

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

1 AGREEMENT

2 32705

3 THIS AGREEMENT is made and entered, in duplicate, as of July 17, 2012  
4 for reference purposes only, pursuant to Resolution No. RES-12-0062 adopted by the  
5 City Council of the City of Long Beach at its meeting on July 10, 2012, by and between  
6 MERRIMAC PETROLEUM, INC. DBA MERRIMAC ENERGY GROUP, a California  
7 corporation ("Contractor"), with a place of business located at 1240 E. Wardlow Road,  
8 Long Beach, California 90807, and the CITY OF LONG BEACH ("City"), a municipal  
9 corporation.

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

13 WHEREAS, the City desires to purchase unleaded and diesel fuel; and

14 WHEREAS, the Saddleback Valley Unified School District has an  
15 agreement, pursuant to Bid #11-04, for the purchase of unleaded and diesel fuel  
16 ("SVUSD Agreement"); and

17 WHEREAS, Resolution No. RES-12-0062 authorizes the City to purchase  
18 unleaded and diesel fuel by virtue of the SVUSD Agreement;

19 NOW, THEREFORE, in consideration of the terms and conditions  
20 contained in this Agreement, the parties agree as follows:

21 1. The SVUSD Agreement with Contractor, attached hereto as Exhibit  
22 "A" is incorporated by this reference as if fully set forth, and the same terms and  
23 conditions contained in the SVUSD Agreement shall be applicable here except as  
24 follows:

25 A. Wherever the SVUSD Agreement refers to the Saddleback  
26 Valley Unified School District, it shall be deemed to refer to the City of Long  
27 Beach;

28 B. Contractor shall sell, furnish and deliver to the City unleaded

1 and diesel fuel of substantially the same type and kind purchased by the  
2 Saddleback Valley Unified School District on the same terms and conditions  
3 offered to the Saddleback Valley Unified School District, except as modified by  
4 Exhibit "B" attached hereto and incorporated in this Agreement, for an amount not  
5 to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000), including tax  
6 and shipping, for a period of one (1) year. To the extent that the SVUSD  
7 Agreement and this Agreement are inconsistent, the following priority shall govern:  
8 (1) this Agreement and (2) the SVUSD Agreement.

9 C. Payment for the unleaded and diesel fuel purchased from  
10 Contractor by the City shall be made by the City on delivery to and acceptance of  
11 the unleaded and diesel fuel by the City and submittal of an invoice to the City.  
12 Payment is due thirty (30) days after the date of the invoice.

13 D. All warranties shall accrue to the City of Long Beach.

14 E. The parties may, by mutual agreement, amend this  
15 Agreement with the approval of the City's City Council.

16 2. Neither this Agreement nor any money that becomes due to  
17 Contractor under this Agreement may be assigned by Contractor without the prior written  
18 consent of the City Manager or his designee.

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

24 4. The terms appearing on the SVUSD Agreement are incorporated in  
25 this Agreement.

26 5. Contractor shall cooperate with the City in all matters relating to self-  
27 accrual of use tax. Contractor shall contact the City Treasurer for additional information  
28 regarding self-accrual.

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Long Beach, CA 90802-4664

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

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

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

9  
10  
11 July 19, 2012

By Mary Hazelrigg  
President  
Mary Hazelrigg  
Type or Print Name

12  
13  
14 July 19, 2012

By Mary Hazelrigg  
Secretary  
Mary Hazelrigg  
Type or Print Name

"Contractor"

CITY OF LONG BEACH, a municipal  
corporation

15  
16  
17  
18  
19 7.20, 2012

By [Signature]  
City Manager  
**Assistant City Manager**

"City"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

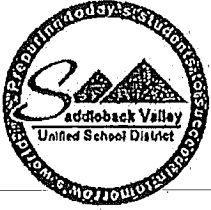
This Agreement is approved as to form on July 19, 2012.

ROBERT E. SHANNON, City Attorney

By [Signature]  
Deputy

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# EXHIBIT "A"



## **SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT**

25631 Peter A. Hartman Way · Mission Viejo, California 92691 · (949) 586-1234 · www.svusd.org

### **Board of Education**

Glnny Fay Aitkens, President · Dolores Winchell, Vice President · Dennis Walsh, Clerk  
Don Sedgwick, Member · Suzie R. Swartz, Member

*Clint Harwick, Ed.D.*  
**Superintendent**

December 16, 2011

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

Re: Bid #11-04, Gasoline and Diesel Fuel

Dear Ms. Hazelrigg:

Please be advised that the Governing Board of the Saddleback Valley Unified School District awarded the above referenced bid for to your firm at the regularly scheduled Board meeting held on Tuesday, December 13, 2011.  
The initial term of the contract begins January 1, 2012 through December 31, 2012

Please complete, sign and return the enclosed Agreement. We look forward to working with you again.

Sincerely,

A handwritten signature in cursive script that reads 'Thomas Finley'.

Thomas Finley  
Senior Buyer

Enclosures

AGREEMENT

(To be completed after award)

THIS AGREEMENT, dated the 14<sup>TH</sup> day of DECEMBER 2011 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 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 #11-04, 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)

7. If 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, vice president and secretary 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

By: Mary Hazelrigg  
Merrimac Energy Group  
(Signature of CONTRACTOR)

\_\_\_\_\_  
(Signature of DISTRICT)

Geri Partida  
Assistant Superintendent,  
Business Services

Print Name

Mary Hazelrigg   
Contractor's License Nbr. & Tax ID Nbr.

DATE: 12/27/2011

(CORPORATE SEAL OF CONTRACTOR,  
if Corporation)

**BID FORM (REVISED)**

**Bid #11-04  
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 #11-04, 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  Addendum 2  Addendum 3

Where the prices are called for on the Bid Form, the prices shall include all costs required to perform the work, including overhead, profits, services, insurance, transportation charges, pump charges, and any and all other applicable costs, except taxes and fees. The bid prices shall also exclude any and all California States sales or use taxes and Federal Superfund, spill fees, AB 32 fees or applicable taxes. These taxes are intentionally excluded from the Bid Form for the purpose of price comparison only, but will be applied, as required, at invoicing.

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

The District has two (2) 8,000 gallon above ground fuel tanks (AST's). Refills will average approximately 4000 gallons for each tank. Line items 1 & 2 will be added together and the "TOTAL" will be used to evaluate the low bidder only.

1. **Diesel Fuel, Ultra Low Sulfur Diesel, (15 parts per million or less of sulfur)**  
(Estimated yearly consumption 120,000 gallons)

\$ 0.00 Cents/Gal ~~above/below~~ OPIS even  
daily average for unbranded suppliers exclusive of all taxes, fees.

2. **Gasoline, 87 Octane, CARFG-eth (57%) Unleaded**  
(Estimated yearly consumption 72,000 gallons)



\$ -0.00407 Cents/Gal above/below OPIS  
daily average for unbranded suppliers exclusive of all taxes, fees.

**TOTAL** (Line 1 + Line 2): \$ -0.00407  
(USED TO EVALUATE LOW BIDDER ONLY)

The District intends to award the contract at its January 2012 Board meeting to that responsible bidder which submits the lowest responsive bid for the products listed.

The undersigned hereby declares that all of the representations of this bid are made under penalty of perjury under the laws of the State of California.

~~Individual~~ Name: \_\_\_\_\_  
~~Bidder~~ Signed by: \_\_\_\_\_  
Print Name \_\_\_\_\_  
Date: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

\*\*\*\*\*  
(Bidder must submit with bid certifications signed by authorized officers of each of the parties to joint venture or partnership)

~~Partnership~~ Name: \_\_\_\_\_  
Signed by: \_\_\_\_\_  
(Partner)  
Print Name \_\_\_\_\_  
Date: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
\_\_\_\_\_  
Other Partners: \_\_\_\_\_  
Telephone: \_\_\_\_\_

.....  
~~Corporation~~ Name: Merrimac Petroleum, Inc., dba Merrimac Energy Gra.

