

AN ORDINANCE 2008 - 06 - 19 - 0609

**AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT FOR FLEET SERVICES AND FUEL WITH EACH DESIROUS LOCAL GOVERNMENTAL UNIT, PROVIDING FOR THE CITY TO FURNISH SUCH ITEMS FOR UP TO 5 ONE-YEAR TERMS, AT THE THEN BUDGETED RATES FOR EACH YEAR.**

\* \* \* \* \*

**WHEREAS**, the City's Fleet Maintenance & Operations Department ("Department") currently provides various fleet services and commodities to City-owned vehicles and equipment through seven service centers, eleven fueling sites, seven automatic car washes, a full service collision repair facility and three vehicle state inspection stations located throughout the City; and

**WHEREAS**, the Department currently sells fuel to Bexar County at City approved rates, and the Department has received requests from several other outside entities, including San Antonio Housing Authority, the City of China Grove, and Lackland ISD, to utilize and purchase Fleet Services and/or fuel at current fleet rates; 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); and

**WHEREAS**, the Department has proposed that the City enter into an Interlocal Agreement For Fleet Services And Fuel with each unit of local government desiring to do so, under terms and conditions that are substantially in accordance with the provisions set forth in Attachment I to this Ordinance, which Attachment I is incorporated herein and made a part hereof for all purposes; and

**WHEREAS**, the prices charged for the provision and sale of Fleet Services and Fuel under these agreements will cover all of the City's procurement and administrative costs, and will be adjusted contemporaneously with adjustments in the Department's rates and prices charged to City departments; **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 For Fleet Services And Fuel 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.

**SECTION 2.** The City Manager, or her designee, or the Director of the Fleet Maintenance & Operations Department, or his designee, is hereby authorized to enter into and execute an Interlocal Agreement For Fleet Services And Fuel with each local governmental unit desiring to do so, under terms and conditions substantially in accordance with those set forth in Attachment I to this Ordinance, which Attachment I is incorporated herein and made a part hereof for all purposes. A true and correct, fully executed copy of each Interlocal Agreement For Fleet Services And Fuel entered into and executed pursuant to this Section of this Ordinance will be on file in the Department.

**SECTION 3.** Funds generated by this ordinance will be deposited into Fund 71001000 Intergovernmental Relations, Internal Order 215000000002 Fleet Operations, General Ledger 4303312.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** 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 19<sup>th</sup> day of June, 2008.

  
M A Y O R  
PHIL HARDBERGER

**ATTEST:**   
City Clerk

**APPROVED AS TO FORM:**   
City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 68


<b>Name:</b>	9, 16, 17, 18, 19, 21, 24, 25, 26, 27, 31, 32, 33, 34, 41, 42, 43, 44, 45, 46, 48, 49, 50, 52, 55, 56A, 56B, 57, 58, 59, 61, 62, 66, 68, 69, 70, 72, 73, 75, 76, 78, 80, 81A, 81B, 81C, 81D, 81E, 81F, 81G, 81H, 81I, 81J
<b>Date:</b>	06/19/2008
<b>Time:</b>	02:48:38 PM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance authorizing the execution of an Interlocal Agreement For Fleet Services and Fuel with each local governmental unit, providing for the City to furnish such items for up to 5 one-year terms, at budgeted rates for each year. [Sharon De La Garza, Assistant City Manager; Florencio Pena, Director, Fleet Maintenance and Operations]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					

A T T A C H M E N T I



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 **five (5)** one-year periods upon the mutual consent of and written agreement between ENTITY and COSA so long as such extension complies with Article X, section 10.02 herein. Any such extension shall be authorized in writing on COSA's behalf by its Director of Fleet Maintenance and Operations ("Director"), or designee, pursuant to the same terms and conditions as set out within this contract except that should COSA's annual budget, as adopted by ordinance, reflect 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, or any extension of this Agreement, shall be amended to reflect such increase or addition, effective upon the first day of the fiscal year for which the budget was adopted.

### ARTICLE III. SERVICES

COSA shall provide vehicle maintenance and service (including fuel and lubricants) upon and as requested by ENTITY. Each ENTITY vehicle shall be registered with and assigned to a specific COSA service center. To the extent reasonably possible, each vehicle shall be assigned to the facility with the capacity to accomplish the required task that is closest to the vehicle's normal domicile. However, all assignments shall be at the sole discretion of COSA and maintenance and service shall be on a first come first served basis so long as COSA has excess capacity to provide such maintenance and service. Nothing herein shall require COSA to provide services for which it does not have sufficient capabilities, resources and competency.

### ARTICLE IV. COMPENSATION

4.01 All charges are established in accordance with the City's annual budget and may be revised as authorized in Article II section 2.03 herein. Current charges are as follows:

1.	Shop Hourly Rate	\$	53.00
2.	Paint & Body Shop Hourly Rate	\$	23.00
3.	Wash (Metered)		
	Car	\$	3.00
	Medium Truck	\$	5.00
	Large Truck	\$	25.00
4.	State Inspections		
	Per Vehicle		
	(Sticker, labor, shop fee)	\$	19.50

5.	COSA's Fuel Price	Oil Price Index Service amt. + taxes
6.	Fuel – Per Gallon Mark-up	\$0.15
7.	COSA administrative fee for outside sales	5%
8.	Total fuel price to ENTITY	Sum of (5), (6) and (7)
9.	Parts Markup	15%
10.	Sublet Markup	10%
11.	Work Order Fee	\$ 3.00
12.	Fuel Card	\$ 5.00
13.	Annual Administrative Fee per vehicle	\$ 7.50

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.

4.03 The Parties may agree that COSA is to provide maintenance or repair services in addition to those listed herein. Such agreement shall comply with ARTICLE X herein.

