

EXHIBIT 3-A

**AGREEMENT BETWEEN THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND
XXX
FOR SERVICES TO PROVIDE XXXXXX**

THIS AGREEMENT is entered into this XXX day of XXX, 2023, by and between Radiant Landscaping 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 Work.

SECTION II COMPENSATION

A. FEE SCHEDULE

Fees payable to Consultant for services specified herein shall be in accordance with the Budget and 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. Monthly billings shall include previous invoice amount, current invoice amount, and remaining budget. 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 Work. Where MPWMD finds the work to be unsatisfactory, MPWMD shall describe deficiencies in writing to Consultant within ten (10) days.

The final invoice for work performed shall be submitted not later than sixty (60) days following notification by MPWMD of completion of such work. The final invoice shall be paid not later than thirty (30) days after receipt of the final invoice.

C. MAXIMUM PAYMENT

Payments to Consultant for services rendered and expenses incurred under this Agreement **shall not exceed \$10,455** for thirteen (13) monthly visits and two (2) annual visits.

D. PREVAILING WAGE

Reference is hereby made to the wage scale established by the State Director of the Department of Industrial Relations which is hereby specified as the rate of prevailing wage to paid workers on this project, and the provisions of Article 2, Chapter 1, Part 7, Division 2 (commencing with Section 1770) of the Labor Code shall be complied with. A copy of the prevailing wage rates is on file and may be inspected at the MPWMD office.

SECTION III 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, and consistent with the professional skill and care ordinarily provided by engineering professionals practicing in the State of California under the same or similar circumstances.

SECTION V RESPONSIBILITIES

- A. The Contractor shall have all applicable **licenses** and permits, including a C-27 license.
- B. Consultant represents that it has or will secure at its 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 its employees and subcontractors, and shall determine the method of performing the services hereunder.
- C. Nothing is allowed to be put in the large percolation **basin**; including but not limited to debris, dirt, or liquid of any kind.
- D. No **dirt** may be removed from the property.
- E. ALL workers must take annual **Unexploded Ordnance (UXO) training**, available in English and Spanish, on-line at [index \(fortordsafety.com\)](http://index.fortordsafety.com). The site is located on the Former Fort Ord in a Munitions Response Area and training is required for all individuals involved in ground disturbing work. The training takes approximately 30 minutes. Certificates must be saved and copies sent to the MPWMD Project Manager each August for the prior fiscal year.
- F. 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.
- G. 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 Consultant's obligations hereunder and further agrees to cooperate with MPWMD's officers, agents and employees.
- H. 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, material men, 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.

- I. Consultant shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill, and diligence ordinarily exercised under similar conditions (Standard of Care) by a member of Consultant's profession currently practicing in California.
- J. The Contractor shall immediately report any hazardous conditions to MPWMD. In the event of any incidents, altercations or accidents involving the public, Contractor employees, or MPWMD employees, the Contractor will notify MPWMD immediately.

SECTION VII INSURANCE

- A. Consultant shall obtain and keep insurance policies in full force and effect as shown in **Exhibit D**, Insurance Requirements.
- B. Consultant shall provide photocopies of his/her current Automobile insurance policy [or policies], including endorsements thereto, or current certificates of insurance in lieu thereof, to MPWMD.
- C. Consultant shall require any subcontractor to provide evidence of the same insurance coverages specified in VII.A.
- D. Consultant shall provide notice to MPWMD of any cancellation or material change in insurance coverage where MPWMD has been named as additional insured, such notice to be delivered to the MPWMD in accord with Section XV of this Agreement at least ten (10) days before the effective date of such change or cancellation of insurance.
- E. Evidence acceptable to MPWMD that Consultant has complied with the provisions of this Section VII shall be provided to the MPWMD, prior to commencement of work under this Agreement.
- F. All policies carried by the Consultant shall provide primary coverage instead of any and all other policies that may be in force. MPWMD shall not be responsible for any premium due for the insurance coverages specified in this Agreement.

