

EXHIBIT 19-A

MPRWA Draft (January 10, 2013)

AGREEMENT TO FORM THE MONTEREY PENINSULA WATER SUPPLY PROJECT GOVERNANCE COMMITTEE

This AGREEMENT TO FORM THE MONTEREY PENINSULA WATER SUPPLY PROJECT GOVERNANCE COMMITTEE (“**Agreement**”) is made and entered into as of [redacted] of February, 2013, by and among the MONTEREY PENINSULA REGIONAL WATER AUTHORITY (“**MPRWA**”), the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT (“**MPWMD**”), the COUNTY OF MONTEREY (“**County**”), and the CALIFORNIA AMERICAN WATER COMPANY (“**Cal-Am**”). The MPRWA, the MPWMD, the County, and Cal-Am are sometimes referred to herein as a “Party,” and collectively as the “Parties”.

I. Formation of Governance Committee

Pursuant to the terms of this Agreement, the Parties hereby form the Monterey Peninsula Water Supply Project Governance Committee (“**Governance Committee**”) comprised of representatives of the MPRWA, the MPWMD, the County, and Cal-Am to ensure efficient and effective public input into the development and operation of the Monterey Peninsula Water Supply Project (“**Project**”). Cal-Am’s entry into this Agreement is expressly conditioned upon its legal obligations to abide by the orders and decision of the California Public Utilities Commission (“**CPUC**”), and therefore, to the extent the CPUC issues any order or decision that conflicts with any provision of this Agreement, Cal-Am shall be relieved of any obligation to abide by the conflicting provision herein.

II. Definitions *[Rich Svindland to assist with Definitions]*

- A. Application A.12-04-019
- B. ASR Infrastructure
- C. Cal-Am Notification. The time when Cal-Am notifies the Governance Committee that a matter is ready for consideration, consultation, or action by the Governance Committee as provided herein, and as further defined within Section ____.
- D. Contracts – e.g. design and build, engineering, etc. contracts for desalination plant (DB), intake wells (likely DB), product and raw pipelines (DBB), ASR wells (DBB), terminal reservoir and ASR pump station (DBB).
- E. County of Monterey
- F. CPCN
- G. Brine Discharge Infrastructure
- H. Desalination Infrastructure
- I. Desalination Project *[note definition needs to be broad enough to incorporate all aspects of the Project for which the GC desires input. Definition will likely incorporate other defined terms]*
- J. Design-Build Contract
- K. Design Build Contractor
- L. GWR Project
- M. MPRWA

- N. MPWMD
- O. Product Water Pipeline
- P. Source Water Infrastructure
- Q. Terminal Reservoir

III. Membership and Voting

Each of the public entities will be represented on the Governance Committee by one elected member and one alternate who shall also be an elected official. Cal Am shall be represented by the President of Cal-Am or the President's designee. The Governance Committee shall appoint a "Chair" and "Vice-Chair" from the primary (non-alternate) elected officials appointed to the Governance Committee. Each of the public entity representative members shall have a single equal vote in decision-making. Cal-Am shall not have a vote for purposes of the issuance of decisions or recommendations by the Governance Committee. However, Cal-Am shall, unless it abstains from doing so, state its preference with respect to any decision made by the Governance Committee (the "**Cal-Am Preference**") at the time that any decision is made by the Governance Committee and the Cal-Am Preference shall be recorded within the meeting minutes together with a summary of any explanation provided by Cal-Am for the Cal-Am Preference.

IV. Powers

A. Purpose. The purpose and function of the Governance Committee shall be to: (i) consult with, advise, and in some circumstances, provide direction, to Cal-Am and the design-build firm selected for the Desalination Project concerning the design, permitting, construction, operations, maintenance, repairs, and replacements of the components of the Desalination Project; and (ii) serve as the entity which Cal-Am regularly updates as to Desalination Project status and issues. The members of the Governance Committee shall diligently consider all matters and cause the Governance Committee to timely and promptly issue decisions or recommendations brought before it as provided pursuant to the terms of this Agreement.

B. Waiver of Action. Upon motion and affirmative vote of the Governance Committee, the Governance Committee may choose to waive its right to issue a decision or recommendations with respect to any matter for which the Governance Committee is afforded such right herein. The purpose of the Governance Committee's right to waive its right to make any specified decision or recommendation herein is to empower the Governance Committee to avoid issuing any decision or recommendation, which, in its determination, would violate any law, unreasonably delay efforts to develop water supplies for the Monterey Peninsula, or otherwise compromise the public interest.