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT  
25631 Peter A. Hartman Way  
Mission Viejo, California 92691

**BID #11-04**

**Gasoline and Diesel Fuel**

TABLE OF CONTENTS

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	<u>PAGES</u>
NOTICE TO CONTRACTORS CALLING FOR BIDS .....	1
INSTRUCTIONS TO BIDDERS.....	1-7
SPECIAL PROVISIONS.....	1-8
<b>DESIGNATION OF SUBCONTRACTORS.....</b>	<b>1-2</b>
<b>BID SECURITY/BOND.....</b>	<b>1-2</b>
<b>BID FORM.....</b>	<b>1-4</b>
<b>INFORMATION REQUIRED OF BIDDER.....</b>	<b>1-3</b>
<b>NON-COLLUSION AFFIDAVIT.....</b>	<b>1</b>
<b>WORKER'S COMPENSATION CERTIFICATE.....</b>	<b>1</b>
<b>DRUG-FREE WORKPLACE.....</b>	<b>1-2</b>
<b>ALCOHOL &amp; TOBACCO FREE POLICY.....</b>	<b>1</b>
<b>AGREEMENT .....</b>	<b>1-2</b>
<b>NON-ASBESTOS CERTIFICATION.....</b>	<b>1</b>
<b>FAITHFUL PERFORMANCE BOND.....</b>	<b>1-3</b>

**\*\* All items highlighted must be returned with your bid**

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT  
25631 PETER A. HARTMAN WAY  
MISSION VIEJO, CALIFORNIA 92691

NOTICE CALLING FOR BIDS

The Saddleback Valley Unified School District is soliciting bids for:

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**BID #11-04, GASOLINE AND DIESEL FUEL**

**MANDATORY PRE-BID CONFERENCE:** WEDNESDAY, 11/9/2011 – 10:00 AM,  
MAINTENANCE & OPERATIONS, BUILDING M

**BID OPENING:** MONDAY, 12/1/2011 – 2:00 PM, MAINTENANCE & OPERATIONS,  
BUILDING M

BID SECURITY/BOND of \$2,000.00 is required

The contract awarded as a result of this bid will be available for use by Public Agencies in Los Angeles-Riverside-Orange Counties.

Solicitations giving complete details, project descriptions, conditions, and required forms may be obtained from the Purchasing Department, 949/580-3255, FAX 959-454-1384 or on Website, [www.svusd.org/purchasing](http://www.svusd.org/purchasing).

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT

Jeffrey P. Starr  
Director, Business Services

Name of Paper: Orange County Register  
Published Dates: 10/24/11 and 10/31/11

## INSTRUCTIONS FOR BIDDERS

### **1. BIDDER'S RESPONSIBILITIES**

**READ THIS ENTIRE DOCUMENT CAREFULLY AND BECOME FAMILIAR WITH ALL INSTRUCTIONS, TERMS AND CONDITIONS, PLANS, SPECIFICATIONS AND DRAWINGS BEFORE SUBMITTING A BID. DO NOT ASSUME THAT THIS DOCUMENT IS THE SAME AS OTHER SOLICITATIONS YOU MAY HAVE RECEIVED FROM THIS OFFICE.**

If you submit a bid it shall be incontrovertible evidence that you understand, and intend to comply with all the requirements of this solicitation and contract.

The Governing Board reserves the right to correct errors or omissions in specifications wherever necessary for the proper fulfillment of the intentions of the bid.

**FURNISH THE FOLLOWING WITH ALL BIDS: (FORMS FOR THIS INFORMATION AND INSTRUCTIONS FOR THESE FORMS ARE INCLUDED IN THIS SOLICITATION PACKAGE.) FAILURE TO SUBMIT ALL FORMS WITH THE BID MAY RESULT IN REJECTION OF THE BID.**

1. Bid Security
2. Bid Form
3. Information Required of Bidder
4. Worker's Compensation Certificate
5. Drug Free Workplace Certification
6. Non-Collusion Affidavit
7. Designation of Subcontractors
8. Non-Asbestos Certification
9. Alcohol and Tobacco Free Campus Policy

### **2. BID PREPARATION**

All bids must be prepared and submitted using only the bid schedule, proposal sheet, questionnaire or other forms included in the solicitation package. Bids prepared, on any other forms may be rejected. All forms must be complete, and all information must be typed or in ink.

State numbers in both words and figures where so indicated. If there is a conflict in the words and the figures, the words shall govern. Both unit and extended prices must be shown on bid forms when spaces are provided. In the event of an error in the extension of bid prices, unit prices will prevail.

Prices, wording and notations must be in ink or typewritten. Erasures or other changes shall be initialed by the person signing the Bid.

The DISTRICT may reject as non-responsive, any bid that it finds to be unintelligible, inconsistent or ambiguous.

In the event you do not wish to bid, please mark "NO BID" and return at least the Bid cover sheet so your name may be removed from the Bidders List.

### **3. SUBMISSION OF BIDS**

Submit the bid with any and all additional material in the number of copies required by the solicitation to the District Purchasing Department in a SEALED ENVELOPE. THIS ENVELOPE SHALL BE CLEARLY MARKED IN THE UPPER LEFT HAND CORNER

WITH THE BIDDER'S NAME, THE BID NUMBER, PROJECT DESIGNATION, AND THE BID OPENING DATE AND TIME.

The bids must be received prior to the scheduled closing time for receipt of bids as set forth in the "Notice Calling for Bids", and the Bidder is completely and solely responsible for this taking place. Postmarks indicating the date of mailing shall not be considered as evidence of receipt of bid. Bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened. No bids will be received after that time. Bids may be opened and read aloud at the DISTRICT office after the time set forth for bid opening.

Bidders may not withdraw any bid for a period of ninety (90) days after opening of bids. Withdrawal of a bid after opening may result in forfeiture of the Bid Security.

#### 4. BID SECURITY

Each bidder is required to submit security in the amount of two thousand dollars (\$2,000.00) with their bid. The security may be in the form of cash, a certified or cashiers check (**NO OTHER FORM OF CHECK IS ACCEPTABLE**), or a Bid Bond executed by an admitted surety. If the bidder elects to furnish a Bid Bond, the Bidder may use the Bid Bond form included in this solicitation. Please see "Instructions to Bidders" Surety Qualifications.

The security is to guarantee that the Bidder will not withdraw the bid within 90 days of said opening and to ensure the bidder, if awarded a contract, will, within ten (10) working days after award of the contract, enter into an agreement and furnish any insurance certificates and/or bonds, or other requirements as set forth in the contract. In the event of refusal to enter into the agreement, or to furnish the required information, the security may be forfeited to the District.

The bid security will be returned to all Bidders after award of the Contract and valid execution of the agreement between District and Contractor.

#### 5. SIGNATURE

Sign the Bid Form, all Bonds, Designations of Subcontractors, the Contractor's Certificate of Worker's Compensation, Asbestos Certification, Non-Collusion Affidavit, Drug Free Workplace Certification, Alcohol and Tobacco Free Campus Policy, all Guarantees and any other required certifications, in the name of the bidder. All signatures must be of the person or persons duly authorized to sign the bid.

If Bidder is a **CORPORATION**, list the legal name of the **CORPORATION** first, together with **TWO** signatures: **ONE** from either the Chairman of the Board, President or Vice President and **ONE** from either the Secretary, Chief Financial officer, or Assistant Treasurer. Alternatively, the signature of other authorized officers or agents may be affixed, if duly authorized by the corporation. This authorization must be furnished to the District upon request. **SUCH DOCUMENTS SHALL INCLUDE THE TITLE OF SUCH SIGNATORIES BELOW THE SIGNATURE AND SHALL BEAR THE CORPORATE SEAL.**

If the Bidder is a **JOINT VENTURE** or **PARTNERSHIP**, submit with the Bid, certifications signed by authorized officers of each of the parties to the joint venture or partnership. These certifications shall name the individual who shall be the agent of the joint venture or partnership authorized to sign all necessary documents for the joint venture or partnership, and to act in all matters relative to the contract resulting from the joint venture or partnership.

If Bidder is an **INDIVIDUAL**, his signature shall be placed on such documents.

All signatures must be in ink. Facsimile signatures are not acceptable. Unsigned bids may be returned as non-responsive.

#### 6. MODIFICATIONS

Any Bidder who wishes to make modifications to a bid already received by the District must withdraw the bid in order to do so. Withdrawals must be made in accordance with the terms and conditions of this solicitation. See Instruction to Bidders 3, "Withdrawal of Bid". All modifications must be made in ink, properly initialed by bidder's authorized representative, executed, and submitted in the same form and manner as the original bid. It is the responsibility of the bidder to ensure that modified or withdrawn bids are resubmitted before the time set forth for the opening of bids.

#### 7. EXAMINATION OF EQUIPMENT, FACILITIES AND CONTRACT DOCUMENTS

All Bidders shall, at their own expense and prior to submitting their bid, examine the Bid Documents; familiarize themselves with all Federal, State and local laws, ordinances, rules, regulations and codes affecting the performance of the Contract, and determine the character, qualities and quantities of the work to be performed. The submission of a Bid shall be incontrovertible evidence that the Bidder has complied with all the requirements of this provision.

