

AN ORDINANCE 2009-03-19-0221

APPROVING AN INTERLOCAL AGREEMENT WITH THE TEXAS TRANSPORTATION INSTITUTE THAT PROVIDES FOR FUEL CONSUMPTION AND EMISSIONS TESTING OF CITY-OWNED COMPRESSED NATURAL GAS (CNG) AND DIESEL-FUELED SOLID WASTE REFUSE COLLECTION VEHICLES AT THE CITY'S NORTHEAST SERVICE CENTER FACILITY.

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WHEREAS, the City's Department of Solid Waste currently utilizes CNG and diesel-fueled solid waste collection vehicles in conducting its solid waste refuse collection operations; and

WHEREAS, the Texas Transportation Institute ("TTI"), a component of the Texas A&M University System, in connection with a \$150,000 grant to TTI from the State Energy Conservation Office ("SECO"), has proposed that the City participate in a project to conduct air quality study testing of fuel consumption and emissions of City CNG and diesel-fueled refuse trucks; and

WHEREAS, the testing will be conducted using 10 City model year 2008 refuse trucks (five CNG and five diesel side loaders) while the trucks are operated on a set pattern of activities (referred to as drive/duty cycles), in order to compare the performance of CNG and diesel; and

WHEREAS, the testing will begin on Monday, March 23, 2009, and will be conducted over 12 business days with three contingency days for unforeseen events; and

WHEREAS, the collection and compaction activities will be conducted at the City's Northeast Service Center (10303 Tool Yard); the drive activity will be conducted on Wurzbach Parkway adjacent to the Northeast Service Center; and

WHEREAS, two portable emissions measurement systems (PEMS) units will be used, and the PEMS units will measure gaseous emissions [Oxides of Nitrogen (NOx), Carbon Monoxide (CO), Hydrocarbons (HC), Carbon Dioxide (CO₂)], particulate matter (PM) as well as fuel consumption and efficiency; and

WHEREAS, in consideration for the City providing the testing sites, the refuse collection trucks, fuel consumed by the trucks during the testing, operators for the trucks, and a fork lift, TTI will pay the City the fixed-price amount of \$11,000; and

WHEREAS, the following points summarize the significance of this research and the benefits to the City of San Antonio:

- This research effort is unique in that it tests vehicles under real operating conditions. Testing used for Environmental Protection Agency (EPA) and other verification protocols usually is done by removing the vehicle's engines and testing them with dynamometers in laboratory conditions. Testing refuse trucks under regular operating conditions instead, provides results that are applicable to real-life situations.
- The data collection will include gaseous emissions, particulate matter (PM) as well as fuel efficiency.
- This project will not hinder normal service delivery of refuse collection or fleet services; and

WHEREAS, there is currently no existing study comparing the above mentioned parameters for diesel and CNG refuse trucks. The information obtained from this research project can help the City of San Antonio assess the relative feasibility and comparative benefits of investing in CNG trucks versus diesel trucks; 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, City Staff has proposed that the City and TTI enter into an Interlocal Agreement For Emissions Testing On City Of San Antonio CNG and Diesel Refuse Trucks 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, City Staff has recommended that the Agreement be approved and its execution on behalf of the City authorized by the City Council, and;

WHEREAS, the Intergovernmental Relations Committee, at its meeting of March 11, 2009, recommended that the Agreement be approved; and

WHEREAS, the City Council, upon review and consideration of the City Staff and Intergovernmental Relations Committee recommendations, is of the opinion that the recommendations should be accepted and the Agreement approved; **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 Emissions Testing On City Of San Antonio CNG and Diesel Refuse Trucks 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 Interlocal Agreement For Emissions Testing On City Of San Antonio CNG and Diesel Refuse Trucks, 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.

SECTION 3. Funds generated by this ordinance will be deposited as per the table below:

Amount	Internal Order	General Ledger	Fund
\$5,000.00	215000000006	6301130	71001000
\$6,000.00	255000000019	6301130	55001000

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 19th day of March, 2009.