V. Governance Committee Action; Procedures

A. Matters Subject to Governance Committee Action. Matters for consideration, consultation, decision, or recommendation by the Governance Committee shall be divided among three categories, with varying processes for consultation, recommendations, and/or decision-making, as follows:

Category A: The Governance Committee makes the decision respecting the matter after receipt of a written recommendation from Cal-Am, and upon issuance of its decision, the Governance Committee provides a written explanation of the reasons for its decision to Cal-Am within seven (7) calendar days of its decision. Thereafter, Cal-Am complies with the determination issued by the Governance Committee so long as the decision is consistent with the terms of this Agreement. **However, notwithstanding any provision of this Agreement, for any matter covered by Category A that relates to an action which may cause either a direct physical change in the**

environment, or a reasonably foreseeable indirect physical change in the environment, as defined by section 21065 of the California Public Resources Code, no decision shall be made by the Governance Committee as to the subject matter unless and until such time as the action has been subject to review by an appropriate agency in accordance with the California Environmental Quality Act (CEQA). The foregoing provision shall not be construed as an agreement or determination by or among any of the Parties that CEQA applies to any action of the Governance Committee. This Agreement is itself not a "project" as defined by section 15378 of the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3) because it is an organizational activity that will not result in direct or indirect physical changes in the environment and this Agreement makes no commitment to any project.

Category B: The Governance Committee makes a recommendation respecting the matter after receipt of a written recommendation from Cal-Am. However, Cal-Am may determine, at its sole discretion, whether or not to follow the Governance Committee's recommendation, provided that if Cal-Am chooses not to follow the recommendation, Cal-Am shall provide a written explanation of Cal-Am's reasons for its decision not to follow the recommendation within ten (10) calendar days of the issuance of the Governance Committee's recommendation. Further, should Cal-Am choose not to follow the advice of the Governance Committee, then any Party may raise the issue for review by the CPUC during Cal-Am's next general rate case.

Category C: Cal-Am makes the decision respecting the matter after receiving advice from the Governance Committee. Cal-Am need not issue a written explanation for its decision, although should Cal-Am choose not to follow the advice of the Governance Committee, then any Party may raise the issue for review by the CPUC during Cal-Am's next general rate case.

B. Procedure for Cal-Am Notification. Whenever Cal-Am is presented with, or becomes aware of, a matter that falls within any of the subjects identified herein for consideration, consultation, or action by the Governance Committee that is ripe for presentation to the Governance Committee, Cal-Am shall promptly notify the Chair of the Governance Committee (Cal-Am Notification), who shall schedule the matter for consideration by the Governance Committee. For purposes of this agreement, a matter shall be deemed ripe for presentation to the Governance Committee at such time as the subject matter is ready for a decision which shall materially impact any financial, design, aesthetic, function, or scheduling aspect of the Project, as it relates to the subject matter. Unless a different period is specified herein, for all matters for which a decision or recommendation is to be made by the Governance Committee, the Governance Committee shall issue its decision/recommendation within ten (10) calendar days of receipt of the Cal-Am Notification. In the event that the Governance Committee determines that it requires more than the prescribed time period provided for in this Agreement to act on any matter that is the subject of the Cal-Am notification, the Chair of the Governance Committee may request an extension of time by written request to Cal-Am, and Cal-Am shall cooperate in good faith with the Governance Committee to set an alternative deadline for action on the subject matter to the extent that said extension does not unreasonably delay the Project or otherwise compromise the public interest. So as to avoid undue delay, in the event the Governance Committee fails to make any decision or provide any recommendation upon any matter brought before it (including all Category A decisions) on or before the expiration of the prescribed period for action by the Governance Committee (or the period of any extension agreed to by Cal-Am), or if the Governance Committee affirmatively waives its right to make a decision or recommendation respecting a matter before it, then Cal-Am may make the subject decision without a decision or recommendation, as applicable, by the Governance Committee.