The Bidder is also responsible for knowing and obtaining, if necessary, the prevailing wage rates and other relevant cost factors, all Federal, State and local laws, ordinances, rules, regulations, codes, and statutes affecting the performance of the work, and any permits and licenses required for the work.

#### 8. CLARIFICATION OF DOCUMENTS

If there is any doubt as to the true meaning of any part of the solicitation or contract documents, or if you believe there are any discrepancies or omissions in the specifications, submit a written request for an interpretation or correction to the District Purchasing Department, Mr. Thomas Finley, Senior Buyer at (949) 580-3255, FAX (949) 454-1384. The bidder submitting this request shall be responsible for its prompt delivery. Request must be received at least five (5) days prior to scheduled bid opening.

Any interpretation or correction of the solicitation or Contract documents will be made only by written addendum issued by the District Assistant Superintendent of Business or his agent on behalf of the Governing Board. A copy of such addendum will be mailed, faxed, or delivered to each contractor receiving a set of the contract documents. If discrepancies or conflicts in the specifications are not covered by addenda, bidder shall include in the bid the method and materials resulting in the highest bid.

No person is authorized to make any oral interpretation of any provision in the solicitation or contract documents, nor shall any oral interpretation be binding on the District. All questions addressed will be covered by written addendum and provided to all prospective bidders.

#### 9. WITHDRAWAL OF BIDS

Any bid may be withdrawn, either personally, by written request, or by telegraphic or facsimile request provided that the request to withdraw is duly authorized and signed by the bidder and that the request was received prior to the scheduled closing time for receipt of bids. The bid

security for bids withdrawn prior to the scheduled closing time for receipt of bids, in accordance with this paragraph, shall be returned upon demand.

#### 10. BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. **HOWEVER**, a person, firm, or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a proposal or quoting prices to other bidders or making a prime proposal.

#### 11. AWARD OF CONTRACT

This bid will result in award of a formal contract by action of the Governing Board. The award of the contract will be to the lowest responsible bidder from among those bidders responsive to the call for bids **UNLESS OTHERWISE SPECIFIED IN THE SPECIAL PROVISIONS.**

In the event an award is made to bidder, and such bidder fails, or refuses, to execute the contract and provide the required documents within ten (10) days after notification of the award of the contract to bidder, the District may award the contract to the next lowest bidder or reject all bids. **SUCH FAILURE BY THE BIDDER MAY RESULT IN FORFEITURE OF THE BID SECURITY.**

The District reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding.

If two identical low bids are received from responsible bidders, the District will determine which bid will be accepted pursuant to Public Contract Code Section 20117.

#### 12. ALTERNATE BIDS

If alternate bids are called for, the award will be in accordance with Special Provisions.

#### 13. COMPETENCY OF BIDDERS

The District intends to award contracts only to those bidders that it considers responsible enough to perform the contract. In order to determine responsibility, the District reserves the right to conduct any investigations it deems necessary. The District may consider the organization, financial condition, experience, facilities, performance under other contracts, and industry reputation of both the bidder and any subcontractors in determining responsibility. The District may also consider the costs, maintenance considerations, performance data, and guarantees of any equipment and/or materials offered under the bid.

Each bidder must submit a statement of recent experience in the type of work being contracted on the form entitled "Information Required of Bidder." **A COPY OF THIS FORM IS INCLUDED IN THIS SOLICITATION AND MUST BE SUBMITTED WITH THE BID. FAILURE TO SUBMIT THIS FORM WITH THE BID MAY RESULT IN REJECTION OF THE BID.**

#### 14. WORKERS' COMPENSATION

In accordance with the provisions of Section 3700 of the Labor Code, the successful bidder as contractor shall secure the payment of compensation to all employees. Contractor shall sign and file with District the "Certificate of Worker's Compensation" prior to performing the work under this contract. **THIS FORM IS INCLUDED IN THE BID PACKAGE AND MUST BE**

**SUBMITTED WITH THE BID. FAILURE TO SUBMIT THIS WITH THE BID MAY RESULT IN REJECTION OF THE BID.**

15. CONTRACTOR'S LICENSE

If, at the time the bids are awarded, bidder is not licensed as a distributor of fuel products, such bid will not be considered.

16. PREFERENCE FOR MATERIALS

The District does not intend that specifications for bids shall be drafted in such a manner as to limit the bidding, directly or indirectly, to any one specific concern, product or service except in those instances where the product or service is designated to match others already in use. If the specifications call for a designated material, product, or service by specific brand or trade name, followed by the words "or equal," bidders may furnish any equal material, product or service. **The bidder assumes responsibility for proving that product or service offered are equal to those specified, and the bidder will be responsible for furnishing any samples or other information required by the District. All data substantiating an "or equal" bid must be submitted with the bid package.**

In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the District, it may list only one.

17. SURETY QUALIFICATIONS

Bidders shall ensure all surety companies have a minimum rating of "A, A-, with an FSC of XV," as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey 08858. Only California admitted surety insurers will be acceptable for the issuance of bonds. (Code of Civil Procedure Section 995.310) District shall verify status of the surety by one of the following ways: 1) printing out information from the website of the California Department of Insurance confirming surety is an admitted surety insurer and attaching it to the bond, or 2) obtaining a certificate from the county clerk for the county in which the District is located that confirms the surety is an admitted surety insurer and attaching it to the bond.

Any admitted surety insurer who cannot satisfy the minimum rating specified above, but who satisfies the following requirements set forth in Code of Civil Procedure Section 995.660 shall be accepted and approved for the issuance of bonds:

- a) These must be on file in the office of the county clerk, for the county in which the District is located, an unrevoked appointment, power of attorney, bylaws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer authorizing the person who executed the bond to do so for and on behalf of the insurer within ten (10) calendar days of the insurer's receipt of a request to submit such document from the District, and an original or certified copy of the document must be submitted to the District.
- b) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner must be submitted to the District within ten (10) calendar days of the insurer's receipt of a request to submit such document from the District.
- c) A certificate from the clerk of the county that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, and in the event it has, whether



renewed authority has been granted must be submitted to District within ten (10) calendar days of the insurer's receipt of a request to submit such document from the District.

d) Copies of the insurer's most recent annual statement and quarterly statement filed with the California Department of Insurance must be submitted to the District within ten (10) calendar days of the insurer's receipt of a request to submit the statements.

**FAILURE TO SUBMIT THE ABOVE INFORMATION MAY RESULT IN A DETERMINATION OF NON-RESPONSIVENESS AND MAY RESULT IN REJECTION OF THE BID.**

18. DRUG-FREE WORKPLACE CERTIFICATION

Pursuant to Government Code Sections 8350 et seq., the successful bidder will be required to execute a Drug-Free Workplace Certificate prior to execution of the agreement. The contractor will be required to take positive measures outlined in the certificate in order to insure the presence of a drug-free workplace. Failure to abide with the conditions set forth in the Drug-Free Workplace Act could result in penalties including termination of the agreement or suspension of payment thereunder. **THIS FORM IS INCLUDED IN THE BID PACKAGE AND MUST BE SUBMITTED WITH THE BID. FAILURE TO SUBMIT THIS WITH THE BID MAY RESULT IN REJECTION OF THE BID AS NON RESPONSIVE.**

19. ANTI-DISCRIMINATION

It is the policy of the District that in connection with all work performed under contracts, there is no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age or marital status. The bidder agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the bidder agrees to require like compliance by any subcontractors.

20. NON-COLLUSION CERTIFICATION

**A NON-COLLUSION AFFIDAVIT MUST BE EXECUTED AND SUBMITTED WITH THE PROPOSAL. THE CERTIFICATE IS INCLUDED AS PART OF THIS PROPOSAL PACKAGE. FAILURE TO SUBMIT THIS FORM WITH YOUR PROPOSAL MAY RESULT IN REJECTION OF THE BID.**

21. PROHIBITED INTERESTS

No official of District who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving this contract, shall become directly or indirectly interested financially in this contract or in any part thereof. Bidder shall receive no compensation and shall repay District for any compensation received by bidder hereunder, should bidder aid, abet or knowingly participate in violation of this article.

22. TIME PERIOD OF PRICE QUOTATION

All prices are to be quoted firm for a period of ninety (90) days.

23. ASSIGNMENT OF CLAIMS

The successful bidder agrees not to assign, transfer, convey, sublet or otherwise dispose of the items which he may be awarded, or any right accruing thereunder, title or interest therein, funds

to be received hereunder, or any power to execute the same without the consent in writing of the School District. Notice is hereby given that the District will not honor any assignment made by the vendor unless consent in writing, as indicated above, has been given.