M A Y O R
PHIL HARDBERGER

ATTEST: 
 City Clerk

APPROVED AS TO FORM: 
 City Attorney

A T T A C H M E N T I

**INTERLOCAL AGREEMENT FOR
EMISSIONS TESTING ON CITY OF SAN ANTONIO
CNG AND DIESEL REFUSE TRUCKS**

THIS AGREEMENT ("Agreement") is entered into this _____ day of March, 2009, by and between the **CITY OF SAN ANTONIO** (hereinafter "COSA"), and the **TEXAS TRANSPORTATION INSTITUTE** (hereinafter "TTI"), 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.

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which the Parties shall **(1)** perform real-world on-board fuel consumption and emissions testing of COSA diesel and compressed natural gas (CNG) refuse trucks ("Project"); and **(2)** share the results of the testing, which will enable COSA to assess the relative feasibility and comparative benefits of investing in CNG trucks versus diesel trucks.

ARTICLE II. TERM

2.01 The term of this Agreement shall begin on the date it is executed by the Parties, and shall terminate upon delivery of the copies of the final report to COSA pursuant to Article VI, Section 6.02 of this Agreement, **or** June 30, 2009, whichever occurs first, 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 **one (1)** additional one-month period upon the mutual consent of and written agreement between the Parties, so long as such extension complies with Article XV of this Agreement. 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 Agreement. Approval of such extension by COSA's City Council shall not be required.

**ARTICLE III. VEHICLES, OTHER EQUIPMENT, OPERATORS,
AND TESTING SITES**

3.01 Trucks. COSA shall provide five (5) CNG fueled 2008 model side-loader refuse trucks and five (5) diesel fueled 2008 model side-loader refuse trucks, for a total of ten (10) 2008 model side-loader refuse trucks ("Trucks"). The Trucks to be provided shall be selected by the Director in his sole, unfettered discretion. One of the Trucks and an operator for that Truck will be available at the Testing Sites (defined below) for each day of the Testing Schedule (defined below). The Trucks will be used in the Project.

3.02. Other Equipment. COSA shall provide one (1) forklift (“Forklift”). The Forklift to be provided shall be selected by the Director in his sole, unfettered discretion. COSA shall provide a qualified and trained operator who shall be a COSA employee and who shall operate the Forklift at all times (“Forklift Operator”). The Forklift Operator will at all times be and remain a COSA employee, and shall be under the direction and control of COSA.

3.03 Truck Operators. COSA will provide an operator for each of the Trucks (“Truck Operator”). The Operator will be an employee in COSA’s Fleet Maintenance & Operations Department. The Operator will stay with the Truck for the entire time that the Truck is at the Testing Site. The Truck Operator shall be entitled to a 15 minute break in the morning, a 15 minute break in the afternoon, and a 45 minute break for lunch. The Truck Operator will perform the various components of the test procedure in accordance with instructions from TTI employees, but the Truck Operator will at all times be and remain a COSA employee.

3.04 Testing Sites. All tests pursuant to this Agreement shall be conducted at (1) COSA’s Northeast Service Center, located at 10303 Tool Yard, San Antonio, Texas (“Service Center”), for the collection and compaction components, and (2) on Wurzbach Parkway adjacent to the Service Center for the driving component. (3) Two days on a regular refuse route with drivers from the Solid Waste Department: One day with CNG Refuse Truck and one day with Diesel Powered Truck. These locations are sometimes hereafter referred to as the “Testing Sites”.

3.05 Fuel. Inclusive to the reimbursement outlined in Article 5, COSA will provide the fuel for the duration of the Project. Within five (5) business days following completion of the Testing Period, COSA will submit to TTI a statement detailing the type of fuel, the number of gallons and the dates of usage for data collection and validation purposes.

COSA will make available to TTI for the duration of the Testing Schedule space within the Service Center reasonably necessary to conduct the collection and compaction components of the testing.