C. Procedure for Presentation of a Matter Upon Request of the Governance Committee; Action Upon a Presentation. Upon reasonable advance, written notice, the Governance Committee may request that Cal-Am present to the Governance Committee the status of any matter that is set forth in any of the three categories for decision, recommendation, or consultation established below, together with an explanation of any pending or soon-to-be-pending decisions or options concerning the subject matter. In the event Cal-Am believes that a presentation to the Governance Committee pertaining to the subject matter at that time would unreasonably delay the Project or otherwise compromise the public interest, Cal-Am shall provide a written explanation to the Governance Committee, within ten (10) calendar days of

the Governance Committee's aforementioned written notice to Cal-Am, that explains the reasons supporting Cal-Am's determination. Upon issuance of a such a written explanation by Cal-Am, a presentation pertaining to the subject matter shall not be required at that time. If a presentation is made by Cal-Am to the Governance Committee upon request of the Governance Committee, as provided for in this Section, then within ten (10) calendar days of that presentation, the Governance Committee may issue any recommendation concerning the subject matter to Cal-Am. Cal-Am may determine, at its sole discretion, whether or not to follow the recommendation, provided that if Cal-Am chooses not to follow the recommendation and the subject matter is a matter covered by either Category A or Category B, Cal-Am shall, within ten (10) calendar days of the issuance of the Governance Committee's recommendation, provide a written explanation of the reasons for Cal-Am's decision not to follow the recommendation. If the subject matter is a matter covered by Category C below, Cal-Am need not issue a written explanation of Cal-Am's reasons for its decision not to follow the recommendation.

D. Categories for Matters Subject to Governance Committee Action. Matters for consideration, consultation, decision, or recommendation by the Governance Committee shall be divided among the following three categories as follows:

Category A

- 1) This matter concerns the "**GWR Recommendation**," which specifically is whether Cal-Am shall:
(i) pursue a water purchase agreement with the MRWPCA for the purchase of water from the GWR Project, and consequently Cal-Am shall develop a smaller desalination facility with a capacity of approximately 6.4 MGD; or (ii) forgo the pursuit of a water purchase agreement with MRWPCA for the GWR Project, and consequently Cal-Am shall develop a larger desalination facility with a capacity of approximately 9.6 MGD. If the GWR Recommendation becomes ripe for decision before a CPCN is issued upon Application A.12-04-019, the Governance Committee shall not issue any binding decision concerning the GWR Recommendation. If the GWR Recommendation becomes ripe for decision after a CPCN is issued upon Application A.12-04-019, the Governance Committee shall decide whether Cal-Am shall adopt the GWR Project or not, which decision shall then be subject to CPUC approval or rejection pursuant the procedure specified herein. The Governance Committee shall make this decision based upon the criteria attached hereto as **Exhibit A**. The decision shall be made within sixty (60) calendar days from the Cal-Am Notification concerning this matter. The decision issued by the Governance Committee shall be submitted by Cal-Am to the CPUC for approval or rejection pursuant to a Tier 2 Advice Letter (or at the direction of the CPUC, an alternate form of submission) within ten (10) calendar days of the decision's issuance by the Governance Committee for the CPUC's review and approval.
- 2) Select a Certified Value Engineer (to facilitate and report on the proposed value engineering for the Desalination Project), with consideration given to any recommended engineer submitted by any member of the Governance Committee;
- 3) Subsequent to the issuance of the CPCN and subsequent to the selection of the design-build contractor for the Desalination Project, issue decisions concerning the Desalination Project's aesthetics consistent with community values, if the decision would in the opinion of the design-build contractor, have no adverse financial impact on the cost of the Desalination Project; and
- 4) Subsequent to the issuance of the CPCN and subsequent to the selection of the design-build contractor for the Desalination Project, issue decisions concerning procurement of alternative (non-PG&E) energy supplies for the Desalination Project, including waste-to-energy, so long as such decisions result in lowering the Desalination Project's estimated unit price for power.

