

**INTERLOCAL COOPERATION AGREEMENT
FOR MOBILE RADIO SERVICES AND EQUIPMENT
BETWEEN THE CITY OF SAN MARCOS
AND LOWER COLORADO RIVER AUTHORITY**

This Interlocal Cooperation Agreement ("**Agreement**") is entered into by and between, as Parties, the Lower Colorado River Authority ("**LCRA**"), a local government, being a conservation and reclamation district of the State of Texas created pursuant to Article XVI, Section 59, of the Texas Constitution, and the City of San Marcos ("**USER**"), pursuant to the authority granted and in compliance with the provisions of the Texas Interlocal Cooperation Act (Chapter 791, Texas Government Code) to be effective for all purposes as of August 21, 2018 (the "**Effective Date**"). (LCRA and USER may also be referred to herein individually as a "**Party**" and collectively as the "**Parties.**")

RECITALS

WHEREAS, LCRA is authorized by law to own, operate and maintain electric generation and transmission facilities for the benefit of its customers and the general public;

WHEREAS, LCRA's electric system includes a communications network, including a regional, trunked radio system ("**Trunked Radio System**"), which has been installed for LCRA's use within LCRA's service area for purposes of communications to support its statutory purposes and in conjunction with providing electric power and energy in Texas, public safety, and emergency services;

WHEREAS, LCRA is authorized by law to license peace officers for the protection of property and the general public and the enforcement of state law and LCRA's rules and regulations;

WHEREAS, LCRA holds certain frequency licenses from the Federal Communications Commission ("**FCC**") for operation of the Trunked Radio System by dispatchable mobile radio services for public safety and business purposes and pursuant to statutes and applicable FCC rules enabling LCRA to provide community assistance and economic development;

WHEREAS, USER is authorized by law to provide public services, including law enforcement transportation services, and emergency services;

WHEREAS, the Trunked Radio System has the current capacity to serve the needs of LCRA and others requiring a Trunked Radio System for public safety, local government purposes, and other purposes in compliance with applicable FCC statutes, rules, and licenses and to provide a key communications link between public safety entities throughout the central Texas region;

WHEREAS, USER and LCRA wish to establish this Agreement allowing LCRA to provide communications equipment, facilities, and technical services required for the installation and operation, of dispatchable mobile radio equipment, as more specifically set out herein, to assist USER with deploying and maintaining radio communications for public safety operations, interlocal response to catastrophic or large-scale incidents or natural disasters, and radio communications coordination support for local, state, tribal, and federal agencies in the State;

WHEREAS, it would be a benefit to USER to receive Trunked Radio System service on a non-profit, cost-shared basis without investing the substantial capital cost required for a completely separate infrastructure and by sharing the cost of the existing and planned Trunked Radio System;

WHEREAS, LCRA has secured FCC radio licenses and, under Section 90.179 of the FCC's rules, (47 C.F.R. § 90.179), is able to share stations in order to serve eligible users throughout its electric, transmission, and water service territory; and

WHEREAS, the Parties are authorized to enter into this Agreement under Chapter 791 of the Texas Government Code, commonly referred to as the Interlocal Cooperation Act, and more particularly Section 791.025, Texas Government Code.

AGREEMENT

NOW THEREFORE, in consideration of the mutual benefits received by both Parties and the public under the terms of this Agreement, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. ACCEPTANCE; USER'S ACCESS TO TRUNKED RADIO SYSTEM

1.1 This Agreement, including Attachments A.1-A.14, B, C, D and E, is a contract for the LCRA to provide services and equipment to USER when accepted in writing by an authorized representative of USER. It is agreed that the provision of services is made only on the terms and conditions herein. LCRA shall not be bound by the terms and conditions in USER's purchase order or elsewhere unless expressly agreed to in writing. In the absence of written acceptance of these terms, acceptance of services hereunder shall constitute an acceptance of these terms and conditions by USER.

