

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

THIS AGREEMENT FOR DIESEL FUEL SERVICES ("Agreement") is made and entered into this 21st day of June, 2022 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and MERRIMAC PETROLEUM INC., a California corporation DBA MERRIMAC ENERGY GROUP ("Contractor").

RECITALS

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

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

C. The City of Torrance competitively awarded to Contractor a Purchase Order for furnishing fuel to the City of Torrance, Purchase Order No. 2019-00000522 ("Torrance Contract"); and

D. Pursuant to the Torrance Contract, Contractor has agreed to extend the same pricing to the City; and

E. The City desires to "piggyback" onto the pricing set forth in the Torrance Contract, and Contractor consents to such "piggybacking"; and

F. City and Contractor desire to contract for diesel fuel delivery services and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

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

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

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

1.0. SERVICES PROVIDED BY CONTRACTOR

1.1. Scope of Services. Contractor shall provide the services described in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein (the "Services"). Contractor shall provide the Services in accordance with the requirements set forth in Exhibit A.

1.2. Performance to Satisfaction of City. Contractor agrees to perform all Services to the complete satisfaction of City. Evaluations of the work will be done by City's Maintenance Services Manager or his or her designee. If the quality of work is not satisfactory, City in its

discretion has the right to:

- (a) Meet with Contractor to review the quality of the work and resolve the matters of concern;
- (b) Require Contractor to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.3. Compliance with Applicable Law. Contractor warrants that it shall perform the services required by this Agreement in compliance with all applicable federal and state employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other applicable federal, state and local laws and ordinances applicable to the services required under this Agreement. Contractor shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Contractor's performance under this Agreement.

1.4. Non-Discrimination. In performing this Agreement, Contractor shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the California Government Code.

1.5. Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other contractors for services similar to the Services in this Agreement or may have its own employees perform services similar to those Services contemplated by this Agreement.

1.6. Delegation and Assignment. Contractor may not delegate or assign this Agreement, in whole or in part, to any person or entity without the prior written consent of City. Contractor may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Contractor's sole cost and expense.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Contractor shall be paid in accordance with the fee schedule set forth in Exhibit B. Contractor's annual compensation shall not exceed Three Hundred Sixty Thousand Dollars (\$360,000.00).

2.2. Additional Services. Contractor shall not receive compensation for any services provided outside the Scope of Services set forth in this Agreement without amending this Agreement as provided herein. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Contractor may submit invoices to the City for approval on a

progress basis, but no more often than two times a month. Each invoice shall be based on the total of all Contractor's services which have been completed to City's sole satisfaction. City shall pay Contractor's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the Services performed, the date of performance, itemized prices, extended totals and such other information as may be requested by the City.

2.4. Records and Audits. Records of Contractor's Services shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times throughout the term of this Agreement through three (3) years after its termination.

3.0. TIME OF PERFORMANCE

3.1. Commencement of Work. Contractor shall commence providing the Services on July 1, 2022 ("Service Commencement Date"). The Services shall be performed in strict compliance with Exhibit A.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two (2) years from the Service Commencement Date, ending on June 30, 2024, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Contractor. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination.

4.3. Compensation. In the event of termination, City shall pay Contractor for reasonable costs incurred and Services satisfactorily performed up to and including the date of City's written notice of termination.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a

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general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Contractor pursuant to its contract with City; products and completed operations of Contractor; premises owned, occupied or used by Contractor; automobiles owned, leased, hired, or borrowed by Contractor."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Contractor's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Contractor shall provide to City certificates of insurance

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showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting. The insurance provisions contained in this Agreement shall not be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the extent to which Contractor may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Contractor shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Contractor called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Contractor in the performance of this Agreement.

Contractor shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Contractor or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONTRACTOR:

Merrimac Energy Group
1240 E. Wardlow Road
Long Beach, CA 90807
Tel: (562) 427-6565
Attn: Mary Hazelrigg

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 327-7499
Attn: Robert Ryan

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Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

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

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Contractor, its employees, and/or authorized subcontractors, of the services undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Contractor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions

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contained either in the City's specifications or Contractor's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Contractor shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall 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 further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to 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 paragraph.

