

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of October 3, 2008 for reference purposes only, pursuant to Resolution No. RES-08-0118 adopted by the City Council of the City of Long Beach at its meeting on September 23, 2008, by and between MERRIMAC PETROLEUM, INC. DBA MERRIMAC ENERGY GROUP, a California corporation ("Contractor"), with a place of business at 1240 E. Wardlow Road, Long Beach, California 90807, and the CITY OF LONG BEACH ("City"), a municipal corporation.

WHEREAS, Section 1802 of the Long Beach City Charter permits the City to make purchases under the purchasing contracts of other governmental agencies when authorized to do so by a resolution; and

WHEREAS, the City desires to purchase unleaded, diesel, bio-diesel and Jet A Fuel; and

WHEREAS, Contractor, a woman-owned business located in the City of Long Beach, has an Agreement with Saddleback Unified School District for the purchase of Unleaded 87-Octane Gasoline, Agreement No. 05-26 ("Saddleback Agreement"); and

WHEREAS, Contractor has a Master Agreement Purchase Order with the City of Anaheim for the purchase of B20, Bio-Diesel, Agreement No. MA 106 400204 ("Anaheim Agreement"); and

WHEREAS, Contractor has a Contract with Foothill Transit for the purchase of Ultra Low Sulfur Diesel, Contract No. 07-028 ("Foothill Contract"); and

WHEREAS, Contractor has a Contract with the County of Los Angeles to purchase Jet A Fuel, Contract No. 226573 ("LA Contract"); and

WHEREAS, Resolution No. RES-08-0118 authorizes the City Purchasing Agent to purchase unleaded, diesel, bio-diesel and Jet A Fuel from Contractor by virtue of the Saddleback Agreement, Anaheim Agreement, Foothill Contract and LA Contract;

NOW, THEREFORE, in consideration of the terms and conditions

1 contained in this Agreement, the parties agree as follows:

2 1. The Saddleback Agreement, Anaheim Agreement, Foothill Contract
3 and LA Contract with Contractor are incorporated by this reference as if fully set forth,
4 and the same terms and conditions contained in the Saddleback Agreement, Anaheim
5 Agreement, Foothill Contract and LA Contract shall be applicable here except as follows:

6 A. Wherever the Saddleback Agreement refers to the
7 Saddleback Unified School District, it shall be deemed to refer to the City of Long
8 Beach;

9 B. Wherever the Anaheim Agreement refers to the City of
10 Anaheim, it shall be deemed to refer to the City of Long Beach;

11 C. Wherever the Foothill Contract refers to the Foothill Transit, it
12 shall be deemed to refer to the City of Long Beach;

13 D. Wherever the LA Contract refers to the County of Los
14 Angeles, it shall be deemed to refer to the City of Long Beach;

15 E. Contractor shall sell, furnish and deliver to the City unleaded,
16 diesel, bio-diesel and Jet A Fuel of substantially the same type and kind
17 purchased by the Saddleback Unified School District, City of Anaheim, Foothill
18 Transit and County of Los Angeles and on the same terms and conditions offered
19 to the Saddleback Unified School District, City of Anaheim, Foothill Transit and
20 County of Los Angeles, except as modified by Exhibit "A" attached to and
21 incorporated in this Agreement, for an amount not to exceed Five Million Dollars
22 (\$5,000,000.00), including tax, for one year with the option of renewing for two
23 additional one-year periods, plus a Twenty-Five Percent (25%) contingency if
24 necessary and if funds are available, for a period extending until the warranty on
25 the unleaded, diesel, bio-diesel and Jet A Fuel expires. To the extent that the
26 Saddleback Agreement, Anaheim Agreement, Foothill Contract and LA Contract
27 and this Agreement are inconsistent, the following priority shall govern: (1) this
28 Agreement and (2) the Saddleback Agreement, Anaheim Agreement, Foothill

1 Contract and LA Contract.

2 F. Contractor shall bill the City for each delivery of fuel on a
3 separate invoice. Invoices shall have unique numbers and shall clearly state the
4 delivery date, ship to address, and Bill of Lading number. Invoices and the
5 corresponding delivery tickets shall be submitted with Weekly Summary Invoice.

6 All charges on the invoice shall be listed as a separate line
7 item and shall include shipping date, product description, gross amount ordered (in
8 gallons), date ordered, net amount delivered (in gallons), fuel price for the day
9 (reference contract for price summary, referencing OPIS) at the time fuel was
10 delivered, State Excise Tax, Oil Spill fees and Sales Tax.

11 THE CITY WILL GENERATE PAYMENT AGAINST THE
12 WEEKLY SUMMARY INVOICE.

13 Contractor shall submit an original plus two copies of the
14 Weekly Summary Invoice, which shall be on Contractor's business stationery, prior
15 to the next weeks billing for orders completed during the previous week. It shall
16 list the Contractor's individual invoice number and cost for each invoice, along with
17 a total cost for the week. One copy of the individual invoices shall also be
18 submitted with the Weekly Summary Invoice.

19 The City will inspect summary invoice costs, after which the
20 City shall process the Weekly Summary Invoice for payment in due course of
21 payments. Payment is due twenty (20) days after the date of the Weekly
22 Summary Invoice.

23 G. All warranties shall accrue to the City of Long Beach.

24 H. The parties may, by mutual agreement, amend this
25 Agreement with the approval of the City's City Council.

26 I. A Bill of Lading or delivery ticket stating the delivery date, the
27 refinery of origin, the location and quantity delivered shall accompany each fuel
28 delivery. In order to facilitate processing of invoices, each Bill of Lading shall have

1 a unique number, and shall also reference the assigned purchase order release
2 (not the blanket purchase order number that starts BPLB).

3 Contractor shall be paid per invoice. Incomplete/incorrect
4 invoices shall not be processed until corrected. All invoices and payments shall be
5 for gross gallons delivered. Any delivery modifications and credits shall be clearly
6 stated on the invoice and shall be explained in the invoice documents.

7 2. Contractor shall perform all deliveries to City facilities in a safe and
8 professional manner. Contractor's equipment shall be in good working order and all
9 personnel shall be trained in safety measures to prevent accidents endangering City
10 personnel or property. Contractor shall have adequate equipment for delivery of fuel.

11 Contractor shall be liable for any damage or citations incurred as a
12 result of any spills. Contractor shall defend, indemnify and hold harmless the City, its
13 officials, employees and agents from and against all liability, loss, demands, damage,
14 causes of action, penalties, proceedings, fines, costs and expenses, including attorney's
15 fees, court costs and expert fees, arising from Contractor's performance or failure to
16 perform in accordance with these specifications, including but not limited to citations
17 issued as a result of spills. In addition, the City reserves the right to terminate the
18 Contract of any contractor or carrier who, notwithstanding compliance with the
19 procedures stated in the Contract, delivers in a negligent or careless manner or who,
20 under any circumstances, causes a spill while delivering.