1.2 Access to the Trunked Radio System consists of USER's right to use certain facilities and capabilities of the Trunked Radio System, as described in the Attachments, in consideration for USER's payment of the monthly service fee as indicated on the Mobile Radio Service Agreement Participant Information Sheet (Attachment A.1-A.14) and monthly usage charges, as set out in the LCRA Mobile Radio Service Rate Table (Attachment B). LCRA and USER acknowledge and agree that although this Agreement shall be effective as of the Effective Date, the monthly service fees listed in Attachments A.1-A.14 shall become effective October 1, 2018. Between the Effective

Date and September 30, 2018, USER shall pay the service fee set forth in Attachment E. Only the features and capabilities selected by USER shall be enabled. Changes or modifications to the Attachments may require modification of system parameters, which will be subject to additional service charges as set forth in the Installation and Maintenance Price Sheet (Attachment C). Upon the Effective Date of this Agreement, USER's equipment will be activated following: (i) registration of the LCRA-authorized identification numbers of each USER unit, and (ii) LCRA's certification of the equipment installation and operator training.

1.3 USER expressly understands that LCRA, as an FCC licensee, will supervise USER's activities pursuant to this Agreement, and that LCRA will retain control over all aspects of the operation of the Trunked Radio System, as required of a licensee under the FCC's rules and regulations. USER expressly acknowledges that all shared transmitters must be subject to LCRA's control.

2. SERVICES; COST-SHARED BASIS

2.1 USER may select from the menu of telecommunications services offered by LCRA which are set forth on the Participant Information Sheet (Attachment A). The Participant Information Sheet may be amended from time to time upon mutual agreement of the Parties provided that such amendments are in writing and signed by authorized representatives of USER and LCRA. USER agrees to pay for the services and features indicated on the Participant Information Sheet and other attachments to this Agreement, including any optional features as set forth in Section 2.3 below, on a non-profit, cost-shared basis in accordance with Section 90.179 of the rules of the FCC, 47 C.F.R § 90.179. USER shall be billed in accordance with Section 3 of this Agreement.

2.2 All service fees to be paid to LCRA are intended to recover a portion of the operation and maintenance expenses and capital expenditures associated with the Trunked Radio System. Included within the expenditures shall be appropriate reserves for future expenditures on and improvements to the Trunked Radio System.

2.3 In addition to basic services, LCRA is able to procure equipment and provide installation, maintenance, and related services under this Agreement; such services shall be performed either by LCRA's personnel or through independent contractors hired by LCRA. If USER selects such services, the services will be noted on the Participant Information Sheet. The cost of equipment User has agreed to initially purchase at the Effective Date of this Agreement is shown on the Equipment Pricing list (Attachment D).

3. SERVICE RATES, CHARGES AND TERMS

3.1 LCRA shall provide the services selected by USER on the Participant Information Sheet at the rates and charges shown on LCRA Mobile Radio Service Rate Table (Attachment B). The LCRA Mobile Radio Service Rate Table includes: (i) USER's monthly basic service fee for use of the Trunked Radio System; (ii) rates and charges for

optional services; and (iii) airtime charges.

3.2 It is agreed that LCRA may at any time revise the LCRA Mobile Radio Service Rate Table (Attachment B) by giving USER written notice of the amount of increase at least sixty (60) days in advance of the date on which the increased fees are to become effective. However, for the Initial Term of service, Service Level/Coverage Area costs for basic service in effect on the Effective Date of this Agreement shall not be increased except by mutual agreement of the Parties, subject to the provisions of Section 1.2 of this Agreement.

3.3 All rates, charges, and fees for services and equipment provided under this Agreement shall be paid by USER monthly. LCRA will invoice USER monthly or as agreed between the parties. Failure of LCRA to send or for USER to receive an invoice shall not relieve USER from payment of any fees due. The monthly basic service fee associated with USER's access to the system shall be invoiced in advance. Periodic equipment maintenance, monthly usage charges, and charges for optional services shall be invoiced at the end of each monthly billing cycle. Late payments shall be subject to interest or reasonable service charges. Payment for equipment purchased or installed shall be due within 30 days after invoiced. The User acknowledges that any payments made under this Agreement are made from current revenues available to it as required by the Interlocal Cooperation Act.

