

EXHIBIT 19-A

AGREEMENT BETWEEN THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND ONPOINT GENERATORS, INC FOR SERVICES TO PROVIDE A GENERATOR

THIS AGREEMENT is entered into this _____ day of _____, 20____, by and between OnPoint Generators, Inc., hereinafter called "Contractor," and the Monterey Peninsula Water Management District, hereinafter called "MPWMD".

SECTION I - SCOPE OF SERVICES

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

SECTION II COMPENSATION

A. FEE SCHEDULE

Fees payable to Contractor 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 Contractor. Monthly billings shall include previous invoice amount, current invoice amount, and remaining budget.

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 Contractor 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 Contractor for services rendered and expenses incurred under this Agreement **shall not exceed \$58,900.**

D. LATE PERFORMANCE PENALTY

With respect to the work within its direct control, in the event Contractor is unable to perform satisfactory work consistent with the professional skill and care ordinarily provided by professionals practicing in the State of California under the same or similar circumstances within thirty (30) calendar days of the date such work is due, MPWMD may, in its discretion, withhold an additional five percent (5%) of the fees which would otherwise be payable pursuant to the fee schedule set forth in Exhibit B. This amount may be increased to a maximum of 10% after sixty (60) calendar days of the date such work is due.

Contractor shall not be responsible for delays to the Schedule due to actions outside of its immediate control. Delays due to lack of performance by other parties shall be documented and the Schedule adjusted to reflect the length of the delay incurred.

SECTION III TIME OF PERFORMANCE

Contractor shall begin work upon the effective date of this Agreement and shall complete all tasks described herein according to the agreed upon time frame, 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 IV INSPECTION OF WORK

The books, papers, records and accounts of Contractor or any subcontractors retained by Contractor 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 V 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). All original source files shall be provided to MPWMD after acceptance by MPWMD of the final work product(s).

Contractor may retain copies for its own use.

SECTION VI RESPONSIBILITIES

A. Contractor 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. Contractor shall

act as an independent contractor and not as an agent or employee of MPWMD. Contractor shall have exclusive and complete control over its employees and subcontractors, and shall determine the method of performing the services hereunder.

- B. Upon request, MPWMD shall provide Contractor with all relevant data and studies in its possession without charge. Contractor represents that it is familiar with such materials provided by 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. Contractor shall be responsible for the reproduction of work produced by Contractor hereunder.
- E. The officers, agents, and employees of MPWMD shall cooperate with Contractor in the performance of services under this agreement without charge to Contractor. Contractor agrees to use such services insofar as feasible in order to effectively discharge Contractor's obligations hereunder and further agrees to cooperate with MPWMD's officers, agents and employees.
- F. The Contractor 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 contractors, 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 Contractor, Contractor's employees, or Contractor's subcontractors or subcontractors in the performance of this Agreement.
- G. Contractor 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 Contractor's profession currently practicing in California.

SECTION VII INSURANCE

- A. Contractor shall obtain and keep insurance policies in full force and effect as shown in **Exhibit C**, Insurance Requirements.
- B. Contractor shall provide photocopies of its current Automobile insurance policy [or policies], including endorsements thereto, or current certificates of insurance in lieu thereof, to MPWMD.
- C. Contractor shall require any subcontractor to provide evidence of the same insurance coverages specified in VII.A.

- D. Contractor 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 Contractor 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 Contractor 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

- A. 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 Contractor Budget and 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, subcontractors or agents of Contractor 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, subcontractors or agents are no longer assigned to the work described in this contract and/or are no longer affiliated with Contractor, Contractor shall immediately notify MPWMD in writing. Contractor 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 Contractor's services at any time by written notice to Contractor at least thirty (30) days prior to such termination. Upon receipt of written notice from MPWMD that this Agreement is terminated, Contractor shall submit an invoice for an amount that represents the value of services actually performed to the date of said notice for which it has not previously been compensated. Upon approval of this invoice by MPWMD, Contractor 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 Contractor, monetarily or otherwise.

- B. Upon receipt of written notice of termination, the Contractor 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 Contractor in performing the services under this Agreement.

SECTION X SUB-CONTRACTING AND ASSIGNABILITY

Contractor 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 Contractor for public works violating this section is subject to all penalties imposed by a violation of this chapter.”

During the performance of this Agreement, Contractor 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. Contractor and its contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor 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 CONTRACTOR

Contractor 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

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any company, or person, other than a bona fide employee working solely for Contractor, 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: David Stoldt
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 or
 P. O. Box 85
 Monterey, CA 93942-0085

CONTRACTOR: OnPoint Generators, Inc.
 1632 Del Monte Blvd.
 Seaside, CA 93955

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.** Insurance Requirements
- Exhibit D.** Drug Free Workplace Certification

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

CONTRACTOR

_____ **Date** _____

BY:

FEDERAL TAX IDENTIFICATION NUMBER:

EXHIBIT A – SCOPE OF WORK

Contract includes installation of a 48 KW, Kohler generator, natural gas, 120/208 three phase, liquid cooled, 1800 rpm, 60 HZ with standard features including all utility hook-ups and testing and the following equipment:

- Automatic transfer switch, 200amps nema three, with exercise clock and battery charger
- Sound attenuated aluminum weather housing dba's 61 @ 23'
- Environmentally coated windings
- Critical grade silencer
- Block heater 120vac-1500w
- Unit mounted radiator
- Circuit breaker 200 amps
- Voltage regulation 2%
- Governor: Electronic
- Natural gas fuel system with flexible fuel line
- Starting battery, battery rack and cables
- Five-year factory warranty

Installation: Deliver and offload new generator, using a crane. New concrete pad. Set in place on concrete pad. Trenching. Electrical hook-up of generator to automatic transfer switch. Natural gas hook-up with new gas line. All applicable permits, Monterey Bay Air Resources District, City and Fire department with signage, drawings, submittals and inspections. Start-up, warranty activation and testing of generator with all fluids to have generator on-line.

Terms and conditions: A 10% deposit is required upon acceptance of proposal. Remainder to be paid upon completion.

EXHIBIT B – FEES

Installation, generator, and transfer switch: \$58,900.00.

EXHIBIT C – 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 D – 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.