

EXHIBIT 5-A

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

MASTER SERVICES AGREEMENT FOR GROUNDWATER

MONITORING AND DATABASE SERVICES

This Services Agreement (the “Agreement”) sets forth terms under which Monterey Peninsula Water Management District a California Special District (“DISTRICT”) shall provide services to Seaside Groundwater Basin Watermaster, a Monterey County Superior Court Administrative Entity (the “WATERMASTER”). This Agreement is effective as of Month dd, yyyy (“**Effective Date**”).

- 1. Services.** The DISTRICT shall provide groundwater monitoring and database services for purposes of supporting the WATERMASTER’s Monitoring and Maintenance plan (“Services”) as described on one or more Statements of Work signed by the DISTRICT and the WATERMASTER that reference this Agreement (“**SOW**” or “**Statement of Work**”). The DISTRICT shall perform groundwater monitoring as outlined in the SOW to collect and enter groundwater data into the WATERMASTER’s database, report data to appropriate parties, and respond to data requests (“Deliverable”) for the WATERMASTER no later than the due date specified (if applicable) in the SOW (“Completion Date”). This due date is subject to change in accordance with the Change Order process defined in the applicable SOW. WATERMASTER shall assist DISTRICT by promptly providing all information requests known or available and relevant to the Services in a timely manner.

DATA FURNISHED BY WATERMASTER

For the purpose of aiding DISTRICT in the performance of its obligations under this Agreement and SOWs issued under it, WATERMASTER shall furnish DISTRICT all relevant data in its possession and shall render all reasonable assistance to DISTRICT in connection with its performance hereunder. WATERMASTER is responsible for the reasonable correctness of data so furnished, but it shall likewise be the responsibility of DISTRICT to apply reasonable caution in its use and interpretation of the data and to promptly advise WATERMASTER of any incorrectness or suspected incorrectness in the data furnished.

WATERMASTER shall provide to DISTRICT in a timely manner all materials, decisions, and direction necessary to the progress of the work and which are basically the prerogative of WATERMASTER, but which DISTRICT is not required to determine or provide under the terms of this Agreement.

RESPONSIBILITIES OF DISTRICT

DISTRICT is employed to render professional service only, and any payments made are compensation solely for such services.

DISTRICT shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all data collection, QA/QC, preparation of data tabulation, data requests, and database support.

For all work performed under this Agreement and all SOWs thereto, DISTRICT shall provide to WATERMASTER copies of all plans, drawings, specifications, studies, data tabulation reports, and all other work products and supporting documentation developed in the course of performing the work authorized by this Agreement. The costs for reproducing, assembling, and delivering said copies of these documents to WATERMASTER shall be considered to have been included in the price for performing each SOW, whether or not specifically stated therein. Unless stated otherwise in the SOW the electronic file (e.g., in MS Word, MS Excel, etc.) of each document shall be provided by DISTRICT to WATERMASTER. WATERMASTER shall have the right, and permission of DISTRICT, to use any such document for any purpose WATERMASTER deems appropriate. Use of documents for other than their intended purpose shall be at WATERMASTER's risk. WATERMASTER shall hold DISTRICT harmless from all claims and damages arising out of improper use of said documents.

DISTRICT shall be and remain liable in accordance with applicable law for damages to WATERMASTER caused by DISTRICT's negligent performance of any of the services performed by the DISTRICT under this Agreement. The only exception in this regard will be for errors, omissions or other deficiencies to the extent attributable to WATERMASTER, WATERMASTER-furnished data, or any third party not under the control of DISTRICT. DISTRICT shall not be responsible for any time delays in Services caused by circumstances beyond DISTRICT's control.

DISTRICT shall perform the services hereunder as an independent contractor, and nothing herein contained shall be construed to be inconsistent with this relationship or status. The employees of DISTRICT assigned to Services shall not be deemed to be the employees of WATERMASTER, and WATERMASTER shall have no right to control the physical conduct of DISTRICT employees.

