

**Binding Construction / Installation Proposal**

**CUSTOMER: San Marcos Fire Dept.  
Attn: Chief Les Stephens  
630 E. Hopkins  
San Marcos, TX 78666**

**LCRA and the City of San Marcos**

This Binding Construction / Installation Proposal (this "Proposal") is issued under and subject to that certain Interlocal Cooperation Act Agreement for Mobile Radio Services and Equipment between the Parties listed above (the "Interlocal Agreement"). This Proposal is further subject to the Terms and Conditions attached hereto.

In the event of any conflict or inconsistency between the terms and provisions of this Proposal and the terms and provisions of the Interlocal Agreement, with respect to the Project identified below only, the terms and provisions of this Proposal shall control.

**PROJECT: 3288 Zorn to San Marcos P25 Site Upgrades****DATE SUBMITTED: June 17, 2024****PRICING EXPIRES: August 28, 2024****SERVICES:**

Pricing is contingent upon the City of San Marcos providing fiber between the San Marcos Radio site and the Hays County CECC.

- If this fiber is not in place by December 31, 2024 LCRA will add a Microwave addition between the San Marcos Radio site and McCarty Lane Substation for increased transport redundancy and security.
- If LCRA installs the Microwave addition in lieu of fiber to be provided by the City of San Marcos, LCRA will invoice an additional \$140,000 for the Microwave addition.
  
- Upgrade existing 10-Channel Multicast site at San Marcos Radio site to a 10-Channel Simulcast site.
- Utilize existing Infrastructure, including Shelter, Generator, Uninterruptible Power Supply (UPS), and Antenna System
- Structural Assessment of San Marcos Radio Site
- Frequency Coordination
- Stage LCRA Emergency Communications Unit (ECU Mobile site) at San Marcos Radio Site during channel upgrade
- Install a 10-Channel Simulcast site and Antenna System at the Zorn Radio site
  - Co-locate equipment on LCRA 320' tower being constructed at this location to support LCRA critical needs
  - Microwave addition between Zorn Radio site and San Marcos Radio site for increased transport redundancy and security
  - Utilize existing LCRA Shelter and Generator
  - Frequency Coordination

**SCHEDULE:**

**Begins:** The work can begin any time after this Proposal is signed.

**Completion:** This Proposal will end on or before December 31, 2026 when all services contemplated hereunder have been successfully completed, or this Proposal has been terminated.

**PRICE:**

**Total Cost:** \$1,520,000

**Billing Method:** Invoice

**Payment Terms:**

The City of San Marcos will be invoiced on the following terms for this Project.:

- 25% upon execution of this Proposal.
- Progress billing for project materials, throughout the duration of the project, up to 50% of the project total.
- 15% upon installation; and
- 10% upon Acceptance. Acceptance shall mean thirty calendar days of system operation without any major interruption in radio service after installation of the radio system infrastructure described in Attachment A.
- Payment terms may be negotiated differently with the approval of both LCRA and the City of San Marcos.

**Billing Method:**

Notwithstanding anything to the contrary in the Interlocal Agreement or this Proposal, the City of San Marcos will be invoiced for the amounts listed above either (i) upon completion of each respective phase as set forth under Payment

Customer and the Lower Colorado River Authority agree that the work described above shall be performed in accordance with the terms and conditions in this Proposal.

**City of San Marcos**

**Lower Colorado River Authority**

By:

By:

Title:

Title:

Date:

Date:

## **BINDING CONSTRUCTION / INSTALLATION PROPOSAL TERMS AND CONDITIONS**

This Proposal is subject to the following terms and conditions:

1. Agreement. This Proposal, including these terms and condition, and any other documents attached hereto (collectively, this "Proposal"), contains the entire agreement and understanding between LCRA and Customer with respect to the subject matter of this Proposal and supersedes any and all prior or contemporaneous oral and written agreements and understandings regarding the defined scope of services. Additional terms and conditions on Customer's forms (including those accompanying any purchase order, invoice or payment) are a material alteration of this Proposal and are rejected and null and void unless expressly agreed to by LCRA in writing. In the case of any conflicts between the terms of this Proposal and the terms of any applicable Customer form, the terms of this Proposal will control.

