

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF SAN MARCOS, TEXAS  
AND THE LOWER COLORADO RIVER AUTHORITY  
CONCERNING ELECTRICAL TRANSMISSION,  
CONTROL AND SUBSTATION FACILITIES**

**THIS AGREEMENT** is made and entered into by and between the City of San Marcos, Texas (hereinafter referred to as the “City”) and the Lower Colorado River Authority (hereinafter referred to as “LCRA”), a conservation and reclamation district of the State of Texas, pursuant to the Texas Interlocal Cooperation Act (Chapter 791, Texas Government Code). LCRA and the City may be referred to individually as a Party, or collectively as the Parties.

**WHEREAS**, the City owns and operates electric transformation and distribution lines and related facilities, and

**WHEREAS**, LCRA is authorized by Chapter 8503 of the Texas Special District and Local Laws Code to distribute and sell electric energy; and

**WHEREAS**, LCRA provides planning, repair, maintenance, testing, technical, training and inspection services for the transmission Facilities (as defined below) of LCRA Transmission Services Corporation, a non-profit corporation and instrumentality of LCRA; and

**WHEREAS**, cooperation between the City and LCRA in planning for and in providing repair, maintenance and technical services (testing, inspection and personnel training) for transformation, distribution and substation facilities (collectively, "Facilities") would enable the City and LCRA to avoid redundant expenditures, reduce the costs to their respective customers, improve the responsiveness of each Party to outages and emergencies, and enhance the reliability of the respective Facilities; and

**WHEREAS**, LCRA is willing to perform Services (as defined below) on the Facilities of the City upon the following terms and conditions;

**NOW, THEREFORE** for and in consideration of the premises, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the City and LCRA agree as follows:

## **I. SCOPE OF SERVICES**

1.1. a. At the City's request, LCRA may provide the following services, including the personnel, labor, material and equipment necessary to perform the work (the "Services"):

- 1) engineering, design and project management services for substation and distribution facilities;
- 2) substation and distribution construction and maintenance (including vegetation management such as tree trimming and ROW clearing);
- 3) relaying and control testing and maintenance;
- 4) material procurement and use of contracts with vendors;
- 5) fleet repair and maintenance;
- 6) protective equipment testing services; and
- 7) any other services or offerings mutually agreed upon by the Parties.

1.2. Performance of Services under this Agreement shall be initiated by a written work order signed by both the City and LCRA ("Work Order"). The Work Order shall be of the form in Exhibit A and will include, as appropriate, the subject Facilities and the detailed scope of Services to be performed, a schedule for the performance of Services, a pricing methodology for the Services to be performed together with a "not to exceed" total cost, and other terms and conditions specific to the Services. The total value of Services performed hereunder shall not exceed \$8,600,000.000 per contract year. A contract year shall extend from the Effective Date (as defined below), or the anniversary of the Effective Date, of this Agreement for a period of twelve (12) months.

1.3. Nothing in this Agreement shall require the City to have Services performed by LCRA, nor shall LCRA be required to accept any work order submitted by the City.

## **II. COMPENSATION**

2.1. The pricing for the Services shall be either (i) a fixed price as established in the Work Order, or (ii) a cost plus methodology in accordance with Section 2.2. If the Parties elect to use the cost plus methodology, the City will be responsible for the total cost of the Services, even if such amount exceeds the estimate provided by LCRA in the Work Order.

2.2. If the Parties elect to use the cost plus methodology, the City will compensate LCRA for the following costs related to the Services:

- a. All direct costs, which may include (1) costs for materials, supplies, fuels and lubricants used to perform the Services, (2) costs to transport necessary equipment and personnel to the City's Facilities, (3) labor costs, including salary and benefits, paid to employees and contractors, together with (4) travel, meal and lodging expenses reimbursed or paid on behalf of employees and contractors within established LCRA expense guidelines.
- b. Indirect costs that LCRA normally applies to Services of this nature, including general and administrative costs and other internal expenses and contributions.

- c. Other expenses specified in the applicable Work Order or otherwise authorized in advance by both Parties, including the costs of contracts entered into with third parties to perform Services.

2.3. LCRA will invoice the City in accordance with terms of the work order. For Fixed Price work orders, LCRA will invoice a fixed amount monthly. For Cost Plus work orders, LCRA will invoice the City for all costs incurred, as defined in Section 2.2 of this Agreement, on a monthly basis.

2.4. The City shall pay LCRA, in accordance with the electronic funds transfer methods provided by LCRA, the amount due within thirty (30) days after receipt. In the event that payment in full is not timely made, interest shall accrue on the unpaid balance at the lesser of the maximum lawful rate or one percent (1.0 %) per month until paid in full.

2.5. The City pledges the revenues of its electric utility system to pay its obligations under this Agreement. In addition, the amounts payable by the City to LCRA under this Agreement 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 the City to secure the City's payment obligations to LCRA hereunder. The City agrees that it shall not request Services for which funds have not been appropriated and are not available.