SECTION VIII CHANGES AND CHANGED CONDITIONS

If, during the course of the work herein contemplated, the need to change the Scope of Work or the Work Schedule 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 Work may also result in a change in the compensation amount. Compensation changes shall be based upon the Consultant Budget and Fee Schedule (**Exhibit B**) attached hereto. Any changes agreed to shall be documented by duly executed amendments to this Agreement.

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, 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).

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 contractors 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 contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its contractors 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 it 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: Simona Mossbacher
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 or
 P. O. Box 85
 Monterey, CA 93942-0085

CONSULTANT: XXX
 XXX

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 Work
- Exhibit B.** Budget and Fee Schedule
- Exhibit C.** Work Schedule
- Exhibit D.** Insurance Requirements
- Exhibit E.** Drug Free Workplace Certification
- Exhibit F.** Special Conditions

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

_____ **Date** _____

BY: David J. Stoldt, General Manager

CONSULTANT

_____ **Date** _____

BY:

FEDERAL TAX IDENTIFICATION NUMBER:

EXHIBIT A – SCOPE OF WORK

The scope of work is to provide regular landscaping at MPWMD's Aquifer Storage and Recovery (ASR) Facility located at 1910 General Jim Moore Boulevard in Seaside, California.

Monthly services include:

1. **Weed Control:** On each visit, the Contractor is to provide weed control for the complete suppression/removal of weed growth.
 - a. The use of pesticides and/or herbicides is not permitted.
 - b. Decomposed Granite areas must be weed free after each visit.
 - c. **Litter & Debris Control:** On each visit, the Contractor shall be responsible for the collection and removal of vegetative litter debris from all horticultural areas within the contracted site. All material is to be disposed of off-site in an acceptable manner.
2. **Decomposed Granite Areas:** All bed surfaces are to be raked, foreign materials removed. Rock should be raked away from drains at the front of the property.
3. **Paved Areas:**
 - a. Plant material must be pruned to keep clear of any roadways, sidewalks, service boxes, fire hydrants and signage at all times.
 - b. Sidewalks and driveways shall be blown free of maintenance and seasonal related debris.
 - c. Moss or mold growing next to the front building drains shall be removed.
 - d. Sweeping/raking up and disposing of loose soil.
 - e. Dirt may not be put down the drains. Dirt can be moved to the north side of the site.
4. **Gates:**
 - a. Tracks for rolling gates shall be blown and rocks removed so they are free of debris.
 - b. Plants lining the gate tracks shall be trimmed, weeds removed.
 - c. Electric eyes shall be free of interfering plants.
 - d. Mothballs shall be put in the control units.

Annual services include:

1. Clean **drain inlets**, create rock berm around the inlets at the front of the property. This work must be done in the dry season after July 1 and before September 30.
2. **Clear Basin floor.** This work is expected to be performed this calendar year.
 - a. All plantings must be removed from site and disposed of at an authorized location by the Landscaper.
 - b. Access to the Basin may be accomplished at the southeast corner of the basin.
 - c. No access is permitted near any infrastructure.
3. **Pest control.** Try eco-friendly first.

EXHIBIT B – BUDGET AND FEE SCHEDULE

Monthly Service \$595.00 per visit

Annual Service \$1,360.00 per visit.

EXHIBIT C – WORK SCHEDULE

Monthly Work:

June 2023 through June 2024.

Annual Work:

May 31, 2023 to September 30 2024

May 31, 2024 to June 30, 2024

EXHIBIT D – INSURANCE REQUIREMENTS

- I. Subgrantee 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. Automobile Liability - "Any Auto - Symbol 1"
 - D. Comprehensive General Liability, including Bodily Injury, Property Damage and Personal Injury
 - E. Owners & Contractors Protective
 - F. 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 \$2,000,000. The procurement and maintenance by the Subgrantee of the policies required to be obtained and maintained by Subgrantee under this Agreement shall not relieve or satisfy Subgrantee'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 Subgrantee's Comprehensive General Liability insurance policy and the policy must be endorsed to provide a 60-day prior written notice of cancellation.
- IV. The District requires that all Subgrantees carry a commercial liability policy written on a broad comprehensive general liability form.
 - A. Such protection is to include coverage for the following hazards, 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
 8. Protective and/or Contingent Liability (O&CP)
 - 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 Subgrantee 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 Subgrantee 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.

