

AN ORDINANCE

2012-09-06-0684

AUTHORIZING AN INTERLOCAL AGREEMENT WITH VIA METROPOLITAN TRANSIT TO PROVIDE EACH PARTY ACCESS TO THE OTHER PARTY'S CNG FACILITY FOR A FIVE YEAR TERM WITH TWO ONE-YEAR RENEWAL OPTIONS.

* * * * *

WHEREAS, the City of San Antonio ("City") 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, VIA Metropolitan Transit ("VIA") has constructed a CNG dispensing facility located at 1720 N. Flores, San Antonio, Texas 78212 ("VIA CNG Facility") which is also fully operational and from which CNG fuel is dispensed for its vehicles that operate on and consume this type of fuel; and

WHEREAS, the City and VIA are sometimes; hereafter referred to as the "Parties"; and

WHEREAS, in order to (1) increase to the maximum extent possible the Parties' use of CNG fuel; (2) provide a back-up source of CNG fuel for each of the Parties in the event it becomes necessary or desirable in the future; and (3) promote and expand the attitude of support and cooperation between the Parties, the Parties desire to provide for the City's use of the VIA CNG Facility and the City's use of the COSA CNG Facility; 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

WHEREAS, the City and VIA desire to enter into an Interlocal Agreement For Use of CNG Facilities ("Interlocal Agreement"), under which each Party will be able to use the other Party's CNG facility for a term of five (5) years, with two (2) one-year renewal terms; and

WHEREAS, City Staff has recommended that the City enter into the Interlocal Agreement with VIA; 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 For Use Of CNG Facilities, between the City and VIA Metropolitan Transit, 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 Director of the Building & Equipment Services Department 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. Funding for this ordinance is available in Fund 71001000, Cost Center 3502010001 and General Ledger 5404530 as part of the Fiscal Year 2012 budget. Future funding during the duration of this contract is contingent upon City Council approval of the Fiscal Year 2013 and subsequent budgets.

SECTION 3. The financial allocations in this ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific cost centers and fund numbers as necessary to carry out the purpose of this ordinance.

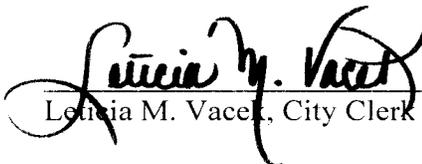
SECTION 4. This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED and APPROVED this 6th day of September, 2012.

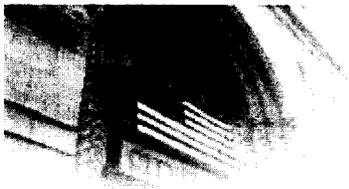

for **MAYOR**
Julián Castro

ATTEST:

APPROVED AS TO FORM:

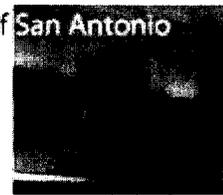

Leticia M. Vacek, City Clerk


Michael D. Bernard, City Attorney



Request for
COUNCIL
 ACTION

City of San Antonio



Agenda Voting Results - 24A

Name:	24A, 24B						
Date:	09/06/2012						
Time:	10:31:25 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Agreement with VIA Metropolitan Transit for Joint Use of CNG Facilities for a term of five years.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x			x	
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

RKN
09/06/12
Item No. 24 (A)

A T T A C H M E N T I

**INTERLOCAL AGREEMENT FOR
USE OF CNG FACILITIES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

THIS AGREEMENT ("Agreement") is entered into this _____ day of August, 2012, by and between **VIA METROPOLITAN TRANSIT** (hereinafter "VIA") 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, VIA'S CNG dispensing facility located at 1720 N. Flores, San Antonio, Texas 78212 ("VIA CNG Facility") has been completed and is fully operational; and

Whereas, in order to (1) increase to the maximum extent possible the Parties' use of CNG fuel; (2) provide a back-up source of CNG fuel for each of the Parties in the event it becomes necessary or desirable in the future, and (3) promote and expand the attitude of support and cooperation between the Parties, the Parties desire to provide for COSA'S use of the VIA CNG Facility and VIA'S use of the COSA CNG Facility; and

Whereas, COSA'S City Council authorized the execution of this Agreement pursuant to Ordinance No. 2012-08-__ - ____, passed and approved _____; and

Whereas, VIA'S Board of Directors has authorized the execution of this Agreement on behalf of VIA pursuant to VIA Board Resolution _____, passed and approved _____, 2012.

