CH
08/06/2015
Item No. 25

AN ORDINANCE 2015-08-06-0652

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A COOPERATIVE AGREEMENT WITH BEXAR COUNTY TO PERMIT THE COUNTY TO PROVIDE MANDATORY RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES IN THE CAMELOT II NEIGHBORHOOD, AN AREA WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION

* * * * *

WHEREAS, the issue of illegal dumping and the collection of solid waste in unincorporated areas of Bexar County has been a continuing problem for a number of years and in 2012 Representative Ruth Jones McClendon requested an opinion from the Texas Attorney General concerning whether a county may provide mandatory solid waste collection services in an area of the county that is within the extraterritorial jurisdiction (ETJ) of a municipality but that is not receiving such service from the municipality; and

WHEREAS, Texas Attorney General (AG) Opinion GA-0988, February 5, 2013, concluded that Section 364.031 of the Health and Safety Code authorizes cooperative agreements between a municipality and a county that would permit the county to provide mandatory solid waste disposal service in an area of the county that is within the ETJ of the municipality that is not receiving such services from the municipality; and

WHEREAS, in early June 2015, Bexar County Precinct 4 Commissioner Tommy Calvert contacted the Solid Waste Management Department Director to discuss solid waste disposal services in the Camelot II residential neighborhood, an area in unincorporated Bexar County and within the City of San Antonio's ETJ; and

WHEREAS, Bexar County does not require mandatory solid waste disposal services for residents of unincorporated Bexar County, and although the Camelot II neighborhood is within the City's ETJ, state statute does not allow the City to mandate or provide solid waste collection or disposal services in areas outside the City limits; and

WHEREAS, this Ordinance would authorize the negotiation and execution of a cooperative agreement between the City and Bexar County to permit the County to provide mandatory solid waste collection and disposal services in the Camelot II neighborhood, an area within the City's ETJ, in accordance with the Texas Attorney General Opinion GA-0988; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designee, or the Director, Solid Waste Management Department, or his designee, is hereby authorized to negotiate a cooperative agreement with Bexar County to permit the County to provide mandatory residential

solid waste collection and disposal service in the Camelot II neighborhood, an area within the City of San Antonio's ETJ.

SECTION 2. The City Manager, or her designee, or the Director, Solid Waste Management Department, or his designee, is hereby authorized to execute a cooperative agreement with Bexar County, including any and all documents required to effectuate the purpose of this Ordinance, without further action by the San Antonio City Council. A draft copy of the Agreement, in substantially final form, is attached and incorporated herein for all purposes as **Attachment I**.

SECTION 3. This Ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes or, if passed by fewer than eight (8) affirmative votes, shall be effective ten (10) days after passage.

PASSED AND APPROVED this 6th day of August, 2015.

M A Y O R
for Ivy R. Taylor

ATTEST:

for Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**25**
Date:	08/06/2015
Time:	12:00:10 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a cooperative agreement between the City of San Antonio and Bexar County allowing the County to provide mandatory residential Solid Waste collection and disposal services for Bexar County's Camelot II neighborhood located within the City's extraterritorial jurisdiction. [Peter Zanoni, Deputy City Manager; David W. McCary, Director, Solid Waste Management]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x				
Michael Gallagher	District 10	x					

STATE OF TEXAS §
§ **INTERLOCAL AGREEMENT FOR SOLID WASTE COLLECTION AND TRANSPORTATION SERVICES IN THE CAMELOT II AREA OF BEXAR COUNTY**
§
COUNTY OF BEXAR §

The City of San Antonio ("COSA"), a home-rule municipality in Bexar County, Texas, and Bexar County, Texas ("County"), enter this agreement pursuant to the authority granted by each governing body and acting through Ordinance No. 2015-08-xx-xxxx, passed and approved by the San Antonio City Council on August xx, 2015, and through a *Order/Resolution/Motion* passed and approved by the Bexar County Commissioners Court on August xx, 2015. The Interlocal Cooperation Act, Texas Government Code Chapter 791, provides that governmental entities of the State may contract with each other to provide governmental functions and services and provide fire protection and associated services to protect public health; and

WHEREAS, the collection, transportation and disposal of municipal solid waste within the COSA city limits is mandated by the San Antonio City Code and these services are performed by the San Antonio Solid Waste Management Department; and

WHEREAS, the collection, transportation and disposal of municipal solid waste generated in unincorporated areas of Bexar County is not mandated by the County Commissioners. The issue of illegal dumping of solid waste in Bexar County has been a continuing problem for a number of years and in 2012 Representative Ruth Jones McClendon requested an opinion from the Texas Attorney General concerning whether a county may provide mandatory solid waste collection services in an area of the county that is within the extraterritorial jurisdiction (ETJ) of a municipality but that is not receiving such service from the municipality; and

WHEREAS, Texas Attorney General (AG) Opinion GA-0988, February 5, 2013, concluded that Section 364.031 of the Health and Safety Code authorizes cooperative agreements between a municipality and a county that would permit the county to provide mandatory solid waste disposal service in an area of the county that is within the ETJ of the municipality that is not receiving such services from the municipality; and

WHEREAS, in early June 2015, Bexar County Precinct 4 Commissioner Tommy Calvert contacted the Solid Waste Management Department Director to discuss solid waste disposal services in the Camelot II residential neighborhood, an area in unincorporated Bexar County and within the City of San Antonio's ETJ; and

WHEREAS, Bexar County does not require mandatory solid waste disposal services for residents of unincorporated Bexar County, and although the Camelot II neighborhood is within the City's ETJ, state statute does not allow the City to mandate or provide solid waste collection or disposal services in areas outside the City limits; and