Category B

- 1) Recommend qualifications and selection criteria for the Contracts not previously executed for the Project;

- 2) Recommend which professionals to be retained under the Contracts after review and evaluation of proposals from qualified contractors for the Contracts. The Governance Committee and its members shall maintain the confidentiality of all proposals, bids, *[and other documents] [Need to address confidentiality concerns]*;
- 3) Review and issue recommendations concerning significant changes to the Project at key stages of the design process, including:
 - Basis of Design
 - 30% Design
 - 60% Design
 - Value Engineering
 - 90% Design, and
 - Final Design

As used in this paragraph, significant changes to the Project shall include _____

- 4) Establish a community outreach program, including a plan and budget for community outreach to be included within the CPCN, and issue decisions concerning the same;
- 5) Recommend the Desalination Project's aesthetic attributes and design consistent with community values if not covered by Section A(3) above;
- 6) Coordinate with Cal-Am with respect to resolution of issues concerning the use of the MRWPCA's ocean outfall and issue recommendations concerning the same;
- 7) Review and recommend whether to adopt any value engineering recommendations issued by the Value Engineer;
- 8) Review and recommend whether to approve any major change order pertaining to any component or components of the Desalination Project, if the change order exceeds \$1 million; and

Category C

- 1) Cal-Am shall monitor the design, engineering, and permitting of all elements of the Desalination Project, and report on such monitoring to the Governance Committee on a quarterly basis. The Governance Committee shall discuss Cal-Am's quarterly report and issue recommendations to Cal-Am pertaining to the Desalination Project;
- 2) Review contract terms relating to the Contracts. *[Cal-Am deletes "financial contracts". Cal-Am limits to construction contracts – Cal Am recommends that if there are terms the public agencies believe should be in the financial contracts then the public agencies should recommend such terms in their CPUC testimony, but Cal-Am does not intend to negotiate terms for financial contracts, which it states are largely preset by CPUC, SRF terms, or American Water for American Water debt. Requires further discussion.]*;
- 3) Preparation and quarterly update of an overall construction budget for the Desalination Project;
- 4) Review and acceptance of a detailed plan for acceptance testing, including follow-up reporting;
- 5) Annually review the Desalination Project operations and maintenance budget and rate impacts; and
- 6) Coordinate with Cal-Am with respect to local and regional permit requirements.

7) [Cal-AM adds "Provide the Governance Committee with quarterly progress reports during major design milestones (i.e., 30% design, 60% design, 90% design, and final design) and information on any material challenges to the Project Design."]

E. Additional Matters. If agreed by all members of the Governance Committee, including Cal-Am, additional matters not provided for herein, may be added to Category A for decision by the Governance Committee or to Category B for recommendation from the Governance Committee. Additional matters may also be added to Category C for Cal-Am consultation with the Governance Committee upon affirmative vote of the Governance Committee unless Cal-Am determines that the addition of the matter to Category C would unreasonably delay the Project or otherwise compromise the public interest. In the event Cal-Am determines that a matter affirmed by the Governance Committee for addition to Category C should not be so added, Cal-Am shall issue a written explanation to the Governance Committee within ten (10) calendar days of the Governance Committee's vote to add the matter to Category C that explains the reasons supporting Cal-Am's determination.

VI. Meetings and Action of the Governance Committee; Agendas and Minutes

A. Meetings. Meetings of the Governance Committee shall be held at the office of the MPWMD and may be called by the Governance Committee's Chair or Vice-Chair. Governance Committee meetings shall be conducted in compliance with the Ralph M. Brown Act (Government Code sections 54950, et seq.). The Board may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by applicable law. The following shall be the order of business of all meetings of the Governance Committee:

1. Call to Order
2. Roll Call.
3. Pledge of Allegiance
4. Public Comment
5. Report from Governance Committee Members
6. Approval of Minutes of the Previous Meeting
7. Agenda Items
8. Adjournment

B. Action by the Governance Committee. All resolutions of the Governance Committee shall be in writing, signed by the Chair. All other actions of the Governance Committee shall be by motion recorded in written minutes.

C. Agendas and Minutes. Agendas and minutes of the meetings of the Governance Committee shall be taken, maintained, and distributed by a designated staff member of the MPWMD.

VII. Quorum and Affirmative Action of the Governance Committee

To constitute a quorum at all meetings of the Governance Committee for the transaction of business, the representative or alternate public representative of each of the Governance Committee's public entities must be present in person or represented by proxy. Action by the Governance Committee shall require the affirmative vote of at least two of the public entity representatives.

