

INTERLOCAL AGREEMENT BETWEEN THE
SAN MARCOS ELECTRIC UTILITY
AND THE LOWER COLORADO RIVER AUTHORITY
CONCERNING ELECTRICAL DISTRIBUTION,
CONTROL AND SUBSTATION FACILITIES

THIS AGREEMENT is made and entered into by and between San Marcos Electric Utility (SMEU), acting as an agent for the City of San Marcos, a Texas home-rule municipal corporation, and the Lower Colorado River Authority (LCRA), a conservation and reclamation district of the State of Texas, pursuant to the authority granted and in compliance with TEX. CONST. ART. III, Sec. 64, and the Interlocal Cooperation Act, Chapter 791, TEX. GOV'T CODE ANN. LCRA and SMEU may be referred to individually as a Party, or collectively as the Parties.

WHEREAS, on December 19, 2014, SMEU and LCRA entered into an Interlocal Agreement for LCRA to provide planning, repair, maintenance, testing, technical and inspection services on the facilities of SMEU; and

WHEREAS, LCRA provides all services and administration for its transmission company, LCRA Transmission Services Corporation ("LCRA TSC") which is the successor in interest to all of LCRA's regulated transmission activities; and

WHEREAS, LCRA TSC is modifying LCRA's Canyon Substation which is utilized by both Parties; and

WHEREAS, LCRA TSC requires distribution facilities and equipment owned and operated by SMEU to be removed and/or relocated during its modification of the Canyon Substation; and

WHEREAS, SMEU is willing to remove and or relocate its distribution facilities and equipment to facilitate LCRA TSC construction; and

WHEREAS, LCRA TSC is willing to compensate SMEU for its work in facilitating construction;

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

I. SCOPE OF SERVICES

1.1. a. LCRA and LCRA TSC may employ SMEU to furnish upon request personnel, labor,

material and equipment necessary to perform services including, but not limited to, the following: engineering design, project management and material procurement of distribution, substation and distribution facilities (such as distribution under built on transmission structures, etc.), distribution, substation, and distribution construction and maintenance (including tree trimming and ROW clearing), relaying and control, metering, protective equipment testing, fleet repair and maintenance, all materials associated with the foregoing, lease of mobile transformers and other equipment, communication services including fiber optic lease, marketing and consulting services, and any other services or offerings mutually agreed upon by the Parties (collectively, "Services") when needed on the joint Facilities of LCRA TSC and SMEU, subject to the terms and conditions of this Agreement.

b. SMEU may also, pursuant to this Agreement, upon the consent of LCRA and LCRA TSC, engage the services of a third party or parties, to perform or assist in the performance of the Services.

1. If SMEU engages a third party or parties to provide services described in this Agreement, SMEU or another entity agreeable to LCRA and LCRA TSC shall act as the project manager with respect to such services.

2. A Party acting as Project Manager shall exercise the same judgment, care and professionalism as used in managing its own contracts.

1.2. Performance of Services under the Agreement shall be initiated by a written work order signed by both SMEU, LCRA TSC and LCRA. The work order shall identify the subject Facilities and the Services to be performed, provide a schedule for the performance of Services, contain an itemized estimate of the costs and expenses for Services performed under that work order together with a "not to exceed" total cost.

1.3. Meaning of Transmission and Distribution;

a. As used in this Agreement, all references to transmission facilities and related equipment in the case of LCRA mean transmission and related equipment owned and or operated by the LCRA Transmission Services Corporation (TSC), a nonprofit corporation created pursuant to Chapter 152 of the Texas Water Code. LCRA provides all required services to TSC through a services agreement between LCRA and TSC.

b. As used in this Agreement, all references to distribution facilities and related equipment in the case of SMEU mean electrical facilities operated below 60 kV and related equipment owned and or operated by San Marcos Electric Utility.

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

II. COMPENSATION

2.1. LCRA shall compensate SMEU for performance of the Services at SMEU's actual cost of labor (including fringe benefits and overhead) and material, plus authorized expenses set forth below. Compensation for Services will be estimated in the work orders referred to in Section 1.2.

2.2. The total cost to LCRA and LCRA TSC for performance of Services by SMEU hereunder shall not exceed \$1,000,000, per contract year.

2.3. Other expenses are authorized as follows:

- a. SMEU's actual cost to transport necessary equipment and personnel to the joint LCRA TSC and SMEU' Facilities;
- b. 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 authorized by this Agreement.

2.4. On or before the fifteenth day of the month following a month in which the SMEU performs Services under the Agreement, SMEU shall send LCRA an itemized invoice, in duplicate, which describes the Services performed, the date(s) of performance, the amount of time, materials and supplies expended, and all authorized expenses. Copies of all relevant timesheets, invoices, bills, and receipts for expenses shall be attached to the invoice.

2.5. LCRA shall pay SMEU at the address shown, the amount due, within thirty-five (35) days after receipt of an invoice. In the event that payment in full is not timely made, interest shall accrue on the unpaid balance at the rate prescribed by Chapter 2251, TEX. GOV'T CODE ANN. Section 2251.025, Interest on Overdue Payment, as it may otherwise be amended or in accordance with its successor statute, until paid in full.