6.11. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

6.13. Conflict of Interest. Contractor and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this Agreement, including, but not limited to, the Political Reform Act (California Government Code Sections 81000, *et seq.*) and California Government Code Section 1090. During the term of this Agreement, Contractor and its officers, employees, associates and subcontractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or

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subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.14. Prohibited Employment. Contractor will not employ any regular employee of City while this Agreement is in effect.

6.15. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.16. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.17. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.18. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.19. Headings. Headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.20. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.21. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.22. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending

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provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

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

6.25. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

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

CONTRACTOR

Signature

Date: _____

[Name and Title]

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

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APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

APPROVED AS TO CONTENT:

Mike Tucker
Project Manager

Date: _____

DEPARTMENTAL APPROVAL:

Raja Sethuraman
Public Services Director

Date: _____

APPROVED AS TO PURCHASING:

Carol Molina
Finance Director

Date: _____

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EXHIBIT A

SCOPE OF SERVICES

Scope of Services

1. Introduction

- 1.1 Contractor is to provide Diesel Fuel to various City facilities.
- 1.2 Service locations are detailed in Attachment 1. Service locations may be added or deleted and service hours modified at any time. Usage is not guaranteed. Usage figures, if provided, are approximations. Contractor is required to provide Diesel Fuel upon request by the City.

2. Fuel Specifications

- 2.1 CARB #2 Diesel – Red: The same specifications as CARB #2 Diesel – Clear (2.2) except for the red dye & dying process to denote usage for tax-exempt purposes.
- 2.2 CARB #2 Diesel – Clear: All diesel fuel sold for vehicular use in California must meet a 15 ppm maximum sulfur limit (Ultra Low), in addition to meeting all of the current low aromatics CARB diesel specifications. The definition of “vehicular use” in California includes on-highway vehicles and non-road vehicles such as agriculture and construction equipment.

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

3. Contractor Responsibilities

- 3.1 Contractor shall possess all Federal, State and Local permits, licenses and approvals necessary to provide goods/services set forth in this Scope of Services. Any associated fees shall be the responsibility of the Contractor.
- 3.2 Contractor shall provide all transitional interfacing and continual uninterrupted services at the Effective Date.
- 3.3 Contractor shall provide current, applicable, and required Material Safety Data Sheet (MSDS) prior to award of the Agreement, or at any time during the Agreement as requested by City.
- 3.4 Contractor shall be held liable for any damage or criminal/civil citations which may occur as a result of any spills and/or accidents.
- 3.5 Contractor shall perform all deliveries and act in a safe and professional manner, adhering to all required Federal, State, & Local regulations for the handling and supply of Diesel Fuel.
- 3.6 Diesel Fuel must meet current fuel industry laws of Federal, State & local codes, requirements, standards and guidelines, including South Coast Air Quality Management District (SCAQMD); American Society of Testing and Materials (ASTM) laws; Department of Transportation (DOT); Air Resources Board (ARB) regulations, Reid Vapor Pressure (RVP) requirements & regulations for the handling and supply of Diesel Fuel.

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- 3.7 Contractor must commit to delivery as requested, at time stated on accepted orders.
- 3.8 Contractor's delivery trucks must comply with the California Air Resources Board approved/certified Phase II Vapor Recovery Equipment Requirements. Proof of compliance shall be provided to the City upon request.
- 3.9 All drivers/delivery personnel shall be HAZMAT trained and certified in safety measures to prevent accidents endangering City personnel and property. Hazardous Materials shall be clearly marked with the proper shipping name and identification number as required by the Department of Transportation.
- 3.10 Contractor shall be responsible for obtaining fuel reading and managing load inventory as requested by City.
- 3.11 Contractor shall provide, at Contractor's cost, a 24-hour, toll free customer support telephone number and services for responding to all requests/orders for fuel, including telephone coverage on weekdays during normal business hours as well as 24-hour access phone number for emergency situations.
- 3.12 Contractor shall be responsible for all freight/delivery charges.
- 3.13 All deliveries of 4000+ gallons shall have temperature correction adjustments to sixty (60) degrees Fahrenheit based on refinery bill of lading.
- 3.14 Contractor shall perform full delivery of fuel within 48 hours after receipt of City's order. Contractor shall provide a delivery metered ticket for each delivery of fuel; and the metered ticket must be signed and dated, and provided to the City at delivery.
- 3.15 Delivery truck driver shall stick each tank with a fuel tank gauge stick prior to offloading to ensure that adequate fuel storage is available to accept the entire shipment without spillage. Readings shall be taken by the driver prior to unloading fuel and after unloading fuel and shall be recorded on the delivery receipts. Each delivery truck must be equipped with a stick. Driver shall sign the delivery ticket at the time and place of delivery. One copy of each delivery ticket is to be mailed to the City at Costa Mesa Public Services Department-Equipment Maintenance, 77 Fair Drive, Costa Mesa, CA 92626, Attn: Katherine Rivas.
- 3.16 Spillage: The City requires "zero leakage" standard for fuel transfer operations. Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel. Contractor will likewise ensure that all equipment, tools and procedures used are in compliance with all applicable specifications and regulations governing such operations. In the event of leakage or spillage, it shall be the responsibility of the Contractor to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and to the City's satisfaction. All material associated with such clean up shall be removed by the Contractor.
- 3.17 Contractor shall itemize applicable Federal and California fuel surcharges, Federal

