

CITY OF MANHATTAN BEACH GENERAL SERVICES AGREEMENT

THIS GENERAL SERVICES AGREEMENT ("Agreement") is made and entered into as of December 5, 2018, by and between the City Of Manhattan Beach, a California municipal corporation ("City") and Merrimac Petroleum, Inc. dba Merrimac Energy Group, a California corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services.

A. Contractor shall perform the work and provide all labor, materials, equipment and services (hereinafter, the "Work" or "Services") in a good and workmanlike manner for the project identified as Bulk Fuel Purchase, as described in this Agreement, the Scope of Work attached hereto as Exhibit A and incorporated herein by this reference, and Contractor's Proposal dated September 24, 2018, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the incorporated documents, the terms of this Agreement shall control.

B. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Mary Hazelrigg, President (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

2. Term. The term of this Agreement shall be from the Effective Date through December 4 , 2021, unless sooner terminated as provided in Section 11 of this Agreement. Additionally, there shall be two (1) one-year options to renew the Agreement with the mutual written consent of both parties. If not renewed prior to the anniversary date, this Agreement may continue on a month-to-month basis under the same terms and conditions for a maximum period not to exceed six months or until renewed, terminated or awarded to a new contractor, whichever is less.

3. Time of Performance.

A. Contractor will not perform any work under this Agreement until:

1) Contractor furnishes proof of insurance as required under Section 13 of this Agreement, and City's Risk Manager has approved the proof of insurance; and

2) City gives Contractor a written notice to proceed (NTP).

B. Should Contractor begin work in advance of receiving a written NTP, any such services are at Contractor's own risk.

C. Contractor shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

4. Time. Time is of the essence in this Agreement.

5. Force Majeure. Neither City nor Contractor shall be responsible for delays in performance under this Agreement due to causes beyond its control, including but not limited to acts of God, acts of public enemies, acts of the government, fires, floods or other casualty, epidemics, earthquakes, labor stoppages or slowdowns, freight embargoes, unusually severe weather, and supplier delays due to such causes. Neither economic nor market conditions nor the financial condition of either party shall be considered a cause to excuse delay pursuant to this Section. Each party shall notify the other promptly in writing of each such excusable delay, its cause and its expected delay, and shall upon request update such notice.

6. Compensation.

A. In consideration of the services rendered hereunder, City shall pay Contractor a fee not to exceed two hundred and ninety thousand dollars (\$290,000.00), in accordance with the prices as submitted in Exhibit B.

B. City shall not reimburse Contractor for any expenses incurred in the performance of this Agreement.

7. Payments. Contractor shall submit to City an invoice on a monthly basis for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period, hourly rates charged, if applicable, fee for task or job, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten business days of receipt of any disputed invoice amounts.

City shall make payments within 30 days after receipt of an undisputed and properly submitted payment request from Contractor. City shall return to Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven days after receipt, and shall explain in writing the reason(s) why the payment request is not proper.

8. Taxes. Contractor shall calculate payment for all sales, unemployment, and other taxes imposed by local, state and federal law. These payments are included in the total amounts in Exhibit B.

9. Audit. City or its representative shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its billings to City as a condition precedent to any payment to Contractor. Contractor will promptly furnish documents requested by City. Additionally, Contractor shall be subject to State Auditor examination and audit at the request of City or as part of any audit of City, for a period of three years after final payment under this Agreement.

10. Unresolved Disputes. In the event of any dispute or controversy with City over any matter whatsoever, Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. Manhattan Beach Municipal Code Chapter 2.56 ("Matters Requiring Filing of Claims") shall govern the procedures of the claim process, and these provisions are incorporated herein by this reference.

11. Termination. This Agreement may be canceled by City at any time with or without cause and without penalty upon 30 days' written notice. This Agreement may be canceled by Contractor at any time with or without cause and without penalty upon 90 days' written notice. In the event of termination, all finished or unfinished work and other materials shall, at the option of City, be delivered to and become the property of City. In the event of termination without fault of Contractor, City shall pay Contractor for all services satisfactorily rendered prior to date of termination, and such payment shall be in full satisfaction of all services rendered hereunder.

