be assigned to perform the tasks specified in **Exhibit A**, Scope of Services. If, during the course of the work herein contemplated, there is a change such that the specified individual employees, subconsultants or agents are no longer assigned to the work described in this contract and/or are no longer affiliated with Consultant, Consultant shall immediately notify MPWMD in writing. Consultant shall assign the rights to this contract to another entity, if requested by MPWMD, as part of termination proceedings pursuant to Section IX, Termination.

SECTION IX TERMINATION

- A. MPWMD may terminate Consultant's services at any time by written notice to Consultant at least thirty (30) days prior to such termination. Upon receipt of written notice from MPWMD that this Agreement is terminated, Consultant shall submit an invoice for an amount that represents the value of services actually performed to the date of said notice for which he/she has not previously been compensated. Upon approval of this invoice by MPWMD, Consultant shall be paid from the sum found due after having applied the provisions of Section II, Paragraph (D) of this Agreement, "Late Performance Penalty," where applicable, and MPWMD shall have no further obligation to Consultant, monetarily or otherwise.
- B. Upon receipt of written notice of termination, the Consultant shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to MPWMD, copies, including magnetic media, of data, design calculations, drawings, specifications, reports, estimates, summaries and other such information and materials as may have been accumulated by the Consultant in performing the services under this Agreement.

SECTION X SUB-CONTRACTING AND ASSIGNABILITY

Consultant shall not sub-contract any portion of the work required by this Agreement nor otherwise assign or transfer any interest in it without prior written approval of MPWMD. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

SECTION XI DISCRIMINATION AND FAIR EMPLOYMENT

Attention is directed to Section 1735 of the California Labor Code, which reads as follows:

“No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the government code and every Consultant for public works violating this section is subject to all penalties imposed by a violation of this chapter.”

During the performance of this Agreement, Consultant and its Consultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Consultant and its Consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its Consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

SECTION XII INTEREST OF CONSULTANT

Consultant covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

SECTION XIII CONTINGENT FEES

Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company, or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gifts, or other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, MPWMD shall have the right to annul this Agreement without liability or at its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage, gift or contingent fee.

SECTION XIV DISPUTES

In the event of a dispute arising out of the performance of this Agreement either party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other party. Within five (5) working days of receipt of such a statement of conflict, the second party will respond and

a meeting will be arranged not more than five (5) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within twenty (20) working days from the initial filing of a statement of conflict an agreement cannot be reached, it is agreed that the dispute may be resolved in a court of law competent to hear this matter. This Agreement shall be construed in accord with California law and it is agreed that venue shall be in the County of Monterey. The prevailing party shall be awarded costs of suit, and attorneys' fees.

SECTION XV NOTICES

All communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at its respective address, as follows:

MPWMD: Jonathan Lear, Water Resources Division Manager
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey CA 93940
or
P. O. Box 85
Monterey, CA 93942-0085

CONSULTANT: Mike Hutnak
Right on Q, INC
2331 Mattison Lane
Santa Cruz, CA 95062

SECTION XVI AMENDMENTS

This Agreement together with **Exhibits A, B, C, and D** sets forth the entire understanding of the parties with respect to the subject matter herein. There are no other agreements expressed or implied, oral or written, except as set forth herein. This Agreement may not be amended except upon written amendment, executed by both parties hereto.

SECTION XVII ATTACHMENTS

The following exhibits attached hereto and referred to in the preceding sections are, by reference, incorporated herein and made an integral part of this Agreement:

- Exhibit A.** Scope of Services
- Exhibit B.** Fee Schedule
- Exhibit C.** Work Schedule
- Exhibit D.** Insurance Requirements

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

BY: David J. Stoldt, General Manager

CONSULTANT

BY:

FEDERAL TAX IDENTIFICATION NUMBER:

EXHIBIT A – SCOPE OF SERVICES

Consultant will finish the Phase 1 component of the Tularcitos ASR feasibility analysis and complete the following tasks identified as the Phase 2 component of the feasibility analysis and prepare a final report summarizing the work completed and conclusions of the feasibility analysis. The task breakdown and description are as follows:

1. **Prepare a Technical Memo for the Phase 1 work completed previously** – A brief technical memorandum will be prepared by consultant summarizing the work completed in 2012 during the Phase 1 component of the feasibility analysis.
2. **Summarize existing land uses, well production, water rights** – Consultant will investigate all water rights, water use patterns and land uses associated with the area of interest. Consultant will come up with a preliminary water budget for the area of interest.
3. **Develop hydrogeologic framework with maps and cross sections** - Consultant will use findings from Phase 1 of this study to produce hydrogeologic maps and cross sections of the area of interest to evaluate the amount of potential underground storage available.
4. **Describe basin hydrology and availability of Carmel River diversions for ASR** – Consultant will perform analysis of water availability from historic flow records at existing diversion points associated with permit 20808 B.
5. **Evaluate ASR potential based on current hydrogeologic understanding using CRBHM modeling** – Consultant will perform a sensitivity analysis of number of wells, location of wells, and volume of injected water using the District’s Carmel River Basin Hydrologic Model to investigate the feasibility and potential size of an ASR project in the area of interest.
6. **Select hydrogeologic units and sites for further analysis/ field testing** – If step 5 shows that an ASR project may be feasible in the area of interest, the consultant will identify areas where field testing should take place to investigate site specific hydrogeologic conditions. Consultant will also suggest a testing program to assess the ASR program as the next Phase of this program.
7. **Prepare a report summarizing work and conclusions related to previous tasks and Phase 2 work** – Consultant will prepare a report summarizing all work completed in Phase 1 and 2 and, if ASR is found feasible, suggesting a field work plan that would be the next phase of the project.

