



Notice is hereby given of a Regular Meeting of the Nacogdoches City Council to be held **April 19, 2016, beginning at 5:30 p.m.** in the Council Chambers of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action.

PLEASE LIMIT PRESENTATIONS TO THREE MINUTES  
(UNLESS PRIOR APPROVAL IS OBTAINED)

1. Call to order.
2. Public comment.
3. Proclamation for Fair Housing Month.
4. Items to be removed from Consent Agenda.
5. **CONSENT AGENDA:** Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
  - A. Consider approval of minutes from April 5, 2016 regular session.
  - B. Consider approving a resolution closing Main Street beginning 4 p.m. on Friday, June 10, 2016 through 9 p.m. on Saturday, June 11, 2016 for the 27<sup>th</sup> Annual Texas Blueberry Festival.

**REGULAR AGENDA:**

6. **PUBLIC HEARING:** Consider request for Specific Use Permit to operate a Bed and Breakfast with four or less patrons in a R-2, single Family Residential zoning district for property located at Lot 4, City Block 4, located at 418 North Mound Street. Thomas Tracy. SUP 2016-001.
7. Consider appointment of four City Council Members to the Deep East Texas Council of Governments (DETCOG) Board of Directors for one year term. (City Manager)
8. Consider contract award for replacement of failed storm sewer line on Raguet Street. (Assistant City Engineer)
9. Consider award of bid for the Hurricane Ike/Dolly Recovery 2.2, Phase 2 Water and Public Facility Generator project. (City Engineer)
10. Consider selection and award of Professional Engineering Contract to Schaumburg & Polk, Inc (SPI) for engineering consulting services pertaining to the creation and renewal of the City's new TCEQ Pre-Treatment Program and Permit. (City Engineer)

For the convenience of the audience, Council may conduct Executive Session deliberation in the first floor conference room, Room 112, of City Hall. Reconvening open session for action, if any, on Executive Session items will be in City Council Chambers. Regular Session agenda items appropriate for Executive Session consideration may be moved into Executive Session for deliberation, but not action, upon proper announcement at the meeting by the presiding officer.

11. **EXECUTIVE SESSION:**

- A. Consultation with City Attorney pursuant to Texas Government Code Section 551.071 to seek or receive legal advice regarding a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.
- B. Deliberation regarding Economic Development negotiations under Local Government Code Section 551.087 as follows:
  - 1. Discuss or deliberate regarding commercial or financial information the City received from business projects the City body seeks to have locate in the City of Nacogdoches and with which the City is conducting economic development negotiations; and
  - 2. Deliberate the offer of a financial or other incentive to business prospects described by Subdivision 1 above.
- 12. Open for action, if any, on Item 11-A.
- 13. Open for action, if any, on Item 11-B-1.
- 14. Open for action, if any, on Item 11-B-2.
- 15. Consider entering into a contract with Lower Colorado River Authority (LCRA) to provide and manage the procurement and installation of public safety radio system. (Police Chief)
- 16. Adjourn.



Jan Vinson, City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact the Attorney General of Texas at 1-800-252-8011; the City Secretary at 936/559-2506 or visit the City of Nacogdoches web site at [www.ci.nacogdoches.tx.us](http://www.ci.nacogdoches.tx.us).

Nacogdoches City Council Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (936) 559-2506 or FAX (936) 559-2912 for further information.

**CERTIFICATION**

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on April 13, 2016 at 5:00 p.m. and remained posted until meeting convened.