21 Contractor shall have the delivery driver determine the exact tank
22 level before unloading fuel into the tank. The tank level readings shall be taken prior to
23 unloading fuel and after unloading fuel and will be recorded on the delivery receipts.
24 Delivery tickets shall be signed by designated City personnel at time and place of delivery
25 when possible.

26 Documentation shall be provided by Contractor on request by the
27 City relating to all training (hazmat certification, licenses required to transport cargo, in-
28 house training for off and on loading of cargo), safety records (spills, DMV or DOT

1 citations), and maintenance records and certifications on (tanks, trucks, and trailers
2 including and regulatory violations or citations) for all employees and equipment
3 associated with the work under this agreement.

4 3. Neither this Agreement nor any money that becomes due to
5 Contractor under this Agreement may be assigned by Contractor without the prior written
6 consent of the City Manager or his designee.

7 4. Any notice given under this Agreement shall be in writing and
8 personally delivered or deposited in the U.S. Postal Service, return receipt, and shall be
9 delivered or mailed to Contractor at the relevant address first stated above, and to the
10 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.
11 Notice shall be deemed given three days after deposit in the mail.

12 5. The terms appearing on the Saddleback Agreement, Anaheim
13 Agreement, Foothill Contract and LA Contract are incorporated in this Agreement.

14 6. Contractor shall cooperate with the City in all matters relating to self-
15 accrual of use tax. Contractor shall contact the City Treasurer for additional information
16 regarding self-accrual.

17 7. Neither party shall be liable in damages or have the right to terminate
18 this Contract for any delay or default in performance if such delay or default is caused by
19 conditions beyond its control including, but not limited to acts of God, illegality, acts of
20 war and/or any other cause not reasonably foreseeable by the party whose performance
21 is affected.

22 8. Contractor shall maintain records of all fuel volumes delivered to the
23 City and shall provide the City with the weekly, monthly, quarterly and annual reports of
24 all the purchases, itemized by date delivered, quantity in gallons, type of fuel, the
25 effective price, all taxes and fees. Additional reports may be requested by the City.
26 Reports shall be submitted within ten (10) days of request made by the City. Reports
27 shall be submitted via email and hard copy.

28 9. This Agreement and all documents which are incorporated by

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 reference in this Agreement constitute the entire understanding between the parties and
2 supersede all other agreements, oral or written, with respect to the subject matter of this
3 Agreement. If there is any legal proceeding between the parties to enforce or interpret
4 this Agreement, or to protect or establish any rights or remedies, the prevailing party shall
5 be entitled to its costs and expenses, including reasonable attorney's fees.

6 IN WITNESS WHEREOF, the parties have caused this document to be duly
7 executed with all formalities required by law as of the date first stated above.

8 MERRIMAC PETROLEUM, INC. DBA
9 MERRIMAC ENERGY GROUP, a
California corporation

10 October 20, 2008 By [Signature]
11 Mary Hazelrigg, Pres.
(Type or Print Name)

12 October 20, 2008 By [Signature]
13 Mary Hazelrigg, Sect'y
14 (Type or Print Name)

"Contractor"

CITY OF LONG BEACH, a municipal
corporation

18 10.30, 2008 By [Signature] - Assistant City Manager
19 City Manager

"City"

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

21 This Agreement is approved as to form on October 22,
22 2008.

23 ROBERT E. SHANNON, City Attorney
24 By [Signature]
25 Deputy
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EXHIBIT "A"



Merrimac Energy Group

1240 E. Wadlow Road

July 9, 2008

Long Beach

Ms. Michelle King
 Buyer
 City of Long Beach
 333 W. Ocean Blvd.
 Long Beach, CA 90802

CA 90807

FAX NO. 562-570-5099

Dear Michelle,

Merrimac Energy Group will provide unleaded 87-octane gasoline to the City of Long Beach for the following rates per the Saddleback Unified School District contract #05-26:

Phone 562.427.6545

0-2,499 gallons	.054 + OPIS daily average, LA
2,500-5,999 gallons	.034 + OPIS daily average, LA
6,000 gallons and above	.0038 + OPIS daily average, LA

Toll Free 800.900.4081

Merrimac will provide clear Ultra Low Sulfur Diesel using the Foothill Transit contract #07-028 based on OPIS posting on date of delivery +.00089. This is .005 less than Foothill Transit due to lower freight costs associated with deliveries.

Fax 562.427.6554

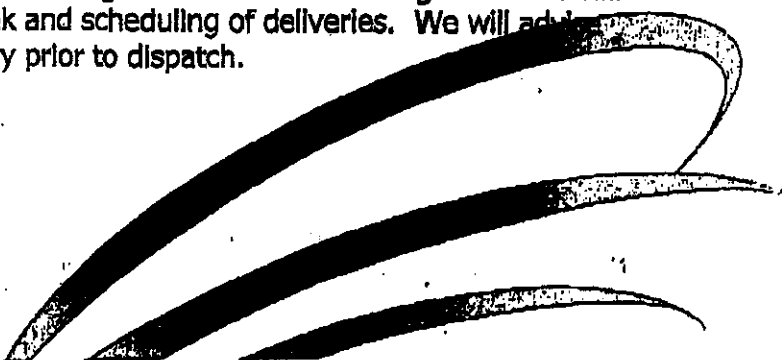
Merrimac Energy Group will provide B20, Bio-diesel using the City of Anaheim contract #MA 106 400204 based on Gross SME Bio-Diesel Tax Adjusted Market Index, B20, CARB ULS on date of delivery + .01239. This is .005 less than the City of Anaheim due to lower freight costs associated with deliveries.

Merrimac will provide Jet A using the County of Los Angeles contract #226573 based on Valero's price on date of delivery +.022.

www.merrimacenergy.net

All applicable taxes will be billed as separate line items.

Merrimac will monitor each of your underground tanks at no charge. Service will include daily readings of each tank and scheduling of deliveries. We will advise each site of the scheduled delivery prior to dispatch.

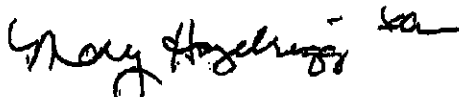


All loads are based on full load deliveries. Merrimac will split loads when pricing is advantageous to the City; however, a split drop fee of \$50.00 will apply. If you require monthly reporting for purchases by location or any other specific reporting please advise in advance of commencement of contract. Also, a copy of OPIS will accompany each invoice for pricing verification. To accommodate timely processing of invoices we can fax invoices as well as delivery tickets, followed by mail. Terms for payment will be 20 days from date of delivery.

Merrimac Energy Group is a 20-year-old WBE firm located in the City of Long Beach for over 17 years. We have strong relationships with all refineries and petroleum traders throughout California. Our purchasing ability, combined with our strong sense of service, allows us to be an excellent supplier to our customers.