24. DELIVERY CHARGES/ADDITIONAL FEES

Bids are sought which are priced F.O.B. Destination. You must include any transportation, delivery charges and pump charges in your bid price. All environmental fees (all products) and lead prevention fees (on gasoline products) must be included where applicable in the above or below OPIS.

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25. STATUS OF CONTRACTOR

Contractor is and shall at all time be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District and Contractor or any of Contractor's agents or employees. Contractor assumes exclusively the responsibility for acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents and employees, shall not be entitled to any rights or privileges of District employees and shall not be considered in any manner to be District employees.

26. DUTY TO PROVIDE FIT WORKERS

Contractor shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article.

## **SPECIAL PROVISIONS**

### **Bid #08-21**

#### **Gasoline and Diesel Fuel**

#### **1. SCOPE**

This bid is for the furnishing and delivery of 87 Octane Unleaded Gasoline and Low Sulfur Diesel Fuel to existing above ground storage tanks (AST's) 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 2012. Contract will be effective upon approval and will expire on December 31, 2012. The contract may be renewed for two (2) additional years in one (1) year increments if mutually agreed upon by District and Contractor. Total contract term not to exceed 3 years. 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. The District shall grant, upon written request, a price adjustment to compensate for inflation at the beginning of each contract year. This adjustment must be requested prior to October 31st of each year for the upcoming renewal year. The adjustment will be effective upon renewal of the contract and will not exceed the percentage of change in the Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County areas for the period ending October 31 of the prior contract renewal year. This percentage will be applied to the gasoline and diesel fuel as bid.

#### **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.

Contractor shall provide the Saddleback Valley Unified School District with a yearly consumption report for each product indicating the level of participation by each school district.

#### **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 total of both line items on the Bid Form. **Both line items on the Bid Form will be added together. The total will be used to evaluate the low bidder only.** The District reserves the right to reject any or all bids, or to waive any irregularities in the bids or in the bidding process.

#### 6. SUBCONTRACTORS

If a subcontractor is required, the contractor shall list the name, address, telephone, and fax number of each subcontractor who performs work, renders service, fabricates or installs a portion of the work in an amount in excess of one-half of one percent of the prime contractors total bid PCC 4104. Subcontractors listed cannot be substituted except according to the conditions and procedures specified in PCC 4107.

#### 7. PRICES

Fuel pricing shall be bid as cents above/below OPIS (Oil Price Information Service) rack/terminal daily average for the Los Angeles area "unbranded". Contractor will be required to provide with each invoice, a copy of the OPIS 10:00AM posted price showing the unbranded daily average for the delivery date for which District is being invoiced.

Where the prices are called for on the Bid Form, the prices shall include all costs required to perform the work, including overhead, profits, services, insurance, transportation charges, pump charges, and any and all other applicable costs, except taxes and fees. The bid prices shall also exclude any and all California States sales or use taxes and Federal Superfund, spill fees, AB 32 fees or applicable taxes. These taxes are intentionally excluded from the Bid Form for the purpose of price comparison only, but will be itemized, as required, at invoicing.

Prices for fuel are maximum for each term of the contract. In the event of a price decline, or, should contractor sell the same product under similar quantity and delivery conditions to the State of California or any County, Municipality, District or Agency of the State of California, at prices below those specified herein, such lower prices are to be immediately extended to the District.

#### 8. DELIVERY POINT:

All quoted prices listed on the Bid Form must include all freight, transportation of product to destination, and pump charges. Delivery is to be made to the bus yard at the Saddleback Valley Unified School District 25631 Peter Hartman Way, Mission Viejo, CA 92691

#### 9. DELIVERY AND PERFORMANCE

Delivery and Performance shall be made as authorized by purchase order and referencing this bid. The contractor shall furnish products specified in the bid during the period of the contract at the contract prices allowed and in effect at time of the order.

Contractor will be required to make deliveries at the time specified in vehicles suitable for the purpose intended and said vehicles shall be equipped as required by applicable laws, rules, regulations, with all components such as connectors and hoses of the proper size, strength, length, pumps etc., necessary to successfully complete delivery. All delivery vehicles and

trailers must have accurate metering equipment to enable District personnel to verify quantities delivered.

Vendor awarded this contract shall deliver fuel products within twenty- four (24) hours from the time the order is placed. The District reserves the right to order from a vendor of choice for those items which cannot be delivered F.O.B. to our School District within twenty-four (24) hours by the successful bidder, and vendor shall be responsible for any additional costs that result due to his failure to deliver in a timely manner. Delivery to other ordering agencies is at their discretion.

Vendor shall be liable for any damage or citations that may be incurred as a result of any spills or accidents. In addition, the District reserves the right to cancel the contract of any vendor or carrier who delivers in a negligent manner or who causes a spill while delivering.

The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the work under this Contract and shall take all necessary measures and be responsible for the proper care and protection of materials delivered and work performed.

Vendor shall have fuel storage, loading terminal, and metered pumps, all within Southern California and have access to a fleet of tanker trucks in sufficient quantities for successful 24 hour delivery service to all agencies utilizing this within the Los Angeles-Riverside-Orange Counties.

#### 10. STANDING TIME

The District shall be entitled to standing time for the purpose of dispensing fuel at no charge (i.e., the District will not incur any additional charges for the truck or drivers time while gasoline or diesel are being delivered and pumped in at the District site.

#### 11. ALLOCATIONS

In the event the Contractor's supply of awarded items is reduced for reasons beyond his control to a level which prevents the supply of District's requirements in full, the Contractor agrees to supply District no less than a proportionate share delivered to similar accounts, unless federal regulations require otherwise. If such reduction occurs, District reserves the right to cancel all or part of the contract without prejudice to either party, by giving the contractor thirty (30) days written notification.

#### 12. NO QUARANTEE TO MINIMUM/MAXIMUM QUANTITY

The District does not guarantee that a minimum or maximum amount will be purchased. The District will not consider a bid to be responsive to this solicitation if a minimum quantity purchase is required by the vendor.

#### 13. BILLINGS, DISCOUNTS AND PAYMENTS

Contractor will bill in accordance with the instructions noted above under pricing. All delivery tickets for Saddleback Valley Unified School District must be signed by a Saddleback Valley Unified School District representative. Discounts for prompt payment are encouraged and may be offered to individual ordering agencies. Prompt payment discounts will not, however, be considered in evaluating bids. Payments will be made within thirty (30) days after receipt of product in acceptable condition, or receipt of an acceptable, correct invoice, whichever is later. All payments are subject to routine processing times or those indicated on the purchase order of

the ordering agencies. All invoices for fuel must be submitted with a copy of the OPIS report showing the Los Angeles area rack/terminal unbranded daily average rate for the day of delivery to the District for reconciliation purposes. Invoices and payments shall be for net gallons received by the District.

#### 14. USAGE REPORTS

The Supplier will be required to maintain a list of those entities that purchase product under this contract. This list shall report quantities purchased and dollars spent and shall be provided to the agent of the Saddleback Valley Unified School District within 10 days of their request.

#### 15. INSPECTION AND ACCEPTANCE

Inspection and acceptance of all items shall be at destination. Items found to be defective or not in accordance with the bid specifications shall be replaced by Contractor at no cost to the participating entities. Failure to replace items not meeting the bid specifications and/or defective items shall be considered sufficient cause for default action.

#### 16. TAX AND FEES

The District is exempt from the payment of Federal and State Excise and Transportation taxes, so such taxes must not be included on invoices. All applicable State Sales Taxes, Use Taxes, and California Oil Spill Recovery Fees, AB32 fees, shall be itemized and added to each invoice

#### 17. INDEMNITY

The Contractor shall indemnify and hold harmless the District, its officers, agents, and employees from every claim or demand made, and every liability, loss, damages, or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Liability for damages for (1) death or bodily injury to persons; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising under either 1 or 2 above, sustained by the Contractor upon or in connection with the work called for in this Agreement, except for liability resulting from the sole negligence, or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District, and except for liability resulting from the active negligence of the District.

(b) Any injury to or death of persons or damage to property caused by any act, neglect, default of the Contractor, or any person, firm, or corporation employed by the Contractor, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation, including the District, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs either on or off school District property, if the liability arose from the negligence or willful misconduct of anyone employed by the Contractor, either directly or by independent contract, and not by the active negligence of the District.

(c) The Contractor, at Contractor's own expense, cost, and risk shall defend: any and all actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

(d) The Contractor shall include with bid Public Liability Insurance Coverage Verification and a Worker's Compensation Coverage Verification (form included).

18. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Contractor shall, at Contractor's sole cost and expense, provide for and maintain in force and effect, from the commencement of services until expiration of this Contract, a policy or policies of insurance covering Contractor's services, and furnish to DISTRICT a certificate of insurance evidencing all coverages and endorsements required hereunder.