12. Indemnification.

A. Indemnities.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

13. Insurance Requirements.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Commercial Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 combined single limit for owned, non-owned and hired vehicles with endorsement to delete the pollution exclusion and on MCS-90 endorsement as required by the Federal Motor Carrier Safety Regulations.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance (statutory limit) with \$1,000,000.00 Employment Practices Liability coverage and Waiver of Subrogation.

4) Pollution Liability Insurance in the amount of \$2,000,000.00.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required

under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 12 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

14. Familiarity with Work.

A. By executing this Agreement, Contractor represents that it:

- 1) Has thoroughly investigated and considered the scope of services to be performed;
- 2) Has carefully considered how the services should be performed
- 3) Understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

B. If services involve work upon any site, Contractor warrants that it has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing the services hereunder. Should Contractor discover any latent or unknown conditions that may materially affect the performance of the services, Contractor will immediately inform City of such fact and will not proceed except at Contractor's own risk until written instructions are received from City.

15. Independent Contractor. Contractor is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as herein set forth; and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to City in such a manner and to such persons, firms, or corporations as Contractor wishes except as expressly provided in this Agreement. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City, bind City in any manner, or otherwise act on behalf of City as an agent. Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees, are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and its employees. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any compensation due to Contractor under this Agreement any amount due to City from Contractor as a result of its failure to promptly pay to City any reimbursement or indemnification arising under this Section.

16. Workers' Compensation Insurance. California Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code 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."

17. Nondiscriminatory Employment. Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, gender, sex, sexual orientation, age or condition of disability. Contractor understands and agrees that it is bound by and will comply with the nondiscrimination mandates of all statutes and local ordinances and regulations.

18. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time Contractor performs its services pursuant to this Agreement.

19. Contractor's Representations. Contractor represents, covenants and agrees that: a) Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in this Agreement; b) there are no obligations, commitments, or impediments of any kind that will limit or prevent its full performance under this Agreement; c) there is no litigation pending against Contractor, and Contractor is not the subject of any criminal investigation or proceeding; and d) to Contractor's actual knowledge, neither Contractor nor its personnel have been convicted of a felony.

20. Warranty. Contractor warrants all Work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees to warranty labor for ninety (90) days, and parts, materials, and workmanship for a period of one year (or the period of time specified elsewhere in this Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance. Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and perform with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of City, City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

21. Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents

and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the City Representative or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

22. Confidentiality and Release of Information.

A. All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Representative.

B. Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Representative or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

C. If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

D. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right

to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

23. Conflicts of Interest. Contractor agrees not to accept any employment or representation during the term of this Agreement or within 12 months after completion of the work under this Agreement which is or may likely make Contractor "financially interested," as provided in Government Code Sections 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to this Agreement.

24. Third Party Claims. City shall have full authority to compromise or otherwise settle any claim relating to this Agreement at any time. City shall timely notify Contractor of the receipt of any third-party claim relating to the Agreement. City shall be entitled to recover its reasonable costs incurred in providing this notice.

25. Non-Assignability; Subcontracting. Contractor shall not assign or transfer any interest in this Agreement nor any part thereof, whether by assignment or novation, without City's prior written consent. Any purported assignment without written consent shall be null, void, and of no effect; and Contractor shall hold harmless, defend and indemnify City and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from or relating to any unauthorized assignment.

26. Applicable Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to this Agreement shall be in the Los Angeles County Superior Court.

27. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

28. Titles. The titles used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it.

29. Authority. The persons executing this Agreement on behalf of Contractor warrants and represents that they have the authority to execute this Agreement on behalf of Contractor and have the authority to bind Contractor to the performance of its obligations hereunder.

30. Incorporation by Reference. All Exhibits attached hereto are incorporated herein by reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

31. Entire Agreement. This Agreement, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between City and Contractor. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be modified or amended, nor any provision or breach waived, except in a writing signed by both parties which expressly refers to this Agreement.

32. Construction. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of this Agreement.

33. Non-waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

34. Notice. Except as otherwise required by law, any notice or other communication authorized or required by this Agreement shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during Contractor's or City's regular business hours or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses listed below, or at such other address as one party may notify the other:

To City:

Gwen Eng
Purchasing Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

To Contractor:

Mary Hazelrigg
President
Merrimac Energy Group
3738 Bayer Ave., Suite 204
Long Beach, CA 90808

35. Counterparts. This Agreement may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

36. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed the within Agreement the day and year first above written.