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Jan Vinson, City Secretary

**ITEM/SUBJECT: Consent Agenda:** Consider approval of minutes from regular session of April 5, 2016.

**SUMMARY/BACKGROUND:**

**FINANCIAL:**

- There is no financial impact associated with this item  
 Item is budgeted: (\_\_\_\_ - \_\_\_\_ - \_\_\_\_ ) In the amount of \$\_\_\_\_\_  
 Item is not budgeted (Budget Amendment required; please attach BA ordinance)  
Amount: \$\_\_\_\_\_ GL Account #: \_\_\_\_\_  
 Item is estimated to generate additional revenue: \_\_\_\_\_

**CITY CONTACT:** Jan Vinson, City Secretary  
936-559-2506  
[vinsonj@ci.nacogdoches.tx.us](mailto:vinsonj@ci.nacogdoches.tx.us)

**ATTACHMENTS:** Minutes

**MINUTES**  
**Regular Session**  
**Nacogdoches City Council**  
**April 5, 2016 – 5:30 p.m.**  
City Council Room – City Hall  
202 E. Pilar Street

**DRAFT**

**Regular Session:**

**Those Present:**

Mayor Roger Van Horn, Council Members Shelley Brophy, Roy Boldon, David Norton and Mike Keller, City Attorney Jeff Davis.

- 1. Mayor Roger Van Horn called meeting to order at 5:30 p.m.**
- 2. Open Forum.**

*Opportunity given for individuals to participate in open forum. No comments from the general public were received.*

- 3. Items to be removed from Consent Agenda.**

*None.*

- 4. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.**

- A. Consider approval of minutes from March 15, 2016 regular session.**
- B. Consider tax resale authorization for property described as: Being Lot 16, Block 3, in the J Thorn Subdivision, Nacogdoches County, TX; more fully described in Volume 436, Page 759, Deed Records, Nacogdoches County, Nacogdoches, TX. (18-599-5303-016000)**

Council Member Norton moved to approve consent agenda as presented. Motion seconded by Council Member Keller and unanimously passed.

**REGULAR AGENDA:**

- 5. Presentation of Nacogdoches Economic Development Corporation Quarterly Report.**

Jimmy Mize, NEDCO Board Chair, presented retail and industry updates. Mr. Mize discussed refocusing on higher paying industry jobs, retaining and expanding local businesses, enhancing innovation culture and improving product readiness and competitiveness.

Mr. Mize provided updates Pilgrim's Pride job expansion, Etech received federal funds for training, new equipment and working capital, Hotel Fredonia construction, Mast Motorsports bid on US Postal Service vehicles, Research and Industrial Park and downtown development.

*No action necessary.*

- 6. Consider granting a 10-foot wide utility easement and right-of-way to Consolidated Communications.**

The easement will be used for fiber optic cable that will extend to the Stephen F. Austin State University's locker room at the Baseball Complex on West Loop 224 which satisfies a requirement by ESPN for broadcasting purposes. Assistant City Engineer Case Opperman states the cable installation will not affect any future park projects and no financial impact on the City.

Council Member Keller moved to approve the utility easement as presented. Motion seconded by Council Member Boldon and unanimously passed.

- 7. Consider creation of an investment fund for economic development.**

City Manager Jim Jeffers presented merits of an investment fund for economic development. City Council will have the final decision on the creation of an investment fund and how the funds will be

**Minutes unofficial until approved by City Council**

used. It was the consensus of City Council to continue discussions on a restricted investment fund for economic development.

*No action necessary.*

**8. EXECUTIVE SESSION:**

**A. Deliberation regarding Economic Development negotiations under Local Government Code Section 551.087 as follows:**

- 1. Discuss or deliberate regarding commercial or financial information that the City has received from business projects that the City body seeks to have locate in the City of Nacogdoches and with which the City is conducting economic development negotiations; and**
- 2. Deliberate the offer of a financial or other incentive to business prospects described by Subdivision 1 above.**

*No executive session was held.*

**9. Adjourned.**

Mayor Van Horn adjourned meeting at 6:31 p.m.

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Mayor Roger Van Horn  
City Council  
City of Nacogdoches

ATTEST:

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Jan Vinson, City Secretary

**PRESENTER:** Amy Mehaffey, Main Street/Communications Director

**ITEM/SUBJECT:** **Consent Agenda:** Consider approval of resolution closing Main Street beginning at 4 p.m. Friday, June 10, 2016 through 9 p.m. Saturday June 11, 2016 for the 27<sup>th</sup> Annual Texas Blueberry Festival.

