

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