VIII. Submission of Project Information to the Governance Committee; Project Inspections

Concurrent with Cal-Am's submission of [describe financial reports] to the CPUC, Cal-Am shall provide a copy of the documents filed with the CPUC to the Chair of the Governance Committee. The Chair may notice a meeting on his or her own initiative, or upon the request of any member of the Governance Committee to review any financial matter addressed by the documents. Cal-Am, upon request of the Chair of the Governance Committee, shall be afforded an opportunity to provide a presentation or any oral explanation relating to the noticed financial matter. Further, upon reasonable advanced notice, any

member(s) of the Governance Committee may inspect any physical facility or structure constructed or being constructed as an element of the Project, and Cal-Am shall provide an employee, consultant, or other representative, who is knowledgeable of the aspects and elements of the physical facility or structure, to accompany the member(s) of the Governance Committee during the inspection.

IX. Miscellaneous

A. **Further Assurances.** The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.

B. **Construction.** The provisions of this Agreement shall be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any Party, as each Party has participated in the drafting of this Agreement and had the opportunity to have their counsel review it.

C. **Choice of Law.** This Agreement shall be governed and construed under the laws of the State of California, with venue proper only in Monterey County.

D. **Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof, shall be stricken from this Agreement, and such provision shall not effect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part of this Agreement is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in content to the stricken provision as is legally possible.

E. **Dispute Resolution.** In the event that any dispute arises between two or more of the Parties relating to this Agreement, or the rights and obligations arising therefrom, the Parties in dispute shall attempt in good faith to resolve the controversy through informal means. However, if the Parties in dispute cannot agree upon a resolution of the controversy within thirty (30) calendar days from a Party's request to submit a dispute to dispute resolution, the dispute shall be submitted to mediation prior to commencement of any arbitration or litigation. The cost of mediation shall be paid in equal proportion among the Parties in dispute. The mediator shall be either voluntarily agreed to, or appointed by the Superior Court upon a suit and motion for appointment of a neutral mediator. So long as the parties in dispute have engaged in mediation as a condition precedent to further proceedings concerning any dispute, the parties in dispute may mutually agree to resolve any dispute through binding arbitration which, unless the parties in dispute mutually agree otherwise, shall be administered by the American Arbitration Association, and absent such a mutual agreement for arbitration, any dispute may be litigated.

F. **Attorneys' Fees.** In any arbitration, lawsuit, or other legal action or proceeding, relating to the interpretation or enforcement of this Agreement, the prevailing Party(s) shall be entitled to recover from the other Party(s) in dispute reasonable expenses, attorneys' fees and costs.

G. **Members to Bear their Own Costs.** Each Party shall bear its own costs relating to the rights and obligations of each Party arising from this Agreement and its participation in the Governance Committee. Therefore, no Party shall be entitled to any reimbursement from another Party as a result of any provision of this Agreement.

H. **Notices and Communication.** Any notice or communication hereunder shall be deemed sufficient if given by one Party to the other Parties in writing and either delivered in person, transmitted by electronic mail or facsimile and acknowledgment of receipt is made by the receiving Party(s), or deposited in the United States mail in a sealed envelope, certified and with postage and postal charges prepaid, and addressed as follows:

If to Cal-Am:

California American Water Company

Attn: Robert MacLean
1033 B Avenue #200
Coronado, CA 92118
Email: Robert.MacLean@amwater.com

If to MPRWA:
If to MPWMD:
If to County:

or to such other address or to such other person as each Party shall have last designated for receipt of notices pursuant to this Agreement. Where this Agreement provides for written notices or communication from Cal-Am to the Governance Committee, such written notice, explanation, or communication shall be directed to the Chair of the Governance Committee at the address set forth above for notices to the public entity from which the Chair is appointed, and when provided shall be deemed provided to all public entity members of the Governance Committee. The effective date of any written notice, explanation, or communication shall be the earlier of the date of actual receipt, acknowledgment of receipt, or three days following deposit in the United States mail.

I. **Effective Date.** This Agreement shall take effect on date first stated above.

J. **[Any other miscellaneous provisions?]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first stated above.

[signature page to follow]

California American Water Company

By: _____
Robert MacLean, President

Agreed as to form:

By: _____
Anthony J. Cerasuolo, Vice President, Legal - Operations

Monterey Peninsula Regional Water Authority

By: _____
Chuck Della Sala, President

Agreed as to form:

By: _____
Donald Freeman, Authority Counsel

Monterey Peninsula Regional Water Authority

By: _____
David Pendergrass, Chair

Agreed as to form:

By: _____
David Laredo, District Counsel

County of Monterey

By: _____
Dave Potter, Chair of the Board of Supervisors

Agreed as to form:

By: _____
Charles McKee, County Counsel