2. Services. LCRA will perform services for the Customer as detailed in the Scope of Services section of the Project Proposal ("Services"). Customer will review and respond as appropriate to all reports, studies, recommendations, requests and other submissions of LCRA so as not to delay the performance of the Services.

3. Notices. Correspondence, notices and invoices will be in writing and mailed or delivered to the other party as identified in the Customer and LCRA Contact sections of the Project Proposal, or at such other address as a party may from time to time designate in writing. All notices, correspondence or invoices will be effective upon receipt.

4. Changes Orders. Changes in the scope of the Services may only be made by written agreement of the Customer and LCRA. Verbal changes will not be given or accepted, except in cases of emergencies which pose a risk of personal injury or property damage, and such changes will be followed up with a written confirmation as soon as practicable.

5. Term; Termination. This Proposal will commence on the date of the last signature by the parties ("Effective Date") and will govern LCRA's performance of the Services. Either party may terminate this Proposal for its convenience at any time by providing written notice to the other party. In the event of such termination, Customer will pay LCRA for all Services performed up to the date of termination, plus (in the case of termination by Customer) any cancellation charges or other termination expenses as may be reasonably identified by LCRA.

6. Costs; Invoicing. As compensation for the Services, Customer will pay LCRA in accordance with one of the following, as identified in the Price section of the Project Proposal: (a) All (i) direct costs incurred by LCRA in performing the Services, including, (1) costs for materials and supplies, (2) labor costs, including salary and benefits, paid to LCRA employees, (3) travel, meal and lodging expenses reimbursed or paid on behalf of LCRA employees within established LCRA expense guidelines, and (4) any third party costs, plus (ii) indirect costs that LCRA normally applies to Services of this nature, including general and administrative costs and other internal expenses and contributions; or

(b) A fixed price. Any changes to the scope of the Services may require an increase in the fixed price. Such change to the scope and the correlating fixed price will be agreed to in writing by

the parties. LCRA may invoice Customer for progress payments for the Services completed to date during the term of this Proposal. All payments by Customer under this Proposal will be due and payable within 30 days after receipt of invoice. If payment is not timely made, interest will accrue on the unpaid balance at the lesser of the maximum lawful rate, or one percent per month, from the due date until paid.

7. Warranty; Disclaimer.

(a) During the term of this Proposal, and for a period of 30 days after completion of the Services, LCRA will correct or reperform any Services not conforming to the requirements of this Proposal. Upon completion of the Services, LCRA will assign to Customer all contractor, manufacturer and supplier warranties related to the Services, to the extent LCRA has the right to do so. After such assignment, LCRA will have no continuing obligations to Customer with respect to the good or service to which the warranty applies, and Customer will look solely to the applicable contractor, manufacturer or supplier for relief regarding any claims or remedies, whether based on a warranty or otherwise.

(b) Any law, code or standard referenced in this Proposal will refer to the version of such law, code or standard in effect as of the Effective Date.

(c) **THE WARRANTIES CONTAINED IN THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE PERFORMANCE, AND LCRA'S OBLIGATION UNDER SECTION 7(A) IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OR LIABILITY OF LCRA ARISING UNDER THIS PROPOSAL.**

8. Environmental Conditions. Prior to LCRA starting any Services on-site, Customer will provide documentation that identifies the presence and condition of any hazardous materials or environmental conditions existing in or about Customer's equipment or the site that LCRA may encounter while performing the Services, and will keep LCRA informed of changes in any such conditions. If LCRA encounters hazardous materials in Customer's equipment or on-site, LCRA is not obligated to perform any Services affected by the hazardous conditions. Customer will indemnify and hold LCRA, its affiliates and their respective directors and employees, harmless for any and all claims, damages, losses, and expenses arising out of or relating to any hazardous materials which are or were (i) present in or about Customer's equipment or the site prior to the commencement of LCRA's work, (ii) improperly handled or disposed of by Customer or Customer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on-site by parties other than LCRA.

