CITY OF COSTA MESA
AGREEMENT FOR DIESEL FUEL SERVICES
WITH
MERRIMAC PETROLEUM, INC. DBA MERRIMAC ENERGY GROUP

THIS AGREEMENT FOR DIESEL FUEL SERVICES ("Agreement") is made and entered into this 1st day of July, 2019 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and MERRIMAC PETROLEUM, INC., a California corporation DBA DBA MERRIMAC ENERGY GROUP ("Contractor").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to provide diesel fuel services, as more fully described herein; and

B. WHEREAS, Section 2-165 of the Costa Mesa Municipal Code permits the City to purchase services through competitively awarded agreements of other local, state, or federal government agencies, a process known as "piggybacking"; and

C. WHEREAS, the County of Orange competitively awarded Contractor a contract for unleaded fuel services, Regional Cooperative Agreement RCA-017-18010009, attached hereto as Exhibit "A" and incorporated herein by this reference ("County Contract"); and

D. WHEREAS, the City desires to "piggyback" onto the County Contract, and Contractor consents to the "piggybacking"; and

E. WHEREAS, City and Contractor desire to contract for the unleaded fuel services in accordance with the County Contract, subject to the modifications set forth herein; and

F. WHEREAS, Contractor represents that it has the experience and expertise to properly perform such services and holds all necessary licenses to practice and perform the services; and

G. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Contractor agrees to perform the services set forth in the County Contract for the City in accordance with the terms of the County Contract, except as otherwise stated herein.

2. Except as otherwise stated herein, the terms and conditions of the County Contract, and any amendments thereto, shall form the basis of this Agreement, with the City having the rights, duties, and obligations of the County of Orange set forth in the County Contract and any amendments thereto.

3. If any provision of this Agreement conflicts with any provision of the County Contract, then the terms, conditions and provisions of this Agreement shall control.

4. The terms and conditions of the County Contract are modified, amended, or supplemented as follows:

   a. All references in the County Contract to "County" shall be amended to read "City." All references in the County Contract to "Board of Supervisors" shall be amended to read "City Council."

   b. The General Terms and Conditions shall be amended to add a new Article DD as follows: "The Contract pricing, as more fully described in Attachment C, shall include full compensation for providing all required goods and services in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract. Contractor's annual compensation shall not exceed Two Hundred Thousand Dollars ($200,000.00)."

   c. Article 2 (Term of Contract) of the Additional Terms and Conditions shall be amended to read as follows: "The initial term of this Contract shall become effective on July 1, 2019 and shall continue for a period of three (3) years, ending on June 30, 2022, unless otherwise terminated as provided herein."

   d. Article 34 (Notices) of the Additional Terms and Conditions shall be amended to provide the following contact information for City:

      City: City of Costa Mesa
      Public Services Department
      77 Fair Drive
      Costa Mesa, CA 92626
      Attn: Bruce Lindemann
      Phone (714) 327-7470

      cc: City of Costa Mesa
      77 Fair Drive
      Costa Mesa, CA 92626
      Attn: Purchasing

   e. Subsection 4.3 (Spillage) of Section 4 (Additional Fees/Charges) of the Scope of Services shall be amended as follows:

      4.3 Spillage: The County requires "zero leakage" standard for fuel transfer operations.

The Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel. The Contractor will likewise ensure that all equipment, tools, and procedures used are in compliance with all applicable specifications and regulations governing such operations.

In order to prevent leakage or spillage, Contractor shall only transfer fuel to underground storage tanks by the gravity drop method. Contractor shall not transfer fuel to underground storage tanks by the pressurized fill method.

In the event of leakage or spillage, it shall be the responsibility of the Contractor to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and subject to the County's satisfaction. All material associated with such clean up shall be removed by the Contractor.

5. Contractor shall provide to City certificates of insurance showing the insurance coverages and required endorsements described in Article O (Insurance Provision) of the General Terms and Conditions of the County Contract, naming the City of Costa Mesa as an additional insured, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B."

6. Contractor agrees to indemnify and hold harmless the County of Orange from all claims, demands, actions or causes of action of every kind resulting directly or indirectly, arising out of, or in any way connected with the City's use of the County Contract.

7. Contractor shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C" and incorporated herein by reference. Contractor's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Lori Ann Harrison — Date: 7/8/19

~~Tamara Letourneau~~ Lori Ann Farrell Harrison
~~Acting~~ City Manager

CONTRACTOR

Mary Hazelrigg — Date: June 28, 2019

Signature

Mary Hazelrigg, President

Name and Title

[redacted]

Social Security or Taxpayer ID Number

ATTEST:

Brenda Green 7/9/19

Brenda Green
City Clerk

APPROVED AS TO FORM:

MLA — Date: 7/3/19

Kimberly Hall Barlow
City Attorney

APPROVED AS TO INSURANCE:

Date: 7/2/19

Ruth Wang
Risk Management

DEPARTMENTAL APPROVAL:

For Raja Sethuraman
Public Services Director

Date: 7/2/19

APPROVED AS TO PURCHASING:

Kelly Telford
Finance Director

Date: 7/3/19

EXHIBIT A

REGIONAL COOPERATIVE AGREEMENT

RCA-017-18010009

MODEL CONTRACT
REGIONAL COOPERATIVE AGREEMENT RCA-017-18010009
BETWEEN
THE COUNTY OF ORANGE
AND
MERRIMAC PETROLEUM INC DBA MERRIMAC ENERGY GROUP
FOR DIESEL FUEL

This Regional Cooperative Agreement ("RCA") to provide Diesel Fuel, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, acting through the County Executive Office/County Procurement Office, hereinafter referred to as "County", and **Merrimac Petroleum, Inc., DBA Merrimac Energy Group**, with a place of business at 1240 E. Wardlow Road, Long Beach, CA 90807-4833, hereinafter referred to as "Contractor". County and Contractor may be referred to individually as "Party", or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference in this Contract:

Attachment A – Scope of Services
Attachment B – Payment/Compensation
Attachment C – PRICING

RECITALS

WHEREAS, the Contractor responded to an Invitation for Bids (IFB)," for Diesel Fuel; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for Diesel Fuel with the Contractor; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions

A. **Governing Law and Venue**: This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

B. **Entire Contract**: This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

C. **Amendments**: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties;

and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes**: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery**: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance/Payment**: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty**: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement**: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Iindemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. **Assignment**: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. **Non-Discrimination**: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination**: In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent To Breach Not Waiver**: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor**: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance Warranty**: Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County. In addition, all subContractors performing work on behalf of contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subContractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insurance or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subContractors to work if subContractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor, and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subContractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against the same; and

2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's key Rating Guide/Property-Casualty/United States or ambest.com**. It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier)

If the insurance carrier does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, agents*** as Additional Insureds, or provide blanket coverage, which will state ***As Required By Written Contract.***
2) A primary non-contributing endorsement using ISO Form CG 20 01 04 13, or a form at least as broad evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees and agents,*** or provide blanket coverage, which will state ***As Required By Written Contract.***

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests' clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes**: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership**: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

R. **Force Majeure**: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality**: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. **Compliance with Laws**: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

V. **Severability**: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees**: In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation**: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is

not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification**: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification Provisions**: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections**: Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure **Diesel Fuel** from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".

2. **Term of Contract:** This Contract shall be effective for the period ***January 9, 2018 through January 8, 2023*** unless otherwise terminated by County.

   The term of any subordinate agreement executed against this Contract by County departments shall not go beyond the life of this Contract. Subordinate agreements executed against this Contract may be subject to approval by the Orange County Board of Supervisors.

3. **Regional Cooperative Agreements (RCA):** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

   The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without the prior written approval of the County assigned Deputy Purchasing Agent.

5. **Americans With Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

6. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "Z" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

7. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   a) Terminate the Contract immediately, pursuant to Section K herein;
   b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
   c) Discontinue payment to the Contactor for and during the period in which the Contractor is in breach; and
   d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

8. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group iden tification, age, religion, marital status, sex or disability.

9. **County of Orange Child Support Enforcement:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract."

10. **Contractor Personnel – Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

    1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
    2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
       a. The dangers of drug abuse in the workplace;
       b. The organization's policy of maintaining a drug-free workplace;
       c. Any available counseling, rehabilitation and employee assistance programs; and
       d. Penalties that may be imposed upon employees for drug abuse violations.
    3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
       a. Will receive a copy of the company's drug-free policy statement; and
       b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

11. **Contractor Personnel-Reference Check:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the department issuing this Contract.

12. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

    The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract

13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is

received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.

14. **Data-Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

15. **Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department may result in the bid/proposal being deemed non-responsible.

16. **Discount Verification:** For Contracts that are based on standard rates or list prices, the Contractor is required to state on the invoice the source and date of the rate/price and, when discounts are quoted, show the list rate/price and the discount.

    The department shall certify on the invoice that the prices are per the current price list for all items that have a per unit cost exceeding $250.00 and that the appropriate discounts were applied.

17. **Discounts – Prompt Payment:** The County of Orange shall process payments with discounts offered for prompt payment and the checks for those payments. If disputes arise over the timeliness of the payment, the date of the postmark shall be the determining factor. The County shall not be held responsible for delays by the US Postal Service, and no additional payment shall be due the Contractor in the event of such delay.

18. **Disputes – Contract:**

    A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

        1. The Contractor shall submit to the department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

        2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

    B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

    Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

19. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the

basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

20. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

21. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

22. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

23. **Nondiscrimination – Statement of Compliance:** The Contractor's signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Sections 11102 and 11103.

24. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

25. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

26. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.

27. **Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

28. **State Funds – Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the State of California, the County of Orange, or a private auditing firm hired by the State or the County. The State or County shall provide reasonable notice of such audit.

29. **Stop Work:** The County may, at any time, by written stop work order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period of 90 days after the stop work order is delivered to the Contractor and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor or within any extension of that period to which the parties shall have agreed, the County shall either:

    1. Cancel the stop work order; or
    2. Terminate work covered by the stop work order as provided for in the "Default" or "Termination" clause of this Contract.

    If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The County shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified in writing accordingly if:

    1. The stop work order results in an increase in the time required or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
    2. The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage, provided that if the County decides the facts justify the action, the County may receive and act upon a proposal submitted at any time before final payment under this Contract.

    If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled, "Termination" the County shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

    If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the County shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order. An appropriate equitable adjustment may be made in any related Contract of the Contractor that provides for adjustment and is affected by any stop work order under this clause. The County shall not be liable to the Contractor for loss of profits because of a stop work order issued under this clause.

30. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

    In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

31. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that

such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

32. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.

33. **Waivers – Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

34. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

CONTRACTOR CONTACT INFORMATION	
Company Name	Merrimac Petroleum Inc Dba Merrimac Energy Group
Address	1240 E Wardlow Rd
	Long Beach, CA 90807-4833
Attention	Mary Hazelrigg
Email	mhazelrigg@merrimacenergy.net
Phone No	(562) 427-6565 or (310) 714-3636 (Emergency)

COUNTY CONTACT INFORMATION	
Gov't Entity Name	County of Orange County Executive Office, County Procurement Office
Address	1300 S Grand Ave Bldg A, 2nd Floor
	Santa Ana CA 92705-4434
Deputy Purchasing Agent	Grace Scott
Email	Grace.Scott@ocgov.com
Phone No	714-567-5025

SIGNATURE PAGE

In WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below:

MERRIMAC PETROLEUM, INC., DBA MERRIMAC ENERGY GROUP *

**If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.*

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Mary Hazelrigg	President/Founder/CEO
Print Name	Title
Mary Hazelrigg	11/3/2017
Signature	Date

**The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.*

Mary Hazelrigg	CFO
Print Name	Title
Mary Hazelrigg	11/3/2017
Signature	Date

****

COUNTY OF ORANGE, a political subdivision of the State of California

Grace Scott	Deputy Purchasing Agent
Print Name	Title
Grace Scott	Nov 3, 2017
Signature	Date

ATTACHMENT A
SCOPE OF SERVICES

1. Introduction

1.1 Contractor is to provide Diesel Fuel to various County facilities and participating government entities located throughout the County of Orange.