Merrimac Energy Group thanks you for the opportunity to serve the fuel needs of the City of Long Beach.

Sincerely,



Mary Hazlerigg, President
Merrimac Energy Group



AGREEMENT

(To be completed after award)

THIS AGREEMENT, dated the 14th day of February 20 06 in the County of Orange, State of California, by and between SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT, hereinafter referred to as "DISTRICT" or "OWNER," and MERRIMAC PETROLEUM, INC., dba MERRIMAC ENERGY GROUP hereinafter referred to as "CONTRACTOR."

WITNESSETH :

That the DISTRICT and the CONTRACTOR for the consideration stated herein, agree as follows:

1. The complete contract includes all of the contract documents, including the Notice to Bidders Calling For Bids, Information for Bidders, Bid Form, Designation of Subcontractors, Contractors Certificate Regarding Worker's Compensation, Performance and/or Payment Bond, if applicable, Insurance Policies or Certificates, General Conditions, if any, Specifications, and this Agreement, Bid #05-26, Gasoline and Diesel Fuel, and all modifications and amendments thereto, by this reference incorporated herein. The contract documents are complementary, and what is called for by any shall be as binding as if called for by all.

2. CONTRACTOR shall provide product within the time set forth in Paragraph 4 of this Agreement and shall furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services to perform the contract.

All products to be furnished shall be provided in a good workmanlike manner in strict accordance with the specifications and provisions of the complete contract as herein defined. The Contractor shall be liable to the DISTRICT for any damages arising as a result of a failure to fully comply with this obligation.

3. District shall pay to the Contractor, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, the pricing as stipulated on each purchase order generated against this contract.

4. The work shall not commence before The District's Notice to Proceed in the form of a purchase order.

5. The number of copies of drawing and specifications to be furnished to Contractor free of charge, as provided in the General Conditions, is NA.

6. The number of executed copies of the Agreement required is one (1).

Contractor is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of California and that Mary Hazelrigg whose title is President is authorized to act for and bind the corporation.

8. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

9. The Contractor hereby certifies that it is, and at all times during the performance of work hereunder shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and the Contractor shall indemnify, hold harmless and defend the District against any and all actions, proceedings, penalties or claims arising out of the contractor's failure to comply strictly with the IRCA.

10. The complete contract, as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed under this Contract, exists between the parties. This Contract can be modified only by an agreement in writing, signed by both parties and pursuant to action of the Governing Board.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

DISTRICT

CONTRACTOR

SADDLEBACK VALLEY
By: UNIFIED SCHOOL DISTRICT

Mary Y. Matsumoto
(Signature of DISTRICT)

Gary Y. Matsumoto
Assistant Superintendent
Business Services

By: Merrimac Petroleum, Inc. dba
Merrimac Energy Group
Mary Hazelrigg
(Signature of CONTRACTOR)

Mary Hazelrigg
Print Name

Contractor's License Nbr. & Tax ID Nbr.

DATE: _____

(CORPORATE SEAL OF CONTRACTOR,
if Corporation)

Grade Fuel
Unleaded

240 E. Waverlow Road

Merrimac Energy Group

BID #05-26

EFFECTIVE 1/1/2008

OPIS PRICE
UNL UBD RACK AVG

GASOLINE DIFFERENTIAL .2096

CA ENVIRO/FED OIL SPILL TAX -.00197

STATE GAS EXCISE TAX -.1800

STATE SPILL & LUST TAX -.00220

NET DIFFERENTIAL
.02543

EFFECTIVE 1/1/2008

OPIS PRICE
CARB ULS UBD RACK AVG

ULTRA LOW SULFUR DIFFERENTIAL .02610

FEDERAL OIL SPILL TAX -.0012

STATE SPILL & LUST TAX -.00220

NET DIFFERENTIAL
.0227

eng Beach

A 90807

Phone 562.427.6545

Toll Free 800.900.4081

Fax 562.427.6536

www.merrimacenergy.net





"Preparing today's students to succeed in tomorrow's world"

November 15, 2007

Ms. Mary Hazelrigg
President
Merrimac Energy Group
1240 E. Wardlow Road
Long Beach, California 90807

Re: Bid #05-26, Gasoline and Diesel Fuel

Dear Ms. Hazelrigg:

Please be advised that the Governing Board of the Saddleback Valley Unified School District renewed award of the above referenced bid to your firm at the regularly scheduled Board meeting held on Tuesday, November 13, 2007.

Please complete, sign and return the enclosed Amendment to Agreement, along with a revised price sheet reflecting the 3.5% price increase, and updated liability and workers compensation insurance certificates. Upon receipt by the District, a copy of the signed Amendment to Agreement will be returned to you for your files.

Please return the above documents as soon as possible. Thank you.

Sincerely,

Roy B. Baker III, C.P.M.
Purchasing Manager

RBB/jc
Enclosure

**SADDLEBACK VALLEY
UNIFIED SCHOOL DISTRICT**

25631 PETER A. HARTMAN WAY
MISSION VIEJO, CALIFORNIA 92691
(714) 526-1001

Steven L. Fish, Ed.D.
SUPERINTENDENT

BOARD OF EDUCATION
Nancy W. Kirkpatrick, President
Suzie R. Swertz, Vice President
Ginny Fay Aitkens, Clerk
Dan Sedgwick, Member
Dore J. Gilbert, M.D. Member

BID FORM**Bid # 05-26
Gasoline and Diesel Fuel**

To: The Saddleback Valley Unified School District, acting by and through its Governing Board, herein called the "District."

From: Merrimac Petroleum Inc, dba Merrimac Energy Group
Name of Bidder

Pursuant to the Notice to Contractors Calling for Bids and the other documents relating thereto, the undersigned bidder hereby agrees to be bound by all the terms and conditions stipulated in the contract as set forth herein, and proposes to provide materials and perform and complete in a good workmanlike manner all that is required, in connection with Bid #05-26, Gasoline and Diesel Fuel.

The undersigned Bidder agrees that they will contract with Saddleback Valley Unified School District to provide all necessary materials, labor, supervision, machinery, tools, apparatus, other means in order to furnish all the products specified in the contract in the manner and time therein prescribed, and that they will provide the insurance and submittals as per the contract documents herein and will take in full payment the amount set forth below.

Bidder acknowledges receipt of the following:

Addendum 1 mc Addendum 2 W Addendum 3 g

(All pricing shall include California sales and use tax, permit fees, all freight, delivery and unloading costs, and any and all additional fees.)

FUELS - (Consumption estimates are approximate and the District does not guarantee a minimum or maximum amount)

1. **Diesel Fuel, Ultra Low Sulfur Diesel, (15 parts per million or less of sulfur)**
(Estimated yearly consumption 230,000 galleons)

\$ 4.02249 Cents per galleon above OPIS daily average for branded and unbranded suppliers inclusive of all taxes, fees and delivery charges.