4. MAINTENANCE OF USER EQUIPMENT

4.1 FCC regulations and proper operation and maintenance of the Trunked Radio System require periodic equipment testing for certain components of the Trunked Radio System. USER agrees to allow LCRA access to USER's equipment for frequency and channel maintenance checks of Trunked Radio System units at any reasonable time and place as requested by LCRA. USER shall pay LCRA for such maintenance in accordance with the Telecom Installation and Maintenance Price Sheet (Attachment C). At USER's option, USER shall have the right to engage other maintenance suppliers, subject to LCRA's approval, to maintain USER's equipment in accordance with the regulations of the FCC and the proper operation and maintenance of the Trunked Radio System. USER acknowledges that LCRA will supervise the technical aspects of USER's activities or other maintenance suppliers in accordance with Section 1.3.

5. EXPANSION OF TRUNKED RADIO SYSTEM

LCRA may, at its sole and exclusive discretion, provide services to other participants on the Trunked Radio System. The provision of radio system services to other participants and expansion of the system will not diminish the capability of USER to use the Trunked Radio System as contemplated in this Agreement. USER acknowledges and agrees that LCRA has or will expand the area covered by its Trunked Radio System. The execution of agreements with other participants may, at the sole option of LCRA,

expand the area covered by the Trunked Radio System and may also result in the availability of additional services to some or all participants. USER acknowledges that LCRA has previously entered into other Interlocal Cooperation Agreements for Mobile Radio Services and Equipment to provide telecommunication services to certain governmental entities and other utilities and intends to expand the number of users by entering into new agreements in the future.

6. TERM - AUTOMATIC RENEWAL

6.1 The initial term of this Agreement shall commence on the Effective Date and shall terminate three (3) years after the Effective Date (the “**Initial Term**”), unless automatically extended as provided below. This Agreement shall automatically extend under the terms and conditions, rates, and charges then in effect for successive one (1) year periods provided that either Party may terminate this Agreement: (i) at the end of the Initial Term of this Agreement by giving to the other party written notice at least ninety (90) days prior to the end of the Initial Term or (ii) by giving to the other party written notice at least ninety (90) days prior to the end of any one (1) year extension; and, provided further, that this Agreement shall terminate automatically if the frequency authorization(s) (which may be held by LCRA) under which USER then presently operates is (are) terminated or are revoked by the FCC or otherwise.

6.2 The rates, charges, and fees due and payable by USER for any annual extension shall be the same as made during the preceding term unless LCRA notifies USER of any changes pursuant to the provisions of Section 3.2.

6.3 Funding. If USER funds are utilized to fund any part of this Agreement, LCRA understands that those USER funds for the payment for work performed by LCRA under this Agreement have been provided through USER's budget approved by its City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. USER cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. LCRA acknowledges and agrees that it will have no recourse against USER for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for USER extends from October 1st of each calendar year to September 30th of the following calendar year.

LCRA shall have the right to terminate this Agreement in the event of a failure by USER's City Council to appropriate funds for the purpose of paying for services under this Agreement in any fiscal year by giving USER prior written notice at least ninety (90) days before the proposed termination date.

7. SERVICE INTERRUPTIONS; INTERFERENCE

7.1 LCRA shall have the right, in cooperation with USER's needs, to plan and schedule system outages for purposes of system maintenance, equipment calibration,

and similar necessities. Except for such planned outages, LCRA shall credit USER with one day of service for any service outage that exceeds four (4) hours in duration, provided that USER promptly notifies LCRA of the outage. If a service outage exceeds twenty-four (24) hours, LCRA shall credit USER a full day for each partial day of outage. Credit for outages, which shall be subject to LCRA's verification, shall appear in the monthly invoice.

7.2 In the event of an emergency, as declared by the LCRA's emergency coordinator or LCRA's Trunked Radio System administrator, LCRA reserves the right to reallocate service priorities for the duration of the emergency.

7.3 USER agrees to refrain from any action, mode of operation, or equipment configuration that interferes with or causes signal degradation with the Trunked Radio System, and to notify LCRA of any conditions likely to cause interference.