1.2 Service locations may be added or deleted and service hours modified at any given time, and usage is not guaranteed. Contractor is required to provide Diesel Fuel upon request by any County department and participating government entity.

2. Fuel Specifications

2.1 CARB #2 Diesel – Red: The same specifications as CARB #2 Diesel – Clear (2.2) except for the red dye & dying process to denote usage for tax-exempt purposes.

2.2 CARB #2 Diesel – Clear: All diesel fuel sold for vehicular use in California must meet a 15 ppm maximum sulfur limit (Ultra Low), in addition to meeting all of the current low aromatics CARB diesel specifications. The definition of "vehicular use" in California includes on-highway vehicles and non-road vehicles such as agriculture and construction equipment.

CARB #2 Diesel – Clear may contain up to 5% bio.

3. Contractor Responsibilities

3.1 Contractor shall possess all Federal, State and Local permits, licenses and approvals necessary to provide goods/services required in the Scope of Work. Any associated fees shall be the responsibility of the Contractor.

3.2 Contractor shall provide all transitional interfacing and continual uninterrupted services at Contract date.

3.3 Contractor shall provide current, applicable, and required Material Safety Data Sheet (MSDS) prior to Contract award, or at any time during the contract as requested by County.

3.4 If service on any County owned tank is required, Contractor shall service the tank only at the County's request at the hourly rate proposed in this IFB.

3.5 Contractor shall be held liable for any damage or criminal /civil citations which may occur as a result of any spills and/or accidents.

3.6 Contractor shall perform all deliveries and to act in a safe and professional manner, adhering to all required Federal, State, & Local regulations for the handling and supply of Diesel Fuel.

3.7 Diesel Fuel must meet current fuel industry laws of Federal, State & local codes, requirements, standards and guidelines, including South Coast Air Quality Management District (SCAQMD); American Society of Testing and Materials (ASTM) laws; Department of Transportation (DOT); Air Resources Board (ARB) regulations, Reid Vapor Pressure (RVP) requirements & regulations for the handling and supply of Diesel Fuel.

3.8 Contractor must commit to delivery as requested, at time stated on accepted orders.

3.9 Contractor's delivery trucks must comply with the California Air Resources Board approved/certified Phase II Vapor Recovery Equipment Requirements. Proof of compliance shall be provided to the County upon request.

3.10 All drivers / delivery personnel shall be HAZMAT trained and certified in safety measures to prevent accidents endangering County personnel and property. Hazardous Materials shall be clearly marked with the proper shipping name and identification number as required by the Department of Transportation.

3.11 Contractor shall be responsible for obtaining fuel reading and managing load inventory as requested by County.

3.12 Contractor shall provide, at Contractor's cost, a 24-hour, toll free customer support telephone number and services for responding to all requests / orders for fuel , including telephone coverage on weekdays during normal business hours as well as 24-hour access phone number for emergency situations.

3.13 Contractor shall be responsible for all freight/delivery charges.

3.14 All deliveries of 4000+ gallons shall have temperature correction adjustments to sixty (60) degrees Fahrenheit based on refinery bill of lading.

3.15 Contractor shall perform full delivery of fuel within 48 hours after receipt of department's order. Contractor shall provide a delivery metered ticket for each delivery of fuel; and the metered ticket must be signed and dated, and provided to the ordering department at delivery.

3.16 Delivery truck driver shall stick each tank with a fuel tank gauge stick prior to offloading to insure that adequate fuel storage is available to accept the entire shipment without spillage. Readings shall be taken by the driver prior to unloading fuel and after unloading fuel and shall be recorded on the delivery receipts. Each Delivery truck must be equipped with a stick. Driver shall sign the delivery ticket at the time and place of delivery. One copy of each delivery ticket is to be mailed to the appropriate location.

3.17 Contractor shall itemize applicable Federal and California fuel surcharges, Federal and State Excise Tax, and California State Sales Tax as separate line items when invoicing.

3.18 Contractor shall adhere to each County facility/location set delivery hours.

3.19 **Usage Report:** The Contractor shall submit usage reports as requested by County within fourteen days of such request. The usage report shall include all information requested by County, in a format specified by County.

4. Additional Fees/Charges

4.1 Emergency Delivery: Deliveries requested on County observed holidays, and request for same day delivery shall be considered as emergency delivery. Contractor shall be entitled to an emergency delivery fee and an emergency delivery invoice must accompany the fuel invoice for payment of the fee. The emergency delivery fee shall be billed at the rate designated in this solicitation.

4.2 Standing Time: The County will not be charge any additional fees for the amount of time it takes the Contractor in offloading / transferring fuel to County tanks in various locations.

Up to one-hour of "standing time" shall be allowable at no charge for the purpose of unloading. If the Contractor is unable to unload fuel within one hour after the scheduled arrival at a County site due to delays caused by County operations, demurrage charges may be assessed by Contractor.

4.3 Spillage: The County requires "zero leakage" standard for fuel transfer operations.

The Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the

transfer of fuel. The Contractor will likewise ensure that all equipment, tools and procedures used are in compliance with all applicable specification and regulations governing such operations.

In the event of leakage or spillage, it shall be the responsibility of the Contractor to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and subject to the County's satisfaction. All material associated with such clean up shall be removed by the Contractor.

4.4 Service Rate: In the event that spillage or standing time was a delay caused by County an hourly service rate quoted herein shall include all costs for labor, tools, equipment, transportation, overhead, profit, travel time, and all other costs related to providing the services described in the scope of work; hourly service rates shall be prorated and billed to the nearest ¼ hour.

4.5 County may request service on County owned tank.

5. County Responsibilities

5.1 County agencies/departments shall provide Contractor with a log that will include the following information:

Department Name
Department Contact's Name & Number
Department Location
Number of fuel tanks; capacity/sizes; unit of measure & fuel site / delivery location

5.2 Ordering agencies/departments or participating government entities shall coordinate delivery schedules with Contractor and specify details of each delivery location's physical surroundings and/or limitations (i.e. Secured & remote locations; no loading dock; narrow, winding or unpaved roads). Depending on the agreed schedule with the department or participating government entity, the Contractor is requested to deliver during off peak hours between 10 am to 4 pm.