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

III. LCRA TSC's RESPONSIBILITIES

3.1. LCRA TSC shall identify the Facilities and equipment upon which SMEU will be

requested to provide Services, and shall provide SMEU with all necessary documents and information relevant to the Facilities and equipment.

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

IV. DOCUMENTS, DATA AND PUBLICATIONS

To the extent permitted by law, it is agreed and understood that the specifications, drawings, plans, contracts and deliverables under the contracts, or other data, documents or information (collectively "Information") provided to SMEU by LCRA TSC 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 LCRA TSC.

V. TERM

5.1. This Agreement shall be effective as of the day following approval of the Agreement by both the City of San Marcos and the LCRA Executive Manager (the "Effective Date").

5.2. This Agreement shall be for a term of one (1) year from the Effective Date of the Agreement. However this Agreement shall automatically renew each year for four additional terms unless affirmatively terminated by a written notice signed by either Party. Services authorized pursuant to this Agreement or authorized and in progress prior to expiration of the then-current term or prior to termination 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 after thirty (30) days written notice to the other Party. Upon termination of this Agreement for convenience, SMEU shall immediately discontinue the performance of Services and shall from then on perform only those Services expressly requested to be completed as necessary to effectively conclude the Services previously performed. SMEU shall be compensated for all services performed up to the effective date of termination as provided above, plus its actual and reasonable costs of demobilization.

VI. STANDARDS AND INSPECTIONS

SMEU 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. LCRA TSC 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, SMEU shall promptly and diligently re-perform such Services at no additional cost to the Requesting Party.

VII. INDEMNIFICATION

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, SMEU SHALL INDEMNIFY AND HOLD LCRA AND LCRA TSC, AND ITS DIRECTORS, OFFICERS, ELECTED AND APPOINTED OFFICIALS AND AGENTS (INCLUDING, BUT NOT LIMITED TO, DIRECTORS, OFFICERS, AND EMPLOYEES OF ITS AFFILIATES AND CONTRACTORS), HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, CLAIMS, DEMANDS AND JUDGMENTS ARISING OUT OF OR CONCERNING DAMAGE TO OR LOSS OF THE USE OF THE PROPERTY ANY PERSON OR PARTY, OR OUT OF THE DEATH, BODILY INJURY, ILLNESS, DISEASE, WORKERS' COMPENSATION OR LOSS OF SERVICES OF ANY PERSON, AND ANY OTHER COST, LOSS OR EXPENSE LCRA AND LCRA TSCS MAY INCUR AS A RESULT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT BY SMEU, OR ITS AGENTS OR EMPLOYEES, IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT. ANY OBLIGATIONS OF SMEU UNDER THIS CLAUSE OR UNDER ANY OTHER PART OF THIS AGREEMENT ARE PAYABLE SOLELY FROM AND TO THE EXTENT OF THE REVENUES OF THE ELECTRIC UTILITY SYSTEM OF SMEU AND NOT FROM ANY FUNDS RAISED OR TO BE RAISED BY TAXATION OR FROM ANY OTHER REVENUES OF THE CITY. THIS CLAUSE DOES NOT CREATE AN ENCUMBRANCE, PLEDGE, OR LIEN ON SMEU'S ELECTRIC UTILITY SYSTEM REVENUES. LIKEWISE, TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, SMEU SHALL INDEMNIFY AND HOLD HARMLESS FROM ALL CLAIMS AND LIABILITIES AS SET FORTH ABOVE, LCRA, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES AND OFFICIALS, WHICH MAY RESULT FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SMEU, OR ITS AGENTS OR ITS AGENTS AND EMPLOYEES IN CONNECTION WITH THE SERVICES.

VIII. NOTICES

Correspondence, notices and invoices shall be in writing and mailed, telefaxed, 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 SMEU:

San Marcos Electric Utility
630 East Hopkins
San Marcos, TX 78666-2683

Attn: Tom Taggart, Executive Director, Public Services

To LCRA and LCRA TSC:

Lower Colorado River Authority
3700 Lake Austin Boulevard
Austin, TX 78703

Attn: Stuart Nelson, VP, Transmission Business Development

IX. MISCELLANEOUS

- 9.1 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 the Agreement except by writing signed by the Party asserted to be bound thereby.
- 9.2 This Agreement does not modify or amend the Interlocal Agreement between SMEU and LCRA of December 19, 2014, which shall remain in effect through its normal term.
- 9.3 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 the Agreement, in whole or part without the prior written consent of the other Party.
- 9.4 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.
- 9.5 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.

- 9.6 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, with venue lying in the courts of Travis County, Texas.
- 9.7 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 on this _____ day of March 2018.

SAN MARCOS ELECTRIC UTILITY

LOWER COLORADO RIVER AUTHORITY

By: _____
Tom Taggart
Executive Director, Public Services
Development
City of San Marcos

By: _____
Stuart Nelson
Senior VP, Transmission Business
Lower Colorado River Authority



LCRA TRANSMISSION SERVICES CORPORATION

By: __ Rob Seiler
VP, Transmission Field Services
LCRA TSC

