

with 2.02 below, or extended in accordance with section 2.03 below.

2.02 This Agreement may be terminated, without penalty, by either party upon 30 days prior written notice.

2.03 This Agreement may be extended for up to two (2) one year periods upon the mutual consent of and written agreement between ENTITY and COSA so long as such extension complies with Article XIII herein. Any such extension shall be authorized in writing on COSA's behalf by its Director of Building and Equipment Services ("Director"), or designee, pursuant to the same terms and conditions as set out within this Agreement except that in the event COSA's annual budget, as adopted by ordinance, reflects any increase or addition in the costs and/or types of the services described in this Agreement, or any extension of this Agreement, this Agreement shall be amended to reflect such increase or addition, effective upon the first day of the fiscal year for which the budget is adopted.

ARTICLE III. SERVICES

COSA shall provide ENTITY access to the COSA Propane Facilities for the purpose of fueling ENTITY's Vehicles.

ARTICLE IV. COMPENSATION

4.01 ENTITY shall compensate COSA for the propane fuel consumed in fueling Vehicles in the following amounts:

- | | | |
|----|---|--|
| 1. | COSA's Fuel Price | Fuel price paid by COSA using the Oil Price Information Service (OPIS) Weekly Average Price PLUS a fuel service operational charge of \$0.13 per gallon |
| 2. | COSA administrative fee for outside sales | \$12.50 x total vehicles set up in the COSA fuel billing system (monthly) |
| 3. | FOB (electronic fueling device) | \$9.00 each |

4.02 COSA will submit to ENTITY a monthly report of charges by COSA for goods and services provided pursuant to this Agreement. Upon approval by ENTITY of the charges in COSA's monthly report, which approval will not be unreasonably withheld, ENTITY shall submit to COSA payment in full for all charges stated in the monthly report. Such payment shall be made to COSA no later than 30 days from the date the monthly report is received by ENTITY. Should ENTITY dispute a portion of the charges on the monthly report ENTITY may not withhold payment of any undisputed portion, but shall submit payment for the undisputed charge as prescribed by this section.

ARTICLE V. MISCELLANEOUS

5.01 ENTITY shall be responsible for ensuring each operator of an ENTITY Vehicle to be refueled at the COSA fueling site obtains and maintains in current and good standing status all applicable and required training, licenses and certifications while operating an ENTITY vehicle on the premises of the COSA fueling site and utilizing COSA fueling equipment.

5.02 COSA shall arrange for each ENTITY operator who will refuel an ENTITY Vehicle to receive training which shall [a] include propane fuel safety, fueling procedures, safety shutdowns, ESD system, the gas detection system, and an introduction to propane fuel, dispensers with fuel-management systems, manual and automatic operation of pumps, electrical switch gear, and panel control to include all shutdowns, indicator lights, alarms and resets as needed, de-fueling, and emergency response in case of leak or malfunction, and [b] also include using the fast-fill dispensers, including the fuel management system. ENTITY shall reimburse COSA for all costs incurred by COSA in arranging for such training. ENTITY shall ensure that each ENTITY operator who will refuel an ENTITY Vehicle receives all of the training described above before refueling any ENTITY Vehicle.

5.03 ENTITY shall ensure that there are no occupants in any ENTITY Vehicle other than the ENTITY operator from the time the ENTITY Vehicle enters the COSA Propane Fueling Facility until the ENTITY vehicle leaves the COSA Propane Fueling Facility.

5.04 Each Party shall be responsible for its own actions and those of its employees and/or persons acting by or on its behalf along with any liability arising from such activities while carrying out the purpose of this Agreement. Each party agrees to have sufficient insurance in place to cover all obligations assumed in this Agreement and any liabilities arising while carrying out those obligations.

5.05 The standard days and hours during which ENTITY's Vehicles may be refueled are Monday through Friday between the hours of 6:00 a.m. and 10:00 p.m. Refueling on additional days and/or at different hours ("Additional Refueling") may be arranged with the prior written consent of the Director or his designee. ENTITY shall be responsible for all costs incurred by COSA to accomplish the Additional Refueling, which shall be billed and paid in the first billing cycle after the Additional Refueling. Refueling and/or Additional Refueling activities shall be superseded by all Scheduled Maintenance and/or Emergency Maintenance of the COSA Propane Fueling Facilities.

