

**INTERLOCAL AGREEMENT
FOR FUNDING OF LCRA RADIO COMMUNICATIONS PROJECT
BETWEEN COMAL COUNTY EMERGENCY SERVICES DISTRICT NO.7 AND
THE CITY OF NEW BRAUNFELS**

This Interlocal Agreement (“Agreement”) is between Comal County Emergency Services District No. 7 (the “District”), a political subdivision of the State of Texas, and the City of New Braunfels (the “City”), a Texas home rule municipality, (each a “Party” and collectively, the “Parties”) which has been approved by each Party’s governing body prior to the execution by the District’s President and the City Manager.

RECITALS

WHEREAS, the City is contracting with the Lower Colorado River Authority (“LCRA”) to install and operate radio communications systems (the “Project”);

WHEREAS, the Project will consist of two 10-Channel, P25, Phase 2 Simulcast Sites. Site 1 of the Project includes an equipment upgrade at the elevated water storage facility located at Kerlick Lane. Site 2 of the Project includes the installation of new equipment at the water storage facility located at Conrads Lane; The Project will improve and enhance the existing radio communication capability with emergency vehicles while responding to service calls throughout the District.

WHEREAS, the District desires to provide funding to the Project in an amount not to exceed \$2,500,000;

WHEREAS, the Project is mutually beneficial by enhancing the emergency response for the residents of the City and the District; and

WHEREAS, the District and the City are authorized to enter into this Agreement in all respects by TEX. GOV'T. CODE ANN., Ch. 791.

AGREEMENT

1. **Purpose.** The purpose of this Agreement is to provide funding for the LCRA radio communications system project. The recitals set forth above are incorporated in and made a part of this Agreement for all purposes.
2. **Term of Agreement.** This Agreement is effective upon the signing of the Parties and continues through the date on which the Project is fully operational.
3. **Responsibilities of the City.**
 - 3.1. The City shall enter into an agreement with the LCRA to carry out the completion of the Project as described in the recitals.
 - 3.2. The City is solely responsible for the oversight of the Project's construction.
 - 3.3. The City shall promptly submit invoices to the District for payment.
 - 3.4. The City shall, upon receipt of District funds, promptly pay each invoice in full.

- 3.5. The City shall provide regular updates to the District regarding the construction of the Project and promptly inform the District of any critical matters related to the Project.
- 3.6. The City shall comply with all applicable laws, rules and regulations in the performance of this Agreement.

4. Responsibilities of the District.

- 4.1. The District shall fund the Project in an amount not to exceed \$2,500,000.
- 4.2. The District shall remit funds to the City, within 15 days from receipt of invoice, so that the City pays the invoice in full. If necessary, the District shall provide thirty percent of the Project estimate as an initial payment within three business days upon final approval of construction agreement for the Project, which notice will be provided by the City.
- 4.3. The District shall comply with all applicable laws, rules and regulations in the performance of this Agreement.

5. **Liability.** Pursuant to Subsection (a-1) of Section 791.006 of the Government Code, the Parties agree to assign liability in a manner that is intended to be different than the liability otherwise assigned under Subsection (a) of Section 791.006 of the Government Code; specifically, the Parties agree that, to the extent allowed by Texas law, each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions, and that no Party shall be liable in monetary damages to the other Party or any other person for any breach of this Agreement, any performance or failure to perform any obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

6. **Amendment of Agreement.** The only modification concerning this Agreement that has any force or effect is a subsequent amendment in writing signed by authorized representatives of both Parties. No official, representative, agent, or employee of the District or the City has any authority to modify this Agreement except pursuant to specific authority to do so expressly granted by the respective governing body.

7. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties to it with respect to the subject matter of it and contains all of the covenants and agreements between the Parties with respect to this subject matter. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any Party or anyone acting on behalf of any Party that are not embodied in this Agreement and that any agreements, statements, or promises not contained in this Agreement are not valid or binding.

8. Breach.

- 8.1. The failure of either Party to comply with the terms and conditions of this Agreement is a breach of this Agreement.

9. Dispute Resolution.

9.1. When mediation is acceptable to both parties in resolving a dispute arising under this agreement, the Parties will use the Central Texas Dispute Resolution Center, located in New Braunfels, Texas, as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE ANN., § 154.073. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation are confidential as described in TEX. CIV. PRAC. AND REM. CODE ANN., § 154.073, unless both parties agree, in writing, to waive the confidentiality.

10. Waiver and Reservation of Rights.

10.1. Waiver. The waiver by either Party of a breach of this Agreement does not constitute a continuing waiver of that breach or of a subsequent breach of the same or a different provision, unless the Party not in breach agrees to a waiver in writing.