NOW THEREFORE, the Parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which VIA shall be entitled to use the COSA CNG Facility to fuel VIA'S CNG-fueled vehicles and COSA shall be entitled to use the VIA CNG Facility to fuel COSA'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, 2017, 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 on the same terms and conditions for up to two (2) one (1) year periods upon the consent of and written agreement between VIA and COSA. Any such extension shall be authorized in writing on COSA'S behalf by its Director, Building & Equipment Services, or designee, and by any authorized officer on behalf of VIA. Authorization of any such extension by COSA's City Council shall not be required.

ARTICLE III. SERVICES

3.01 COSA shall provide VIA access to the COSA CNG Facility for the purpose of fueling VIA'S CNG fueled vehicles in the event VIA's CNG fueling facility becomes non-operational for any reason. Such access shall continue only during the time VIA's CNG fueling facility remains non-operational.

3.02 VIA shall provide COSA access to the VIA CNG Facility for the purpose of fueling COSA'S CNG fueled vehicles in the event COSA's CNG fueling facility become non-operational for any reason. Such access shall continue only during the time COSA's CNG fueling facility remains non-operational.

ARTICLE IV. COMPENSATION

4.01 VIA shall compensate COSA for the CNG fuel consumed in fueling VIA's CNG fueled vehicles, and COSA shall compensate VIA for the CNG fuel consumed in fueling COSA'S CNG fueled vehicles, in the following amounts:

- | | |
|--|--|
| 1. Fuel Price | CPS CCF Rate plus Operations & Maintenance Rate based on Consumption
(The basis for determining the Operations & Maintenance Rate is set forth in Exhibit A, attached hereto and made a part hereof for all purposes) |
| 2. Fuel -- Per Gallon Mark-up Diesel Gallon Equivalent (DGE) | \$ 0.10 |
| 3. Total fuel price | Sum of (1) and (2) |
| 4. Administrative fee for outside sales system (monthly) | \$3.00 x total vehicles set up in the fuel billing |
| 5. FOB (electronic fueling device) | \$6.50 each |

4.02 Compensation is intended to properly compensate each Party for the costs, services and functions being performed under this Agreement. Either Party may renegotiate the compensation at any time provided compensation to be paid by each Party to the other remains equal.

4.02 The billing party will submit to the consuming party a monthly report of charges by the billing

party for goods and services provided pursuant to this Agreement. Upon approval by the consuming party of the charges in the billing party's monthly report, which approval will not be unreasonably withheld, the consuming party shall submit to the billing party payment in full for all charges stated in the monthly report. Such payment shall be made to the billing party no later than 30 days from the date the monthly report is received by the consuming party. Should the consuming party dispute a portion of the charges on the monthly report the consuming party 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 VIA shall be responsible for ensuring each operator of a VIA 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 VIA vehicle on the premises of the COSA CNG Facility.

5.02 COSA shall be responsible for ensuring each operator of a COSA vehicle to be refueled at the VIA CNG Facility obtains and maintains in current and good standing status all applicable and required training, licenses and certifications while operating a COSA vehicle on the premises of the VIA CNG Facility.

5.03 COSA shall arrange for each VIA operator who will refuel a VIA 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. VIA shall reimburse COSA for all costs incurred by COSA in arranging for such training. VIA shall ensure that each VIA operator who will refuel a VIA vehicle receives all of the training described above before refueling any VIA vehicle at the COSA CNG Facility.