**SUMMARY/BACKGROUND:** The Texas Blueberry Festival, held for the past 26 years in downtown Nacogdoches, is a celebration of Nacogdoches County being the top blueberry - producing county in the state. This festival is the only state sanctioned Blueberry Festival in Texas and is a fund- raising event for Nacogdoches County Chamber of Commerce. The Texas Blueberry Festival brings in an estimated 20,000 attendees and over 100 vendors to the downtown area the second weekend in June each year. The festival features live music, blueberry farm tours, children's activities, a classic car show, a pie-eating contest, and all things blueberry.

Nacogdoches County Chamber of Commerce is requesting the City approve the resolution closing Main Street during the above listed hours for this year's 27th Annual Texas Blueberry Festival.

**FINANCIAL:**

- There is no financial impact associated with this item
- Item is budgeted: (\_\_\_\_ - \_\_\_\_ - \_\_\_\_) In the amount of \$\_\_\_\_\_
- Item is not budgeted (Budget Amendment required; please attach BA ordinance)  
Amount: \$\_\_\_\_\_ GL Account #: \_\_\_\_\_
- Item is estimated to generate additional revenue: \_\_\_\_\_

**CITY CONTACT:** Amy Mehaffey, Main Street/Communications Director  
936-559-2573  
[mehaffeya@ci.nacogdochest.tx.us](mailto:mehaffeya@ci.nacogdochest.tx.us)

**ATTACHMENTS:** Resolution

**RESOLUTION: 1190-4-16**

WHEREAS, organizers of the Texas Blueberry Festival desire to have a safe and successful event for all vendors and participants; and,

WHEREAS, organizers of the Texas Blueberry Festival are requesting the City of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastwardly to its intersection at Mound Street from 4:00 p.m. Friday, June 10<sup>th</sup>, 2016 until 9:00 p.m. Saturday, June 11<sup>th</sup>, 2016 in order to provide safety for vendors and participants; and,

WHEREAS, after duly considering such request, it is the consent of City Council that a resolution be adopted requesting Texas Department of Transportation to allow the closing of Main Street for the Texas Blueberry Festival.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastwardly to its intersection at Mound Street from 4:00 p.m., Friday June 10<sup>th</sup>, 2016 until 9:00 p.m., Saturday, June 13<sup>th</sup>, 2016 for the Texas Blueberry Festival.

BE IT FURTHER RESOLVED that Jim Jeffers, City Manager be authorized to execute an agreement with Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 19<sup>th</sup> day of April, 2016.

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Roger Van Horn, Mayor

ATTEST:

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Jan Vinson, City Secretary

**PRESENTER:** Larissa Philpot, Director of Municipal Services

**ITEM/SUBJECT: Public Hearing** - Consider request for Specific Use Permit to operate a Bed and Breakfast with four or less patrons in an R-2, Single Family Residential zoning district for property located at Lot 4, City Block 4, located at 418 North Mound Street. Thomas Tracy. SUP 2016-001.

**SUMMARY/BACKGROUND:** This property has operated as a bed and breakfast since 1999. Previous to that, the structure was converted into apartment units. The house was originally built in 1905 as a single family home. The structure is a contributing structure to the Washington Square National Register district.

All exterior restoration work has been approved by the Historic Landmark Preservation Committee.

This specific use request is essentially a renewal of the same use the property has enjoyed previously. This renewal is required because the specific use was abandoned for more than 180 days and therefore was revoked.

A brief statement outlining the property owner's business plan is attached.

**The Planning and Zoning Commission unanimously recommended approval of this request.**

**FINANCIAL:**

  X   There is no financial impact associated with this item

**CITY CONTACT:** Larissa Philpot, Director of Municipal Services  
[philpotl@ci.nacogdoches.tx.us](mailto:philpotl@ci.nacogdoches.tx.us)  
936-559-2572

**ATTACHMENTS:** Property owner's business plan  
Zoning map  
Aerial photo



## 418 Mound Street

The house at 418 N. Mound Street was built by architect Diedrich Rulfs for Dr. John Garrison. Construction is believed to have begun in 1899 and the house was occupied by the Garrison Family in the spring of 1900.