[signatures begin on next page]

CITY OF MANHATTAN BEACH

CONTRACTOR

Merrimac Energy Group

By: _____
Bruce Moe, City Manager

By: Mary Hazelrigg
Printed Name: Mary Hazelrigg

ATTEST:

Title: President

By: _____
Liza Tamura, City Clerk

APPROVED AS TO FORM:

By: Quinn M. Barrow
Quinn M. Barrow, City Attorney

APPROVED AS TO CONTENT:

By: Steve Charelian
Steve Charelian, Interim Finance
Director

EXHIBIT A

Scope of Work

SPECIFICATIONS

Gasoline shall meet the performance requirements described in the most current American Society for Testing and Materials (ASTM) standards for automotive spark-ignition fuel, and shall be Reformulated Gasoline (RFG) as required by the U.S. Clean Air Act and the California Air Resources Board (CARB) Reformulated gasoline (CaRFG) program, as well as for biodiesel fuel.

A. Fuels shall be identified as follows:

- 1) Regular Unleaded, 87-Octane*
- 2) Mid-Grade Unleaded, 89-Octane*
- 3) Clear CARB B10 Biodiesel, 45-Cetane Rating minimum

*The octane ratings are exclusive of any additives and are subject to the following specifications:

B. Gasoline characteristics:

- 1) Octane Rating shall be determined using (R+M)/2 methods
- 2) All fuels shall be blended for climatic conditions and local requirements (i.e. summer/winter blends).
- 3) Gasoline fuel shall have a maximum shelf life of one (1) year. All gasoline fuel shall be guaranteed against any damage to equipment resulting from the proper use of the product.

C. B10 Biodiesel: Biodiesel fuel shall consist of clear CARB diesel combined with ten (10) percent virgin oil feedstock with a minimum Cetane rating of 45, and must meet ASTM specification for pure biodiesel (ASTM D 6751) before blending with petro diesel. The B10 blend shall meet properties for ASTM D975, Standard Specification for Diesel Fuel Oils or the ASTM specification.

EXHIBIT B
Contractor's Proposal

[attached]

3738 Boyer Avenue #204



September 24, 2018

Long Beach

City of Manhattan Beach
City Clerk's Office
CA 90808
1400 Highland Avenue
Manhattan Beach, CA 90266
Bid # 1185-19 Bulk Fuel

To Whom It May Concern:

Phone 562.420.6000 Please find enclosed the bid from the City's incumbent fuel supplier, Merrimac Petroleum, Inc. dba Merrimac Energy Group. I've also included a spill management program should one occur, but we are proud to say Merrimac has not experience a fuel spill at any time in our 30 year history.

Please advise if you have any questions we may answer for you.

Toll Free 800.900.4081 If awarded, we will provide contractual evidence of our continued ability to supply the various fuels outlined in your bid documents, and we hope that our record of on time deliveries over our many years of supplying fuel to the City also substantiates our level of ability and commitment to meet your requirements.

Fax 562.420.6005 We look forward to hearing back from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary Hazelrigg", is written over a faint, larger version of the Merrimac Energy Group logo.

Mary Hazelrigg, President

www.merrimacenergy.net
Merrimac Energy Group





City of Manhattan Beach

General Services

Phone: (310) 802-5568
FAX: (310) 802-5590
TDD: (310) 546-3501

September 11, 2018
Addendum #1
Bid #1185-19
Bulk Fuel

To All Prospective Bidders:

Please note the following questions and answers when submitting your response:

- Q1. Regarding pricing method, is it for the morning or evening report?
A1. The pricing method will be based off the morning report.
- Q2. Will renewable diesel proposals be considered for award, given the State of California's initiatives to adopt renewable energy fuel that is proven to reduce air emissions, including the reduction of greenhouse gas emissions by 80% which are caused by burning fossil fuels?
A2. The City has opted to use B10 biodiesel fuel for its current diesel-powered vehicles. Consequently, other types will not be considered at this time as noted on page 5 of the bid documents
- Q3. What is the start, expiration, and award date?
A3. The start date for the contract is November/December 2018, based on City Council approval. The expiration date is 3 years from the start date with potentially (2) two one-year renewals. The award date is October/November 2018 based on City Council meetings which are held on the first and third Tuesdays of every month.
- Q4. Who is your current supplier?
A4. The most recent bulk fuel provider is Merrimac Energy, with a winning bid as follows: 87-octane unleaded gasoline at -0.0328, 89-octane unleaded gasoline at -0.0396 and 10% Biodiesel at 0.0377.