2. **Gasoline, 87 Octane, CARFG-eth (5.7%) Unleaded** (Estimated yearly consumption 41,000 galleons)

\$ 4.1959 Cents per gallon above OPIS daily average for branded and unbranded suppliers inclusive of all taxes, fees, and delivery charges.

AMENDMENT TO AGREEMENT
BID #05-26

This Amendment to Contract is made and entered into by the SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT (hereinafter referred to as "District") and MERRIMAC ENERGY GROUP (hereinafter referred to as "Contractor").

RECITALS:

- A. District and Contractor entered into a contract for gasoline and diesel fuel dated February 14, 2006. ✓
- B. The Contract provides for renewal on a year-to-year basis for up to three (3) years, upon mutual agreement.
- C. The Contract also provides for a price increase not to exceed the percentage increase in the Consumer Price Index (CPI) for year ending October 31st.
- D. It is the desire of District and Contractor to renew said Contract for the period January 1, 2008 through December 31, 2008.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises as hereinafter set forth, the parties agree that the Contract shall be amended as follows:

- 1. Pursuant to the terms and conditions of Paragraph 2 of the Special Provisions the Contract is renewed for the period January 1, 2008 through December 31, 2008.
- 2. Prices are increased 3.5% in accordance with the Special Provisions, Paragraph 7 of the contract.
- 3. All other terms and conditions of the Contract dated February 14, 2006 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Contract the day and year first written above.

CONTRACTOR Merrimac Energy Group

SADDLEBACK VALLEY
UNIFIED SCHOOL DISTRICT

By: Mary Harglitz

Stephen L. McMahon
Assistant Superintendent,
Business Services

1240 E. Wardlaw Road
Address

Loma Beach, CA 90807
City, State, Zip Code

Date

(Corporate Seal of Contractor,
If a Corporation)

By: Mary Harglitz
Its: President

Bid # 05-26
Gasoline and Diesel Fuel
SPECIAL PROVISIONS

1. SCOPE

This bid is for the furnishing and delivering 87 Octane Unleaded Gasoline and Low Sulfur Diesel Fuel to existing underground storage tanks at the Saddleback Valley Unified School District Bus yard as identified on the Bid Form. This bid covers the approximate annual requirements of the Saddleback Valley Unified School District of the aforementioned products. The Saddleback Valley Unified School District and other Districts in the Los Angeles-Riverside-Orange Counties will have the opportunity to order from this bid in quantities necessary to maintain a District's vehicle and equipment operations as per Public Contract Code 20118. Timing and quantity needed will be determined solely by District agents and not by vendors submitting bids.

2. CONTRACT PERIOD

The District anticipates that its Governing Board will approve the award of a contract for this bid at its meeting in January 2006. Contract will be effective upon approval and will expire on December 31, 2006. The contract may be renewed for two (2) additional years in one (1) year increments if mutually agreed upon by District and Contractor. Renewal will be under the same terms and conditions as set forth in the initial contract. At the time of renewal fuel prices may be adjusted in accordance with the Consumer Price Index (please see Special Provisions PRICES).

3. UTILIZATION OF THIS CONTRACT BY OTHER PUBLIC ENTITIES

It is the intent of the Saddleback Valley Unified School District that other districts in Los Angeles-Riverside-Orange Counties be able to place orders against this contract pursuant to Public Contract Code Section 20118. This use is at the discretion of each public agency.

The successful bidder, in accepting award of this contract, agrees to sell to other districts in Los Angeles-Riverside-Orange Counties.

The Saddleback Valley Unified School District waives its rights to require other school districts to draw their warrants in favor of this District, and authorizes each agency to make payments directly to the contractor.

4. ORDERS

Each school district using this contract will place orders in its own name and will schedule deliveries to its facilities. Each order will reference this basic contract number. Each school district will be responsible for any tax liabilities and payments incurred by its orders. The Saddleback Valley Unified School District will place orders for its facilities through the purchase order process.

5. AWARD/EVALUATION

The District intends to award to the responsible bidder submitting the lowest responsive bid for each item bid. The District reserves the right to make a single award for both fuels or separate/multiple awards if it is determined to be in its best interests to do so. Bidders are therefore required to indicate on the Bid Form whether their bid is "All or Nothing." The District reserves the right to reject any or all bids, or to waive any irregularities in the bids or in the bidding process.



Master Agreement Purchase Order

City of Anaheim

200 S. Anaheim Blvd.
 Purchasing, Suite 620
 Anaheim, CA 92805-3820
 Phone: 714-765-5110
 Fax: 714-765-5285

Vendor Code: VC0000110110 Phone 562/427-6556
MERRIMAC PETROLEUM, INC.
MERRIMAC ENERGY GROUP
 1240 E. WARDLOW ROAD
LONG BEACH, CA 90807

MA Number: MA.106 400204
 MA Date: 10/24/07
 Revision Number: 1 Last Revision 10/24/07
 Effective Begin Date: 10/24/07 Expiration Date: 12/31/08
 Total Purchase Not to Exceed: 1,200,000.00
 Supercedes PO:
 Payment Terms: **NET 30 DAYS**

Board Award: 6994
 Number of Attachments: 7
 Authorized Department(s)
PUBLIC WORKS

Buyer: Neil Groom
 Phone: 765-5207 Email: ngroom@anaheim.net
 Requestor: Ruben Perez
 Phone: 765-5303 Email:

MASTER AGREEMENT FOR:

FOB: Services, Not Applicable

FUEL: BIO-DIESEL: 412; FW: FLEET

Comments
 PER BID#: 6994 SPECIFICATIONS, TERMS AND CONDITIONS, DATED: 09-27-07; CONTACT: LORI ANDERSON, 562-427-6555 T, 562-427-6556 F, landerson@merrimacenergy.net; BUYER: NG
 COORDINATE WITH CITY OF ANAHEIM REPRESENTATIVE: RUEBEN PEREZ, 714-765-6826

1. Reporting: provide a copy of the previous Thursday weekly OPIS with each invoice as backup. Provide reports as requested, but not less than every invoice.
 2. Invoicing: provide separate invoices for each delivery; invoices not accompanied by the reports will not be paid and the payment cycle will not begin until satisfactory receipt of matching reports has been provided.