5.04 VIA shall arrange for each COSA operator who will refuel a COSA vehicle on the VIA 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. COSA shall reimburse VIA for all costs incurred by VIA in arranging for such training. COSA shall ensure that each COSA operator who will refuel a COSA vehicle receives all of the training described above before refueling any COSA vehicle at the VIA CNG Facility.

5.05 VIA shall ensure that there are no occupants on any VIA vehicle other than the VIA operator from the time the VIA vehicle enters the COSA CNG Facility until the VIA vehicle leaves the COSA CNG Facility.

5.06 COSA shall ensure that there are no occupants in any COSA vehicle other than the COSA

operator from the time the COSA vehicle enters the VIA CNG Facility until the COSA vehicle leaves the COSA CNG Facility.

5.07 The standard days and hours during which VIA'S CNG fueled vehicles may be refueled at the COSA CNG Facility are Monday through Friday between the hours of 6:00 p.m. and 6:00 a.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. VIA 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.

5.08 The standard days and hours during which COSA'S CNG fueled vehicles may be refueled at the VIA CNG Facility are Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m. Refueling on additional days and/or at different hours ("Additional Refueling") may be arranged with the prior written consent of the VIA Vice President Maintenance. COSA shall be responsible for all costs incurred by VIA 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 VIA CNG Facility.

5.09 VIA 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 VIA'S CNG-fueled 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 COSA CNG Facility to be restored to operational at the earliest possible time, so that CNG fuel will be available to accomplish the purposes of this Agreement.

5.10 COSA acknowledges that this Agreement is subject to the operational status of the VIA CNG Facility and that if it becomes non-operational for any reason, CNG fuel will not be available from the VIA CNG Facility to refuel COSA'S CNG-fueled vehicles during that period. VIA agrees that it will make reasonable efforts using sources and resources presently available to it to cause the status of the VIA CNG Facility to be restored to operational at the earliest possible time, so that CNG fuel will be available to accomplish the purposes of this Agreement.

5.11 VIA acknowledges that this Agreement is subject to COSA's ability to satisfy COSA operational obligations for COSA CNG vehicles. CNG fuel will not be available from the COSA CNG Facility to refuel VIA'S CNG-fueled vehicles if COSA is not for any reason capable of satisfying both the COSA CNG refueling obligation and the VIA refueling need. COSA agrees that it will make reasonable efforts using sources and resources presently available to satisfy COSA operational obligations at the earliest possible time, so that CNG fuel will be available to VIA to accomplish the purposes of this Agreement.

5.12 COSA acknowledges that this Agreement is subject to VIA's ability to satisfy VIA operational obligations for VIA CNG vehicles. CNG fuel will not be available from the VIA CNG Facility to refuel COSA'S CNG-fueled vehicles if VIA is not for any reason capable of satisfying both the VIA CNG refueling obligation and the COSA refueling need. VIA agrees that it will make reasonable efforts using

sources and resources presently available to satisfy VIA operational obligations at the earliest possible time, so that CNG fuel will be available to COSA 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 VIA 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 VIA. Under no circumstances shall VIA, 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 VIA 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 VIA, 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 VIA.

ARTICLE VII. NOTICES AND ADDRESSES

All notices, invoices, statements and reports to VIA 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 VIA: Ron Perez
 Manager Maintenance Administration
 VIA Metropolitan Transit
 800 W. Myrtle
 San Antonio, Texas 78212

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 VIA for the services provided pursuant to this Agreement shall be made from current revenues available to VIA.

11.02 Payment by COSA for the services provided pursuant to this Agreement shall be made from current revenues available to the City.

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 VIA 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 VIA shall advise COSA promptly of any claim or demand against COSA or VIA known to VIA related to or arising out of VIA'S activities under this contract.

12.03 COSA shall advise VIA promptly of any claim or demand against VIA or COSA known to COSA related to or arising out of COSA'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 _____, 2012.

CITY OF SAN ANTONIO

VIA METROPOLITAN TRANSIT

Jorge A. Perez
Director, Building &
Equipment Services

Gary Glasscock, V.P.
Maintenance

Approved as to Form:

Robert Nordhaus
Assistant City Attorney