

AN ORDINANCE 2017-06-15-0446

**AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT FOR THE USE OF THE CITY'S PROPANE FUEL FACILITIES THROUGH JUNE 30, 2019 WITH THE OPTION OF TWO ADDITIONAL ONE YEAR EXTENSIONS.**

\* \* \* \* \*

**WHEREAS**, the City operates three facilities from which HD 5 Propane fuel is dispensed for its vehicles that operate on and consume this type of fuel (the "COSA Propane Facilities"); and

**WHEREAS**, the San Antonio Independent School District ("SAISD") desires to use the COSA Propane Facilities to fuel SAISD's Propane fueled school buses ("Vehicle" or "Vehicles"); and

**WHEREAS**, the City is willing to allow SAISD to use the COSA Propane Facilities to fuel SAISD's Propane fueled school buses; 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**, City Staff has recommended that the City enter into an Interlocal Agreement ("Interlocal Agreement") with SAISD to provide terms and conditions under which SAISD shall be entitled to desires to use of the COSA Propane Facilities to fuel SAISD's Vehicles; 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 Agreement between the City and SAISD, 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 Deputy Chief Financial Officer, or his designee, is hereby authorized to enter into and execute the Interlocal Agreement, under terms and conditions substantially in accordance with those set forth in **Attachment I** to this Ordinance.

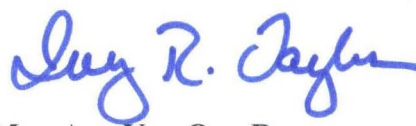
**SECTION 2.** Funds generated by this ordinance will be deposited as per the table below:

Amount	General Ledger	Internal Order	Fund
\$112,755.00	4303112	235000000006	77001000
\$90.00	4303112	235000000006	77001000
\$1,500.00	4303150	235000000006	77001000

**SECTION 3.** The financial allocations in this ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer 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.

**SECTION 4.** 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 15<sup>th</sup> day of June, 2017.

  
**M A Y O R**  
Ivy R. Taylor

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>18 ( in consent vote: 4, 5, 6, 7, 9, 10, 11A, 11B, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35A, 35B )</b>						
<b>Date:</b>	06/15/2017						
<b>Time:</b>	09:32:16 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing an Interlocal Agreement between the City of San Antonio and the San Antonio Independent School District for the use of the City's Propane fuel facilities through June 30, 2019 with the option of two additional one year extensions. [Roderick Sanchez, Assistant City Manager; Jorge A. Perez, Director, Building and Equipment Services]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Ana E. Sandoval	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				x

RKN  
06/15/17  
Item No. 18

## ATTACHMENT I



**INTERLOCAL AGREEMENT FOR  
HD 5 PROPANE FUELING SERVICES**

STATE OF TEXAS

§

§

COUNTY OF BEXAR

§

THIS *Interlocal Agreement for HD 5 Propane Fueling Services* ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **SAN ANTONIO INDEPENDENT SCHOOL DISTRICT** (hereinafter "ENTITY") pursuant to Resolution No. \_\_\_\_\_, passed and approved \_\_\_\_\_, 2017, and the **CITY OF SAN ANTONIO** (hereinafter "COSA"), pursuant to Ordinance No. 2017-06-\_\_\_\_-\_\_\_\_, passed and approved June \_\_, 2017, both of which may be referred to herein individually as a "Party" and collectively as the "Parties", pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

**WITNESSETH:**

Whereas, COSA operates three facilities from which HD 5 Propane fuel is dispensed for its vehicles that operate on and consume this type of fuel (the "COSA Propane Facilities"); and

Whereas, the locations of the three COSA Propane Facilities are as follows:

1. Northeast Service Center – 10303 Tool Yard;
2. Southeast Service Center – 7402 S. New Braunfels; and
3. Northwest Service Center – 6802 Culebra;

and

Whereas, COSA desires and is willing to allow ENTITY to use the COSA Propane Facilities to fuel its propane fueled school buses, under the terms and conditions set forth below; and

Whereas, ENTITY desires and is willing to use the COSA Propane Facilities to fuel ENTITY's propane fueled school buses ("Vehicle" or "Vehicles") , under those terms and conditions; NOW THEREFORE, the Parties agree as follows:

**ARTICLE I. PURPOSE**

The purpose of this Agreement is to state the terms and conditions by which ENTITY shall be entitled to use the COSA Propane Facilities to fuel ENTITY'S 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 ("Commencement Date"), and shall terminate on June 30, 2019, unless terminated earlier in accordance

14CD0640-06AD-42DB-BA2D-9F050FBC4478 ~~INTERLOCAL AGREEMENT – HD 5 PROPANE FUELING SERVICES –~~

~~SAISD – V5 – 05-31-17~~

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 <b>PLUS</b> 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