

**INTEGRATION AGREEMENT FOR
HD-5 PROPANE MOTOR FUEL**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its Director of Finance or designee (“Director”), and **Longhorn Propane, L.P.** (“Contractor”), a Texas limited partnership. City and Contractor may be referred to herein collectively as the “Parties”.

WHEREAS, Contractor entered into an agreement with the VIA Metropolitan Transit (“VIA”), a local governmental entity, on or about October 26, 2021, for the delivery of HD-5 Propane Motor Fuel (the “VIA Contract”); and

WHEREAS, State law allows local governmental entities to engage in cooperative purchasing, thereby satisfying the requirements of competitive bidding; and

WHEREAS, VIA and Contractor have agreed to allow City to utilize the prices, terms and conditions of the VIA Contract, as may be modified between Contractor and City by this Agreement;

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. CONTRACT DOCUMENTS

The terms and conditions for performance and payment of compensation for this Agreement are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes, and shall be interpreted in the order of priority as appears below:

- a. This Integration Agreement; and
- b. Via Contract, including all exhibits, attachments and addendums thereto (**Exhibit A**).

II. TERM

The term of this Agreement shall begin on the effective date of the ordinance awarding this Agreement and shall terminate on October 31, 2026.

III. SCOPE OF SERVICES

3.1 VIA Contract. Contractor hereby agrees to provide those goods and services to City as described and specified in the VIA Contract, under the same terms and conditions stated therein, except to the extent modified by this Agreement. The VIA Contract is attached hereto and incorporated herein for all purposes as **Exhibit A**. To the extent of a conflict between the VIA Contract and this Agreement, this Agreement shall control.

3.2 All references in the VIA Contract to VIA Metropolitan Transit, or any acronym therefore, shall be deemed to refer to City, unless clearly inapplicable. All references in the VIA Contract to the VIA Board of Trustees shall be deemed to refer to the San Antonio City Council, unless clearly inapplicable.

3.3 No modifications or amendments to the VIA Contract made after execution of this Agreement, other

than to the term, shall be binding on City, unless expressly agreed to by City by written amendment to this Agreement. Director shall have the authority to execute all such amendments without further action by the San Antonio City Council, subject to and contingent upon appropriation of any necessary funds therefore.

3.4 All services shall be coordinated through the City's Director of Building and Equipment Services Department (BESD), or designee.

3.5 Delivery shall be FOB to City specified fueling locations. Fueling locations are:

3.5.1 Northeast Service Center-10303 Tool Yard, San Antonio, TX 78233 (210) 207-0739

3.5.2 Northwest Service Center- 6939 W. Loop 1604 N., San Antonio 78254 (210) 206-8432

3.5.3 Southeast Service Center- 1318 SE Loop 410, San Antonio, TX 78220 (210) 206-8487

3.6 Contractor shall notify City's BESD Fleet Services Fuel Section (210) 207-8380/8383 prior to delivery.

3.7 Deliveries will only be accepted Monday-Fridays: 7:00 a.m. – 4:00 p.m., excluding City Holidays.

3.8 City anticipates requesting fuel deliveries when storage tank levels fall to approximately 35%. Tank capacity is 18,000 gallons, with one tank at each fueling location. Orders will be placed by the City's Fleet Services Fuel Section. Delivery shall be made within one calendar day of order placement.

IV. INVOICING

4.1 Contractor shall send invoices to the City at:

City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, Texas, 782830-3976, with a copy to

City of San Antonio, Fleet Maintenance & Operations Department, Attn: Fuels Manager, 329 S. Frio St., San Antonio, Texas 78207.

4.2 Invoices shall be in a form and content approved by City. All invoices shall include City's Purchase Order number.

V. INSURANCE

5.1 Prior to the commencement of any work under this Agreement, Vendor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department-Purchasing Division, which shall be clearly labeled "**HD-5 Propane Motor Fuel**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Finance Department-Purchasing Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

5.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

5.3 A Vendor's financial integrity is of interest to City; therefore, subject to Vendor's right to maintain reasonable deductibles in such amounts as are approved by City, Vendor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension here of, at Vendor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

| TYPE | AMOUNTS |
|---|--|
| 1. Workers' Compensation 2. Employers' Liability | Statutory \$1,000,000/\$1,000,000/\$1,000,000 |
| 3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. e. Independent Contractors f. Contractual Liability | For <u>Bodily Injury</u> and <u>Property Damage</u> of \$2,000,000 per occurrence; \$4,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage |
| 4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles | <u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence. With AOA access \$5,000,000 CSL |
| 5. Environmental Insurance –(Contractor's Pollution Liability (Claims-made coverage) | \$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation. |
| 6. Explosion, Collapse, Underground Property Hazard Liability | \$2,000,000 per claim |

5.4 Vendor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Vendor herein, and provide a certificate of insurance and endorsement that names Vendor and City as additional insureds. Vendor shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

5.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Vendor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Vendor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department-Purchasing Division
P.O. Box 839966
San Antonio, Texas 78283-3966

5.6 Vendor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy;

Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and

Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

5.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Vendor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Vendor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

5.8 In addition to any other remedies City may have upon Vendor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Vendor to stop work hereunder, and/ or withhold any payment(s) which become due to Vendor hereunder until Vendor demonstrates compliance with the requirements hereof.

5.9 Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payment of damages to persons or property resulting from Vendor's or its subcontractors' performance of the work covered under this Agreement.

5.10 It is agreed that Vendor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Agreement.

5.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

5.12 Vendor and any subcontractors are responsible for all damage to their own equipment and/or property.

VI. INDEMNITY

6.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising

out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

6.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

VII. MISCELLANEOUS

7.1 Notices. Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing:

If intended for City, to:

City of San Antonio
Building & Equipment Services Department
Attn: Fuels Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Contractor, to:

Longhorn Propane, L.P.
P.O. Box 2030
Canyon Lake, Texas 78133

Or street address:

City of San Antonio
Building & Equipment Services Department
Attn: Fuels Manager
329 S. Frio St.,
San Antonio, Texas 78207

With copy to:

City of San Antonio

Finance Department, Purchasing Division
P.O. Box 839966
San Antonio, Texas 78283-3966

7.2 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

7.3 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

7.4 Entire Agreement. This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

CITY OF SAN ANTONIO

LONGHORN PROPANE, L.P.

By: Norbert Dziuk
Title: Assistant Finance Director
Date: _____

By: Carlton King
Title: CEO / Partner
Date: 11-4-21

Approved as to Form:

Assistant City Attorney