5.3 County will work with Contractor on security clearance procedures that may be required for delivery drivers on high security facilities / locations.

5.4 If service for any County owned tank is required, the Contractor shall service the tank only at the County's request at the hourly rate submitted in this Contract.

6. Security Requirements

6.1 The County operates several secured facilities: most notable are several Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to strict operation policies and may be required to pass a background check prior to their employment due to security requirements for certain facilities covered under this Contract. During performance of the work, especially at detention facilities, workers shall closely monitor all tools, equipment and other materials at all times. Workers shall have no contact verbal or physical, with any inmate of these facilities. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.

6.2 The Contractor will provide a list of all personnel/employees who will be directly performing tasks associated with the Contract. Contractor's personnel/employees providing service in a secured detention facility, a Probation facility or a Sheriff's facility, will be expected to pass two (2) separate background checks performed by the Orange County Sheriff's Department and the Orange County Probation Department. No changes shall be authorized to the approved list without a request in writing submitted by the Contractor and approved by the County Site Coordinator. At no time will unauthorized Contractor employees perform any task associated with this Contract. If this occurs, the Contractor will be notified that they have not complied with the terms of this Contract and are subject to Contract termination. The list of all Personnel/Employees working on County projects shall be submitted prior to award of this Contract.

6.3 Contractor shall prepare and submit a Security Clearance form to the County Site Coordinator for all persons who will be working on or who will need access to secured facilities.

6.4 Security Clearance forms shall be submitted at least five (5) working days prior to the start of work or prior to the use of any person subsequent to the start of work.

6.5 Said Security Clearance forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.

6.6 No person shall be employed on this work who has not received prior clearance from the Probation Department, Sheriff's Department or John Wayne Airport.

6.7 The County, John Wayne Airport, the Probation Department and the Sheriff's Department are <u>not</u> under any obligation to give a reason clearance is denied.

6.8 The Contractor shall be responsible to sign in with the County Site Coordinator or designee, as required. Upon arrival at any secure facility (e.g., JWA, Probation) the Contractor shall report to the Central Control Center (Control). Contractor personnel shall have no contact, either verbal or physical, with internees in secured detention facilities.

Specifically:

6.8.1 Do not give names or addresses to internees.

6.8.2 Do not receive any names or addresses from internees.

6.8.3 Do not disclose the identity of any internee to anyone outside the facility.

6.8.4 Do not give any materials to internees.

6.8.5 Do not receive any materials from internees (including materials to be passed to another individual or internee).

**Failure to comply with these requirements is a criminal act and can result in prosecution.*

6.9 Any Contractor personnel/employee(s) engaged in the performance of work under this Contract shall be expected to pass the screening requirements and abide by all of the security requirements set forth by the Federal Aviation Administration (FAA) and the County of Orange.

"The Federal Aviation Administration (FAA) approved security program for John Wayne Airport requires that each person issued a John Wayne Airport security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of the airport".

All persons within the restricted air operation areas of the airport are required to display, on their person, a John Wayne Airport security badge, unless they are specifically exempted for reasons or they are under escort by a properly badge individual. Each airport employee or airport tenant employee who has been issued a John Wayne Airport security badge is responsible for challenging any individual who is not properly displaying an airport issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid John Wayne Airport security badge must immediately be referred to the Sheriff's Department Airport Detail Office for proper handling.

The John Wayne Airport security badge is the property of the County of Orange and must be returned upon termination of employment at John Wayne Airport. The loss of a badge shall be reported within twenty-four (24) hours to the Sheriff's Department Airport Dispatch Center (949) 252-5000. A report shall be made before a replacement badge will be issued.

6.10 All vehicles parked on-site shall be locked and thoroughly secured at all times.

6.11 All equipment and materials shall remain in the Contractor possession at all times and shall never be left unattended. All lost or misplaced equipment or materials shall be reported immediately to the (a) security staff or Control in secured detention facilities or (b) the escort or Control in Sheriff's facilities.

6.12 Personnel shall not smoke or use profanity or other inappropriate language while on-site.

6.13 Personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession.

6.14 Personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.

6.15 Contractor employee(s) shall be well-disposed to the public and County staff utilizing the facilities but shall be responsive only to the requests of the County Site Coordinator unless otherwise directed and shall direct all inquiries or requests to the County Site Coordinator.

ATTACHMENT B
PAYMENT/COMPENSATION

1. **PAYMENT – INVOICING INSTRUCTIONS:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Invoices must be submitted to address indicated by the ordering department. Each invoice must have a unique number and must include the following information:

    a) Contractor's name and address;
    b) Contractor's remittance address;
    c) Contractor's Federal Tax I.D. Number;
    d) Name of County Department;
    e) Delivery/Service address;
    f) MA-DO Number / PO / OR CT Number
    g) Date of order/services rendered: Bill of Lading, daily OPIS delivery date attached to invoice and other supporting document as needed;
    h) Product/Service description, quantity, and prices
    i) Sales tax, if applicable
    j) Total

2. **PAYMENT TERMS:** The Invoice is to be submitted in arrears to the user department to the bill-to address, unless otherwise directed in this Contract. Contractor shall reference the subordinate Contract number on invoice. Payment will be net 30 days after receipt of the invoice in a format acceptable to the County and verified and approved by the department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

    Billing shall cover services not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

    Payments made by the County shall not preclude the right of the County from thereafter disputing any services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

3. **COMPENSATION**: The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.

4. **PAYMENT - ELECTRONIC FUNDS TRANSFER (EFT):**
    The County of Orange offers contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. To request a form, please contact the department representative listed in the contract.

ATTACHMENT C
PRICING

1. **CARB #2 Diesel – red and CARB #2 Diesel – clear:**

1.1 The prices shall be based on the margin below subject to the "Los Angeles", PAD District 5 Report, Ultra Low Sulfur Diesel, Unbranded Rack Average, without CAR Cost of the Oil Price Information Service on a daily basis.

1.2 The daily unbranded "rack average" report will serve as a base price, and copy shall be attached for all purchases made each delivery or fueling date.