9. Schedule. Unless otherwise expressly stated in the Proposal documents, time is *not* of the essence and LCRA will not be liable to Customer for any damages arising out of LCRA's delay in providing the Services, including any failure to meet schedules contained in this Proposal.

10. Force Majeure. Neither party will be responsible or liable for any delay or failure in its performance under this Proposal

to the extent such delay or failure is caused by conditions or events of Force Majeure. The term "Force Majeure" means causes or events beyond the reasonable control of, and without the fault or negligence of the party claiming Force Majeure, including (to the extent satisfying the foregoing requirements) (i) acts of God or sudden actions of the elements such as floods, earthquakes, hurricanes, tornadoes, ice storms, or wildfires; (ii) terrorism; war; riots; blockades; insurrection; strike at a regional level; labor disruption at a regional level (even if such difficulties could be resolved by conceding to the demands of a labor group); (iii) any action by a governmental or regulatory entity, including ERCOT or the PUCT; and (iv) pandemic, including the current Coronavirus Disease 2019 outbreak.

**11. LIMITATION OF LIABILITY. THE TOTAL LIABILITY OF LCRA ARISING OUT OF THIS PROPOSAL AND THE SERVICES WILL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID TO LCRA UNDER THIS PROPOSAL, AND LCRA WILL NOT BE LIABLE FOR INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. IN NO EVENT WILL ANY OFFICER, DIRECTOR, EMPLOYEE OR AFFILIATE (OR AFFILIATE'S OFFICER, DIRECTOR OR EMPLOYEE) OF LCRA BE LIABLE TO CUSTOMER UNDER THIS PROPOSAL, AND CUSTOMER'S SOLE RECOURSE UNDER THIS PROPOSAL WILL BE AGAINST LCRA AND NOT AGAINST SUCH OTHER PERSONS. THE LIMITATIONS ON LIABILITY AND REMEDIES IN THIS PARAGRAPH WILL APPLY REGARDLESS OF WHETHER THE LIABILITY OR CAUSE OF ACTION ARISES IN PROPOSAL, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. NOTHING IN THIS PROPOSAL WILL BE CONSTRUED TO WAIVE LCRA'S GOVERNMENTAL IMMUNITY.**

12. Amendment. This Proposal may only be amended or modified through written agreement of the parties signed by an authorized representative of LCRA and by an authorized representative of the Customer.

13. Assignment. This Proposal will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party may assign this Proposal, in whole or part, without the prior written consent of the other party.

14. Non-Waiver. No failure or delay on the part of a party to exercise any right or remedy will operate as a waiver of such right or remedy, nor will any single or partial exercise of any right or remedy preclude any further or other exercise of any such right or remedy.

15. Partial Invalidity. If any section or part of this Proposal is declared invalid by any court of competent jurisdiction, the court's decree will not affect the remainder of this Proposal, and the remainder of this Proposal will remain in full force and effect with the deletion of the part declared invalid.

16. Choice of Law; Venue; Waiver of Jury Trial. This Proposal will be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. Each party irrevocably consents and agrees that any legal action or proceeding arising out of this Proposal will be brought exclusively in a court of competent jurisdiction in Travis County, Texas. LCRA AND CUSTOMER IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM

ARISING OUT OF OR IN CONNECTION WITH THIS PROPOSAL.