See below for insurance requirements for the Bulk Fuel bid:

INSURANCE

The successful Contractor shall obtain comprehensive commercial general liability insurance for bodily injury and property damage, as well as State of California workers compensation insurance (statutory limit). **Insurance is not required at the time of the bid, but shall be provided within 5 business days after award of contract. The following items checked shall be required of the successful bidder only in the form of a Certificate of Insurance:**

- ☒ Commercial General Liability Insurance in the amount of \$2,000,000 per occurrence with the City named as an additional insured (endorsement required), primary/non-contributory endorsement, and Waiver of Subrogation.

X Commercial Automobile Insurance in the amount of \$1,000,000 combined single limit for owned, non-owned and hired vehicles with endorsement to delete the pollution exclusion and an MCS-90 endorsement as required by the Federal Motor Carrier Safety Regulations.

X Workers' Compensation Insurance (statutory limit) with \$1,000,000 Employment Practices Liability coverage and Waiver of Subrogation.

X Pollution Liability Insurance in the amount of \$2,000,000

Subcontractors

The Contractor shall ensure that subcontractors maintain insurance that complies with the requirements stated herein.

Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of any agreement resulting from this RFP, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under any agreement resulting from this RFP, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising from any agreement resulting from this RFP.

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of any agreement resulting from this RFP. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or

threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of any agreement resulting from this RFP, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to any agreement resulting from this RFP. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of any agreement resulting from this RFP.

Please note that only those subscribed to eNews will automatically receive any bid addenda that might be released. If you have any further questions, please contact me at dleonard@citymb.info or at 310-802-5569.

Sincerely,

Dru Leonard

Dru Leonard,
General Services Coordinator

This Addendum #1 must be acknowledged by returning it with your proposal.
All other terms, conditions and specifications remain unchanged for Bid # 1185 19.

Name of Company: Merrimac Petroleum, Inc. dba Merrimac Energy Group

Signature: _____





City of Manhattan Beach

General Services

Phone: (310) 802-5568
FAX: (310) 802-5590
TDD: (310) 546-3501

September 19, 2018
Addendum #2
Bid #1185-19
Bulk Fuel

To All Prospective Bidders:

Please note the following questions and answers when submitting your response:

Q1. Can you verify the Bio tank is an underground tank and not an above ground tank?

A1. The City of Manhattan Beach does not have a separate Bio fuel tank at this time. The City currently uses the diesel fuel tank for the B10 biodiesel fuel.

Please note that only those subscribed to eNews will automatically receive any bid addenda that might be released. If you have any further questions, please contact me at dleonard@citymb.info or at 310-802-5569.

Sincerely,

Dru Leonard

Dru Leonard,
General Services Coordinator

This Addendum #2 must be acknowledged by returning it with your proposal.
All other terms, conditions and specifications remain unchanged for Bid # 1185-19.

Name of Company: Merrimac Petroleum, Inc. dba Merrimac Energy Group

Signature: _____

Mary Hazelrigg
Mary Hazelrigg, President

THIS PAGE MUST BE SUBMITTED WITH BID

City of Manhattan Beach
Invitation to Bid # 1185-19 Bulk Fuel

SIGNATURE DOCUMENT

The undersigned has read, understands and agrees to all terms, conditions, requirements and specifications stated herein. By signing this document, I attest that I am authorized to contractually bind the company listed, and will meet the bid requirement as specified if awarded a contract.

Exceptions: Itemize any exception to terms, conditions, requirements, or specifications or price schedule stated herein. Use additional sheet of paper if more space is required.

(Bidders should note that any exceptions taken from the stated terms and/or specifications may be cause for their submittal to be deemed "non-responsive", risking the rejection of their submittal.)