Comprehensive General Liability Insurance for injuries including accidental death, to any one person in an amount not less than and Subject to the same limit for each person on account of one accident, in an amount not less than	<u>\$ 1,000,000.00</u>          <u>\$ 1,000,000.00</u>
Broad Form Property Damage Insurance in an amount not less than	<u>\$ 1,000,000.00</u>
Contractual Liability Insurance in an amount not less than	<u>\$ 1,000,000.00</u>
Comprehensive Automobile Liability Insurance covering the use of all owned, non-owned and hired vehicles with combined bodily injury and property damage in an amount not less than	<u>\$ 1,000,000.00</u>
Product & Completed Operations Liability	<u>\$ 1,000,000.00</u>
Statutory Workers' Compensation Insurance in accordance with Sections 3700 and 3800 of the Labor Code of the State of California	
An endorsement to said policy(s) naming DISTRICT as an additional insured while rendering services under this Contract	

A thirty (30) day written notice to DISTRICT of cancellation or reduction in coverage.

#### 19. WARRANTIES AND GUARANTEES

Contractor expressly warrants that the goods/services covered in this contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, 3) fit for the particular purpose for which they are intended.

#### 20. HAZARDOUS CHEMICAL/MSDS SHEETS

The contractor shall have available, and shall furnish to the District upon request, material Safety Data Sheets for each hazardous substance and all chemical products provided in this bid and used in the performance of this contract. The provision of the MSDS must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The MSDS for each substance must be sent to the place of shipment or provision of goods and services, and a copy must also be sent to the District Maintenance and Operations Department, at 25631 Peter A. Hartman Way, Mission Viejo, CA 92691.

#### 21. COMPLIANCE WITH CODE

All materials and equipment used or supplied shall conform to all Federal, State and County Safety and Health Codes, regulations and requirements.

#### 22. ANTI-DISCRIMINATION

It is the policy of the District that in connection with all work performed under contracts, there be no discrimination by any prospective or active employee engaged in the work because of race, color, ancestry, natural origin, religious creed, sex, age or marital status. The Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1410, and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by any subcontractors employed on the work by such Contractor.

#### 23. STATE AUDIT

Pursuant to and in accordance with Section 10520 -10536 of the California Government Code, the parties agree that all books, records and files shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this contract. This provision shall apply to all grants, assignments, leases and subcontracts, if any, hereunder.

#### 24. CLAYTON/CARTWRIGHT ACTS

In submitting this bid, the Contractor offers and agrees that if the bid is accepted, it will assign to District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business & Professions Code Section 16700 et seq.) arising from purchase of goods, materials, or services by the Contractor for sale to the District pursuant to the bid. Such assignment shall be made and become effective at the time the District tenders final payment.

#### 25. COMPLIANCE WITH STATUTES AND REGULATIONS

(a) Each and every provision of law and clause required by law to be inserted in the 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 correctly inserted, then upon application of either party the contract shall forthwith be physically amended to make such insertion or correction. The contract documents are complimentary, and what is called for by any shall be as binding as if called for by all.



(b) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules regulations and orders of the United States, and of any state or political subdivision thereof, including laws and regulations pertaining to labor, wages, hours, and other conditions of employment, and applicable price ceilings if any. 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. Failure of the District to insist on the strict performance of the terms, conditions, and agreements of this contract shall not constitute or be construed as a waiver or relinquishment of the Buyer's rights thereafter to enforce strict compliance with any such terms, conditions or agreements but the same shall continue in full force and effect.

#### 26. NON-ASBESTOS CERTIFICATION

Bidder must complete the enclosed Non-Asbestos certification form and must return this form with their bid. Failure to do so may result in the bid being deemed non-responsive.

#### 27. ALCOHOLIC BEVERAGE AND TOBACCO FREE CAMPUS POLICY

Bidder must complete the Alcoholic Beverage and Tobacco Free Campus Policy Certificate enclosed herein and must return this form with their bid. Failure to do so may result in the bid being deemed non-responsive.

#### 28. ALTERNATE BIDS

This project does not call for alternate bids.

#### 29. CHANGES

The product desired is defined in this original contract and in each order issued against it. Any changes to what is requested must be issued and approved by the District in advance of delivery. Supplying product without coverage by a written order shall be at the sole risk of the contractor and may result in non-payment.

#### 30. DISPUTES

Except as otherwise provided in this contract, prior to and during the period of performance of the contract, any dispute between the parties arising out of the solicitation or during the performance of this contract which is not disposed of by "agreement" shall be decided by the District, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the District shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the District a written appeal. The decision of the District, on such an appeal, shall be final and conclusive, subject to any legal remedy that may be available under the laws of the State of California to the aggrieved party to further review such decision. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. If a dispute arises during performance of the contract and said dispute is pending a final decision hereunder, the Contractor shall proceed with due diligence in the performance of the contract and in accordance with the District's decision.

#### 31. DISTRICT'S RIGHT TO TERMINATE CONTRACT

If the Contractor refuses or fails to deliver product or to perform the required services with such diligence as will insure its complete delivery within the time specified or any extension thereof, or if the Contractor should file a petition for relief as a debtor, or should relief be ordered against Contractor as a debtor, under Title 11 of the United States Code, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account

of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, or if Contractor should otherwise be guilty of a substantial violation of any provision of this Contract, then District may, without prejudice to any other right or remedy, serve written notice upon Contractor and its surety if applicable, of District's intention to terminate this Contract, such notice to contain the reasons for such intention to terminate, and unless within ten (10) days after the service of such notice such condition shall cease or such violation shall cease and arrangements satisfactory to District for the correction thereof be made, this Contract shall upon the expiration of said ten (10) days, cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until performance is completed.

In the event of termination under this paragraph, the cost to the District to secure other product exceeds the cost of providing the service pursuant to this Contract; the excess cost shall be charged to and collected from said Contractor and/or his surety as the case may be.

The District may terminate this contract without cause in whole or in part if it determines such termination to be in its best interest. The District will be liable only for payments, product and services received and accepted prior to effective date of the termination. The termination shall be effective upon thirty (30) days written notice to the Contractor.

### 32. NO WAIVER

The failure of the District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred 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 in the future.

### 33. PRECEDENCE

In the event of conflict between contract terms and conditions, special provisions, specifications, plans and drawings and instructions to bidders, the following order of precedence shall prevail: Specifications, Special Provisions, Plans and Drawings, Instructions to Bidders, Terms and Conditions.

DESIGNATION OF SUBCONTRACTORS  
(FORM MUST BE SUBMITTED WITH THE BID)

In compliance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et. seq.) and any amendments thereof, each bidder shall set forth below: (a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the bidder (prime Contractor) in or about the construction of the work or improvement to be performed under this contract or a subcontractor licensed by the State of California who, under subcontract to the bidder (prime contractor), specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent of the bidder's (prime contractor's) total bid and (b) the portion of the work which will be done by each subcontractor. The bidder (prime contractor) shall list only one subcontractor for each such portion as is defined by the bidder (prime contractor) in this bid.

If a bidder (prime contractor) fails to specify a subcontractor or if a bidder (prime contractor) specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of one percent of the bidder's (prime contractor's) total bid, bidder shall be deemed to have agreed that bidder is fully qualified to perform that portion, and that bidder alone shall perform that portion.

No bidder (prime contractor) whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontractor to be voluntarily assigned or transferred or allow it to be performed by any one other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the bidder's (prime contractor's) total bid as to which the original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the bidder's (prime contractor's) total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, only after a finding reduced to writing as a public record of the District awarding this contract setting forth the facts constituting the emergency or necessity.

