

**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, 78283-3976, 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:

<u>TYPE</u>	<u>AMOUNTS</u>
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: SUP corp Dev
Date: 11-7-13

Approved as to Form:

Robert K. Nordhaus
Assistant City Attorney