Name of Company or Firm: Merrimac Petroleum, Inc. dba Merrimac Energy Group

Address: 3738 Bayer Avenue Suite 204

City/ST/Zip Code: Long Beach, CA 90808

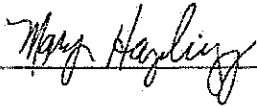
Telephone: 562-420-6000

Email: mihazellrigg@merrimacenergy.net

Mary Hazellrigg

Printed Name of Person Authorized to Contractually Bind the Company

Title: President/ Founder

Signature: 

x

Approved for Use 08/24/18

THIS PAGE MUST BE SUBMITTED WITH BID

City of Manhattan Beach
Invitation to Bid # 1185-19, Bulk Fuel

NO BID

If your company or firm has no interest to bid, kindly indicate your reason(s) by placing a check mark or an "x" in the first column of each of the reason(s) listed and return to the City.

	Reason	Comments
	Specifications too restrictive (please indicate which part)	
	Pricing mechanism not Acceptable	
	Insufficient Fuel Quantities	
	Other (please specify)	
	Do you have any suggestions for Improving the Bidding methodology?	

Company Name: Merrimac Energy Group

Address/City/Zip: 3738 Bayer Avenue #204 Long Beach, CA 90808

Telephone: 562-420-6000 24/7/365

Printed Name: Mary Hazelrigg

Signature: 

Please mail this sheet to: City Clerk's Office, 1400 Highland Avenue, Manhattan Beach, CA 90266,
and enter the Bid Number on the outside of the envelope (Bid #1185-19, Bulk Fuel).

Thank you!

QUESTIONNAIRE

BIDDER QUESTIONNAIRE	RESPONSE
1. Company name	Merrimac Energy Group dba Merrimac Energy Group
2. Address	3738 Bayer Avenue Ste. 204
3. City/State/Zip Code	Long Beach, CA 90808
4. What is the name of the contact person?	Mary Hazelrigg
5. Business Telephone	562/420-6000 24/7/365
6. Email	mhazelrigg@merrimacenergy.net
7. How long has your company been in business?	since 1988, going on 31 years in business
8. Is your company public or private?	private
9. Is your company owned by a larger company?	no
10. Has your company ever filed for bankruptcy under its current name or another name?	no
11. If so, provide names and outcomes:	
11. List any suites, liens or judgments that have been filed against your company and any current liability if applicable:	none
12. What is your protocol for handling a fuel spill should it occur during a delivery?	Every truck has a spill kit should an incident occur. All carriers follow the requirements of CFR 49 Section 130. I have attached confidential policies and procedures manual that every driver has on board and every carrier follows when hired. Merrimac has been fortunate to never have a spill while making a delivery to either an end user account or a retail facility in its 30 years in business

Mary Hazelrigg

REFERENCES

Provide three references where similar work of similar size and nature is currently in process or recently completed. Include name of firm, telephone, and name of contract person. The City reserves the right to investigate references not furnished by a Bidder in its response to this ITB. Submission of a bid shall constitute authorization for the City to make all reasonable investigations necessary to evaluate the Bidder's qualifications.

REFERENCES	RESPONSE
Name of your company:	Merrimac Petroleum, Inc. dba Merrimac Energy Group
1. Firm	City of San Buena Ventura
2. Address	501 Poli Street Room 102 P.O. Box 99
3. City/State/Zip Code	Ventura, CA 93002
4. Customer Contact Person	Jennifer Yates Purchasing Supervisor
5. Contact Telephone No.	805-658-4710
6. Email address	jyates@cityofventura.net
7. Duration of contract	July 1, 2017 through June 2022
1. Firm	City of Los Angeles
2. Address	100 N. 1st Street Room 600
3. City/State/Zip Code	Los Angeles, CA
4. Customer Contact Person	Carlos Benedicto or Jeffrey McKimson
5. Contact Telephone No.	213-978-3784
6. Email address	carlos.benedicto@lacity.org or Jeffrey.McKimson@lacity.org
7. Duration of contract	2009 through 2019 plus possible extension
1. Firm	City of Burbank
2. Address	275 East Olive Avenue P.O. Box 6459
3. City/State/Zip Code	Burbank, CA 91510-6459
4. Customer Contact Person	Paul Herman, Purchasing Manager
5. Contact Telephone No.	818-238-5466
6. Email address	pherman@burbankca.gov
7. Duration of contract	1/2017 through 12/2020