Line	Description	Mfg. Name	Model #	Comm. Cd.	Qty	Unit of Meas.	Unit Price \$
1	GROSS SME BIO-DIESEL TAX ADJUSTED MARKET INDEX, B20 CARB ULS: TAXABLE	NA	NA	40500	0.00		0.0000
2	TRANSPORTATION COSTS: SUBJECT TO QUARTERLY CPI-TRANSPORTATION ADJUSTMENTS: TAXABLE	NA	NA	96266	0.00	GAL	0.0140
3	MARKUP: NOT SUBJECT TO ADJUSTMENTS: TAXABLE	NA	NA	40500	0.00	GAL	0.0034
4	FEES & TAXES: 0.00119=CALIFORNIA OIL SPILL 0.00100=L.U.S.T. TAX 0.00110=FED. ENVIRONMENTAL FEE SUBJECT TO GOVERNMENTAL ADJUSTMENTS: TAXABLE	NA	NA	40500	0.00	GAL	0.0033
5	CA DIESEL TAX: NON-TAXABLE	NA	NA	40500	0.00	GAL	0.1800

INSTRUCTIONS TO VENDORS
 This Purchase Order subject to and governed by all Terms and Conditions printed at the end of this order.

Neil Groom
 AUTHORIZED SIGNATURE



Master Agreement Purchase Order
City of Anaheim

200 S. Anaheim Blvd.
Purchasing, Suite 620
Anaheim, CA 92805-3820
Phone: 714-785-5110
Fax: 714-785-5288

Special Instructions

This Master Agreement ("MA"), along with the City's Standard Terms and Conditions, documents the items, prices and terms and conditions of the City's agreement with the supplier to provide the goods and/or services shown.

Quantities and/or dollars shown are estimates only. The City is under no obligation to purchase any or all of the items or services shown on this Master Agreement.

The City shall be obligated only for the specific quantities of materials or services that are authorized by the issuance of a specific Delivery Order ("DO") referencing this Master Agreement. Delivery Orders will be issued by the requesting department and shall specify the delivery date, location and unique Delivery Order Number.

Prices shown are to remain firm for the first year of this Agreement, unless otherwise specified in the body of this Master Agreement.

The total purchase limit shown for this Master Agreement is inclusive of all taxes. Supplier is not authorized to accept orders, nor provide goods or services in excess of this amount.

All invoices are to be sent to Accounts Payable ONLY, and must reference the specific Delivery Order number applicable to the invoice.

This Master Agreement may be renewable, in accordance with the terms of the applicable bid and/or City Council award.

This order may be terminated by either party, without cause, upon a thirty (30) day written notice.

INSTRUCTIONS TO VENDORS

This Purchase Order subject to and governed by all Terms and Conditions printed at the end of this order.



AUTHORIZED SIGNATURE

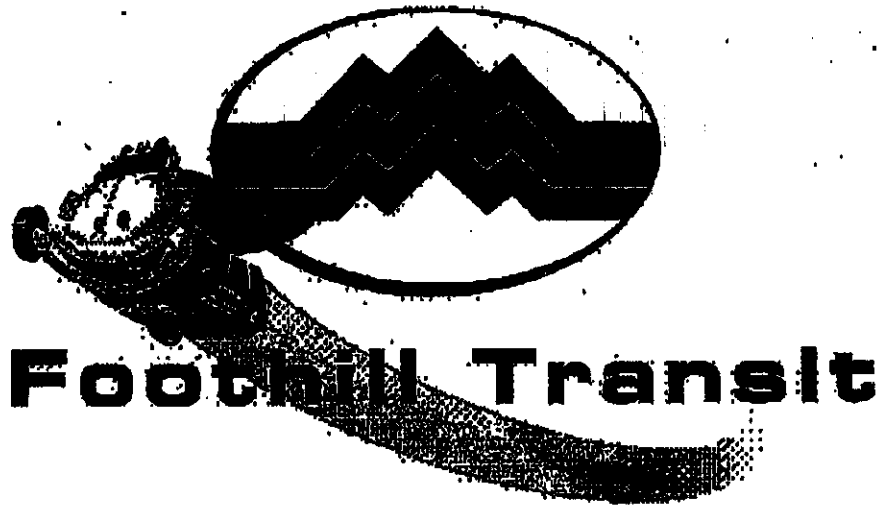
1. California Oil Spill Fee: a mandatory, set, taxable fee, which is subject to change.
2. L.U.S.T. Tax: the Leaking Underground Storage Tank tax mandatory, set, taxable tax, which is subject to change.
3. Federal Environmental Fee Recovery: a mandatory, set, taxable fee, which is subject to change.
4. Subtotal: add all taxable items.
5. Orange County, California Sales Tax: current rate is 7.75% is applied to the Subtotal, which is subject to change.
6. CA Diesel Tax: is a mandatory, set, taxable fee, which is subject to change.
7. Total: add Subtotal; Orange County, California Sales Tax, CA Diesel Tax; carry price to the fourth decimal place.
8. Undersigned, having carefully examined the specifications, terms and conditions contained herein, hereby proposes to furnish, in strict accordance with the specifications, the below listed items for the prices entered herein:

PRICE SHEET: BIODIESEL FUEL (REVISED 09/20/07)

LN	QTY	UN	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	25,000	GL	GROSS SME BIODIESEL TAX ADJUSTED MARKET INDEX, B20, Corp ULS: AS OF 08-18-07 (TAXABLE)	\$ 2.2804	\$ 57,260.00
2	25,000	GL	TRANSPORTATION COSTS (TAXABLE)	\$.014	\$ 350.00
3	25,000	GL	MARKUP (TAXABLE)	\$.00339	\$ 84.75
4	25,000	GL	CALIFORNIA OIL SPILL FEE (TAXABLE)	\$ 0.00119	\$ 29.75
5	25,000	GL	L.U.S.T. TAX (TAXABLE)	\$ 0.00100	\$ 25.00
6	25,000	GL	FEDERAL ENVIRONMENTAL FEE RECOVERY (TAXABLE)	\$ 0.00110	\$ 27.50
7	25,000	GL	SUBTOTAL ABOVE TAXABLE ITEMS	\$	\$ 57,777.00
8	25,000	GL	ORANGE COUNTY, CALIFORNIA SALES TAX 7.75%	\$	\$ 4,477.72
9	25,000	GL	CA DIESEL TAX (NOT TAXABLE)	\$ 0.1800	\$ 4,500.00
10	25,000	GL	TOTAL PER MONTH (ADD LINES 7-9)	\$	\$ 66,754.72
11	1	LOT	TOTAL FOR 18 MONTHS (MULTIPLY LINE 10 X 16) ENTER HERE →		\$ 1,001,320.80

82.25

Written price:	One million one thousand three hundred twenty dollars & eighty Cents
Company Name	Merrimac Petroleum Inc. dba Merrimac Energy Group
Principal Office Address	12410 E. Warshaw Rd.
City, ST, Zip	Long Beach CA 90807
Phone Number	562-427-6565
Fax Number	562-427-6556
E-mail Number	landerson@merrimacenergy.net
Federal Employer I.D. Number	
Title of Person Authorized to Sign	Vice President Marketing
Print Name Authorized to Sign	Lori Anderson
Authorized Signature	<i>Lori Anderson</i>
Date Signed	9/26/07



Contract No. 07-028

**ULTRA LOW SULFUR DIESEL FUEL PURCHASE AND
DELIVERY**

Irwindale Operations and Maintenance Facility



Foothill Transit

This Contract Agreement (hereinafter "Contract" or "Agreement") is made and entered into as of _____, 2007 for the provision and delivery of Ultra Low Sulfur Diesel Fuel to Foothill Transit's Irwindale Operations and Maintenance Facility by and between FOOHILL TRANSIT, a joint powers agency organized under the laws of the State of California with its principal place of business at 100 North Barranca Avenue, Suite 100, West Covina, California 91791-1800 and Merrimac Energy Group, a California corporation, with its principal place of business at 1240 East Wardlow Road, Long Beach, California 90807 ("Contractor"). Foothill Transit and Contractor are sometimes individually referred to as a "Party" and collectively as "Parties."

