

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

INTERLOCAL AGREEMENT
FOR
FUEL PURCHASING

This Agreement (“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”), pursuant to Ordinance No. _____, and **VIA Metropolitan Transit** (“VIA”). City and VIA may be referred to herein collectively as the “Parties”.

WHEREAS, the Interlocal Cooperation Act (the “Act”), Chapter 791, Texas Government Code permits local governmental entities to enter into interlocal agreements for the performance of governmental functions, including administrative functions, such as purchasing, in order to promote efficiencies and effectiveness; and

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

WHEREAS, VIA has competitively bid and has in place a contract for the delivery of HD-5 Propane motor fuel with Longhorn Propane, L.P. (“Vendor”); and

WHEREAS, City desires to use the existing contract between VIA and the Vendor to satisfy the City’s needs for HD-5 Propane motor fuel; and

WHEREAS, both VIA and Vendor have agreed to allow City to utilize the prices, terms and conditions of the VIA Contract, as may be modified between Vendor and City; and

NOW THEREFORE, in consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the Parties hereto do mutually agree as follows:

ARTICLE I
TERM

- 1.1 The term of this Agreement shall begin on the effective on the day of the last of the Parties executes the Agreement.
- 1.2 This Agreement shall terminate when the contract between VIA and the Vendor (the “underlying contract”) terminates, including any renewals thereof.

ARTICLE II
SCOPE AND REPRESENTATIONS

- 2.1 The Parties warrant and represent that the procurement and use of propane is a function each entity is authorized to perform individually.
- 2.2 The Parties represent that they agree and understand that the purpose of this Agreement is to provide City access to a means for it to purchase for its own use HD-5 Propane motor fuel and that City and VIA are each independently contracting with the Vendor and any issues or disputes arising out the contract with the Vendor will be the responsibility of the contracting party. It is agreed and understood that VIA is by no means a party to the contract between City and Vendor and City shall administer its own contract with Vendor, including but not limited to, issuing purchase orders to, taking shipments of fuel from, and making payments to Vendor.
- 2.3 City warrants and represents that it is authorized to enter into this Agreement whereby it uses an existing contract of another local entity, VIA in this case, to obtain fuel (“piggybacking”).

- 2.4 City represents that it has independently reviewed the terms and conditions of the underlying contract, attached hereto and incorporated herein for all purposes as **Exhibit B**, between VIA and the Vendor and all related documentation pertinent to this transaction and that all terms and conditions are wholly acceptable to City. *Further, City has reviewed the federal requirements pertaining to “piggybacking”, including but not limited to those set out in the Federal Transit Administration Best Practices Procurement & Lessons Learned Manual Section 3.3.4 and FTA CIRCULAR 4220.1F, and has made an independent determination as the applicability of these provisions to City under this Agreement and the underlying contract. City agrees and understands that it is solely responsible for compliance with these provisions, as to compliance with these provisions in entering into this Agreement.*
- 2.5 Parties agree to cooperate with each other to accomplish the understanding set forth herein.
- 2.6 All information and documents that may have been prepared in accordance with this Agreement shall be freely exchanged between the Parties in the event of termination of this Agreement.
- 2.7 Any arrangement, contractual or otherwise, between Vendor and City, shall not bind or obligate VIA. VIA shall not be a party to the agreement between City and Vendor. Use of the underlying contract shall not make VIA a party to the agreement between City and Vendor. VIA shall have no obligation for payment to Vendor for any fuel purchased by City. VIA shall have no responsibility for fuel provided, or to be provided, by Vendor to City.
- 2.8 In no event shall VIA be considered a dealer, remarketer, agent or other representative of Vendor. Further, VIA shall not be considered and is not an agent, partner or representative of City.

**ARTICLE III
COMPENSATION**

- 3.1 Parties agree that neither Party shall charge a fee to the other Party for the services contemplated herein. The Parties agree that the public purpose of cooperation to achieve efficiency in providing services is mutually beneficial to the Parties.
- 3.2 Any and all payments, contributions, fees, and disbursements required by a Party hereunder shall be made from current revenues budgeted and available to said Party.

**ARTICLE IV
NOTICE**

- 4.1 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.
- 4.2 The Parties addresses are as follows:

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 VIA, to:

VIA Metropolitan Transit
 Attn: Bryan Kohlberg, Procurement
 800 W. Myrtle
 San Antonio, Texas 78212

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

ARTICLE V
NO JOINT ENTERPRISE

- 5.1 There is no intention on the part of the Parties hereto to create or otherwise from a joint enterprise under or pursuant to this Agreement. The Parties to this Agreement are undertaking a governmental function or service. Particularly, the Parties are acting in accordance with the Texas Local Government Codes Chapters 252 and 271, the Texas Government Code Chapter 791, and the Texas Transportation Code Chapter 451.
- 5.2 City has a superior right to control the direction and management of its procurements solely by virtue of its responsibility of the day-to-day management and control of purchases to support the functional operations of City, but has no right to control the direction or management of VIA's functional operations, including, but not limited to its decision to purchase from a Vendor solicited by City or its contract with a Vendor resulting therefrom.
- 5.3 VIA has a superior right to control the direction and management of its procurements solely by virtue of its responsibility of the day-to-day management and control of purchases to support the functional operations of VIA, but has no right to control the direction or management of City's functional operations, including, but not limited to its decision to purchase from a Vendor solicited by VIA or its contract with a Vendor resulting therefrom.
- 5.4 Parties covenant and agree that they are independent contractors, and not an officer, agent, servant or employee of the other; that a Party shall have exclusive control of and exclusive right to control the details of the work performed by that Party hereunder and all persons performing same and shall be responsible for the acts and omission of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and VIA, their officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and VIA. The Parties hereto understand and agree that VIA has no authority to bind City, nor does City have nay authority to bind VIA.

ARTICLE VI
ASSIGNMENT

- 6.1 Neither Party shall assign, sell, pledge, transfer or convey any interest in this Agreement to any other party. Any such attempt at an assignment will be *void ab initio* and shall confer no rights on the purported assignee.
- 6.2 Parties shall provide and perform all services and responsibilities required under this Agreement in compliance with all federal, state and local laws, rules and regulations.

ARTICLE VII
THIRD PARTY BENEFICIARY

For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree that: (1) the Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with City or VIA or both, or that such third persons may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person from obligations owing by them to either City or VIA.

ARTICLE VIII
AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by City and VIA.

ARTICLE IX
INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits.

Exhibit A – Contract Modification to the Underlying Agreement

Exhibit B – Underlying Agreement

ARTICLE X
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 in accordance with Article VIII.

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

VIA METROPOLITAN TRANSIT

By: Norbert Dziuk

By: _____

Title: Assistant Finance Director

Title: _____

Date: _____

Date: _____

Approved as to Form:

Assistant City Attorney