May Hasbun

BID

The price differential mechanism shall be +/- \$0.0000/Gallon (Example: -\$0.0205/gallon) of the OPIS Daily Contract Average Price (branded & unbranded), with CARB, in effect at the time of delivery for the Los Angeles area. The price differential quoted shall include freight charges and margin, but no taxes. All applicable taxes and fees shall be itemized separately on the invoice. Price differential shall remain constant during the term of the contract. The Federal Leaking Underground Storage Tank (LUST) Fee is payable by the City, and shall be itemized along with other taxes and fees on invoices. For bid purposes, however do not include the LUST fee in the "Price Differential" amount.			
Name of your company: Merrimac Petroleum, Inc. dba Merrimac Energy Group			
Description	Estimated Annual Usage (Gallons)	Price differential plus or minus (+/-) in cents per gallon, to a maximum of four decimals	Extension (Col. B x Col. C)
Unleaded Gasoline, 87-octane	48,000	-.089	minus \$4,272 \$0.00
Unleaded Gasoline, 89-octane	36,000	-.099	minus \$3,564. \$0.00
CARB B10 Biodiesel #2 clear	16,000	+.037	plus \$592.00 \$0.00
Total Extended Price \$ (sum of column 4)			minus \$7,244. 00 \$0.00

Merrimac Energy Group

Oil Spill Prevention and Response Plan (49 CFR 130)

INTRODUCTION:

In 49 CFR 130, the Department of Transportation requires that each carrier transporting more than 3,500 gallons of petroleum in a truck or trailer maintain a written Oil Spill Prevention and Response Plan. The plan establishes procedures to respond to a worst-case discharge that may occur during transportation and identifies the personnel, equipment, and agencies available to respond. The Emergency Response Plan addresses similar requirements. The DOT Oil Spill Prevention and Response Plan have been integrated into the ERP and will be reviewed annually.

1. RESPONSES TO SMALL SPILLS

Small spills associated with loading, unloading, and leaks are the most common type of spill from tank trucks. These spills do not require outside assistance from spill contractors or regulatory agencies. Examples include: a release of product out of remote fills or vents; a release that occurred when an unloading hose became disconnected; and a gasket that leaked but was not immediately noticed and corrected.

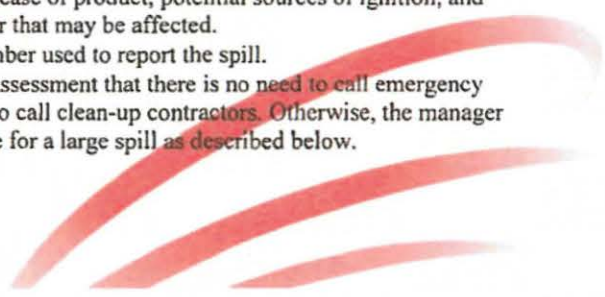
Characteristics of a Small Spill are:

- Amount of product spilled is small
- Source can be easily controlled
- Can be contained on a paved area (not reached a storm drain or public highway)
- Can be completely cleaned by the driver with the spill kit provided on the truck.

Procedures for Driver

- Stop the release of product
- Notify the safety manager who will then assume the role of incident commander.

Procedures for Incident Commander

- Obtain the following information: location of spill, driver name, identification number of truck, product type, estimated volume spilled, potential of further release of product, potential sources of ignition, and nearby bodies of water that may be affected.
 - Record the phone number used to report the spill.
 - Confirm the driver's assessment that there is no need to call emergency response agencies or to call clean-up contractors. Otherwise, the manager will initiate a response for a large spill as described below.
- 

- If the incident is at a service station, the manager will notify the shipper of the spill, so that they may make agency notifications or reports required of the facility owner. If the station is an independent dealer, the supervisor will also notify the station owner.
- Spill reporting forms must be completed and submitted to appropriate persons or agencies.

2. RESPONSES TO LARGE SPILLS

Examples of a large spill are those that can not be stopped such as a truck rollover, a tear in the product tank, or a large tank overflow.