Type of trade,  
labor, or  
service

Name & License I  
of Subcontractor  
License Expiration  
Date

Complete Address  
(Name of City  
Not Sufficient) and  
Telephone No.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Name of Bidder)

\_\_\_\_\_

\_\_\_\_\_  
(Signature of Bidder)

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_, as Principal, and, \_\_\_\_\_, as Surety, are held and firmly bound unto the Saddleback Valley Unified School District, hereinafter called the DISTRICT, in the sum of two thousand (\$2000.00) dollars to the said DISTRICT for the work described below for the payment of which sum in lawful money of the United States, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that whereas the Principal has submitted the accompanying bid dated \_\_\_\_\_ 20\_\_\_\_\_, for:

**Bid #11-04  
Gasoline and Diesel Fuel**

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within ninety (90) days after said opening; and if the Principal is awarded the contract, and shall within the period specified therefore, or, if no period be specified, within ten (10) working days after the award of the contract, enter into a written contract with the DISTRICT, in accordance with the bid as accepted and give bonds with good and sufficient surety or sureties, as may be required for the faithful performance and proper fulfillment of such contract and for the payment for labor and materials used for the performance of the contract, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by the DISTRICT and judgment is recovered, the Surety shall pay all costs incurred by the DISTRICT in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, the parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and duly signed by its undersigned authorized representative

(Corporate Seal of  
Principal, if Principal  
Corporation)

\_\_\_\_\_  
Principal or (Proper Name of Bidder)

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

(Corporate Seal  
of Surety)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

(Attach Attorney in fact Certificates  
and required acknowledgements)

**BID FORM (REVISED)**

**Bid #11-04  
Gasoline and Diesel Fuel**

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

From: \_\_\_\_\_  
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 #11-04, 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 \_\_\_\_\_ Addendum 2 \_\_\_\_\_ Addendum 3 \_\_\_\_\_

**Where the prices are called for on the Bid Form, the prices shall include all costs required to perform the work, including overhead, profits, services, insurance, transportation charges, pump charges, and any and all other applicable costs, except taxes and fees. The bid prices shall also exclude any and all California States sales or use taxes and Federal Superfund, spill fees, AB 32 fees or applicable taxes. These taxes are intentionally excluded from the Bid Form for the purpose of price comparison only, but will be applied, as required, at invoicing.**

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

The District has two (2) 8,000 gallon above ground fuel tanks (AST's). Refills will average approximately 4000 gallons for each tank. Line items 1 & 2 will be added together and the "TOTAL" will be used to evaluate the low bidder only.

1. **Diesel Fuel, Ultra Low Sulfur Diesel, (15 parts per million or less of sulfur)**  
(Estimated yearly consumption 120,000 gallons)

\$ \_\_\_\_\_ Cents/Gal above/below OPIS  
daily average for unbranded suppliers exclusive of all taxes, fees.

2. **Gasoline, 87 Octane, CARFG-eth (5.7%) Unleaded**  
(Estimated yearly consumption 72,000 gallons)

\$ \_\_\_\_\_ Cents/Gal above/below OPIS  
daily average for unbranded suppliers exclusive of all taxes, fees.

**TOTAL** (Line 1 + Line 2): \$ \_\_\_\_\_  
(USED TO EVALUATE LOW BIDDER ONLY)

The District intends to award the contract at its January 2012 Board meeting to that responsible bidder which submits the lowest responsive bid for the products listed.

The undersigned hereby declares that all of the representations of this bid are made under penalty of perjury under the laws of the State of California.

Individual Bidder Name: \_\_\_\_\_  
Signed by: \_\_\_\_\_  
Print Name \_\_\_\_\_  
Date: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

\*\*\*\*\*

(Bidder must submit with bid certifications signed by authorized officers of each of the parties to joint venture or partnership)

Partnership Name: \_\_\_\_\_  
Signed by: \_\_\_\_\_  
(Partner)  
Print Name \_\_\_\_\_  
Date: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
\_\_\_\_\_  
Other Partners: \_\_\_\_\_  
Telephone: \_\_\_\_\_

.....

Corporation Name: \_\_\_\_\_



(a \_\_\_\_\_ Corporation)

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Signed by: \_\_\_\_\_

(President)

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Signed by: \_\_\_\_\_

(Secretary)

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone \_\_\_\_\_

(Seal and Attest)

\*\*\*\*\*

Joint Venture Name: \_\_\_\_\_

Signed by: \_\_\_\_\_

(Joint Venturer)

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Other Parties to Joint Venture:

If an Individual: \_\_\_\_\_  
(Signed)

Print Name \_\_\_\_\_

Doing Business As: \_\_\_\_\_

-----  
If a Partnership: \_\_\_\_\_

Signed by: \_\_\_\_\_  
(Partner)

Print Name \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Seal and Attest)

## INFORMATION REQUIRED OF BIDDER

The Bidder shall furnish all the following information accurately and completely. Failure to comply with this requirement will render the bid informal and may cause its rejection. Additional sheets may be attached if necessary. "You" or "your" as used herein-refers to the bidder's firm and any of its owner, officers, directors, shareholders, parties or principals. District has discretion to request additional information.

(1) Firm name and address:

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(2) Telephone:

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(3) Type of firm: (check one)

Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_

(4) Distributors License No. \_\_\_\_\_

Name of license holder \_\_\_\_\_

(5) Have you or any of your principals ever been licensed under a different name or different license number? (Response must include information pertaining to principals, association outside of the firm bidding this Project). \_\_\_\_\_ If Yes, give name and license number.

(6) Names and titles of all principles of the firm:

_____	_____
_____	_____
_____	_____

(7) Number of years as a supplier in this type of business:

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(8) Has your firm or any of its principals defaulted so as to cause a loss to a surety? (Response must include information pertaining to principals, association outside of the firm bidding this Project). \_\_\_\_\_ If the answer is "Yes," give dates, names and address of surety and details.

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(9) Have you or any of your principals been assessed damages in association with any product supplied in the past three years? (Response must include information pertaining to principals' association outside of the firm bidding this Project). \_\_\_\_\_ . If "Yes", explain:

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(10) Have you or any of your principals been in litigation or arbitration or dispute of any kind on a question or questions relating to any contracts during the past three years? (Response must include information pertaining to principals' association outside of the firm bidding this Project). \_\_\_\_\_ If "Yes", provide name of public agency and details of the dispute.

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(11) Have you or any of your principals ever failed to perform under a contract in the last three years? (Response must include information pertaining to principals' association outside of the firm bidding this Project). \_\_\_\_\_ . If so, give owner's name and details:

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(12) Do you now or have you ever had any direct or indirect business, financial, or other connection with any official, employee or consultant of the District? \_\_\_\_\_  
If so, please elaborate:

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(13) Additional information required:

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(14) Vendor must have fuel storage, loading terminal, metered pumps, etc. within Southern California and have access to a fleet of tanker trucks. Does your facility have all these requirements?

If not, list items your facility is lacking:

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List of Reference's –

1. Name : \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_

2. Name : \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_

Contact Person: \_\_\_\_\_

3. Name: \_\_\_\_\_  
Address and Telephone: \_\_\_\_\_  
Contact Person: \_\_\_\_\_

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing Information Required of Bidder, pages 1 through 3, is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, at \_\_\_\_\_ State of California. (City, County)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**NON-COLLUSION AFFIDAVIT TO BE EXECUTED  
BY BIDDER AND SUBMITTED WITH BID**

(Public Contract Code Section 7106)

State of California                    )  
  )  
County of \_\_\_\_\_ )        ss.  
\_\_\_\_\_ )

\_\_\_\_\_ being first duly sworn, deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

\_\_\_\_\_  
Signature of Bidder

**NOTARY FOR NONCOLLUSION AFFIDAVIT**

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL OF NOTARY)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Typed Name of Notary

**WORKERS' COMPENSATION**  
**(FORM MUST BE SUBMITTED WITH BID)**

Labor Code Section 3700.

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.
- (c) For any county, city, city and county, municipal corporation, public district, public agency or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers, compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state that, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702 of the Labor Code.

I am aware of the provisions of Labor Code Section 3700, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
Name of the Contractor

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(In accordance with Section 1860 and 1861 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)

**DRUG-FREE WORKPLACE CERTIFICATION**  
**(FORM MUST BE SUBMITTED WITH THE BID)**

This Drug-Free Workplace Certification is required pursuant to Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract for the procurement of any property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract, and the contractor may be subject to debarment from future contracting, if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- b) establishing a drug-free awareness program to inform employees about all of the following:
  - 1) The dangers of drug abuse in the workplace;
  - 2) The person's or organization's policy of maintaining a drug-free workplace;
  - 3) The availability of drug counseling, rehabilitation and employee-assistance programs;
  - 4) The penalties that may be imposed upon employees for drug abuse violations;
- c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the DISTRICT determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements Of Section 8355, that the contract awarded herein is subject to suspension of payments, termination, or both. I further understand that, should I violate the terms of the Drug-Free workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 et seq.



I acknowledge that I am aware of the provisions of Government Code Section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

\_\_\_\_\_  
NAME OF CONTRACTOR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CONTRACTOR'S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE AND  
TOBACCO-FREE CAMPUS POLICY**

The CONTRACTOR agrees that it will abide by and implement the DISTRICT'S Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on DISTRICT owned or leased buildings, on DISTRICT property and in DISTRICT vehicles.