8. ASSIGNMENT; SUBCONTRACT; NO THIRD-PARTY BENEFICIARIES

8.1 This Agreement is a privilege for the personal benefit of USER and may not be assigned in whole or in part by USER to any other person or entity without the prior written consent of LCRA, and provided that no such assignment of this Agreement shall be effective unless assignee shall assume in writing the obligations of the assignor under this Agreement or enters into a new written agreement with LCRA. LCRA reserves the right to assign this Agreement or subcontract any of its obligations hereunder. This Agreement is entered into for the sole benefit of the Parties. Nothing in this Agreement shall be construed as conferring any rights, benefits, remedies, or claim upon any person or entity not a Party to this Agreement. Any assignment entered into in violation of the provisions of this Section shall be void.

9. COVERAGE

9.1 USER acknowledges that one hundred percent (100%) coverage of any area at all times is improbable. Testing and experience with actual field conditions indicate adverse propagation conditions, such as short-term unpredictable meteorological effects and sky wave interference from distant stations, can interrupt service at any time. Such events are beyond the reasonable control of LCRA. Other causes beyond the reasonable control of LCRA include but are not limited to motor ignition and other electrical noise that could be minimized by corrective devices at USER's expense. Satisfactory communication performance is generally viewed as intelligible reception over rolling terrain approximately ninety percent (90%) of the time.

9.2 USER further acknowledges and agrees that LCRA is not providing a warranty of coverage and that the inability of LCRA to provide such coverage will be subject to the limitation of liability set forth in Sections 12, 13, and 14.

10. DEFAULT AND REMEDIES

10.1 If USER fails to timely make any payment of any sum due or fails to perform as required by any other provision hereunder, and continues in such failure for fifteen (15) days after written notice has been sent by LCRA to USER of such breach, USER shall be deemed in default under this Agreement. If a Party should be in default and if the other Party has performed all of its material obligations hereunder, the non-defaulting Party shall deliver written notice to the defaulting Party describing such default. If the default continues for more than one month after delivery of the notice (or such time as necessary to correct the default with due diligence), the non-defaulting Party may immediately terminate this Agreement and pursue its remedies as provided below or as otherwise provided at law or in equity.

10.2 Notwithstanding the above, LCRA shall have the right to immediately terminate USER's service at any time for USER's failure to use the Trunked Radio System in accordance with rules and regulations of the FCC or USER's failure to use the Trunked Radio System in accordance with applicable laws and regulations. In the event of termination as herein provided, all accrued and unpaid charges shall be due and payable immediately.

10.3 In the event LCRA has the right to immediately terminate either the Trunked Radio System service in its entirety or, as to USER, this Agreement, LCRA may retain all payments made hereunder, disconnect and deny USER any service provided by the Trunked Radio System or equipment identified herein, and impose a separate charge for disconnect and a separate charge for any reconnect expenses. If disconnect takes place and the equipment requires reprogramming, USER will also be subjected to additional costs for reprogramming its equipment. Each and all of the rights and remedies of LCRA hereunder are cumulative to and not in lieu of each and every other such right and remedy and every other right and remedy afforded by law and equity.

11. WARRANTIES

11.1 LCRA warrants that its management and operation of the Trunked Radio System will comply with reasonable and standard industry practices. LCRA further warrants that it will operate the Trunked Radio System in compliance with all applicable statutes, laws, ordinances, rules and regulations, including, but not limited to, those of the FCC (such as frequency and eligibility requirements).

11.2 USER agrees (a) to observe and abide by all applicable statutes, laws, ordinances, rules and regulations, including but not limited to those of the FCC (such as waiver and eligibility requirements), and (b) to operate the equipment so as not to cause undue interference with any other participants using the Trunked Radio System. LCRA will provide USER with copies of the relevant FCC rules and compliance information upon request. USER recognizes that applicable FCC rules and other statutes, laws, ordinances, rules and regulations may change from time to time and that, accordingly, LCRA in its sole discretion has the right without liability to modify this Agreement to comply with any such changes. USER further warrants to LCRA that it will operate the equipment for the purposes contemplated by this Agreement, and that USER shall not re-

sell service, interconnect, nor patch any equipment with another radio user or another radio system without written consent of LCRA.