The house is listed as a contributing structure in the Washington Square Historical District. The residence has been used as a boarding house, apartments, and a bed and breakfast from about 1910 until present. Pending approval of the specific use permit, the house will continue to operate as a bed & breakfast. Per municipal code, the maximum stay will be limited to 14 days.


A front porch was added to the exterior of the house after obtaining appropriate city building permits and a certificate of appropriateness from the Historic Landmark Preservation Committee. Modifications, such as the porch, were undertaken to improve the aesthetics and historical accuracy of the house and not to facilitate its use as a bed and breakfast.

The house will have a total of four guest rooms, separate from the owner's quarters. Each room will have a private bath. The residence has a circle drive with paved parking for ten vehicles in the rear of the house. Cars parked behind the house are screened by fences, trees, and landscaping.

The bed and breakfast will serve tourists attending downtown events and festivals, parents visiting SFA students, and occasionally weddings and receptions. City codes and signage requirements will be complied with. The owner will occupy the house as his primary residence.





  
 1 inch = 100 feet  
 0 25 50 100 150 200 Feet

**Legend**

 SUP2016-01

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

**PRESENTER:** Jim Jeffers, City Manager

**ITEM/SUBJECT:** Consider appointment of four (4) City Council Members to the Deep East Texas Council of Governments (DETCOG) Board of Directors for one year term.

**SUMMARY/BACKGROUND:** Deep East Texas Council of Governments begins a new Board membership on July 1, 2016. DETCOG bylaws state each member city with a population of 10,000 and up is eligible to select four (4) members to the Board who shall be the mayor or city council members. Current DETCOG Board Members are Council Members Brophy, Keller, Norton and Boldon.

**FINANCIAL:**

There is no financial impact associated with this item  
 Item is budgeted: (\_\_\_\_ - \_\_\_\_ - \_\_\_\_) In the amount of \$\_\_\_\_\_  
 Item is not budgeted (Budget Amendment required; please attach BA ordinance)  
Amount: \$\_\_\_\_\_ GL Account #: \_\_\_\_\_  
 Item is estimated to generate additional revenue: \_\_\_\_\_

**CITY CONTACT:** Jim Jeffers, City Manager  
936-559-2501  
[jeffers@ci.nacogdoches.tx.us](mailto:jeffers@ci.nacogdoches.tx.us)

**ATTACHMENTS:** None

**PRESENTER:** Case Opperman, EIT, Assistant City Engineer

**ITEM/SUBJECT:** Consider contract award for replacement of failed storm sewer line on Raguet Street.

**SUMMARY/BACKGROUND:** The City received bids for construction of replacing storm sewer line on Raguet Street from Davis Street to Blount Street. Bid totals are as follows:

Duplichain Contractors	\$144,081.00
Trendsetter Construction	\$149,729.37
Horton Excavating	\$149,812.00
Crockett Construction	\$157,946.00

Duplichain Contractors was the lowest qualified bidder. Duplichain has an excellent work history on similar projects, including prior work for the City.

The existing storm sewer on the west side of Raguet Street from Davis Street to Blount Street has failed and caused several problems including sinkholes and failed driveways which have required repair. It continues to present a hazard to high pedestrian traffic in the area and needs immediate attention in the form of complete replacement of the storm sewer line.

It is recommended the low bid for this storm sewer replacement is awarded to Duplichain Contractors in the amount of \$144,081.00.

**FINANCIAL:**

  X   Item is budgeted: (680.80) In the amount of \$ 144,081  
Line item transfer will be required.

