

**INTERLOCAL AGREEMENT FOR
USE OF CNG FACILITIES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

THIS AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2015, by and between **City Public Service Board (“CPS Energy”)** (hereinafter "CPS") and **CITY OF SAN ANTONIO** (hereinafter "COSA"), both of which may be referred to herein collectively as the “Parties”, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

WITNESSETH:

Whereas, COSA has constructed a facility at its Northeast Service Center - Toolyard site, which is located at 10303 Toolyard, San Antonio, Texas 78233, and from which CNG fuel is dispensed for its vehicles that operate on and consume this type of fuel (the “COSA CNG Facility”); and

Whereas, CPS desires and is willing to use the COSA CNG Facility to fuel its vehicles; and

Whereas, COSA’S City Council authorized the execution of this Agreement pursuant to Ordinance No. 2015-____-____-_____, passed and approved _____;

NOW THEREFORE, the Parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which CPS shall be entitled to use the COSA CNG Facility to fuel CPS’S CNG-fueled vehicles.

ARTICLE II. TERM

2.01 The term of this Agreement shall begin on the date it is executed by the last of the Parties to do so and shall terminate on September 30, 2016, unless terminated earlier in accordance 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 written notice.

2.03 This Agreement may be extended for up to two (2) one (1) year periods upon the consent of and written agreement between CPS and COSA. Any such extension shall be authorized in writing on COSA'S behalf by its Director, Building & Equipment Services, 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 goods or services described in this Agreement, or any extension of this Agreement, this Agreement shall be amended upon mutual consent of the Parties to reflect such increase or addition, effective upon the first day of the fiscal year for which the budget is adopted, and absent such mutual consent, COSA may terminate this Agreement upon ten (10) days prior written notice. Authorization of any such extension by COSA’s

City Council shall not be required.

ARTICLE III. SERVICES

3.01 COSA shall provide CPS access to the COSA CNG Facility for the purpose of fueling CPS'S CNG fueled vehicles.

ARTICLE IV. COMPENSATION

4.01 CPS shall compensate COSA for the CNG fuel consumed in fueling CPS's CNG fueled vehicles in the following amounts:

- | | | |
|----|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 1. | Fuel Price | CPS CCF Rate converted into Gasoline Gallon Equivalent (GGE)
PLUS \$0.13 per GGE mark-up
<i>(1 GGE = 1.2667 CCF)</i> |
| 2. | Administrative fee for outside sales | \$ 14.00 x total vehicles set up in the fuel billing system (monthly) |
| 3. | FOB (electronic fueling device) | \$ 8.70 each |

4.02 COSA will submit to CPS a monthly report of charges by COSA for goods and services provided pursuant to this Agreement. CPS 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 CPS. Should CPS dispute a portion of the charges on the monthly report CPS 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 CPS shall be responsible for ensuring each operator of a CPS vehicle to be refueled at the COSA CNG Facility obtains and maintains in current and good standing status all applicable and required training, licenses and certifications while operating a CPS vehicle on the premises of the COSA CNG Facility.

5.02 COSA shall arrange for each CPS operator who will refuel a CPS vehicle on the COSA CNG Facility to receive training which shall **[a]** include natural gas safety, fueling procedures, safety shutdowns, ESD system, the gas detection system, and an introduction to natural gas, 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. CPS shall reimburse COSA for all costs incurred by COSA in arranging for such training. CPS shall ensure that each CPS operator who will refuel a CPS vehicle receives all of the training described above before refueling any CPS vehicle at the COSA CNG Facility.

5.03 CPS shall ensure that there are no occupants in any CPS vehicle other than the CPS operator from the time the CPS vehicle enters the COSA CNG Facility until the CPS vehicle leaves the COSA CNG Facility.

5.04 The standard days and hours during which CPS'S CNG fueled vehicles may be refueled at the COSA CNG Facility are Monday through Friday between the hours of 7:00 a.m. and 9:00 p.m. Refueling on additional days and/or at different hours ("Additional Refueling") may be arranged with the prior written consent of the COSA Director of Building & Equipment Services. CPS 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 CNG Facility.

5.06 CPS acknowledges that this Agreement is subject to the operational status of the COSA CNG Facility and that if it becomes non-operational for any reason, CNG fuel will not be available from the COSA CNG Facility to refuel CPS'S CNG-fueled vehicles during that period.

**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 CPS and COSA. Under no circumstances shall COSA, its directors, officers, employees, agents, successors or assigns, be deemed employees, agents, partners, successors, assigns or legal representatives of the CPS. Under no circumstances shall CPS, its directors, officers, employees, agents, successors or assigns, be deemed employees, agents, partners, successors, assigns or legal representatives of COSA.

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 pecuniary purpose, let alone a common one. The purpose of this Agreement is to further the public good, not to gain a profit.

6.03 COSA and CPS 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 CPS, 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 CPS.

ARTICLE VII. NOTICES AND ADDRESSES

All notices, invoices, statements and reports to CPS 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 CPS: Chad Johnston
Interim Director, Corporate Support Operations
CPS Energy
145 Navarro
San Antonio, Texas 78205

If to COSA: Jorge A. Perez
Director, Building & Equipment Services
111 Soledad Riverview Towers 16th Floor
San Antonio, Texas 78283

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 hereto, 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 CPS for the services provided pursuant to this Agreement shall be made from current revenues.

11.02 Any other provision in this Agreement notwithstanding, this Agreement shall terminate in the event sufficient funds are not appropriated by either Party in any given year to meet that Party's fiscal obligations herein. Both Parties agree to and shall make all reasonable efforts to appropriate all necessary funds in each fiscal year to fulfill its respective duties and responsibilities hereunder.

ARTICLE XII. NO INDEMNIFICATION BY PARTIES

12.01 CPS 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 The Parties 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 is in writing, dated subsequent to the date hereof and duly executed by the parties and authorized by COSA City Council; except that the Agreement may be extended as authorized in Article II section 2.03 herein.

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. TO BE EFFECTIVE FROM AND AFTER THE _____ DAY OF _____, 2015.

CITY OF SAN ANTONIO

CPS Energy

Jorge A. Perez
Director
Building & Equipment Services

Chad Johnston
Interim Director, Corporate Support Operations
CPS Energy

Approved as to Form:

Robert Nordhaus
Assistant City Attorney