5.06 The Parties acknowledge that this Agreement is subject to the operational status of the COSA Propane Fueling Facilities and that if any one or more of them becomes non-operational for any reason, HD 5 Propane fuel will not be available at the affected facility(ies) to refuel ENTITY'S Vehicles during that period. COSA agrees that it will make reasonable efforts using sources and resources presently available to it to cause the status of the affected facility(ies) to be restored to operational at the earliest possible time, so that HD 5 Propane fuel will be available to accomplish the purposes of this Agreement.

ARTICLE VI. INDEPENDENT CONTRACTOR STATUS; NO THIRD PARTY BENEFICIARIES

6.01 Nothing contained herein shall be deemed to create any relationship other than that of an

independent contractor between the Parties. Under no circumstances shall a Party, its directors, officers, employees, agents, successors or assigns, be deemed employees, agents, partners, successors, assigns or legal representatives of the other Party.

6.02 No Joint Enterprise – There is no intention on the part of the Parties to create or otherwise form a joint enterprise under or pursuant to this Agreement. The Parties are undertaking a governmental function or service in accordance with Chapter 791 of the Texas Government Code. The Parties do not have a common pecuniary purpose. The purpose of this Agreement is to further the public good, not to gain a profit.

6.03 COSA and ENTITY specifically agree that (1) this Agreement only affects rights and obligations between the Parties, 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 ENTITY, or both, or that such third parties 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 or entity from obligations owing by them to either COSA or ENTITY.

ARTICLE VII. NOTICES AND ADDRESSES

All notices, invoices, statements and reports to ENTITY or COSA shall be deemed given when either delivered in person or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested, addressed to the appropriate party at the following address:

If to ENTITY: San Antonio Independent School District
 1103 Austin Street
 San Antonio, Texas 78208
 ATTN.: Miguel R. Flores
 Title: Assistant Director, Vehicle Maintenance

If to COSA: Jorge A. Perez, Director
 Building Equipment & Services Department
 P.O. Box 839966
 San Antonio, Texas 78283-3996

and

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

ARTICLE VIII. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and 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 Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereof, and duly executed by the parties, in accordance with Article XIII. Amendments.

ARTICLE IX. ASSIGNMENT

Neither this Agreement nor any rights, duties or obligations hereunder shall be assignable by either party without the prior written consent of the other party. Any such attempt at assignment without prior approval shall be void.

ARTICLE X. TEXAS LAW TO APPLY

This Agreement is performable in Bexar County, Texas, and the validity of any of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of Texas. The parties further agree that venue for any legal action, claim or dispute arising under this Agreement will be in Bexar County, Texas.

ARTICLE XI. PAYMENTS FROM CURRENT REVENUES

11.01 Payment by ENTITY for the services provided pursuant to this Agreement shall be made from current revenues.

11.02 Prior to the execution of any extension of this Agreement, ENTITY must provide in its annual budget, for that year, for the expenditure of funds for the services to be furnished by COSA as described herein.

ARTICLE XII. NO INDEMNIFICATION BY PARTIES

12.01 ENTITY and COSA acknowledge they are each political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *et. seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accidents, injuries or deaths.

12.02 Each Party shall advise the other Party in writing within 24 hours of any claim or demand against either Party known to either Party related to or arising out of either Party's activities under this contract.

ARTICLE XIII. AMENDMENT

No amendment, supplementation, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the Parties and authorized by the COSA City Council; except that this Agreement may be extended and modified as authorized in Article II Section 2.03 above without authorization by the COSA City Council.

ARTICLE XIV. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH HAVE THE FORCE AND EFFECT OF AN ORIGINAL, THIS THE ___ DAY OF _____ 2017.

COSA

ENTITY

CITY OF SAN ANTONIO

SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT

Jorge A. Perez
Director, Building & Equipment Services

Authorized Officer