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and State Excise Tax, and California State Sales Tax as separate line items when invoicing.

- 3.18 Contractor shall adhere to each City facility/location set delivery hours.
- 3.19 Usage Report: Contractor shall submit usage reports as requested by City within fourteen (14) days of such request. The usage report shall include all information requested by City, in a format specified by City.

4. City Responsibilities

- 4.1 Ordering departments or will coordinate delivery schedules with Contractor and specify details of each delivery location's physical surroundings and/or limitations (i.e. secured & remote locations; no loading dock; narrow, winding or unpaved roads). Depending on the agreed schedule with the department, the Contractor is requested to deliver during off peak hours between 7:00 am and 4:00 pm.
- 4.2 City will work with Contractor on security clearance procedures that may be required for delivery drivers on high security facilities/locations.

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SERVICE LOCATIONS

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THE CITY OF COSTA MESA DIESEL FUEL TANKS

	FACILITY	TANK ID #	ADDRESS	POSITION	CONTENTS	CAPACITY (GALLONS)	ANNUAL USAGE (GALLONS)	MONITORING SYSTEM
1	CITY CORPORATION YARD	1	2310 PLACENTIA AVE	UNDERGROUND	RED DYE DIESEL	2,500	500	VEEDER ROOT TLS 350
2	CITY CORPORATION YARD	2	2310 PLACENTIA AVE	UNDERGROUND	DIESEL	8,000	19,000	VEEDER ROOT TLS 350
3	POLICE GENERATOR	8	99 FAIR DRIVE	ABOVE GROUND	DIESEL	4,000	1,500	
4	FIRE STATION 2	12	800 BAKER STREET	UNDERGROUND	DIESEL	1,000	4,800	TLS 300C
5	FIRE STATION 1	13	2803 Royal Palm	ABOVE GROUND	DIESEL	2,000	10,000	VEEDER ROOT TLS 350R
6	FIRE STATION 5	14	2450 VANGUARD WAY	ABOVE GROUND	DIESEL	1,000	12,500	VEEDER ROOT
7	FIRE STATION 6	15	3350 SAKIOKA DRIVE	UNDERGROUND	DIESEL	1,000	3,000	VEEDER ROOT TLS 300C
8	COMMUNICATIONS GENERATOR	16	99 FAIR DRIVE	ABOVE GROUND	DIESEL	1,000	1,000	
9	CITY HALL GENERATOR	17	77 FAIR DRIVE	ABOVE GROUND	DIESEL	2,000	2,000	

Total Annual Usage = 54,300

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EXHIBIT B FEE SCHEDULE

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Fee Schedule

Brand	Price + or – Daily Oil Price Information Service (OPIS) Newsletter Average Price for the Los Angeles Area
CARB Ultra Low Sulfur Diesel (Clear) – Bulk Deliveries	- \$0.0299
CARB Ultra Low Sulfur Diesel (Clear) – Non-Bulk Deliveries	- \$0.0290
CARB Renewable Diesel – Bulk Deliveries	+ \$0.0491
CARB Renewable Diesel – Non-Bulk Deliveries	+ \$0.0290

The prices set forth herein shall be inclusive of all delivery/unloading/handling charges to all City fuel fill locations.

“Bulk Deliveries” refers to deliveries of >7,600 gallons.

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EXHIBIT C

CITY COUNCIL POLICY 100-5

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SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

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

PURPOSE

It is the purpose of this Policy to:

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

POLICY

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

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

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- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

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- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.