- 2. Contract Price.** For performance of the Services and rendering the Deliverable, WATERMASTER shall pay to DISTRICT all fees due under the applicable SOW.
- 3. Dates of Performance.** DISTRICT will begin performing Services upon receipt of signed Agreement. Unless terminated as provided for in this Agreement, the DISTRICT will complete Services by the Completion Date. Deliverable shall be furnished to WATERMASTER or WATERMASTER's consultants.
- 4. Change in Services.** Either party, at its discretion and from time to time, may request to revise, correct, or modify the work to be performed under a SOW. All such change requests shall be made formally and in writing. Should DISTRICT determine that said changes will result in an increase or decrease in costs to DISTRICT, these costs shall be evaluated by WATERMASTER and DISTRICT for negotiation as to adjustment in the compensation due DISTRICT. Written agreement as to said changes and adjustment in costs shall be reached between the parties prior to commencement of any work that will cause an increase or decrease in DISTRICT's costs.
- 5. Termination.** DISTRICT shall have the right to modify, reject, or terminate any SOW and any related work in process with thirty (30) days written notice to WATERMASTER. In the

event the DISTRICT terminates the SOW prior to completion of Services, the WATERMASTER shall pay the DISTRICT the fees due under the SOW with respect to Services completed as of the date of termination. Upon settlement of funds due to DISTRICT, all WATERMASTER provided materials will be returned to WATERMASTER.

WATERMASTER reserves the right to terminate any SOW to this Agreement at any time prior to the completion of the Services to be furnished by DISTRICT under said SOW by giving thirty (30) days written Notice of Termination to DISTRICT, in which event WATERMASTER shall pay DISTRICT only for work done and direct costs incurred by DISTRICT under said SOW prior to receipt of such Notice of Termination. Such costs will include reasonable costs to bring the work to a halt, and costs to deliver to WATERMASTER the documentation described in the following paragraph. Termination of a particular SOW will not affect any other operative SOW.

Upon receipt of a Notice of Termination, DISTRICT shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver to WATERMASTER all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by DISTRICT in performing work under a particular SOW, whether completed or in process.

Upon termination WATERMASTER may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work taken over by WATERMASTER for completion will be completed at WATERMASTER's risk, and WATERMASTER will hold harmless DISTRICT from all claims and damages arising out of improper use of DISTRICT'S work.

- 6. Payment of Services.** In exchange for DISTRICT'S Services under this Agreement, the Watermaster shall pay DISTRICT the contract price set forth in the SOW. DISTRICT shall invoice WATERMASTER quarterly for work completed during the previous quarter. All invoices shall be due and payable within thirty (30) days of the date of receipt by WATERMASTER, provided all costs included in the invoice are adequately supported by documentation accompanying the invoice. If payment is not made within sixty (60) days of the date of receipt by WATERMASTER, interest on the unpaid balance will accrue beginning with the sixty-first day at the rate of 1.0 percent per month, or the maximum interest rate permitted by law, whichever is the lesser. Such interest shall become due and payable at the time said overdue payment is made.

Time-and-Material Payment Method - WATERMASTER will pay the DISTRICT on a time-and-material basis in accordance with the DISTRICT'S most current Standard Schedule of Compensation. The hourly rates set forth in the Standard Schedule of Compensation shall be inclusive of all direct and indirect salary costs, overhead, fringe benefits, and other costs, and shall reflect the total hourly charge for each listed job category. Other direct non-salary expenses for the performance of work authorized under the Time-and-Material Payment Method shall be all identifiable costs directly chargeable to each SOW including, but not limited to: travel and subsistence expenses; work subcontracted to others; reproduction of plans, specifications, reports and other documents; equipment rental; and, drafting and stenographic supplies used in the work. The chargeable rate for automobile mileage for the work to be performed under this Agreement

shall be stated in the SOW. Direct non-salary expenses shall be compensated for at their actual cost, unless otherwise stated in the SOW, providing they have been authorized in advance by WATERMASTER. A Total Price, which may not be exceeded without WATERMASTER's prior written approval, will be established for each specific SOW.

Projected Cost Overruns Under Time-and-Material Payment Method - If, at any time in the performance of the work of a specific SOW under the Time-and-Material payment method, DISTRICT has reason to believe that the costs which it expects to incur to complete the work of that SOW will exceed the total amount authorized for that SOW, DISTRICT shall notify WATERMASTER in writing to that effect. The notice shall: State the reason(s) why DISTRICT anticipates a cost overrun, state the estimated amount of additional funds beyond the total amount currently authorized that will be required to complete the work authorized by the SOW, and provide recommendations of how the overrun can be avoided.

Penalty for Late Performance - The DISTRICT is not responsible for delays in the schedule caused by events outside DISTRICT's reasonable control. However, in the event DISTRICT fails to properly complete work within thirty (30) days of the Completion Date, because of events within DISTRICT's reasonable control, WATERMASTER shall reduce the total compensation established for the work of that SOW by ten percent (10%). Said reduction shall be deemed liquidated damages for the untimely performance of work required by this Agreement. DISTRICT shall be deemed to have waived any claim for such amount by reason of its failure to perform in a timely fashion.