1. Scope of Work and Contract Term

1.1 General Scope of Work

The scope of the work to be performed by the Contractor shall be as set forth in Exhibit A. Foothill Transit may modify the scope from time-time as set forth in Section 4.

1.2 Term

The term of the Contract will be from March 1, 2007 until February 28, 2009. At its sole discretion, Foothill Transit may exercise two (2) one (1) year options extending the term of the Contract. Foothill Transit will provide written notice to the Contractor of its intentions concerning the exercise of the options. This notice will be provided at least sixty days prior to the expiration of the base contract or the first option year as appropriate.

2. Representatives and Notices

2.1. Foothill Transit's Representative

Foothill Transit's Representative for supervision, direction, control, and approval of the work of the Contractor shall be the Foothill Transit's Director of Operations..

2.2. Contractor's Representative

Contractor hereby designates Mary Hazelrigg as its representative to oversee the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement.

Foothill price page

2.3. Delivery of Notices

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor: Mary Hazelrigg
President
Merrimac Energy Group
1240 East Wardlow Road
Long Beach, CA 90807
(562) 427-6565
(562) 427-6556 Fax

Foothill Transit: George Karbowski
Director of Operations
100 North Barranca Avenue, Suite 100
West Covina, CA 91791-1600
(626) 967-2274 Ext. 246
(626) 915-1143 Fax

*Bill to
FET except
USD diesel
gas
price*

Any notices required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand (including overnight courier service) during receiving Party's regular business hours or by facsimile before or during receiving Party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provisions of this Section 4.3. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3. Furnishing Materials

For and in consideration of the payments and agreements to be made and performed by Foothill Transit, Contractor agrees to furnish all materials and perform all work required for the Project, and to fulfill all other obligations as set forth in the Contract Documents.

4. Fees and Payments

4.1. Compensation

Contractor agrees to receive and accept an amount not to exceed the per gallon Oil Price Information Service (OPIS) price of Diesel Fuel as specified by the California Air Resources Board on the date of delivery, ~~plus a margin of .00589~~ per gallon plus all applicable taxes as full compensation for furnishing all materials; performing all work and fulfilling all obligations hereunder (Contract Price). The Contractor agrees that Foothill Transit may extend the term of the Contract at Foothill Transit's sole discretion for the following prices: Option Year 1 (OPIS price per gallon plus a margin of .00589 per gallon adjusted by CPI and all applicable taxes), Option Year 2 (OPIS price per gallon plus the first year option price margin per gallon adjusted by CPI and all applicable taxes).

4.2. Payment of Compensation

The Contractor shall submit individual invoices to Foothill Transit which set forth the total fuel delivered at each delivery and the per delivery cost of the fuel. Foothill Transit shall, on a monthly basis, review the invoices and pay approved charges thereon. Foothill Transit agrees that if an invoice is received no later than the fifth day of a month, it will make payment to the Contractor during that month. Neither payment of amount due by Foothill Transit nor acceptance of any such payment by the Contractor shall constitute a waiver of any claim for errors or omission in invoices or payments. Foothill Transit may withhold payment that it believes were improper or were otherwise questionable.

4.3 Prompt Payment Requirements

No later than Thirty (30) days after receiving payment from Foothill Transit for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, Contractor shall make full payment to its subcontractors of all compensation due and owing under the relevant subcontract agreement, unless excused by Foothill Transit for good cause pursuant to provisions set out below.

No later than Thirty (30) days after receiving payment of retention from Foothill Transit for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, Contractor shall also make full payment to its subcontractors of all retentions withheld by it pursuant to the relevant subcontract agreement, unless excused by Foothill Transit for good cause pursuant to provisions set out below.

Contractor may only delay or postpone any payment obligation (or retention) to any of its subcontractors for services rendered arising out of or related to this Agreement where, in Foothill Transit's sole estimation, good cause exists for such a delay or postponement. All such determinations on Foothill Transit's part that good cause exists for the delay or postponement of Contractor's payment obligation to its subcontractor must be made in writing, prior to the time when payment to the subcontractor would have been otherwise due by the Contractor.

5. Change Orders

5.1. Written Change Orders Required

Written change orders signed by the Executive Director of Foothill Transit or his designee are required. The Contractor shall be liable for all costs resulting from any change not properly ordered by written change order.

5.2. Right to Issue Change Orders

Under the terms of this Agreement, only the Executive Director of Foothill Transit has the right to issue an immediate change order and negotiate cost and price afterwards.

5.3. Change Order Proposal

Within thirty (30) calendar days after receipt of a written change order proposal request initiated by Foothill Transit or initiated by the Contractor, the Contractor shall submit a detailed price and schedule proposal for the work to be performed to Foothill Transit's Representative. This proposal shall be discussed in negotiations between the Contractor and Foothill Transit's Representative. Upon completion of negotiations, Foothill Transit's Representative will make a recommendation to the Foothill Transit Executive Director. If the

Foothill Transit Executive Director accepts the recommendation to approve the change order, Foothill Transit shall prepare a written Change Order for both the Contractor and the Executive Director of Foothill Transit to execute. Disagreements that cannot be resolved by negotiations between the Contractor and Foothill Transit's Representative shall be resolved in accordance with the contract disputes clause (Section 6) Regardless of any disputes, the Contractor shall proceed with the work ordered at the sole direction of the Executive Director of Foothill Transit.

6. Disputes

6.1. General

Any dispute between the Contractor and Foothill Transit relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.

6.2. Resolution

The parties shall first attempt to resolve the dispute informally in meetings or communications between the Contractor and Foothill Transit's Representative. If the dispute remains unresolved 15 days after it first arises, the Contractor may request that Foothill Transit's Representative issue a recommended decision on the matter in dispute. Foothill Transit's Representative shall issue the recommended decision in writing and provide a copy to the Contractor.

The recommended decision of Foothill Transit's Representative shall become final unless, within 15 days of receipt of such recommended decision, the Contractor submits a written request for review to the Foothill Transit Executive Director. In connection with any such review, the Contractor and Foothill Transit's Representative shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Foothill Transit Executive Director, either party may seek resolution through non-binding mediation or judicial resolution of the dispute in an appropriate Court of the State of California.

Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with the Contract and Foothill Transit's Representative's recommended decision.

7. Conflict of Interest

7.1. General

No Executive Board Member or member of the management consulting staff of Foothill Transit shall participate in the selection, or in the award or administration of the Contract if a conflict of interest, real or apparent, would be involved. Such a conflict is determined in accordance with the Conflict of Interest Code adopted by the Foothill Transit Executive Board.

7.2. Foothill Transit Responsibility

Foothill Transit's Executive Board Members and management consulting staff shall neither solicit, demand nor accept from any person anything of a pecuniary value for or because of any action taken or to be taken, in the performance of their duties.

7.3. Contractor Responsibility

The Contractor covenants that both itself, its principals and its subcontractors presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

8. Organizational Conflict of Interest

Prior to entering into this Contract, the Contractor is required to inform Foothill Transit of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, result in an unfair competitive advantage to the Contractor, or may impact the contractor's objectivity in performing the contract work.

9. Inspection of Work

9.1. General

All materials furnished by the Contractor shall be subject to inspection and test by Foothill Transit to the extent practicable at all times and places during the term of the Contract. All inspections by Foothill Transit shall be made in such a manner as to not unduly delay the work. Foothill Transit shall have the right to enter the premises used by the Contractor for the purpose of inspecting and auditing all data and records, which pertain to the Contractor's performance under the Contract.

9.2. Non-conformance

If any material furnished by the Contractor is not in conformity with the requirements of the Contract, Foothill Transit shall have the right to require the Contractor to supply substitute materials at no increase in the total Contract amount. In the event the Contractor fails promptly to supply substitute materials, Foothill Transit shall have the right to terminate the Contract for default as provided in Section 12.

10. Force Majeure

The Contractor shall not be liable for any failure to perform if acceptable evidence has been submitted to Foothill Transit that failure to perform the Contract was due to causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, civil disturbances, fire, war, or floods, but does not include labor related incidents, such as strikes or work stoppages.

11. Taxes

The Contractor shall pay sales, consumer, use, and similar taxes for the Project or portions thereof provided by the Contractor which are legally enacted at the time of award of the Contract whether or not yet effective or merely scheduled to go into effect.

12. Termination

12.1. Termination for Convenience

The performance of work under the Contract may be terminated by Foothill Transit in accordance with this Section in whole, or from time to time in part, whenever Foothill Transit determines that such termination is in the best interest of Foothill Transit. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

12.1.1. Receipt of Notice

Upon receipt of a notice of termination, and except as otherwise directed by Foothill Transit, the Contractor shall (1) stop work under the Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) assign to Foothill Transit in the manner, at the times, and to the extent directed by Foothill Transit, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of Foothill Transit, to the extent Foothill Transit may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to Foothill Transit and deliver in the manner, at the times, and to the extent, if any, directed by Foothill Transit, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and any information and other property which, if the Contract had been completed, would have been required to be furnished to Foothill Transit; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as Foothill Transit may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which Foothill Transit has or may acquire an interest. Payments by Foothill Transit to the Contractor shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Contractor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

12.2. Termination by Mutual Agreement

The Contract may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Sections 12.1 and 12.3.

12.3. Termination for Default

12.3.1. General

Subject to the provisions in Section 12.3.3, Foothill Transit may terminate the whole or any part of the Contract in any one of the following circumstances:

- 12.3.1.1. If the Contractor fails to provide the services in the manner required by the Contract;
- 12.3.1.2. If the Contractor fails to perform any of the provisions of the Contract in accordance with its terms; or
- 12.3.1.3. If the Contractor fails to make progress in the prosecution of the work under the Contract so as to endanger such performance.

12.3.2. Conditions upon Termination

In the event that Foothill Transit terminates the Contract in whole or in part as provided in this Section, Foothill Transit may procure, upon such terms and in such manner as Foothill Transit may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to Foothill Transit for costs associated with the termination of the Contract, the procurement of replacement services by Foothill Transit, any excess costs of such similar supplies or services, and any increase in the total Contract cost as a result of the re-procurement of services from the date of termination to the expiration date of the original Contract. The Contractor shall continue the performance of the Contract to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and Foothill Transit are subject to resolution pursuant to Section 6.

12.3.3. Notification

If Foothill Transit determines that an event of default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor with ten (10) days in which to cure such default. If the Contractor fails to cure within such timeframes, Foothill Transit may declare the Contractor to be in default and terminate the Contract in whole or in part.

12.3.4. Settlement

Except as otherwise provided, settlement of claims by the Contractor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

13. Waiver of Terms and Conditions

The failure of Foothill Transit or the Contractor to enforce one or more of the terms or conditions of the Contract or to exercise any of its rights or privileges, or the waiver by Foothill Transit of any breach of such terms or conditions, shall not be construed as thereafter

waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

14. Interpretation, Jurisdiction, and Venue

All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of California. The Contractor hereby consents and submits to the jurisdiction of the appropriate courts of California or of the United States having jurisdiction in California for adjudication of any suit or cause of action arising under or in connection with the Contract documents, or the performance of such Contract, and agrees that any such suit or cause of action may be brought in any such court.

15. Responsibilities of Contractor

15.1. Control and Payment of Subordinates: Independent Contractor

The Contractor shall, at all times during the term of the Contract, perform all work diligently, carefully, and in a professional manner, and shall furnish all labor, supervision, material, machinery, equipment, and supplies necessary therefor. Notwithstanding the provision of drawings, technical specifications, or other data by Foothill Transit, the Contractor shall have the responsibility of supplying all items and details required or reasonably inferred from the Contract Documents. The Contractor shall conduct all work in the Contractor's own name and as an independent contractor, and not in the name of, or as an agent for, Foothill Transit.

15.2. Responsibility for Work

By executing this Contract the Contractor certifies the Contractor shall be responsible to Foothill Transit for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Project under a contract with the Contractor.

15.3. Legal Resident Verification

Contractor warrants that it fully complies with all laws regarding employment of aliens and others, and that all its employees performing Services meet the citizenship or alien status requirements contained in Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Contractor shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Contractor shall retain such documentation for all covered employees for the period prescribed by law. Contractor shall indemnify, defend and hold Foothill Transit, its agents, officers and representatives harmless from employer sanctions and any other liability which may be assessed against Contractor or Foothill Transit or both in connection with any violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing Services under this Agreement.

16. Indemnification and Insurance

16.1. Indemnification

Contractor shall defend, indemnify and hold Foothill Transit, its Members, officials, officers, volunteers, agents, and independent contractors who serve as Foothill Transit officers, officials, or staff (hereinafter referred to as "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, Contractors and contractors arising out of or in connection with the performance of the Services and this Agreement, including without limitation reimbursement of damages and reasonable attorneys fees and other related costs and expenses. Contractor shall reimburse Indemnitees' reasonable defense costs, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Indemnitees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Indemnitees in any such suit, action or other legal proceeding. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Indemnitees.