CONTRACTOR NAME: \_\_\_\_\_

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

**AGREEMENT**

(To be completed after award)

THIS AGREEMENT, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ in the County of Orange, State of California, by and between \_\_\_\_\_ SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT, hereinafter referred to as "DISTRICT" or "OWNER, " and \_\_\_\_\_, 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 #11-04, 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)

7. If Contractor is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of \_\_\_\_\_ and that \_\_\_\_\_ whose title is \_\_\_\_\_ 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

By: \_\_\_\_\_

\_\_\_\_\_  
(Signature of DISTRICT)

\_\_\_\_\_  
(Signature of CONTRACTOR)

Geri Partida  
Assistant Superintendent,  
Business Services

Print Name

\_\_\_\_\_  
Contractor's License Nbr. & Tax ID Nbr.

DATE: \_\_\_\_\_

(CORPORATE SEAL OF CONTRACTOR,  
if Corporation)

**CONTRACTOR'S CERTIFICATE REGARDING**  
**NON-ASBESTOS CONTAINING MATERIAL**

Certification for: Bid #11-04, Gasoline and Diesel Fuel

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We hereby certify that no Asbestos, or Asbestos containing materials shall be used in this project or in any tools, devices, clothing or equipment for the completion of this project.

The contractor further certifies that all employees have been instructed with respect to the standards, hazards, risks and liabilities of Asbestos contained materials.

Asbestos and/or asbestos containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite.

Any or all material containing greater than one-tenth of one percent asbestos shall be defined as asbestos containing material.

Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy. The costs of any such tests shall be paid for by the contractor if the material is found to contain asbestos.

All materials found to contain asbestos or material installed with asbestos containing equipment will be immediately rejected and this work will be removed at no additional cost to the District.

---

DATE

NAME OF CONTRACTOR

By: \_\_\_\_\_

---

Print Name

---

Title

## FAITHFUL PERFORMANCE BOND

### FAITHFUL PERFORMANCE KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Saddleback Valley Unified School District of Orange County, California (hereinafter referred to as "DISTRICT"), awarded to \_\_\_\_\_ (hereinafter referred to as the "Contractor/Principal") the contract for the work described as follows:

WHEREAS, said Contractor/Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract which contract is incorporated herein by reference; **Bid # 11-04, Gasoline and Diesel Fuel.**

NOW, THEREFORE, we the undersigned Contractor, as Principal, and Surety are held and firmly bound to the DISTRICT in the sum of \_\_\_\_\_ Dollars, \$\_\_\_\_\_. This amount being not less than one hundred percent (100%) of the total amount payable by the DISTRICT under the terms of the contract awarded by the DISTRICT to the Contractor/Principal), lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bonded Contractor/Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the said contract and any alteration thereof, made as therein provided, including, but not limited to, the provisions regarding contract duration and liquidated damages, all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and affect.

As a condition precedent to the satisfactory completion of the contract, the above obligation shall hold good for a period of one (1) year(s) after the acceptance of the work by DISTRICT, during which time if Contractor/Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the DISTRICT from loss or damage made evident during the period of one (1) year (s) from the date of completion of the work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligation of Surety hereunder shall continue so long as any obligation of Contractor remains.

Whenever Contractor/Principal shall be, and is declared by the DISTRICT to be, in default under the contract, the DISTRICT having performed the DISTRICT'S obligations thereunder, the Surety shall promptly remedy the default, or shall promptly:

1. Complete the contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a contract between such bidder and the DISTRICT, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the

amount set forth above. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor/Principal by the DISTRICT under the contract and any modifications thereto, less the amount previously properly paid by the DISTRICT to the Contractor/Principal.

Surety expressly agrees that the DISTRICT may reject any contractor or subcontractor that may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

Surety shall not utilize Contractor/Principal in completing the contract nor shall Surety accept a bid from Contractor/Principal for completion of the work if the DISTRICT, when declaring the Contractor/Principal in default, notifies Surety of the DISTRICT 's objection to Contractor's/Principals further participation in the completion of the work.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the DISTRICT named herein or the successors or assigns of the DISTRICT. Any suit under this bond must be instituted within the applicable statute of limitations period.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alternation or modification of the Project documents, or of the work to be performed thereunder, shall in any way affect its obligations on this bond; and it does hereby waive notice of any change, extension of time, alteration or modification of the Project documents or of work to be performed thereunder.

Contractor/Principal, and Surety agree that if the DISTRICT is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay DISTRICT's reasonable attorney's fees incurred, with or without suit, in addition to the above amount.

IN WITNESS WHEREOF, we have hereunto set our hands and seals

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Contractor/Principal

(Seal)

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Print Name and Title

SEAL AND NOTARY  
ACKNOWLEDGEMENT  
SURETY

(Seal)

(Mailing Address and Telephone  
No.of Surety)

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# EXHIBIT “B”



1240 E. Wardlow Road

Long Beach

July 18, 2012

CA 90807

City of Long Beach  
Business Relations Bureau  
Purchasing Division  
333 W. Ocean Blvd., 7<sup>th</sup> Floor  
Long Beach, CA 90802

Dear Mr. Sund,

Phone 562.427.6565

Merrimac Energy Group a woman owned business located in Long Beach, California will provide the City of Long Beach a contract for the purchase of gasoline and diesel fuel based on their contract with Saddleback Unified School District.

Toll Free 800.900.4081

**Merrimac Energy Group will provide the following rates for unleaded 87-octane and premium unleaded 91-octane gasoline to the City of Long Beach (Rates based on date of delivery)**

0-2,499 gallons +.075 + OPIS daily average, LA for date of delivery

Fax 562.427.6556

2,500-5,999 gallons +.055 + OPIS daily average, LA for date of delivery

6,000 gallons and above -.02407 + OPIS daily average, LA for date of delivery

**Merrimac Energy Group will provide the following rates for diesel fuel to the City of Long Beach (Rates based on date of delivery)**

0-2,499 gallons +.080 + OPIS daily, average, LA for date of delivery

www.merrimacenergy.net

2,500 – 5,999 gallons +.060 + OPIS daily, average, LA for date of delivery

6,000 gallons and above .000 + OPIS daily average, LA for date of delivery

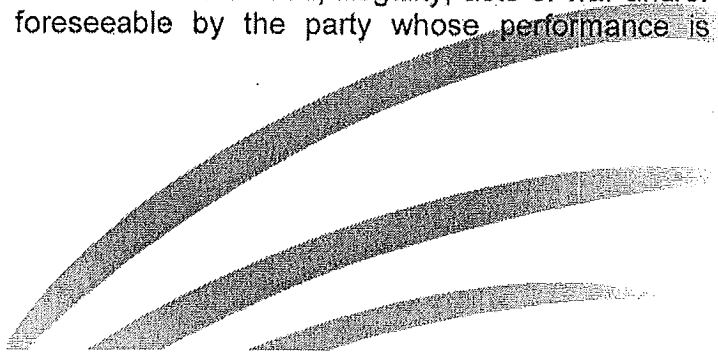


Additional requirements:

- All applicable taxes will be billed as separate line items.
- Terms for payment are 20 days from delivery.
- To accommodate timely processing of invoices we will email or fax invoices, delivery tickets and a copy of OPIS. Original invoice and delivery ticket with a copy of the OPIS will also be sent in the mail. Email addresses and fax numbers to be provided to Merrimac from the City of Long Beach.
- Merrimac requests that we receive an email each morning with all City tank readings for each site and the current levels that they have in each tank.
- Merrimac requests a list of active sites. Site #, location, truck type, gated/no gate, above ground, underground and any other pertinent information.
- Fuel orders will be placed by the City working together with Merrimac to improve the system of ordering and delivery of fuel which will be beneficial to both parties.
- If for any reason, site is unable to hold fuel that was scheduled a fee of \$250 will be charged.
- All split deliveries will be charged a \$75 split charge fee. If the delivery has more than one stop, each stop after the first will be charged \$75 for each stop.
- Off loading time allowed at each stop is 45 minutes, after that demurrage will be charged at \$25 per quarter hour.
- If the tank requires a pump a \$55 pump fee will be charged.

**Force Majeure**

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



## Reports

Contractor shall maintain records of all fuel volumes delivered to the City and shall provide the City with the weekly, monthly, quarterly and annual reports of all the purchases, itemized by date delivered, quantity in gallons, type of fuel, the effective price, all taxes and fees. Additional reports may be requested by the City.

Reports shall be submitted within 10 days of request made by the City. Reports shall be submitted via email and hard copy.

## Bill of Lading/Delivery Tickets

A Bill of Lading or delivery ticket stating the delivery date, the refinery of origin, the location and quantity delivered shall accompany each fuel delivery. In order to facilitate processing of invoices, each Bill of Lading shall have a unique number, and shall also reference the assigned purchase order release (not the blanket purchase order number that starts BPLB).