4.04 The Parties agree that COSA will not maintain vehicles older than 5 years and reserves the right to reject maintenance of certain vehicles at the COSA's sole discretion.

#### **ARTICLE V. INDEPENDENT CONTRACTOR STATUS**

5.01 Nothing contained herein shall be deemed to create any relationship other than that of an independent contractor between ENTITY 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 ENTITY.

5.02 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.

**ARTICLE VI. 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, Texas 782\_\_

If to COSA: Florencio Pena, Director  
Fleet Services  
\_\_\_\_\_ Frio Street  
San Antonio, Texas 78204

and

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

**ARTICLE VII. 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 be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XII. Amendments.

**ARTICLE VIII. 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 IX. 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 X. PAYMENTS FROM CURRENT REVENUES**

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

10.02 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 XI. INDEMNITY**

11.01 ENTITY covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS, the COSA and the elected officials, employees, officers, directors, volunteers and representatives of the COSA, 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 COSA directly or indirectly arising out of, resulting from or related to ENTITY'S activities under this Agreement, including any acts or omissions of ENTITY, any agent, officer, director, representative, employee, consultant or subcontractor of ENTITY, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of COSA, its officers or employees, in instances where such negligence is the sole cause of personal injury, death, or property damage. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY TO ANY LIABILITY ATTRIBUTABLE TO COSA BASED ON A JOINT ENTERPRISE LIABILITY THEORY OF RECOVERY. IN THE EVENT ENTITY AND COSA ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, ON A BASIS OTHER THAN JOINT ENTERPRISE LIABILITY, LIABILITY SHALL BE APPROTIONED 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.**

11.02 The provisions of this INDEMNIFICAITON 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.

11.03 ENTITY shall advise the COSA in writing within 24 hours of any claim or demand against the COSA or ENTITY known to ENTITY related to or arising out of ENTITY's activities under this contract.

## **ARTICLE XII. 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 hereto and authorized by COSA City Council; except that the Agreement may be extended and modified as authorized in Article II section 2.03 herein.

*Remainder of page intentionally left blank*

**ARTICLE XIII. 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 \_\_\_\_\_, 20\_\_ .

CITY OF SAN ANTONIO

ENTITY

\_\_\_\_\_  
Florencio Pena  
Director, Fleet Services

\_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Robert Nordhaus  
Assistant City Attorney

\_\_\_\_\_  
Legal Counsel



**CITY OF SAN ANTONIO**  
**Request for Council Action**

Agenda Item # 68  
Council Meeting Date: 6/19/2008  
RFCAs Tracking No: R-3467

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**DEPARTMENT:** Fleet Maintenance & Operations **DEPARTMENT HEAD:** Florencio Pena

**COUNCIL DISTRICT(S) IMPACTED:**  
City Wide

**SUBJECT:**  
Interlocal Agreement for Fleet Services and Fuel

**SUMMARY:**

This Ordinance authorizes the City Manager to execute Interlocal Agreements for Fleet Services and Fuel between the City of San Antonio and outside Entities, pursuant to the Interlocal Cooperation Act of the Texas Government Code, at budget approved rates adopted through closing ordinance each fiscal year. This Agreement may be extended for up to five (5) year one-year periods.

**BACKGROUND INFORMATION:**

The Fleet Maintenance & Operations Department is responsible for providing various fleet services and commodities to City owned vehicles and equipment. There are currently seven service centers, eleven fueling sites, seven automated carwashes, a full service collision repair facility and three vehicle state inspection stations servicing City vehicles and equipment. Fleet Maintenance and Operations has received requests from several outside entities such as the San Antonio Housing Authority, the City of China Grove and Lackland ISD to utilize and purchase Fleet Services and/or Fuel at the current fleet rates. The City currently sells fuel to Bexar County at City approved rates.

Fleet Maintenance and Operations coordinated with the City Attorney's Office to prepare an Interlocal Agreement that would identify terms and conditions for the use of Fleet Services and commodities along with a price list of services and commodities.

**ISSUE:**

State law authorizes cities and entities to enter into agreements to share or exchange services. Under previous agreements the City has previously sold fuel to San Antonio Housing Authority and currently sells fuel to Bexar County. This ordinance authorizes agreements to be entered into with other entities pursuant to state law and under the conditions provided by this Interlocal agreement. The net revenue received from the sale of fuel to Bexar County in fiscal year 2006-2007 is \$160,000.00. These funds are recorded in the fleet services operations fund and used to offset the cost of fleet rates charged to city departments.

**ALTERNATIVES:**

The City may elect to deny Fleet services and commodities to outside Entities requiring the Entities to purchase these services from other providers.

**FISCAL IMPACT:**

The fiscal impact of this action is approximately \$175,000.00 in net annual revenue from Bexar County, City of China Grove and the San Antonio Housing Authority. Sale of fuel and possibly fleet maintenance services to outside entities will provide additional revenue to the City without impacting delivery of fleet services to city departments. The fleet rates provided by Article IV. Compensation provides for the rates currently in effect. Changes to the rates are subject to City Council action each fiscal year.

**RECOMMENDATION:**

Staff recommends approval of the Interlocal Agreement for fleet services and fuel.

**ATTACHMENT(S):**

File Description	File Name
<a href="#">Interlocal Agreement for Fleet Services and Fuel</a>	Interlocal Agreement - Vehicle Maintenance Services -.pdf
<a href="#">Voting Results</a>	
<a href="#">Ordinance/Supplemental Documents</a>	200806190609.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Florencio Pena Director Fleet Maintenance & Operations

**APPROVED FOR COUNCIL CONSIDERATION:**

Sharon De La Garza Assistant City Manager