7. **Indemnification.** DISTRICT shall indemnify and hold harmless WATERMASTER and its officers, officials, employees and agents from and against all losses, claims, demands, payments, suits, actions, recoveries, and judgements of every nature and description brought or recoverable against it or them by reason of any grossly negligent act, grossly negligent error, or grossly negligent omission of DISTRICT, its agents, or employees for work performed under this Agreement.

WATERMASTER shall indemnify and hold harmless DISTRICT and its officers, officials, employees and agents from and against all losses, claims, demands, payments, suits, actions, recoveries, and judgements of every nature and description brought or recoverable against it or them by reason of any negligent act, negligent error, or negligent omission of WATERMASTER, its agents, or employees for work performed under this Agreement.

8. **Limitation of Liability.** DISTRICT understands that this Agreement is with WATERMASTER alone, and that none of the members of WATERMASTER are liable for any sums which may be payable hereunder, or for any debts of WATERMASTER.
9. **Compliance with Laws.** Each party shall perform all of its obligations under this Agreement in compliance at all times with all foreign, federal, state and local statutes, orders and regulations, including those relating to privacy and data protection.
10. **General.** Neither party may assign this Agreement without the prior written consent of the other party and any attempt to do so will be void. Any notice or consent under this Agreement will be in writing to the addresses specified below. If any part of this Agreement is found to be

in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall be in full force and effect. Any waivers or amendments shall be effective only if made in writing signed by a representative of the respective parties. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties, and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. This Agreement is to be signed by a representative from each party duly authorized to bind to Agreement terms and services and no consent from any third party is required.

Both parties hereby reserve the right to amend the provisions of this Agreement from time to time as may be in the best interest of WATERMASTER and DISTRICT. Such amendments, upon written acceptance by DISTRICT and by WATERMASTER, shall become and be considered as part of this Agreement, and all provisions herein shall apply to such amendments.

This Agreement constitutes the entire agreement between the parties relative to the subject matters hereof, and no modifications thereof shall be effective unless and until such modifications are evidenced by written amendments, signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties, or promises with respect to the subject matter of this Agreement which are not actually contained in this Agreement, except those expressly contained in such written amendments.

Written notice shall be deemed to have been duly served if delivered in person or by mail to the individuals and at the addresses listed below:

A. WATERMASTER: Administrative Officer
 Seaside Basin Watermaster
 P.O. Box 51502
 Pacific Grove CA 93950

B. DISTRICT: General Manager
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 PO Box 85
 Monterey, CA 93942-0085

11. Choice of Law. This Agreement will be deemed to have been made in, and shall be construed pursuant to, the laws of the State of California without regard to conflicts of laws provisions thereof. Any suit or proceeding arising out of or relating to this Agreement shall be commenced in a State court in Monterey County, California and each party irrevocably submits to the jurisdiction and venue of such courts.

12. Remedies. If any legal action is necessary to enforce or interpret the terms or provisions of this Agreement and all amendments thereto, and the respective rights and duties of the parties

hereunder, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other entitled relief.

13. Insurance. DISTRICT shall procure and maintain for the duration of this Agreement 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 DISTRICT, its agents, representatives, employees or subcontractors.

A. Minimum Scope and Limits of Insurance

DISTRICT shall maintain the types of insurance with limits no less than those set forth below, and having no deductibles, except as noted.

General Liability Insurance: Combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement, or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability Insurance: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability Insurance: \$1,000,000 per accident for bodily injury or disease.

Workers' Compensation Insurance: As required by the State of California.

B. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. WATERMASTER, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of DISTRICT; products and completed operations of DISTRICT; premises owned, occupied or used by DISTRICT; or, automobiles owned, leased, hired or borrowed by DISTRICT. The coverage shall contain no special limitations on the scope of protection afforded to WATERMASTER, its officers, officials and employees.
2. For any claims related to this Agreement, DISTRICT insurance coverage shall be primary insurance as respects WATERMASTER, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by WATERMASTER, its officers, officials, employees, or volunteers shall be excess of DISTRICT insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to WATERMASTER, its officers, officials and employees.
4. DISTRICT'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.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to WATERMASTER.
6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

C. Verification of Coverage

DISTRICT shall furnish WATERMASTER with Certificates of Insurance effecting coverage required by this section. All Certificates of Insurance are to be received by WATERMASTER before work commences.

[Signature Page Follows]

Accepted and agreed to as of the Effective Date by the authorized representative of each party:

WATERMASTER

Signature: _____

Print Name: Paul Bruno

Print Title: Board Chairman

Date: [MM/DD/YYYY]

DISTRICT

Signature: _____

Print Name: [NAME]

Print Title: [TITLE]

Date: [MM/DD/YYYY]