1.3 The proposed +/- differential" shall be inclusive of all delivery/unloading/handling charges to all County fuel fill locations or participating government entity location.

1.4 The proposed +/- differential on the daily Los Angeles Average Rack Price reported by OPIS for Unbranded Fuel shall remain firm for the entire term of the contract.

Gallons	Proposed +/- Differential RED	Proposed +/- Differential CLEAR
0 – 1000	+ 0.1000	+ 0.1000
1,001 - 5,000	+ 0.0490	+ 0.0500
5,001 - 7,000	+ 0.0000	+ 0.0000
*7,001	+ 0.0280	+ 0.0000
* The County may place an order larger than 7,000 gallons, this order may require more than one (1) truckload delivery; proposed pricing shall remain unchanged.		

2. **Additional Fixed Fee Charges**

2.1 Emergency Delivery Fixed Fee Charge — $ 125.00 /delivery

2.2 Standing Time / Demurrage Charge — $ 25.00 /delivery - quarter of an hour in excess of first initial hour

2.3 Service Rate — $ 125.00 / hour (tank cleaning, fuel polishing, sampling and analysis as needed, for normal business hours M-F 8:00am to 5:00pm)

$ 150.00 / hour (tank cleaning, fuel polishing, sampling and analysis as needed, weekends and holidays outside of normal business hours)

2.4 Special Equipment — $ 225.00 / special fitting not common to industry (one time charge)

2.5 **Retain Fee — $ 250.00 / occasion

2.6 ***Stop in Transit — $ 60.00 / each additional stop

2.7 Discount of $.005/gallon for receipt of payment 20 days from date of delivery.

**Retain Fee is charged when fuel that has been ordered by the customer for delivery cannot be delivered in its entirety due to an incorrect order by the customer. When this occurs the driver cannot complete his delivery and Merrimac must find another home for the fuel that cannot be held. This can be an entire compartment or even a few gallons.

***Stop in Transit is a charge when customer requires multiple deliveries, possible due to a retain of fuel ordered for one location that cannot be held (note: if the driver is at risk of a spill due to trying to deliver all fuel ordered -each tank has a max. capacity of 90% or possibly less- this is information your facilities management would know) Also, if the driver has to pick up his hoses (moving the truck) and move to another site on the property to make an additional delivery.

AMENDMENT ONE
REGIONAL COOPERATIVE AGREEMENT RCA-017-18010009
BETWEEN
COUNTY OF ORANGE, COUNTY PROCUREMENT OFFICE
AND
MERRIMAC PETROLEUM INC DBA MERRIMAC ENERGY GROUP
FOR DIESEL FUEL

This Amendment, hereinafter referred to as "Amendment Number One" is made and entered into upon execution of all necessary signatures between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and **Merrimac Petroleum, Inc., DBA Merrimac Energy Group**, with a place of business at 1240 E. Wardlow Road, Long Beach, CA 90807-4833; hereinafter referred to as "Contractor", which are sometimes individually referred to as "Party," or collectively referred to as "Parties."

RECITALS

WHEREAS, the County and the Contractor entered into a Regional Cooperative Agreement RCA-017-18010009 (hereinafter "Original Contract") for Diesel Fuel, effective January 9, 2018 through and including January 8, 2023; and

NOW, THEREFORE, in consideration of the mutual obligations set forth herein, both County and Contractor agree to amend the Contract as follows:

1. Amend Attachment A, Scope of Services, and Attachment C, Pricing, accordingly, to incorporate delivery of Diesel Exhaust Fluid (DEF) as per In-Use Off-Road Diesel-Fueled Fleets Regulation mandates by the California Air Resources Board (CARB).
2. All terms and conditions contained in this AMENDMENT are incorporated by this reference into the Contract. This AMENDMENT modifies the Contract only as expressly set forth above. This AMENDMENT does not modify, alter or amend the CONTRACT in any other way whatsoever.

ATTACHMENT A
SCOPE OF SERVICES

1. Introduction

1.1 Contractor is to provide Diesel Fuel and/or Diesel Exhaust Fluid (DEF) to various County facilities and participating government entities located throughout the County of Orange.

1.2 Service locations may be added or deleted and service hours modified at any given time, and usage is not guaranteed. Contractor is required to provide Diesel Fuel upon request by any County department and participating government entity.

2. Fuel Specifications

2.1 CARB #2 Diesel – Red: The same specifications as CARB #2 Diesel – Clear (2.2) except for the red dye
& dying process to denote usage for tax-exempt purposes.

2.2 CARB #2 Diesel – Clear: All diesel fuel sold for vehicular use in California must meet a 15 ppm maximum sulfur limit (Ultra Low), in addition to meeting all of the current low aromatics CARB diesel specifications. The definition of "vehicular use" in California includes on-highway vehicles and non-road vehicles such as agriculture and construction equipment.

CARB #2 Diesel – Clear may contain up to 5% bio.

3. Diesel Exhaust Fluid (DEF) Specifications

3.1 A non-hazardous solution of 32.5% Urea in 67.5% de-ionized water. It is clear and colorless, and looks exactly like water. It has a slight smell of ammonia similar to some home cleaning agents. It is used in by Selective Catalytic Reduction (SCR) technology to remove harmful NOx emissions from diesel engines.

4. Contractor Responsibilities

4.1 Contractor shall possess all Federal, State and Local permits, licenses and approvals necessary to provide goods/services required in the Scope of Work. Any associated fees shall be the responsibility of the Contractor.

4.2 Contractor shall provide all transitional interfacing and continual uninterrupted services at Contract date.

4.3 Contractor shall provide current, applicable, and required Material Safety Data Sheet (MSDS) prior to Contract award, or at any time during the contract as requested by County.

4.4 If service on any County owned tank is required, Contractor shall service the tank only at the County's request at the hourly rate proposed in this IFB.

4.5 Contractor shall be held liable for any damage or criminal /civil citations which may occur as a result of any spills and/or accidents.

4.6 Contractor shall perform all deliveries and to act in a safe and professional manner, adhering to all required Federal, State, & Local regulations for the handling and supply of Diesel Fuel.