Procedures for Driver

- Do not attempt to stop or contain leak.
- Call 911 or local Fire Department
- Call safety manager or his designate who will then assume the role of Incident Commander.
- Keep the public away from the spill.
- Isolate the spill from sensitive drains or other facilities, assuming this can be done at a large enough distance from the spill to prevent exposure to vapors.

Procedures for Incident Commander

- Obtain all available information on the spill, including location, driver, identification number of the truck, type and amount of contents leakage rate and direction, amount spilled, if known, potential sources of ignition, and whether nearby bodies of water may be affected. Record the phone number used to report the spill.
- Proceed to the spill site and coordinate containment and recovery activities as necessary. Work with the local fire department and other response agencies.
- Arrange for the necessary spill response manpower and equipment to contain and recover the spill.
- Estimate spill volume, if possible.
- Notify state, federal and local agencies as required by regulations, including the US Coast Guard if there is a chance of the spill reaching US navigable waters or shoreline. (A list of these agencies is found in the Emergency Response Plan).
- Notify spill clean-up contractors as listed in the ERP.
- Notify our shipper, terminal, or station owner as required.
- Contact our insurance carrier and convey all facts concerning the incident.
- Fill out a spill report form.
- Arrange for transport of recovered material to an approved disposal facility.

MAXIMUM POTENTIAL DISCHARGE

The complete loss of a full tank truck could create a spill up to 8,800 gallons. Failure of a single compartment could create a spill up to 4,200 gallons, which is the maximum tank truck compartment size.

EMERGENCY CONTACT NOTIFICATION LIST

CHP AND FIRE	911
DEPT. OF TRANSPORTATION (DOT)	800.424.8802
US COAST GUARD (for spills that reach coastal waters)	800.424.8802
CALIFORNIA DEPT OF FISH & GAME (Emergency Response)	916.445.0045
OFFICE OF EMERGENCY SERVICES (OES) (Log OEC incident control number)	800.852.7550
WATER QUALITY BOARD (8am – 5pm Mon-Fri)	
Los Angeles Region	213.576.6600
San Diego Region	858.467.2952
CHEMTREC (only for chemical emergencies)	800.424.9300
<u>SAN DIEGO AREA</u>	
North State Environmental (All Southern California)	909.875.9288
NRC (All Southern California)	800.337.7455
<u>LOS ANGELES AREA</u>	
North State Environmental (All Southern California)	909.875.9288
NRC (All Southern California)	800.337.7455
<u>COLTON AREA</u>	
North State Environmental (All Southern California)	909.875.9288
NRC (All Southern California)	800.337.7455



ENVIRONMENTAL REMEDIATION SERVICE

LOS ANGELES AREA

North State Environmental (All Southern California)	909.875.9288
NRC (All Southern California)	800.337.7455
United Storm Water	626.961.9326
Advanced Cleanup Technologies Inc.	800.334.2284

COLTON AREA

North State Environmental (All Southern California)	909.875.9288
NRC (All Southern California)	800.337.7455
United Storm Water	626.961.9326
Advanced Cleanup Technologies Inc.	800.334.2284

SAN DIEGO AREA

North State Environmental (All Southern California)	909.875.9288
NRC (All Southern California)	800.337.7455
United Storm Water	626.961.9326
Advanced Cleanup Technologies Inc.	800.334.2284



WORKING WITH THE MEDIA

All personnel involved in an incident should understand that the media would be a factor in any emergency situation. Personnel should provide as much information as possible about the situation and what the response team is doing. The media contact should stress concern for the safety of people and the protection of the environment and provide information on what actions will be taken to protect both. The media contact should:

- Attend first to the three P's – **Personnel, Public, & Property**
- Provide an accurate account of the status of the incident and the response to it. This means providing straight facts and emphasizing the positive.
- Inform families of injured personnel first, before releasing their names to the press. Newsmen understand this procedure and should cooperate.
- Make sure the newsmen understand the scope of the emergency as an inexperienced reporter may exaggerate the seriousness of the situation.
- Provide escorts for media personnel if the situation permits observation of operation and if safety is not compromised.
- Explain safety procedures and safeguards that have been established to protect against emergencies. Be sure that terminal personnel are briefed from time to time on what to do in case of an emergency or disaster.
- Government officials will usually investigate. Cooperate fully and be sure they are assisted in every way.

