

ORDINANCE

2021-11-18-0854

APPROVING AN INTERLOCAL AGREEMENT WITH VIA METROPOLITAN TRANSIT TO ENGAGE IN COOPERATIVE FUEL PURCHASING AND APPROVING AN AGREEMENT WITH LONGHORN PROPANE, L.P., TO PROVIDE HD-5 PROPANE MOTOR FUEL TO CITY DEPARTMENTS WITH FOR AN ESTIMATED ANNUAL COST OF \$63,000.00. FUNDING IS AVAILABLE FROM THE FY 2022 FLEET SERVICES FUND BUDGET.

* * * * *

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 thereby satisfying the requirements of competitive bidding; and

WHEREAS, VIA Metropolitan Transit ("VIA") has competitively bid and has in place a contract for the delivery of HD-5 propane motor fuel with Longhorn Propane, L.P. ("Longhorn") beginning on or about November 1, 2021 through October 31, 2026 ("VIA Contract"); and

WHEREAS, approval of this ordinance will authorize the execution of an Interlocal Agreement for Fuel Purchasing with VIA Metropolitan Transit which will allow the City to use the existing contract between VIA and Longhorn Propane, L.P., to satisfy the City's needs for HD-5 Propane motor fuel; and

WHEREAS, approval of this ordinance will also approve an Integration Agreement between the City and Longhorn Propane, L.P., to allow City to utilize the prices, terms and conditions of the VIA Contract, as may be modified between City and Longhorn; and

WHEREAS, all expenditures will be in accordance with the applicable fiscal year's budget approved by City Council; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or Director of Finance or designee, is hereby authorized to execute an Interlocal Agreement for Fuel Purchasing with VIA Metropolitan Transit. A copy of the Interlocal Agreement is attached hereto and is incorporated herein for all purposes as **Exhibit I**.

SECTION 2. The City Manager or designee, or Director of Finance or designee, is hereby authorized to execute an Integration Agreement for HD-5 Propane Motor Fuel with Longhorn Propane, L.P., beginning upon approval of the City Council and terminating on October 31,

2026 A copy of the bid tabulation and contract is attached hereto and is incorporated herein for all purposes as **Exhibit II**.

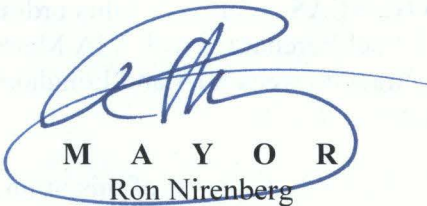
SECTION 3. Funding for this ordinance in the amount of \$63,000.00 is available in Fund 77001000, Cost Center 3598000001 and General Ledger 5403545 as part of the Fiscal Year 2022 Adopted Budget approved by City Council. Additional funding for future years is contingent upon City Council approval of the Fiscal Year 2023 Budget and subsequent budgets that fall within the term of this contract.

SECTION 4. Payment is authorized to Longhorn Propane, L.P., and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

SECTION 6. This ordinance is effective immediately upon passage by eight or more affirmative votes; otherwise, it is effective on the tenth day after passage.


PASSED and APPROVED this 18th day of November, 2021.


M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:


Debbie Racca-Sittre, Acting City Clerk


Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting November 18, 2021

6.

2021-11-18-0854

Ordinance approving an Interlocal Agreement with VIA Metropolitan Transit to engage in cooperative fuel purchasing; and approving an agreement with Longhorn Propane, L.P., to provide HD-5 propane motor fuel to City Departments for an estimated annual cost of \$63,000.00. Funding is available from the FY 2022 Fleet Services Fund Budget. [Ben Gorzell Jr., Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]

Councilmember Courage moved to Approve on the Consent Agenda. Councilmember Cabello Havrda seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Courage, Perry

Absent: Sandoval, Pelaez

LC
11/18/21
Item No. 6

Exhibit I

STATE OF TEXAS	§	INTERLOCAL AGREEMENT
	§	FOR
COUNTY OF BEXAR	§	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

LC
11/18/21
Item No. 6

Exhibit II

Opened: June 25, 2021		LD	VIA
For: HD-5 Propane Motor Fuel VIA IFB 21-311			Longhorn Propane LP
6100014152			PO Box 2030
			Canyon Lake,
			TX 78133
			830-964-2525
Item	Description	Estimated Quantity	
1	Propane Motor Fuel	18,000	
a	For Delivery to Northeast Service Center- 10303 Tool Yard, San Antonio, TX 78233		
	Price Per Gallon over OPIS		\$1.1697
	OPIS Average on 6/25/2021		\$0.9825
	Mark-Up Price on 6/25/2021		\$0.1872
	Total Price		\$21,054.60
b	For Delivery to Northwest Service Center- 6939 W. Loop 1604 N., San Antonio 78254	18,000	
	Price Per Gallon over OPIS		\$1.1697
	OPIS Average on 6/25/2021		\$0.9825
	Effective Price on 6/25/2021		\$0.1872
	Total Price		\$21,054.60
c	For Delivery to Southeast Service Center- 1318 SE Loop 410, San Antonio, TX 78220	18,000	
	Price Per Gallon over OPIS		\$1.1697
	OPIS Average on 6/25/2021		\$0.9825
	Effective Price on 6/25/2021		\$0.1872
	Total Price		\$21,054.60
	Payment Terms		Net 30
	Estimated Annual Total		\$63,163.80
	Estimated Annual Award		\$63,163.80

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	Statutory
2. Employers' Liability	\$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 Bodily Injury and Property Damage 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	Combined Single Limit for Bodily Injury and Property Damage 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: *Coltin Kay*

Title: *CEO / Partner*

Date: *11-4-21*

Approved as to Form:

Assistant City Attorney