4.7 Diesel Fuel must meet current fuel industry laws of Federal, State & local codes, requirements, standards and guidelines, including South Coast Air Quality Management District (SCAQMD); American Society of Testing and Materials (ASTM) laws; Department of Transportation (DOT); Air Resources Board (ARB) regulations, Reid Vapor Pressure (RVP) requirements & regulations for the handling and supply of Diesel Fuel.

4.8 Diesel Exhaust Fluid (DEF) must meet current industry laws of Federal, State & Local codes, requirement, standards and guidelines, including International Organization for Standardization 22241(ISO 22241), and regulations for handling and supply of DEF.

4.9 Contractor must commit to delivery as requested, at time stated on accepted orders.

4.10 Contractor's delivery trucks must comply with the California Air Resources Board approved/certified Phase II Vapor Recovery Equipment Requirements. Proof of compliance shall be provided to the County upon request.

4.11 All drivers / delivery personnel shall be HAZMAT trained and certified in safety measures to prevent accidents endangering County personnel and property. Hazardous Materials shall be clearly marked with the proper shipping name and identification number as required by the Department of Transportation.

4.12 Contractor shall be responsible for obtaining fuel and/or DEF reading and managing load inventory as requested by County.

4.13 Contractor shall provide, at Contractor's cost, a 24-hour, toll free customer support telephone number and services for responding to all requests / orders for fuel and/or DEF, including telephone coverage on weekdays during normal business hours as well as 24-hour access phone number for emergency situations.

4.14 Contractor shall be responsible for all freight/delivery charges.

4.15 All deliveries of 4000+ gallons shall have temperature correction adjustments to sixty (60) degrees Fahrenheit based on refinery bill of lading.

4.16 Contractor shall perform full delivery of fuel and/or DEF within 48 hours after receipt of department's order. Contractor shall provide a delivery metered ticket for each delivery of fuel; and the metered ticket must be signed and dated, and provided to the ordering department at delivery.

4.17 Delivery truck driver shall stick each tank with a fuel tank gauge stick prior to offloading to insure that adequate fuel storage is available to accept the entire shipment without spillage. Readings shall be taken by the driver prior to unloading fuel and after unloading fuel and shall be recorded on the delivery receipts. Each Delivery truck must be equipped with a stick. Driver shall sign the delivery ticket at the time and place of delivery. One copy of each delivery ticket is to be mailed to the appropriate location.

4.18 Delivery truck driver shall stick each tank with a DEF tank gauge stick prior to offloading to insure that adequate DEF storage is available to accept the entire shipment without spillage. Readings shall be taken by the driver prior to unloading fuel and after unloading fuel and shall be recorded on the delivery receipts. Each delivery truck must be equipped with a stick. Driver shall sign the delivery ticket at the time and place of delivery. One copy of each delivery ticket is to be mailed to the appropriate location.

4.19 Contractor shall itemize applicable Federal and California fuel surcharges, Federal and State Excise Tax, and California State Sales Tax as separate line items when invoicing for diesel fuel and/or DEF.

4.20 Contractor shall adhere to each County facility/location set delivery hours.

4.21 **Usage Report:** The Contractor shall submit usage reports as requested by County within fourteen days of such request. The usage report shall include all information requested by County, in a format specified by County.

5. Additional Fees/Charges

5.1 Emergency Delivery: Deliveries requested on County observed holidays, and request for same day delivery shall be considered as emergency delivery. Contractor shall be entitled to an emergency delivery fee and an emergency delivery invoice must accompany the fuel invoice for payment of the fee. The emergency delivery fee shall be billed at the rate designated in this solicitation.

5.2 Standing Time: The County will not be charged any additional fees for the amount of time it takes the Contractor in offloading / transferring fuel to County tanks in various locations.

Up to one-hour of "standing time" shall be allowable at no charge for the purpose of unloading. If the Contractor is unable to unload fuel within one hour after the scheduled arrival at a County site due to delays caused by County operations, demurrage charges may be assessed by Contractor.

5.3 Spillage: The County requires "zero leakage" standard for fuel transfer operations. The Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel. The Contractor will likewise ensure that all equipment, tools and procedures used are in compliance with all applicable specification and regulations governing such operations.

In the event of leakage or spillage, it shall be the responsibility of the Contractor to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and subject to the County's satisfaction. All material associated with such clean up shall be removed by the Contractor.

5.4 Service Rate: In the event that spillage or standing time was a delay caused by County an hourly service rate quoted herein shall include all costs for labor, tools, equipment, transportation, overhead, profit, travel time, and all other costs related to providing the services described in the scope of work; hourly service rates shall be prorated and billed to the nearest ¼ hour.

5.5 County may request service on County owned tank/s.

6. County Responsibilities

6.1 County agencies/departments shall provide Contractor with a log that will include the following information:

Department Name
Department Contact's Name & Number
Department Location
Number of fuel tanks; capacity/sizes; unit of measure & fuel site / delivery location

6.2 Ordering agencies/departments or participating government entities shall coordinate delivery schedules with Contractor and specify details of each delivery location's physical surroundings and/or limitations (i.e. Secured & remote locations; no loading dock; narrow, winding or unpaved roads). Depending on the agreed schedule with the department or participating government entity, the Contractor is requested to deliver during off peak hours between 10 am to 4 pm.

6.3 County will work with Contractor on security clearance procedures that may be required for delivery drivers on high security facilities / locations.

6.4 If service for any County owned tank is required, the Contractor shall service the tank only at the County's request at the hourly rate submitted in this Contract.

7. Security Requirements

7.1 The County operates several secured facilities: most notable are several Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to strict operation policies and may be required to pass a background check prior to their employment due to security requirements for certain facilities covered under this Contract. During performance of the work, especially at detention facilities, workers shall closely monitor all tools, equipment and other materials at all times. Workers shall have no contact verbal or physical, with any inmate of these facilities. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.