WHEREAS, it is to the mutual benefit of COSA and the County that the collection, transportation and disposal of solid waste in the Camelot II neighborhood be provided by the County, and COSA will permit the County to provide mandatory solid waste collection and disposal services in the Camelot II neighborhood, an area within the City's ETJ, in accordance with the Texas Attorney General Opinion GA-0988;

NOW THEREFORE, in consideration of the terms, rights and duties contained in this Interlocal Agreement, COSA and BEXAR County, through their respective governing bodies, agree that this cooperative agreement between COSA and Bexar County would permit Bexar County to provide mandatory solid waste disposal service in an area of Bexar County that is within the ETJ of COSA that is not receiving such services from COSA (Camelot II), in accordance with Section 364.031 of the Health and Safety Code and the conclusion provided in Texas Attorney General (AG) Opinion GA-0988, February 5, 2013. COSA and Bexar County agree as follows:

SECTION 1. SERVICES

1.01 Services to Be Provided by COSA.

1.02 Services to Be Provided by BEXAR COUNTY.

1.03 Services. Upon request, BEXAR COUNTY agrees to provide the aforementioned services and acknowledges that COSA is consenting to these services for the benefit of the public.

1.04 Provision of Services. COSA and BEXAR COUNTY agree that these services will be put in place and maintained _____.

1.05 Term of Agreement. BEXAR COUNTY shall provide services following approval of the governing bodies as signified by the passage of the aforementioned Ordinance and County [*Order/Resolution/Motion]*, and complete this project by _____. This Agreement will terminate upon _____, unless one of the Parties terminates this Agreement earlier.

1.06 Service Requirements. [if any insert here]

SECTION 2. COSTS

2.01 Charges. Any costs to COSA or Bexar County associated with the ILA would be addressed here as part of the agreement.

2.02 Billing. If there are costs associated with the ILA, this section will contain the details on billing and how the Parties will be compensated. [ie: City/County provide invoices, City/County pay within xx days, address to send checks to, if disagreement on costs some resolution procedure, etc]

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2.03 Source of Funds. Any Party paying for performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying Party.

SECTION 3. TERMINATION

3.01 Termination. Any other provision notwithstanding, either Party, at any time, may elect to terminate this Agreement by providing ninety (90) days written notice to the other Party and full payment for terms of the agreement that have been incurred up to the date of Termination.

SECTION 4. GENERAL PROVISIONS

4.01 Liability and Venue. The Parties hereby acknowledge and understand that they are both governmental entities and that the Texas Tort Claims Act and other applicable laws will govern issues of liability. This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas. The Parties shall maintain self-insurance at a level sufficient to meet their respective obligations under this Agreement.

4.02 Assignment. This Agreement is not transferable or assignable without the prior written consent of the other Party. Failure to obtain written consent before assigning any rights under this Agreement shall result in automatic termination of the Agreement, and neither Party shall have any further duty to perform under the contract or other liability. Consent shall not be unreasonably withheld.

4.03 Comparative Liability. In the event the Parties are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas and the United States, without, however, waiving any governmental immunity available to the Parties under Texas and Federal law and without waiving any defenses of the Parties under Texas and Federal law.

4.04 Tort Claims Act. Each Party acknowledges that the other Party is a political subdivision of the State of Texas and is subject to, and complies 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 accident, injury or death.

4.05 Notice of Claims. Each Party shall promptly advise the other Party in writing of any claim or demand against it or known to it related to or arising out of actions or omissions under this Interlocal Cooperation Agreement and shall see to the investigation of and defense of such claim or demand at its expense. The other Party shall have the right, at its option and at its own expense, to participate in such defense without relieving the advising Party of any of its obligations under this paragraph.

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4.06 Severability. If any provision of this Agreement is held invalid or unenforceable under federal, state or local laws, then, and in that event, it is the intention of the Parties that any unenforceability shall not affect any other provision of this Agreement and that the remainder of this Agreement shall be construed as if such invalid or unenforceable provision was never included.

4.07 Notice by Mail. Any notice or claim mailed shall be effective upon receipt. From time to time, either Party may designate another address for all purposes under this Agreement by giving the other Party no less than ten (10) days advance notice of such change of address in accordance with the provisions hereof. Except as otherwise provided herein, all notices shall be sent to the following:

If to COSA:	City of San Antonio Attn: City Clerk P.O. Box 839966 San Antonio, Texas 78283-3966
With a copy to:	Solid Waste Management Department City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966
If to BEXAR COUNTY:	name address address San Antonio, Texas 78xxx

4.08 Force Majeure. Neither Party to this Agreement shall be required to perform a duty set out in this Agreement so long as that performance is delayed or prevented by acts of God, strikes, material or labor restrictions by any governmental authority, civil riot, floods, or any other cause not reasonably within the control of either Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.

4.09 Entire Agreement. This Agreement, with the Attachments: (A) map of the Camelot II area; (B) COSA Ordinance; (C) Bexar County [*Order/Resolution/Motion*] and (D) _____, constitutes the final and entire agreement between the Parties. It contains 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 unless made in writing.

4.10 Amendments. This Agreement may be amended only by the mutual written agreement of the Parties, and any such substantive amendment is subject to prior approval by each Party's governing body.

4.11 Parties Bound. This Agreement shall bind and benefit the Parties to the Agreement and their respective successors and assigns, except as otherwise expressly provided for in this Agreement.

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EXECUTED to be effective this _____day of August, 2015. [Effective Date]

CITY OF SAN ANTONIO

By: _____
NAME
TITLE

BEXAR COUNTY

By: _____
NAME
TITLE

APPROVED AS TO FORM:

By: _____
Martha G. Sepeda
Acting City Attorney

By: _____
name
title

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