2.6. The City reserves the right to review LCRA's invoices and to audit and examine a any reasonable time the books and records of LCRA to the extent necessary to verify the accuracy of any statement, charge, computation or invoice made under this Agreement, and to recover any overcharges paid by it.

### **III. THE CITY'S RESPONSIBILITIES**

3.1. To the extent permitted by law, the City shall identify the Facilities and equipment upon which LCRA will be requested to provide Services and shall provide LCRA with all necessary documents and information relevant to the Facilities and equipment.

3.2. The City shall review and respond as appropriate to all reports, studies, recommendations and other submissions of LCRA so as not to delay the performance of the Services.

### **IV. DOCUMENTS, DATA AND PUBLICATIONS**

4.1. It is agreed and understood that the specifications, drawings, plans, contracts and deliverables developed under this Agreement, or other data, documents or information provided to LCRA by the City pursuant to this Agreement are of a strictly confidential nature and, except as otherwise required by law, no such confidential information shall be disclosed to any third Party without the prior written consent of the City.

## **V. TERM**

5.1. This Agreement is contingent upon approval by the City of San Marcos City Council, and will become effective upon execution by both Parties (the "Effective Date").

5.2. This Agreement shall be for a term of five (5) years from the Effective Date; provided, however, that this Agreement shall automatically renew for up to three additional terms of one (1) year each unless affirmatively terminated by a written notice signed by a Party and delivered prior to the expiration of each term. Services authorized prior to expiration of the then-current term shall be completed, and the Parties' obligations under the Agreement shall remain in effect until such completion.

5.3. Either Party may terminate this Agreement for convenience upon thirty (30) days' prior written notice to the other Party. Upon termination of this Agreement for convenience, LCRA shall immediately discontinue the performance of Services and shall from then on perform only those Services expressly requested to be completed by the City, and LCRA shall be compensated for all such Services performed, plus its actual and reasonable costs of demobilization.

## **VI. STANDARDS AND INSPECTIONS; LIMITATION ON LIABILITY**

6.1 LCRA shall perform all work under this Agreement in a good and workmanlike manner in accordance with the work order specifications and applicable industry standards and electrical codes in affect at the time the Services are performed. The City shall have the right of inspection at all reasonable times during the performance of the Services and prior to acceptance of the Services. In the event that the inspection reveals that the Services have not been performed in accordance with the above standards, the LCRA shall promptly and diligently re-perform such Services at no additional cost to the City.

**6.2 OTHER THAN THE EXPRESS LIMITED WARRANTIES IN SECTION 6.1, LCRA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**6.3 NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, STATUTE OR OTHERWISE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST USE, BUSINESS INTERRUPTION LOSSES, OR DAMAGES OR LOSSES INCURRED BY A PARTY'S CUSTOMER), REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED OR COULD HAVE BEEN REASONABLY FORESEEN.**

## **VII. NOTICES**

Correspondence, notices and invoices shall be in writing and mailed or delivered to the other Party as follows, or at such other address as a Party may from time to time designate in writing. All notices, correspondence or invoices shall be effective upon receipt.

TO THE CITY:

City of San Marcos  
650 East Hopkins  
San Marcos, TX 78666

Attn: Stephanie Reyes

TO LCRA:

Lower Colorado River Authority  
3700 Lake Austin Blvd.  
P.O. Box 220  
Austin, TX 78767-0220  
Attn: Transmission Strategic Services

## **VII. MISCELLANEOUS**

7.1. This Agreement constitutes the entire understanding of the Parties relating to the subject matter of the Agreement, and there shall be no modification or waiver of this Agreement except by writing signed by the Party asserted to be bound thereby.

7.2. This Agreement shall 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 Agreement or subcontract the performance of Services under this Agreement, in whole or part without the prior written consent of the other Party.

7.3. No failure or delay on the part of a Party to exercise any right or remedy shall operate as a waiver of such right or remedy, nor shall any single or partial exercise of any right or remedy preclude any further or other exercise of any such right or remedy. All rights and remedies under this Agreement are cumulative and shall not be considered exclusive of any other rights or remedies provided by law.

7.4. If any section or part of this Agreement is declared invalid by any court of competent jurisdiction, the court's decree shall not affect the remainder of this Agreement, and the remainder of the Agreement shall remain in full force and effect with the deletion of the part declared invalid.

7.5. The Parties agree and intend that all disputes which may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the Parties under the Agreement, or respecting any performance or failure of performance by either Party under the Agreement, shall be governed by the laws of the State of Texas. Any legal action or proceeding arising out of this Agreement will be brought exclusively in the courts located in Travis County, Texas.

7.6. The Parties signing this Agreement warrant that they are the representatives of their entities and that they have been duly authorized to enter into this Agreement.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement to be effective on the date of the last signature below.

**CITY OF SAN MARCOS, TEXAS**

**LOWER COLORADO RIVER  
AUTHORITY**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_