7.2 The Contractor will provide a list of all personnel/employees who will be directly performing tasks associated with the Contract. Contractor's personnel/employees providing service in a secured detention facility, a Probation facility or a Sheriff's facility, will be expected to pass two (2) separate background checks performed by the Orange County Sheriff's Department and the Orange County Probation Department. No changes shall be authorized to the approved list without a request in writing submitted by the Contractor and approved by the County Site Coordinator. At no time will unauthorized Contractor employees perform any task associated with this Contract. If this occurs, the Contractor will be notified that they have not complied with the terms of this Contract and are subject to Contract termination. The list of all Personnel/Employees working on County projects shall be submitted prior to award of this Contract.

7.3 Contractor shall prepare and submit a Security Clearance form to the County Site Coordinator for all persons who will be working on or who will need access to secured facilities.

7.4 Security Clearance forms shall be submitted at least five (5) working days prior to the start of work or prior to the use of any person subsequent to the start of work.

7.5 Said Security Clearance forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.

7.6 No person shall be employed on this work who has not received prior clearance from the Probation Department, Sheriff's Department or John Wayne Airport.

7.7 The County, John Wayne Airport, the Probation Department and the Sheriff's Department are not under any obligation to give a reason clearance is denied.

7.8 The Contractor shall be responsible to sign in with the County Site Coordinator or designee, as required. Upon arrival at any secure facility (e.g., JWA, Probation) the Contractor shall report to the Central Control Center (Control). Contractor personnel shall have no contact, either verbal or physical, with internees in secured detention facilities.

Specifically:

7.8.1 Do not give names or addresses to internees.

7.8.2 Do not receive any names or addresses from internees.

7.8.3 Do not disclose the identity of any internee to anyone outside the facility.

7.8.4 Do not give any materials to internees.

7.8.5 Do not receive any materials from internees (including materials to be passed to another individual or internee).

**Failure to comply with these requirements is a criminal act and can result in prosecution.*

7.9 Any Contractor personnel/employee(s) engaged in the performance of work under this Contract shall be expected to pass the screening requirements and abide by all of the security requirements set forth by the Federal Aviation Administration (FAA) and the County of Orange.

"The Federal Aviation Administration (FAA) approved security program for John Wayne Airport requires that each person issued a John Wayne Airport security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of the airport".

All persons within the restricted air operation areas of the airport are required to display, on their person, a John Wayne Airport security badge, unless they are specifically exempted for reasons or they are under escort by a properly badge individual. Each airport employee or airport tenant employee who has been issued a John Wayne Airport security badge is responsible for challenging any individual who is not properly displaying an airport issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid John Wayne Airport security badge must immediately be referred to the Sheriff's Department Airport Detail Office for proper handling.

The John Wayne Airport security badge is the property of the County of Orange and must be returned upon termination of employment at John Wayne Airport. The loss of a badge shall be reported within twenty-four (24) hours to the

Sheriff's Department Airport Dispatch Center (949) 252-5000. A report shall be made before a replacement badge will be issued.

7.10 All vehicles parked on-site shall be locked and thoroughly secured at all times.

7.11 All equipment and materials shall remain in the Contractor possession at all times and shall never be left unattended. All lost or misplaced equipment or materials shall be reported immediately to the (a) security staff or Control in secured detention facilities or (b) the escort or Control in Sheriff's facilities.

7.12 Personnel shall not smoke or use profanity or other inappropriate language while on-site.

7.13 Personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession.

7.14 Personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.

7.15 Contractor employee(s) shall be well-disposed to the public and County staff utilizing the facilities but shall be responsive only to the requests of the County Site Coordinator unless otherwise directed and shall direct all inquiries or requests to the County Site Coordinator.

ATTACHMENT C
PRICING

1. **CARB #2 Diesel – red and CARB #2 Diesel – clear:**

   1.1 The prices shall be based on the margin below subject to the "Los Angeles", PAD District 5 Report, Ultra Low Sulfur Diesel, Unbranded Rack Average, without CAR Cost of the Oil Price Information Service on a daily basis.

   1.2 The daily unbranded "rack average" report will serve as a base price, and copy shall be attached for all purchases made each delivery or fueling date.

   1.3 The proposed +/- differential" shall be inclusive of all delivery/unloading/handling charges to all County fuel fill locations or participating government entity location.

   1.4 The proposed +/- differential on the daily Los Angeles Average Rack Price reported by OPIS for Unbranded Fuel shall remain firm for the entire term of the contract.

Gallons	Proposed +/- Differential RED	Proposed +/- Differential CLEAR
0 – 1000	+ 0.1000	+ 0.1000
1,001 - 5,000	+ 0.0490	+ 0.0500
5,001 - 7,000	+ 0.0000	+ 0.0000
*7,001	+ 0.0280	+ 0.0000
* The County may place an order larger than 7,000 gallons, this order may require more than one (1) truckload delivery; proposed pricing shall remain unchanged.		

2. Diesel Exhaust Fluid (DEF)

   2.1 Price per gallon, delivered exclusive of any taxes or applicable fees: $1.78 / gallon through and including June 30, 2018.

   2.2 Upon mutual agreement, contractor may be permitted a price increase of upto 10% without a formal amendment.

3. **Additional Fixed Fee Charges**

2.1 Emergency Delivery Fixed Fee Charge	$ 125.00 /delivery
2.2 Standing Time / Demurrage Charge	$ 25.00 /delivery - quarter of an hour in excess of first initial hour
2.3 Service Rate	$ 125.00/hour (tank cleaning, fuel polishing, sampling and analysis as needed, for normal business hours M-F 8:00am to 5:00pm)
	$ 150.00/ hour (tank cleaning, fuel polishing, sampling and analysis as needed, weekends and holidays outside of normal business hours)
2.4 Special Equipment	$ 225.00 / special fitting not common to industry (one time charge)
2.5 **Retain Fee	$ 250.00 / occasion

2.6 ***Stop in Transit $ 60.00 / each additional stop

2.7 Discount of $.005/gallon for receipt of payment 20 days from date of delivery.

**Retain Fee is charged when fuel that has been ordered by the customer for delivery cannot be delivered in its entirety due to an incorrect order by the customer. When this occurs the driver cannot complete his delivery and Merrimac must find another home for the fuel that cannot be held. This can be an entire compartment or even a few gallons.