17. Ownership. Intellectual property and rights to intellectual property owned by any party on the Effective Date will remain the property of that party. All deliverables, including plans, drawings, designs, specifications, computer programs or applications photographs, studies, data, schedules, test readings, technical reports, and calculations developed or utilized by LCRA or its subcontractors which are developed and specified to be delivered under this Proposal and which are paid for by Customer are the property of Customer, but subject to LCRA's intellectual property rights. Customer recognizes that no deliverables will be suitable for reuse at any Customer facility or in connection with any project other than that for which the deliverable was prepared. LCRA DISCLAIMS LIABILITY FOR ANY REUSE OF THE DELIVERABLES ON ANY OTHER FACILITY OR PROJECT THAT IS DONE WITHOUT THE EXPLICIT, WRITTEN APPROVAL OF LCRA.

18. Confidentiality. "Confidential Information" means information marked or otherwise designated as "confidential" by a party. Confidential Information may only be used by the parties for purposes related to the performance of this Proposal, and each party agrees not to disclose Confidential Information of the other party to any other person (other than its affiliates, and the party's and affiliate's respective employees and directors, or to contractors who agree to be bound by the provisions of this Section), provided that either party may disclose Confidential Information if and to the extent such disclosure is required by law (including the Texas Public Information Act). In the event a party is requested under law to disclose Confidential Information, such party will to the extent possible notify the other party within three business days of such request.

19. Municipally Owned Utilities. If Customer is a municipally owned utility, the following additional terms will apply:

(a) This Proposal is entered into under the authority of Chapter 791 of the Texas Government Code; (b) Customer pledges the revenues of its electric utility system to pay its obligations under this Proposal. In addition, the amounts payable by Customer to LCRA under this Proposal are operation and maintenance expenses as contemplated by Section 1502.056 of the Texas Government Code and, as a result, are a first lien against the revenues of Customer to secure the Customer's payment obligations to LCRA hereunder. Customer agrees that it will not request Services for which funds have not been appropriated and are not available.

(c) Payments made under this Proposal (1) are based on cost recovery, (2) will fairly compensate LCRA for the Services, and (3) will be made from current revenues available to Customer.

20. Survival. Termination or expiration of this Proposal will not relieve, reduce, or impair any rights or obligations of a party which expressly or by implication survive termination or expiration of this Proposal. Without limiting the generality of the foregoing, the following sections will survive the termination or expiration of this Proposal: Costs; Invoicing, Warranty; Disclaimer, Environmental Conditions, Schedule, Limitation of Liability, Choice of Law; Venue; Waiver of Jury Trial, Ownership, Confidentiality, and Municipally Owned Utilities



**CONFIDENTIAL**

**Attachment A**

Installation Services and Equipment Costs	Price
<ul style="list-style-type: none"> <li>• Upgrade existing 10-Channel Multicast site at San Marcos Radio site to a 10-Channel Simulcast site               <ul style="list-style-type: none"> <li>○ Co-locate equipment in existing Shelter</li> <li>○ Utilize existing Generator, UPS and Antenna System</li> <li>○ Structural Assessment of San Marcos Radio Site</li> <li>○ FCC Frequency Coordination</li> <li>○ Stage LCRA ECU Mobile site at San Marcos Radio site during channel upgrade</li> <li>○ Engineering</li> <li>○ Materials</li> <li>○ Labor</li> </ul> </li>   <li>• Install a 10-Channel Simulcast site at the Zorn Radio site               <ul style="list-style-type: none"> <li>○ Install Antenna System</li> <li>○ Co-locate equipment on LCRA 320' tower to be constructed at site</li> <li>○ FCC Frequency Coordination</li> <li>○ Local Jurisdiction and FAA Permitting</li> <li>○ Co-locate equipment in existing LCRA Shelter</li> <li>○ Utilize existing LCRA Generator and UPS</li> <li>○ Add Microwave hop (segment) between Zorn Radio site and San Marcos Radio site</li> <li>○ Engineering</li> <li>○ Materials</li> <li>○ Labor</li> </ul> </li> </ul> <p>INCLUDES: maintenance on all electronics and 24x7x365 support.</p>	<p><b>\$1,520,000</b></p>
<b>Total*:</b>	<b>\$1,520,000</b>

\* Please note that the foregoing pricing is a non-binding estimate for discussion purposes only.