EXHIBIT E – DRUG-FREE WORKPLACE CERTIFICATION

The District is committed to maintaining a work environment free from the influence of alcohol and drugs in keeping with the spirit and intent of the Drug-Free Workplace Acts of 1988 and 1990. Illegal drugs in the workplace are a danger to all of us. They impair health, promote crime, lower productivity and quality, and undermine public confidence in the work we do. The use of any controlled substances is inconsistent with the behavior expected of our employees, contractors, and subcontractors. It subjects all employees, contractors, and subcontractors, as well as visitors to our facilities and work site, to unacceptable safety risks and undermines the District's ability to operate effectively and efficiently. In this connection, any location at which Monterey Peninsula Water Management District business is conducted, whether on District property or at any other site, is declared to be a drug-free workplace. This means that:

1. All employees, contractors, and subcontractors are absolutely prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, sale, or use of a controlled substance in the workplace or while engaged in District business off our premises. Violation of this policy by contractors or subcontractors could result in termination of the contract for their services.
2. Employees, contractors, and subcontractors have the right to know the dangers of drug abuse in the workplace, the Monterey Peninsula Water Management District's policy about it, and what help is available to combat drug problems.
3. Any employee, contractor, or subcontractor convicted of violating a criminal drug statute in this agency's workplace must inform the District of such conviction (including pleas of guilty and nolo contendere) within five (5) days of its occurrence. Failure to do so by a contractor or subcontractor could result in termination of the contract for their services. By law, the District will notify the federal contracting officer within ten (10) days of receiving any notice of such a conviction.

ALL CONTRACTORS AND SUBCONTRACTORS ARE ASKED TO ACKNOWLEDGE THAT THEY HAVE READ THE ABOVE POLICY AND AGREE TO ABIDE BY IT IN ALL RESPECTS. BY LAW, THIS ACKNOWLEDGEMENT AND AGREEMENT ARE REQUIRED OF YOU AS A CONDITION OF ENTERING INTO THIS AGREEMENT.

EXHIBIT F – SPECIAL CONDITIONS

As used herein, the term "work" refers to the articles, equipment, materials, supplies, services and labor as specified, designated or otherwise required by the scope of work and the Request for Quote (RFQ).

1. The Contractor shall have all applicable **licenses** and permits, including a C-27 license.
2. Work must adhere to the City of Seaside **noise** Ordinance 9.12.
3. **Hours** of work as of the writing of this RFQ are:
 - a. 7 a.m. to 7 p.m. Monday through Friday and
 - b. 9 a.m. to 7 p.m. Saturday, Sunday, and holidays.
 - c. Hours are subject to change by the City of Seaside.
4. Provider to **notify** MPWMD two (2) weeks before and less than one (1) week after landscape services at the operating facility.
5. Nothing is allowed to be put in the large percolation **basin**; including but not limited to debris, dirt, or liquid of any kind.
6. No **dirt** may be removed from the property.
7. ALL workers must take annual **Unexploded Ordnance (UXO) training**, available in English and Spanish, on-line at [index \(fortordsafety.com\)](https://www.fortordsafety.com). The site is located on the Former Fort Ord in a Munitions Response Area and training is required for all individuals involved in ground disturbing work. The training takes approximately 30 minutes. Certificates must be saved and copies sent to the MPWMD Project Manager each August for the prior fiscal year.
8. The Contractor shall have valid business, automobile, and workers compensation **insurance** in effect.