10.2. Reservation of Rights and Remedies. All rights of both Parties under this Agreement are specifically reserved. Any reimbursement, installment, payment, act, or omission by a Party does not impair or prejudice any remedy or right of that Party under this Agreement. Any right or remedy stated in this Agreement does not preclude the exercise of any other right or remedy under this agreement, the law or in equity, and any action taken in the exercise of any right or remedy shall not be deemed a waiver of any other rights or remedies.

11. Termination.

11.1. Termination for Breach. Either Party may terminate this Agreement if it is found that the other Party has breached this Agreement. Prior to termination, the terminating Party shall provide written notice to the other Party of any breaches. Upon receipt of this notice, the breaching Party has 30 calendar days to correct the breaches or explain why the actions do not breach this Agreement to the satisfaction of the terminating Party. Failure to correct the breaches or give a satisfactory explanation within 30 calendar days results in automatic termination of this Agreement at the end of the 30-day period, unless the Parties agree in writing to extend the time to cure the breaches.

11.2. Mutual Termination. The District and the City may terminate this Agreement if both the District and the City agree in writing.

11.3. Termination on Dissolution of the District. If the District is dissolved or merged, this Agreement is automatically terminated effective on the date of dissolution or merger.

12. **Notice.** Written Notice. All notices sent pursuant to this Agreement shall be in writing and sent by registered or certified mail, postage prepaid, return receipt requested to the following addresses:

The District:

Board President
Comal County Emergency Services District No. 7
P.O. Box 311975
New Braunfels, Texas 78131

With a copy to:
John J. Carlton
The Carlton Law Firm, P.L.L.C.
4301 Westbank Dr., Suite B-130
Austin, Texas 78746

The City:

City Manager
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

With a copy to:
Fire Chief
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

- 12.1. Time of Delivery. Notice shall be deemed effective two business days after deposit in a U.S. mailbox or at a U.S. post office.
- 12.2. Change of Address. Either Party may change its address for notice under this Agreement by providing a prompt notice of the change to all Parties in compliance with this paragraph.
13. **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties to it and to their respective legal representatives and successors where permitted by this Agreement. This Agreement is not assignable without consent of the other Party which shall not be unreasonably withheld.
14. **Assignment.** Neither Party may assign any of its rights or responsibilities under this Agreement without the prior written consent of the other. It is acknowledged by each Party that no officer, agent, employee or representative of the other Party has any authority to grant that assignment unless expressly granted that specific authority by the Party's governing body.
15. **Third Party Rights Not Created.** This Agreement is not intended and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and neither the City nor the District is waiving any defense or immunity to which it is entitled against any person or legal entity that is not a party to it.

16. **Independent Contractor, No Agency.** The Parties expressly acknowledge and agree that the City and the District are independent entities, and each assumes all the rights, obligations, and liabilities applicable to it as an independent entity. It is the intention of the Parties that the City and the District act as independent contractors under this Agreement and no other relationship be created. An officer or employee of one party shall not be construed to be the agent or employee of the other party. Nothing in this Agreement is intended, or shall be construed, to create a joint venture or partnership, or to render either party hereto liable for any obligation of the other. Neither party may represent the other for any purpose not expressly authorized in this Agreement without the prior consent of the other party.
17. **Indemnification.** The City shall indemnify to the fullest extent permitted by law and hold the District, as well as its commissioners, officials, agents, volunteers, and employees, harmless from any and all claims arising out of or in connection to this Agreement, including any claims related to the installation or use of the Project, including negligence, and all attorney's fees and related costs, made on account of any loss through personal injuries, deaths, or property damages, arising directly or indirectly out of the sole or concurrent negligence, or the sole or concurrent intentional acts or omissions of the City or its contractors, officials, agents, employees, volunteers, subcontractors, or representatives, except where the District is concurrently negligent or has committed concurrent intentional acts or omissions.
18. **Applicable Law and Venue.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and venue for any dispute arising out of this Agreement will lie in the appropriate court of Comal County, Texas.
19. **Severability.** If any provision of this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, to the extent reasonably feasible, the remainder of this Agreement shall remain valid and binding.
20. **Gender and Number.** Words of gender used in this Agreement shall be construed to include any other gender and words in the singular number shall be construed to include the plural and vice versa unless this agreement requires otherwise.
21. **Duplicate Originals.** This Agreement may be executed in duplicate originals.

[Signature Page Follows]

IN WITNESS THEREOF, this Agreement is hereby effective upon the date of the second signatory set forth below .

Comal County Emergency Services District No. 7

By: _____
James Frye
Board President

Date: _____

City of New Braunfels

By: _____
Robert Camareno
City Manager

Date: _____