EXHIBIT B - FEE SCHEDULE

The fee schedule by task is broken down below. Task costs are related to the billing rate and time allotted to each task. Payment will only be made for actual hours worked towards completion of tasks and this breakdown of cost shows the distribution of level of effort associated with each task. Billing rate and hours for each task are attached to this document.

<u>Task</u>	<u>Cost</u>
1. Prepare a Technical Memo for the Phase 1 work completed previously	\$3,000
2. Summarize existing land uses, well production, water rights	\$3,000
3. Develop hydrogeologic framework with maps and cross sections	\$4,000
4. Describe basin hydrology and availability of Carmel River diversions for ASR	\$3,000
5. Evaluate ASR potential based on current hydrogeologic understanding using CRBHM	\$8,000
6. Select hydrogeologic units and sites for further analysis/testing	\$2,000
7. Prepare a report summarizing work and conclusions	<u>\$4,000</u>
Total Cost of Feasibility Analysis	\$27,000

EXHIBIT C – SCHEDULE

Work is expected to be initiated with an on-site startup meeting after contracting is complete and is expected to be completed within 180 days.

EXHIBIT D - INSURANCE REQUIREMENTS

- I. Consultant shall provide evidence of valid and collectible insurance carried for those exposures indicated by an "X".
 - A. ___ Professional Liability Errors & Omissions
 - B. ___ Workers Compensation and Employers Liability
 - C. X Automobile Liability - "Any Auto - Symbol 1"
 - D. ___ Comprehensive General Liability, including Bodily Injury, Property Damage and Personal Injury
 - E. ___ Protection & Indemnity (Marine/Aviation)

- II. The minimum limit of protection provided by insurance policies for each of the coverages listed above shall be not less than \$300,000, except for coverage "D", which shall not be less than \$2,000,000. The procurement and maintenance by the Consultant of the policies required to be obtained and maintained by Consultant under this Agreement shall not relieve or satisfy Consultant's obligation to indemnify, defend and save harmless the District.

- III. Evidence of insurance carried shall be Certificates of Insurance for the current policies. The District shall be listed as a certificate holder on the Consultant's Comprehensive General Liability insurance policy and the policy must be endorsed to provide a 30-day

prior written notice of cancellation.

IV. The District requires that the Consultant carry a commercial liability policy written on a broad comprehensive general liability form.

A. Such protection is to include coverage for the following, indicated by an "X":

1. ___ Premises and Operations
2. ___ Products and Completed Operations
3. ___ Explosion Collapse and Underground
4. ___ Broad Form Blanket Contractual
5. ___ Broad Form Property Damage
6. ___ Personal Injury, A, B & C
7. ___ Employees named as Persons Insured

B. The "Persons Insured" provision on each comprehensive general liability policy shall include as an insured the "Monterey Peninsula Water Management District, its officers, directors, agents and employees."

C. This policy shall contain a severability of interest clause or similar language to the following:

"The insurance afforded applies separately to each insured against whom claim is made or suit is brought including claims made or suits brought by any persons included within the persons insured provision of the insurance against any other such person or organization."

D. All policies shall contain a provision that the insurance company shall give the District at least thirty (30) days prior written notice mailed to the address shown below prior to any cancellation, lapse or non-renewal. The 30-day written notice must be shown on all certificates of insurance.

E. Certificates of Insurance for the current policies shall be delivered by the Consultant to the Risk Manager for the District as verification that terms A, B, C and D have been met.

V. All insurance correspondence, certificates, binders, etc., shall be mailed to:

Monterey Peninsula Water Management District
Attn: Administrative Services Manager
5 Harris Court, Building G
P.O. Box 85
Monterey, CA 93942-0085

VI. All policies carried by the Consultant shall be primary coverage to any and all other policies that may be in force. The District shall not be responsible for payment of premiums due

as a result of compliance with the terms and conditions of the insurance requirements.

- VII. All such policies of insurance shall be issued by domestic United States insurance companies with general policy holders' rating of not less than "B" and admitted to do business in the State of California. The policies of insurance so carried shall be carried and maintained throughout the term of this Agreement.

U:\staff\Boardpacket\2020\20200316\ConsentCalendar\03\Item-3-Exh-A.docx