11.3 No other warranties, express or implied, are given by either Party.

12. DISCLAIMER OF WARRANTIES; LIMITATION OF REMEDIES

12.1 USER acknowledges and agrees that LCRA is not the manufacturer of equipment, and LCRA hereby disclaims all representations and warranties, direct or indirect, express or implied, written or oral, in connection with the equipment or service (whether purchased or leased by USER from LCRA or another), including but not limited to any and all express and implied warranties of suitability, durability, merchantability, and fitness for a particular purpose. LCRA, to the extent permitted by law, assigns to USER any and all manufacturers' warranties relating to equipment purchased by LCRA, if any, and USER acknowledges receipt of any and all such manufacturers' warranties.

12.2 USER acknowledges and agrees that its sole and exclusive remedy in connection with any defects in any equipment, including manufacture or design, shall be against the manufacturer of the equipment under the manufacturers' warranties and that LCRA shall have no liability to USER in any event for any loss, damage, injury, or expense of any kind or nature related directly or indirectly to any equipment or service provided hereunder. Without limiting the above, LCRA shall have no liability or obligation to USER, in either contract or tort or otherwise, for special, incidental, indirect, punitive or consequential damages of any kind incurred by USER, such as, but not limited to, claims or damages for personal injury, wrongful death, loss of use, loss of anticipated profits, or other incidental or consequential damages or economic losses of any kind incurred by USER directly or indirectly resulting from or related to any equipment or service described hereunder, whether or not caused by LCRA's negligence, to the full extent same may be disclaimed by law. Any references to equipment in this paragraph shall be deemed to apply to all equipment purchased by USER or leased by USER from LCRA, if any, or another lessor. Notwithstanding the above limitations, LCRA shall be liable for the cost of restoration, repair, or replacement of any USER-owned facilities to the extent such facilities are damaged or destroyed as a direct result of a grossly negligent or willful act of LCRA.

13. INTERRUPTION OF SERVICE; FORCE MAJEURE

Except for actions required by this Agreement, LCRA shall not be liable to USER or any other person for any loss or damage, regardless of cause. LCRA does not assume and shall have no liability under this Agreement for failure to provide, or delay in providing, service due directly or indirectly to causes beyond the control of LCRA or its subcontractors, including, but not restricted to, acts of God, acts of governmental entities, acts of the public enemy, strikes, or severe weather conditions. In the event of any failure or delay attributable to the fault of LCRA or its subcontractors, USER's sole remedy shall be limited to a credit for service as is more fully described in Section 7.1.

14. LIMITATIONS OF LIABILITY; INDEMNIFICATION

14.1 USER understands that (a) alternative means of communication are available to USER; (b) occasional interruption or irregularities in the service may occur; and (c) any potential harm from interruptions or irregularities in the service is speculative in nature. LCRA cannot offer the service at rates which reflect its value to each user, and LCRA assumes no responsibility other than that contained in this Agreement. Accordingly, USER agrees that, except as limited by law, LCRA's sole liability for loss or damage arising out of mistakes, omissions interruptions, delays, errors, or defects in the service or transmission of service provided by LCRA or any carrier, or for losses or damages arising out of the failure of LCRA or any carrier to maintain proper standards or maintenance and operation shall be a credit for service as set forth in Section 7.1. Notwithstanding any other provisions of this Agreement, *neither Party shall be liable to the other for any special, incidental, consequential, punitive or indirect damages or for any loss of use, revenue, or profit* suffered by the other Party, its successors or assigns, customers or affiliates in connection with any breach of obligation under this Agreement, nor as a result of premises defect, condition or use of real or personal property, interference, failure or unavailability of any equipment, facility or service to be provided by LCRA under this Agreement, or under any other circumstance.

14.2 Neither Party shall be liable for delays, nonperformance, damage or losses due to causes beyond its reasonable control, including but not limited to action of the elements, severe weather, fires, floods, sabotage, government or regulatory action including withholding of approvals, strikes, embargoes, or delays beyond the control of vendors or contractors.

14.3 USER acknowledges that the radio service provided hereunder uses radio channels to transmit voice and data communications and that the service may not be completely private. LCRA is not liable to USER for any claims, loss, damages or cost which may result from lack of privacy on the system.