ARTICLE IV. TESTING SCHEDULE, TEST INSTRUMENTS, AND TEST PROCEDURES

4.01 Testing Schedule. The Testing Schedule shall consist of sixteen (16) consecutive business days: one day for preparation, 12 days of actual testing, and three days set aside as reserve for unforeseen events such as bad weather. The beginning date of the Testing Schedule shall be Monday, March 23, 2009.

A graphic setting forth the Testing Schedule and a brief description of each day’s activities will be provided by TTI and attached to this Agreement as Attachment I, and is incorporated herein by reference for all purposes.

4.02 Test Instruments. The Test Instruments (hereafter so called) shall consist of: (a) two (2) portable emissions measurement systems (PEMS) units, which will measure gaseous emissions (NO_x, CO₂, HC, CO), particulate matter, and fuel consumption; and (b) an electronic flowmeter, which will measure actual exhaust flow, and a generator for providing electric power to the PEMS units that will be installed by TTI on each Truck on the day the Truck is used in the

Project and removed by TTI immediately upon conclusion of the use of the Truck in the Project. The Test Instruments will be provided by TTI at its sole cost and expense. COSA hereby authorizes TTI to install and remove the Test Instruments on each Truck.

4.03 Test Procedures. The Test Procedures (hereafter so called) shall consist of the following Drive/Duty cycles: (a) *Collection* – replicating actual collection activity in residential area; (b) *Compaction* – replicating actual compaction activity during the collection service; and (c) *Driving* – replicating highway driving from/to the Center to/from service area.

The Collection and Compaction components of the Test Procedures will be conducted at the Northeast Service Center. The Driving components will be conducted on Wurzbach Parkway adjacent to the Northeast Service Center and a regular refuse collection route.

TTI shall be solely responsible for developing a set pattern of activities for each of the components of the Test Procedures, and for instructing each Operator of a Truck with regard to these activities. All such development and instructions shall be at the sole cost and expense of TTI.

ARTICLE V. REIMBURSEMENT TO COSA

5.01 In consideration for COSA providing the Trucks, the Truck Operators, the Forklift, the Forklift Operator, the fuel, and the Testing Sites that will be used to accomplish the purposes of this Agreement, TTI shall reimburse COSA in the fixed-price amount of ELEVEN THOUSAND AND NO/100 DOLLARS (\$11,000.00).

5.02 Upon completion of the Testing Period, COSA will submit to TTI a statement for reimbursement in the amount of \$11,000.00. Within thirty (30) days from TTI's receipt of such statement, TTI shall reimburse COSA the amount of \$11,000.00.

5.03 The provisions of the Prompt Payment Act, Chapter 2251 of the Texas Government Code, shall apply to the reimbursement to be paid by TTI pursuant to this Article.

ARTICLE VI. TEST RESULTS

6.01 TTI shall provide COSA five (5) copies via CD or other electronic format of the accumulated raw data resulting from the tests conducted pursuant to this Agreement. These copies shall be delivered to the Director within ten (10) business days after the completion of the Testing Schedule.

6.02 TTI shall provide COSA five (5) copies of the final report resulting from the tests conducted pursuant to this Agreement. The copies of the report shall be delivered to the Director within ten (10) business days after TTI has submitted it to the State Energy Conservation Office.

6.03 Upon receipt of the materials described in Sections 6.01 and 6.02 above, those copies shall irrevocably become the property of COSA.

ARTICLE VII. RISK OF LOSS

- 7.01 Operation of Trucks to and from Test and at Test Site. All risk of loss on COSA.
- 7.02 Installation of Test Instruments on and removal of Test Instruments from Trucks. All risk of loss on TTI. TTI shall be solely responsible for payment of all costs related in any manner to repairs to any Truck used in the Project that are necessary as the result of installation of Test Instruments on the Truck and/or removal of Test Instruments from the Truck.
- 7.03 Damage to or destruction of Test Instruments during Test Period. All risk of loss on TTI.
- 7.04 Gathering, storing, and interpreting data collected during the Testing Period. All risk of loss on TTI
- 7.05 Operation of Forklifts to and from Test and at Test Site. All risk of loss on COSA.