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

## PAYMENT REQUIREMENTS

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

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

**THE CITY WILL GENERATE PAYMENT AGAINST THE WEEKLY SUMMARY INVOICE.**

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

The City will inspect summary invoice costs, after which the City shall process the weekly summary invoice for payment in due course of payments. Payment is due (20) days after date the summary invoice.

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

Sincerely,



Lori Anderson  
Merrimac Energy Group



## ATTACHMENT "B"

### CONTRACTOR'S RESPONSIBILITIES

The Contractor shall make deliveries or provide delivery of fuel only upon receipt of orders issued by City of Long Beach authorized representatives, at Contractor's Plant (in the case of City-owned carriers) or to designated locations within the City of Long Beach. The City reserves the right to specify in said orders whether the deliveries are required in tank wagon or truck/trailer loads. Additionally, orders must be accepted for truck/trailer split product loads (unleaded/diesel). Deliveries shall be made between the hours of 8:00 a.m. and 2:00 p.m., Monday through Friday, unless specifically instructed otherwise. The City requires that delivery be made within twenty-four (24) hours after notification.

Both parties agree to work together cooperatively to improve the system of ordering and delivery of fuel, which is efficient and beneficial to both parties.

In the event the parties are not able to agree the matter shall be referred to Business Relations Manager to resolve any issue.

Fuel orders will be placed by the City to take advantage of volume discounts. City will also place orders Monday through Friday and if necessary emergencies and weekends and holidays. Deliveries will be made at locations listed on Attachment C

Deliveries shall be made by owned or contract motor carriers. Carriage vehicles shall be fully equipped, in good mechanical condition and appearance, always bearing the correct placard identification of fuel being delivered. Hoses and all coupler fittings shall be tight when in use. Product that leaks from hoses or coupler connections shall be cleaned up and removed by Contractor, including product in spill containers.

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

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

## ATTACHMENT "B"

Contractor shall provide on request by the City of Long Beach documentation of all training (hazmat certification, licenses required to transport cargo, in-house training for off and on loading of cargo), safety records (spills, DMV or DOT citations), and maintenance records and certifications on (tanks, trucks, and trailers including any regulatory violations or citations) for all employees and equipment associated with the work under this agreement.

### **FUEL DELIVERY LOCATIONS**

Current delivery locations are listed on Attachment "C". The City reserves the right to delete or add locations for services within the City's boundaries under the same terms and conditions as stated herein.

### **REGULATIONS**

Any contract resulting from this bid shall be subject to allocation orders of the United States of America and/or the State of California. All fuels furnished shall comply with Federal, State, County and local rules, regulations or law. Contractor shall prorate available volumes in accordance with the priority levels established by proposed Federal and State of California emergency fuel rationing plans. It is understood that the City's obligation to purchase fuels from the Contractor will cease if the use of any of such fuels violate any of the above requirements.

### **GASOLINE**

Gasoline shall be CARB-approved Unleaded gasoline. The anti-knock index for regular unleaded gasoline shall not be less than 87 octane and not less than 91 octane for premium-grade. Gasoline shall also be additized in accordance with California Code of Regulations Title 13, Section 2257 to approved "keep clean" levels.

Contractor shall provide oxygenated gasoline during the control period for the Long Beach area. The City of Long Beach prefers Ether blended gasoline during oxygenated season.

### **Ultra Low Sulfur (ULS) Diesel #2**

Contractor shall provide CARB-approved #2 ULS diesel fuel and CARB-approved #2 ULS bio-diesel fuel upon request.

ULSD is characterized by low sulfur content (maximum 15 parts per million) and a number of other properties, such as high cetane number (minimum 57), which leads to lower emissions.

## ATTACHMENT "B"

### **Force Majeure**

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

### **Bill of Lading/Delivery Tickets**

A Bill of Lading or delivery ticket stating the delivery date, the refinery of origin, the location and quantity delivered shall accompany each fuel delivery. In order to facilitate processing of invoices, each Bill of Lading shall have a unique number, and shall also reference the assigned purchase order release (not the blanket purchase order number that starts BPLB).

Incomplete/incorrect invoices shall not be processed until corrected. All Invoices and payments shall be for gross gallons delivered. Any delivery modifications and credits shall be clearly stated on the invoice and shall be explained in the invoice documents.

### **PAYMENT REQUIREMENTS – NET 20**

**BILLING INSTRUCTIONS:** Contractor shall bill the City for each delivery of fuel on a separate invoice. Invoices shall have unique numbers and shall clearly state the delivery date, ship to address, and Bill of Lading number. Invoices and the corresponding delivery tickets shall be submitted within one (1) working day of delivery date.

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



ATTACHMENT C

CITY OF LONG BEACH - DELIVERY LOCATIONS

Site	Site Address	Fuel Type	Truck Type	Tank Capacity	Fuel Storage Type	Delivery Access Information	Delivery Access Information
	<b>FLEET SERVICES SITES</b>						
11	160 E Market St	Diesel	TW	4,000	UST	Gated	Gated, 7 days a week 8 AM to 4 PM
11	160 E Market St	Diesel	TW	2,000	UST	Gated	Gated, 7 days a week between 8 AM & 4 PM
13	2475 Adriatic Ave	Diesel	TW	1,000	UST	Gated	Gated, 7 days a week between 8 AM & 4 PM
14	5200 Eliot St.	Unleaded	TT or TW	12,000	UST	No Gate	No Gate, 24/7 access
14	5200 Eliot St.	Diesel	TT or TW	12,000	UST	No Gate	No Gate, 24/7 access
16	2890 E. Wardlow Rd.	Diesel	TW	1,000	UST	Gated	Gated, Airport access Deliver no later than 4 PM
23	334 W Broadway	Diesel	TT or TW	5,000	UST -Generator	No Gate	Access 7:00 to 4:00
29	4105 Donald Douglas Dr	Diesel	TT or TW	500	UST -Generator	Gated	By appointment 570-1251
29	4105 Donald Douglas Dr	Diesel	TT or TW	3,000	UST -Generator	Gated	By appointment 570-1251
34	400 W. Broadway	Unleaded	TW	15,000	UST	Gated	Gated, Mon - Thu between 6 AM and no later than 3 PM
34	400 W. Broadway	Premium	TW	15,000	UST	Gated	Gated, Mon - Thu between 6 AM and no later than 3 PM
34	400 W. Broadway	Diesel	TW	6,000	UST	Gated	Gated, Mon - Thu between 6 AM and no later than 3 PM
35	4891 Atlantic Av.	Unleaded	TW	10,000	UST	Gated	Gated, 6:30 AM no later than 2 PM
35	4891 Atlantic Av.	Diesel	TW	2,000	UST	Gated	Gated, 6:30 AM no later than 2 PM
38	2400 E. Spring St.	Unleaded	TW or TT	20,000	UST	No Gate	No Gate, 24/7 access
38	2400 E. Spring St.	Diesel	TW or TT	20,000	UST	No Gate	No Gate, 24/7 access
39	1835 Santa Fe Av.	Unleaded	TW	12,000	UST	Gated	Gated, 6:30 AM no later than 2 PM
59	2249 Argonne Av.	Unleaded	TW or TT	5,000	UST	No Gate	No Gate, 24/7 access, except during training exercises.
59	2249 Argonne Av.	Diesel	TW or TT	20,000	UST	No Gate	No Gate, 24/7 access, except during training exercises.
12	1199 E Artesia Blvd	Unleaded	TW	2,000	AST	Upcoming Site - Gated	
12	1199 E Artesia Blvd	Diesel	TW	2,000	AST	Upcoming Site - Gated	
54	4320 Olympic Plaza	Diesel	TW	2,000	AST	Upcoming Site - No Gate	
	<b>HARBOR DEPT SITES</b>						
75	925 Harbor Plaza	Unleaded	TW or TT	3,900	UST	Gated	8:00 am to 2:00 pm
76	1400 W. Broadway	Unleaded	TW or TT	6,000	UST	Gated	8:00 am to 2:00 pm
76	1400 W. Broadway	Diesel	TW or TT	2,000	UST	Gated	8:00 am to 2:00 pm
	<b>WATER DEPT. SITES</b>						
WD-1	2950 Redondo Ave.	Diesel	Bobtail	8,000	UST	Gated	7:00 am to 3:00 pm
WD-2	1731 E. 33rd St.	Unleaded	TT/TW/BT	15,000	UST	Gated	6:30 am to 3:30 pm
WD-3	1731 E. 33rd St.	Diesel	TT/TW/BT	10,000	UST	Gated	6:30 am to 3:30 pm