

AN ORDINANCE 2014 - 01 - 16 - 0019

AUTHORIZING AN INTERLOCAL AGREEMENT WITH VIA METROPOLITAN TRANSIT AND AN INTEGRATION AGREEMENT WITH PINNACLE PROPANE, LLC, TO PROVIDE THE BUILDING AND EQUIPMENT SERVICES DEPARTMENT, FLEET SERVICES DIVISION AND OTHER VARIOUS CITY DEPARTMENTS WITH HD-5 PROPANE MOTOR FUEL FOR AN ESTIMATED ANNUAL COST OF \$122,000.00, FUNDED WITH THE BUILDING AND EQUIPMENT SERVICES ADOPTED BUDGET.

* * * * *

WHEREAS, VIA Metropolitan Transit (“VIA”) has entered into a contract with Pinnacle Propane, LLC (“Pinnacle”) to provide VIA with HD-5 Propane Fuel for a term beginning on or about October 22, 2013 and ending October 31, 2016 (“VIA Contract”); and

WHEREAS, VIA and Pinnacle have agreed to allow the City to utilize the process, terms and conditions of the VIA Contract, as they may be modified between City and Pinnacle pursuant to an Integration Agreement, so that the City can purchase HD-5 Propane Motor Fuel from Pinnacle; and

WHEREAS, the City and Pinnacle have agreed upon terms and conditions of an Integration Agreement For HD-5 Propane Motor Fuel (“Integration Agreement”), under which City shall acquire HD-5 Propane Motor Fuel from Ferrell for a term beginning on or about January 9, 2014 and ending October 31, 2016, with one (1) one-year renewal at the City’s option if the VIA contract is also renewed for one year; and

WHEREAS, Chapter 791 of the Texas Government Code provides that units of local government may contract or agree with each other to perform governmental functions and services (including administrative services as defined therein), in order to promote efficiencies and effectiveness and thereby satisfying the requirements for competitive bidding; and

WHEREAS, the City and VIA desire to enter into an Interlocal Contract For Fuel Purchasing (“Interlocal Contract”), in order to allow the City to acquire HD-5 Propane Motor Fuel from Pinnacle under the terms and conditions of the VIA Contract, as modified by the Integration Agreement; and

WHEREAS, City Staff has recommended that the City enter into the Interlocal Contract with VIA, and also enter into the Integration Agreement with Pinnacle, so that HD-5 Propane Motor Fuel can be acquired for the Building and Equipment Services Department, Fleet Services Division and other various City departments under their terms; and

WHEREAS, the City Council, upon consideration of and deliberation on such recommendation, desires to accept City Staff’s recommendation; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Interlocal Contract For Fuel Purchasing, between the City and VIA Metropolitan Transit, as set forth in **Attachment I** to this Ordinance, which **Attachment I** is incorporated herein and made a part hereof for all purposes, are hereby approved.

The City Manager, or her designee, or the Director of Finance, or his designee, is hereby authorized to enter into and execute the Interlocal Contract, under terms and conditions substantially in accordance with those set forth in Attachment I to this Ordinance.

SECTION 2. The terms and conditions of the Integration Agreement For HD-5 Propane Motor Fuel, between the City and Pinnacle Propane, LLC, as set forth in **Attachment II** to this Ordinance, which **Attachment II** is incorporated herein and made a part hereof for all purposes, are hereby approved.

The City Manager, or her designee, or the Director of Finance, or his designee, is hereby authorized to enter into and execute the Integration Agreement, under terms and conditions substantially in accordance with those set forth in **Attachment II** to this Ordinance.

SECTION 3. A true and correct copy of the VIA Contract is attached to this Ordinance as **Attachment III**, and is incorporated herein and made a part hereof for all purposes.

SECTION 4. The amount of each purchase will be encumbered upon issuance of a purchase order, and payment is authorized to Pinnacle Propane, LLC. All expenditures will be in accordance with the Fiscal Year 2014 and subsequent budgets that fall within the term period of this contract approved by City Council.

SECTION 5. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's 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.

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SECTION 6. This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

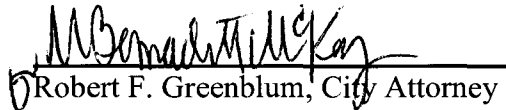
PASSED and APPROVED this 16th day of January 2014.