ARTICLE VIII. INDEPENDENT CONTRACTOR STATUS

- 8.01 Nothing contained herein shall be deemed to create any relationship other than that of an independent contractor between COSA and TTI. Under no circumstances shall COSA, its directors, officers, employees, agents, successors or assigns, be deemed employees, agents, partners, successors, assigns or legal representatives of TTI. Under no circumstances shall TTI, its directors, officers, employees, agents, successors or assigns, be deemed employees, agents, partners, successors, assigns or legal representatives of COSA.
- 8.02 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.

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ARTICLE IX. NOTICES AND ADDRESSES

All notices, invoices, statements and reports to TTI 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 TTI: Janice Konecny
Director of Projects Administration and Operational Analysis
TTI Business Operations
3135 TAMU
College Station, Texas 77843-3135

If to COSA: Florencio Pena, Director
Fleet Services
329 S. Frio Street
San Antonio, Texas 78207

and

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

ARTICLE X. 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 XV. Amendment.

ARTICLE XI. 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 XII. 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 venue for any legal action, claim or dispute arising under this Agreement brought against COSA will be in Bexar County, Texas. Pursuant to Section 85.18, Texas Education Code, mandatory venue for any legal action, claim or dispute arising under this Agreement brought against TTI lies in Brazos County.

17.02 TTI represents, warrants, assures and guarantees as follows:

A. The signer of this Agreement on behalf of TTI possesses full legal authority pursuant to Chapter 85, Texas Education Code, to execute this Agreement on behalf of TTI and to bind TTI to the terms and conditions set forth herein; and

B. TTI possesses full legal authority to enter into this Agreement and to perform its responsibilities, duties and obligations herein set out.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH HAVE THE FORCE AND EFFECT OF AN ORIGINAL, THIS THE ___ DAY OF March, 2009.

CITY OF SAN ANTONIO

TEXAS TRANSPORTATION INSTITUTE

Florencio Pena
Director, Fleet Services

Dennis L. Christiansen, Ph.D., P.E.
Agency Director, TTI

Approved as to Form:

Robert Nordhaus
Assistant City Attorney

ARTICLE XIII. PAYMENTS FROM CURRENT REVENUES

13.01 Payment of funds to be paid by TTI pursuant to this Agreement shall be made from current revenues.

ARTICLE XIV. NO INDEMNIFICATION BY PARTIES

14.01 TTI and COSA acknowledge they are each political subdivisions or agencies 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.

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

ARTICLE XV. 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.

ARTICLE XVI. 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.

ARTICLE XVII. AUTHORITY

17.01 COSA represents, warrants, assures and guarantees as follows:

A. The signer of this Agreement on behalf of COSA possesses full legal authority pursuant to Ordinance No. 2009-03-05-____ adopted by the San Antonio City Council on March 5, 2009, to execute this Agreement on behalf of COSA and to bind COSA to the terms and conditions set forth herein; and

B. COSA possesses full legal authority to enter into this Agreement and to perform its responsibilities, duties and obligations herein set out.

Test Schedule

March/April	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W
TTI team arrives at the center																								
Preparation for Testing																								
CNG truck 1 (Duty Cycle Testing)																								
CNG truck 2 (Duty Cycle Testing)																								
CNG truck 3 (Duty Cycle Testing)																								
CNG truck 4 (Duty Cycle Testing)																								
CNG truck 5 (Duty Cycle Testing)																								
CNG truck 5 (In-Service Testing)																								
Diesel truck 1 (Duty Cycle Testing)																								
Diesel truck 2 (Duty Cycle Testing)																								
Diesel truck 3 (Duty Cycle Testing)																								
Diesel truck 4 (Duty Cycle Testing)																								
Diesel truck 5 (Duty Cycle Testing)																								
Diesel truck 5 (In-Service Testing)																								
TTI team packs & leaves																								
Reserve for unforeseen events																								