16.2. Insurance

Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

16.2.1. Minimum Scope of Insurance

Coverage shall be at least as broad as the latest version of the following: (a) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (c) Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

16.2.2. Minimum Limits of Insurance

Contractor shall maintain limits no less than: (a) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limits is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (b) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (c) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code

of the State of California with Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

16.2.3. Insurance Endorsements

The insurance policies shall contain the following provisions, and Contractor shall provide endorsements on forms supplied or approved by Foothill Transit to add the following provisions to the insurance policies:

16.2.3.1. General Liability

The general liability policy shall be endorsed to state that: (A) Foothill Transit, its Members, directors, officials, officers, agents, volunteers, and independent contractors who serve as Foothill Transit officers, officials, or staff (hereinafter referred to as Additional Insureds) shall be covered as additional insureds with respect to the services or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (B) the insurance coverage shall be primary insurance as respects the Additional Insureds, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Additional Insureds shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.

16.2.3.2. Automobile Liability

The automobile liability policy shall be endorsed to state that (A) Foothill Transit, its Members, directors, officials, officers, agents, volunteers, and independent contractors who serve as Foothill Transit officers, officials, or staff (hereinafter referred to as Additional Insureds) shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (B) the insurance coverage shall be primary insurance as respects the Additional Insureds, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Additional Insureds shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.

16.2.3.3. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against Foothill Transit, its Members, directors, officials, officers, agents, volunteers and independent contractors who serve as Foothill Transit officers, officials, or staff for losses paid under the terms of the insurance policy, which arise from work performed by the Contractor. Workers Compensation insurance shall contain endorsements equivalent to State Compensation Insurance Fund endorsements #2507 (waiver of subrogation), #0015 (additional insured employer), and #2065 (30-day

notice of cancellation). Endorsements #2507 and #0015 shall name Foothill Transit and its Members.

16.2.3.4. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Foothill Transit; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Foothill Transit, its directors, officials, officers, agents, volunteers and independent contractors who serve as Foothill Transit officers, officials, or staff.

16.2.3.5. Separation of Insureds: No Special Limitations

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to Foothill Transit, its members, directors, officials, officers, agents, volunteers, and independent contractors who serve as Foothill Transit officers, officials, or staff.

16.2.4. Deductibles and Self-Insurance Retentions

Any deductibles or self-insured retentions must be declared to and approved by Foothill Transit. Contractor shall guarantee that, at the option of Foothill Transit, either: (A) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Foothill Transit, its members, directors, officials, officers, agents, volunteers, and independent contractors who serve as Foothill Transit officers, officials, or staff; or (B) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

16.2.5. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to Foothill Transit.

16.2.6. Verification of Coverage

Contractor shall furnish Foothill Transit with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to Foothill Transit. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Foothill Transit if requested. All certificates and endorsements must be received and approved by Foothill Transit before work commences. Foothill Transit reserve the right to require complete, certified copies of all required insurance policies, at any time

17. Equal Opportunity Employment

Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of Foothill Transit's Affirmative Action Plan, or other related programs or guidelines currently in effect or hereinafter enacted.

Contractor specifically recognizes and agrees that if Foothill Transit finds that any of the foregoing provisions have been violated, such violations shall constitute a material breach of contract upon which Foothill Transit may determine to cancel, terminate, or suspend the Agreement. While Foothill Transit reserves the right to determine individually that the anti-discrimination provisions of the Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commissioner or the Federal Equal Employment Opportunity Commission that Contractor has violated State and Federal Anti-Discrimination laws shall constitute a finding by Foothill Transit that Contractor has violated the anti-discrimination provisions of the Agreement.

18. Audit and Inspection of Records

18.1. General

The Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Contract in accordance with generally accepted accounting practices. All such records shall be clearly identifiable. The Contractor agrees that Foothill Transit, or any of its duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls and other data and records, and to audit the books, records, and accounts relating to the performance of the Contract. Further, the Contractor agrees to maintain all required records for at least three (3) years after Foothill Transit has made final payment and all other pending matters are closed.

18.2. Audit Adjustments

Appropriate financial adjustments may be made by Foothill Transit based upon any inconsistency, irregularity, discrepancy or unsubstantiated billing revealed as a result of an audit. Financial adjustments reflecting an overcharge to Foothill Transit may be charged against Contractor's future invoices.

19. General Provisions

19.1. Cooperation: Further Acts

The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

19.2. Successors and Assigns

This Agreement shall be binding on the successors and assigns of the parties. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of Foothill Transit. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Contractor's shareholders shall not transfer, sell, exchange, assign or divest themselves of interests in Contractor in such a way as to give majority control of Contractor to any persons, or entities other than the majority controlling interest therein as of the date of this Agreement without the prior written consent of Foothill Transit.

19.3. Construction: References: Captions

Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to Foothill Transit include its elected officials, officers, agents, volunteers and independent contractors who serve as Foothill Transit officers, officials, or staff except as otherwise specified in this Agreement. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

19.4. Amendment: Modification

No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

19.5. No Third Party Beneficiaries

There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

19.6. Invalidity: Severability

If any portion of this Agreement is declared as invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

19.7. Authority to Enter Agreement

Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

19.8. Entire Agreement

This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed with all the formalities required by law on the first date written above.

FOOTHILL TRANSIT

CONTRACTOR

By: _____
Doran J. Barnes
Executive Director

By: _____
Mary Hazelrigg
President

Approved as to Form:

By: _____
Edward J. Gill, Jr.
Special Counsel
Foothill Transit

PRICE SHEET		INVITATION TO BID			
NUMBER : 210715 OPEN DATE: 09/20/06 T-NUMBER : 1905R		TIME: 12:00 PM VENDOR: MERRIMAC ENERGY GROUP			PAGE 33
LINE NO.	COMMODITY/SERVICE DESCRIPTION	QUANTITY FROM/TO	UNIT	UNIT PRICE	EXT AMOUNT
	SHERIFF AERO BUREAU LONG BEACH MUNICIPAL AIRPORT 3335 LAKEWOOD BLVD. LONG BEACH, CA 90802 TANK CAPACITY: 10,000 GAL-UNDERGROUND FUEL TANK DELIVERY TRUCK PRICES QUOTED ARE TO BE THE PRICES YOU WOULD CHARGE THE COUNTY BASED ON DELIVERY COST AS OF SEPT. 7, 2006. ULTRAMAR PRICE INDEX ULTRAMAR AVERAGE FOR LOS ANGELES INDICATE PRICES PER GALLON ULTRAMAR AVERAGE <u>2.1425</u> DISCOUNT <u>MARK-UP</u> - CIRCLE ONE + <u>.022</u> NET COST PER GALLON <u>2.1645</u>				

*bought
out by
Volero*