MAYOR
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Robert F. Greenblum, City Attorney

Agenda Item:	5 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12)
Date:	01/16/2014
Time:	09:19:38 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an Interlocal Agreement with VIA Metropolitan Transit and an Integration Agreement with Pinnacle Propane, LLC to provide the Building and Equipment Services Department and various City departments with HD-5 Propane Motor Fuel for an estimated annual cost of \$122,000.00, funded with the Building and Equipment Services Department adopted budget. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

RKN
01/16/14
Item No. 5

A T T A C H M E N T I

STATE OF TEXAS § INTERLOCAL CONTRACT
 § FOR
COUNTY OF BEXAR § FUEL PURCHASING

This Agreement ("Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("COSA"), pursuant to Ordinance No. 2013-10-__-__ and VIA Metropolitan Transit ("VIA"), both of which may be referred to herein collectively as the "Parties".

WHEREAS, the Texas Government Code Chapter 791 authorizes inter-local agreements for the purchase of goods and services and

WHEREAS, VIA has competitively bid and has in place a contract for HD-5 Propane motor fuel with Pinnacle Propane, LLC ("Vendor"); and

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

WHEREAS, both VIA and the Vendor are willing to allow the COSA access to their contract by modifying the existing contract for this purpose;

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:

I. TERM

1.01 This Agreement shall become effective on the day the last of the Parties executes the agreement.

1.02 This Agreement shall terminate when the contract between VIA and the Vendor ("underlying contract") terminates, including any renewals thereof.

II. SCOPE AND REPRESENTATIONS

2.01 The Parties warrant and represent that the procurement and use of propane is a function each entity is authorized to perform individually.

2.02 The Parties represent that they agree and understand that the purpose of this Agreement is to provide COSA access to a means for it to purchase for its own use HD-5 Propane motor fuel and that COSA and VIA are each independently contracting with the Vendor and any issues or disputes arising out of 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 COSA and Vendor and COSA shall administer its own contract with Vendor, including, but not limited to, issuing purchase orders to, taking shipments of fuel from, and making payments directly to Vendor.

2.03 COSA 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").

2.04 COSA 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 COSA. *Further, COSA has reviewed the federal requirements pertaining to "piggybacking", including but not limited to those set out in the Federal Transit Administration Best Practices Procurement Manual Section 1.3.3.5 and FTA CIRCULAR 4220.1F, and has made an independent determination as to the applicability of these provisions to COSA under this Agreement and the underlying contract. COSA agrees and understands that it is solely responsible for compliance with these provisions, as applicable, and that VIA is relying upon COSA's representations and assurances pertaining to compliance with these provisions in entering into this Agreement.*

2.05 The Parties agree to cooperate with each other to accomplish the understanding set forth herein.

2.06 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.

2.07 Any arrangement, contractual or otherwise, between Vendor and COSA, shall not bind or obligate VIA. VIA shall not be a party to the agreement between COSA and Vendor. Use of the underlying contract shall not make VIA a party to the agreement between COSA and Vendor. VIA shall have no obligation for payment to Vendor for any fuel purchased by COSA. VIA shall have no responsibility for fuel provided, or to be provided, by Vendor to COSA.

2.08 In no event shall VIA be considered a dealer, remarketeer, agent or other representative of Vendor. Further, VIA shall not be considered and is not an agent, partner or representative of COSA.

III. COMPENSATION.

3.01 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.

3.02 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.

IV. NOTICE

4.01 Unless otherwise expressly provided elsewhere in this Agreement, 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 delivery when sent by a national commercial courier service for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below in Section 4.02 unless and until otherwise notified in writing by the respective Party.

4.02 The Parties addresses are as follows:

COSA:

City of San Antonio, Attn: Department Director, Building and Equipment Services

Mailing Address:

P.O. Box 839966, San Antonio, Texas 78283-3966

Street Address:

111 Soledad, 11th Floor, San Antonio, Texas 78205

VIA:

VIA Metropolitan Transit, Attn: Terry Dudley, Procurement

800 W. Myrtle, San Antonio, TX 78212

V. NO JOINT ENTERPRISE

5.01 There is no intention on the part of the Parties hereto to create or otherwise form 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 Code Chapters 252 and 271, the Texas Government Code Chapter 791, and the Texas Transportation Code Chapter 451.

5.02 COSA has a superior right to control the direction and management of its procurements solely by virtue of its responsibility for the day-to-day management and control of purchases to support the functional operations of COSA, but has no right to control the direction or management of VIA's functional operations, including, but not limited its decision to purchase from a Vendor solicited by COSA or its contract with a Vendor resulting there from.

5.03 VIA has a superior right to control the direction and management of its procurements solely by virtue of its responsibility for 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 COSA's functional operations, including, but not limited its decision to purchase from a Vendor solicited by VIA or its contract with a Vendor resulting there from.

5.04 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 omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between COSA 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 COSA and VIA. The Parties hereto understand and agree that VIA has no authority to bind COSA, nor does COSA have any authority to bind VIA.