14.4 LCRA is not liable for any damage, accident, injury or the like occasioned by the use of radio service or the presence of equipment, including radio handsets and other devices, facsimile units, and ancillary equipment of either Party except as provided herein. LCRA is not liable for any defacement or damage to USER's motor vehicles or any personal or real property resulting from the installation or presence of radio and ancillary equipment.

14.5 The liability of LCRA in connection with the services provided is subject to the foregoing limitations, and LCRA makes no warranties of any kind, expressed or implied, as to the provision of such services.

14.6 Nothing in this Agreement is intended to waive any immunity from suit or liability to which a Party may be entitled by law, except for acts in violation of criminal laws.

15. NOTICES

15.1 Any notice or demand required or permitted to be made hereunder shall be made by certified or registered mail to the addresses given on the Participant Information Sheet (Attachment A). Either Party may from time to time designate any other address for this purpose by written notice to the other Party. All notices or demands shall be effective upon receipt and shall be deemed to be received when actually delivered by hand delivery, facsimile transmission, overnight courier, or two days after deposit in a regularly maintained receptacle of the United States Mail, registered or certified, return receipt request, postage prepaid.

16. NO COMMON CARRIER OFFERING

16.1 With respect to services contemplated by this Agreement, neither USER nor LCRA shall make a common-carrier offering of communication services.

17. TAX CODE CONSEQUENCES.

17.1 The relationship of the Parties shall not be treated as a partnership, joint enterprise, or other taxable entity for any purpose, including liability under the United States Internal Revenue Code (the "**Code**"). No provision of the Agreement shall be construed to create an association, joint venture, trust, or partnership with regard to the other Party. The Parties agree to take appropriate actions, including appropriate elections under Section 761 of the Code, to exclude the application of the partnership provisions of the Code.

17.2 Each Party shall be responsible for the payment of its own tax liabilities arising from this Agreement.

18. AMENDMENT; WAIVER; SEVERABILITY

18.1 Except for revisions of the LCRA Mobile Radio Service Rate Table (Attachment B), additions of additional participants and users or the expansion provisions set forth in Section 5, amendments to or modification of this Agreement shall be in writing and signed by authorized representatives of the Parties. Lack of enforcement of any right under this Agreement by either Party shall not constitute a waiver of that right or any other in the future. The terms and conditions of this Agreement supersede other agreements, written or oral, between the Parties regarding the subject of this Agreement. Should a court of competent jurisdiction find any part of this Agreement invalid or unlawful, the remainder of this Agreement shall remain in full force and effect, consistent with the original intent of the Parties. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

19. NO ORAL AGREEMENTS.

19.1 The parties agree that this Agreement contains all representations,

understandings, contracts and agreements between the Parties regarding the subject matter of this Agreement and any other writings, understandings, oral representations or contracts for radio service, if any, shall be deemed to be terminated, void and ineffective from the Effective Date of this Agreement, except for charges and fees incurred and remaining unpaid under any previous agreement. This Agreement is understood and intended to be the final expression of the Parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the Parties relating to the subject matter of this Agreement.

20. REVIEWS

20.1 The Parties agree to conduct periodic reviews at the request of either Party to coordinate operations and related administrative or management activities with regard to the services provided under this Agreement. The Parties may loan equipment to each other in furtherance of this Agreement, but any such equipment shall remain the property of the loaning Party and must be returned after requested within a reasonable period of time to insure non-interruption of official duties and services.

21. INTERLOCAL CERTIFICATION

21.1 The Parties certify that (1) the services described herein and to be provided under this Agreement are necessary and essential for activities that are properly within the Parties' statutory functions; (2) the proposed arrangements serve the interests of efficient and economical administration of the Parties' authorized functions, and (3) the services, supplies, or materials contracted for are not required by Article XVI, Section 21 of the Texas Constitution to be supplied under contract given to the lowest responsible bidder.

Executed to be effective on the Effective Date set out in the first paragraph above.

Agreed by:

Lower Colorado River Authority:

By: _____

Name: _____

Title: _____

USER

City of San Marcos

By: _____

Name: _____

Title: _____