***Stop in Transit is a charge when customer requires multiple deliveries, possible due to a retain of fuel ordered for one location that cannot be held (note: if the driver is at risk of a spill due to trying to deliver all fuel ordered -each tank has a max. capacity of 90% or possibly less- this is information your facilities management would know) Also, if the driver has to pick up his hoses (moving the truck) and move to another site on the property to make an additional delivery.

SIGNATURE PAGE

Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

MERRIMAC PETROLEUM, INC., DBA MERRIMAC ENERGY GROUP *

**If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.*

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Mary Hazelrigg	President
Print Name	Title
Mary Hazelrigg	December 29, 2017
Signature	Date

**The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.*

Mary Hazelrigg	Secretary
Print Name	Title
Mary Hazelrigg	December 29, 2017
Signature	Date

****

COUNTY OF ORANGE, a political subdivision of the State of California

Rita Gore	Deputy Purchasing Agent
Print Name	Title
Rita Gore	January 3, 2018
Signature	Date

EXHIBIT B

CERTIFICATES OF INSURANCE

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/14/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Edgewood Partners Insurance Center (EPIC)
19000 MacArthur Blvd. PH Floor
Irvine, CA 92612

www.edgewoodins.com

CONTACT NAME:
PHONE (A/C, No, Ext): (949) 263-0606 FAX (A/C, No): (949) 263-0906
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Kinsale Insurance Company	38920
INSURER B : Ohio Security Insurance Company	24082
INSURER C : Crum & Forster Specialty Insurance Co	44520
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Merrimac Petroleum, Inc.
Merrimac Energy Group
3738 Bayer Avenue #204
Long Beach CA 90808

COVERAGES **CERTIFICATE NUMBER:** 49310405 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	✓ COMMERCIAL GENERAL LIABILITY	✓	✓	0100052576-2	6/13/2019	6/13/2020	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE ✓ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
	✓ BI/PD Ded: $5,000 Per Occ.						MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY			BAS (20) 59 12 49 89	6/13/2019	6/13/2020	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	✓ ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	✓ HIRED AUTOS ONLY / ✓ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB ✓ OCCUR			01000525776-2	6/13/2019	6/13/2020	EACH OCCURRENCE	$2,000,000
	✓ EXCESS LIAB CLAIMS-MADE						AGGREGATE	$2,000,000
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
C	Pollution Liability			CPL-110178	6/13/2019	6/13/2020	$2,000,000 Each Claim Limit $2,000,000 Aggregate Limit $10,000 Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is additional insured for general liability coverage but only if required by written contract with the named insured prior to an occurrence as per form EGY5001 0817 (includes primary and non-contributory wording) and form CG2037 0704 attached.
General liability waiver of subrogation applies if required by written contract per form CAS4002 0110. Automobile additional insured and waiver of subrogation apply if required by written contract as per form CA8810 0113.

CERTIFICATE HOLDER

The City of Costa Mesa
and its elected and appointed boards, officers,
agents and employees
P. O. Box 1200
Costa Mesa CA 92628

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Anthony D'Asaro

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED AND PRIMARY AND NON-CONTRIBUTORY AS REQUIRED BY WRITTEN CONTRACT- BLANKET

Attached To and Forming Part of Policy	*Effective Date of Endorsement*	*Named Insured*
0100052576-2	06/13/2019 · 12:01AM at the Named Insured address shown on the Declarations	Merrimac Petroleum Inc
Additional Premium: $0	*Return Premium:* $0	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

A. **SECTION II – WHO IS AN INSURED** is amended to include any person(s) or organization(s) you are required to include as an Additional Insured on this policy by written contract in effect during the policy period and executed prior to the "occurrence" of the "bodily injury" or "property damage" but only for such "bodily injury" or "property damage" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
   1. In the performance of your ongoing operations; or
   2. In connection with your premises owned or rented to you.

B. The insurance provided by this endorsement shall be excess with respect to any other valid and collectible insurance available to the Additional Insured unless the written contract specifically requires that this insurance apply on a primary and non-contributory basis, in which case this insurance shall be primary and non-contributory.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

Attached To and Forming Part of Policy	*Effective Date of Endorsement*	*Named Insured*
0100052576-2	06/13/2019 · 12:01AM at the Named Insured address shown on the Declarations	Merrimac Petroleum Inc
Additional Premium: $0	*Return Premium:* $0	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Insured Person(s) or Organization(s)	Location and Description of Completed Operations
Blanket, as required by written contract	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US-BLANKET

Attached To and Forming Part of Policy	*Effective Date of Endorsement*	*Named Insured*
0100052576-2	06/13/2019 12:01AM at the Named Insured address shown on the Declarations	Merrimac Petroleum Inc
Additional Premium: $0	*Return Premium:* $0	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE

SECTION IV – CONDITIONS, 8. Transfer of Rights of Recovery against Others to Us is amended by the addition of the following:

We waive any right of recovery we may have against persons or organizations because of payments we make for injury or damage arising out of "your work" done under a written contract with that person or organization wherein you have agreed to provide this waiver.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

CERTHOLDER COPY

SC

STATE COMPENSATION INSURANCE FUND

P.O. BOX 8192, PLEASANTON, CA 94588

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 05-30-2019

GROUP:
POLICY NUMBER: 1903687-2018
CERTIFICATE ID: 76
CERTIFICATE EXPIRES: 09-01-2019
09-01-2018/09-01-2019

CITY OF COSTA MESA
2300 PLACENTIA AVE
COSTA MESA CA 92627-3306

SC

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

Authorized Representative

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: $1,000,000 PER OCCURRENCE.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 09-01-2012 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

ENDORSEMENT #1651 - MARY HAZELRIGG PRESIDENT - EXCLUDED.

EMPLOYER

MERRIMAC PETROLEUM INC. DBA: MERRIMAC ENERGY GROUP
3738 BAYER AVE STE 204
LONG BEACH CA 90808

[JRB,CN]

(REV.7-2014)

PRINTED : 05-30-2019

EXHIBIT C

CITY COUNCIL POLICY 100-5

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.

2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:

    a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

b. Establishing a Drug-Free Awareness Program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;

d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;

f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:

   a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;

   b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;

   c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.