VI. ASSIGNMENT

6.01 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.

6.02 Parties shall provide and perform all services and responsibilities required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

VII. THIRD PARTY BENEFICIARY

7.01 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 COSA 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 COSA or VIA.

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 both COSA and VIA.

IX. ENTIRE AGREEMENT

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

Signatures appear on the next page

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO		VIA METROPOLITAN TRANSIT
----------------------------	--	---------------------------------

(Signature)

x 
(Signature)

Printed
Name: _____
Title: _____
Date: _____

Printed
Name: Terry Dudley
Title: Manager of Procurement
Date: 12/19/2013

Approved as to Form:

Robert K. Nordhaus
Assistant City Attorney

ATTACHMENTS:

- Exhibit "A" Contract Modification to the Underlying Agreement
- Exhibit "B" Underlying Agreement

RKN
01/16/14
Item No. 5

A T T A C H M E N T I I

**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”) and PINNACLE PROPANE, LLC (“Contractor”), a limited liability company chartered under the laws of the State of Texas, both of whom 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 22, 2013, 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. TERM

- 1.1 **Original Term.** The term of this Agreement shall begin upon the first to occur of (a) November 1, 2013, or (b) the effective date of the City ordinance awarding this Agreement; and shall terminate on October 31, 2016.
- 1.2 **Renewals.** Parties recognize that the VIA contract includes two (2) one-year options to extend the term. If the VIA Contract shall be renewed for either or both of the renewal terms, City may renew this Agreement for the same period as the VIA Contract. Renewal by City shall be in writing and signed by City’s Director of Building and Equipment Services (“Director”), or his designee, without additional approval from the San Antonio City Council, so long as funds have been appropriated therefor.

II. SCOPE OF SERVICES

- 2.1 **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 Attachment A. To the extent of a conflict between the VIA Contract and this Agreement, this Agreement shall control.
- 2.2 All references in the VIA Contract to VIA Metropolitan Transit, or any acronym therefor, 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.

- 2.3 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.
- 2.4 All services shall be coordinated through the Director or his designee.
- 2.5 Delivery shall be FOB to City specified fueling locations. Fueling locations are:
 - Northeast Service Center-10303 Tool Yard, San Antonio, TX 78233 (210) 207-0701
 - Northwest Service Center-7000 Culebra, San Antonio, TX 78238 (210) 680-3821
 - Southeast Service Center- 7402 S. New Braunfels, San Antonio, TX 78223 (210) 359-3130
- 2.6 Contractor shall notify City's Fleet Services Fuel Section (210) 207-8380/8383 prior to delivery.
- 2.7 Deliveries will only be accepted Monday-Fridays: 7:00 a.m. – 4:00 p.m., excluding City Holidays.
- 2.8 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.

III. INVOICING

- 3.1 Contractor shall send monthly invoices to 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: Martha O. Rivera, 329 S. Frio St., San Antonio, Texas 78207.
- 3.2 Invoices shall be in a form and content approved by City. All invoices shall include City's Purchase Order number.

IV. INSURANCE

- 4.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Purchasing & General Services Department, 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. The 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 the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Purchasing & General Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- 4.2 The 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.
- 4.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor'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 \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability (or Pollution Liability as listed below.) g. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

	g. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>

- 4.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Respondent shall provide the 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.
- 4.5 As they apply to the limits required by the City, the 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). Contractor 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. Contractor shall pay any costs incurred resulting from said changes.

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

- 4.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the 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 the 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 the 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 the City.
 - 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.
- 4.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor’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.
- 4.8 In addition to any other remedies the City may have upon Contractor’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- 4.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor’s or its subcontractors’ performance of the work covered under this Agreement.
- 4.10 It is agreed that Contractor’s insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 4.11 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 the City shall be limited to insurance coverage provided..
- 4.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

V. INDEMNITY

- 5.1 **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, it s 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.

- 5.2 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.

VI. MISCELLANEOUS

- 6.1 Notices. All notices to be provided to City shall be sent to:

City of San Antonio, Building and Equipment Services Department, Fleet Services Division -
Attn: Martha O. Rivera


Street Address: 329 S. Frio St., San Antonio, Texas 78207, or
Mailing Address: P.O. Box 839966, San Antonio, Texas 78283-3966.

- 6.2 **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.**
- 6.3 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.

CITY OF SAN ANTONIO:

PINNACLE PROPANE, LLC:

By: _____
Title: _____
Date: _____


By: Robert W Chalmers
Title: SVP Corp Dev
Date: 11-7-13

Approved as to Form:

Robert K. Nordhaus
Assistant City Attorney