**CITY CONTACT:** Case Opperman, EIT, Assistant City Engineer  
(936) 559-2515  
[oppermanc@ci.nacogdoches.tx.us](mailto:oppermanc@ci.nacogdoches.tx.us)

**ATTACHMENTS:** Bid tabulation is available for review in the engineering office.

**PRESENTER:** Steve Bartlett, PE, City Engineer

**ITEM/SUBJECT:** Consider award of bid for Hurricane Ike/Dolly Recovery 2.2, Phase 2 Water and Public Facility Generator Project.

**SUMMARY/BACKGROUND:** March 30, 2016, the City received five (5) bids for construction of new generators at various public water works facilities across the City. Sites for new generators include Austin Street Elevated Storage Tank, Moore Elevated Storage Tank, Zula Street Elevated Storage Tank, Beulah Elevated Storage Tank, SFA Elevated Storage Tank and the Public Works building. The following bids were submitted:

Timberline Constructors	<input checked="" type="checkbox"/>	\$384,914.00
Ludco, Inc.	<input type="checkbox"/>	\$399,438.00
Duplicain Contractors	<input type="checkbox"/>	\$408,110.00
Alan Fielding Electric	<input type="checkbox"/>	\$459,650.00
Terry Black Construction	<input type="checkbox"/>	\$471,836.00

Timberline Constructors was the qualified low bidder. Timberline is an experienced contractor with a successful history of work on similar projects.

These proposed generator sites are a utilization of remaining funds in the General Land Office (GLO) Hurricane Ike/Dolly Recovery 2.2 disaster relief program. These are grant funds and do not have a financial impact on City budget. It is recommended the low bid for the Hurricane Ike/Dolly Recovery 2.2, Phase 2 Water and Public Facility Generator Project be awarded to Timberline Constructors in the amount of \$384,914.00.

**FINANCIAL:**

  X   There is no financial impact associated with this item

**CITY CONTACT:** Steve Bartlett, PE, City Engineer  
(936) 559-2522  
bartletts@ci.nacogdoches.tx.us

**ATTACHMENTS:** Bid tabulation is available for review in the engineering office.

**PRESENTER:** Steve Bartlett, PE, City Engineer

**ITEM/SUBJECT:** Consider selection and award of Professional Engineering Contract to Schaumburg & Polk, Inc. (SPI) for engineering consulting services pertaining to creation and renewal of the City's new TCEQ Pre-Treatment Program and Permit.

**SUMMARY/BACKGROUND:** Over two years ago, SPI assisted the City with developing a new Pre-Treatment Program to be used in renewal of our TCEQ permits. TCEQ has now begun to review this document and is requesting modifications and responses to technical questions. This document is an extensive scientific and engineering report of over 1000 pages and requires an engineering specialist to prepare.

This contract with SPI will provide the City with needed expertise to prepare changes and responses to the Pre-Treatment Permit over the next year. Since the extent and scope of work is not well defined, this contract is an hourly billing task order where the City only pays for time and materials used by SPI in this effort. This agreement has a not-to-exceed value of \$75,000 which matches the amount currently in the CIP budget.

This Pre-Treatment Permit modification will allow the City to develop limits for pollutants found in wastewater discharges, from industries, that are specific to Nacogdoches and the ability to treat for these contaminants, instead of using statewide average values that may not be appropriate for the City's receiving stream.

**FINANCIAL:**

- There is no financial impact associated with this item
- Item is budgeted: (30.179.39) In the amount of \$ 75,000
- Item is not budgeted (*Budget Amendment required - see attached*)  
Amount: \$ \_\_\_\_\_ GL Account #: (XX-XXX-XX)
- Item is estimated to generate additional revenue: \$ 0

**CITY CONTACT:** Steve Bartlett, PE City Engineer  
936-559-2522  
bartletts@ci.nacogdoches.tx.us

**ATTACHMENTS:** SPI Contract

General Services Agreement  
Authorization Number 37  
For  
2016 Pretreatment Program Update

Exhibit A.37

FURTHER DESCRIPTION OF ENGINEERING SERVICES  
AND RELATED MATTERS



## Further Description of Engineering Services and Related Matters

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement made on April 4, 2006, between City of Nacogdoches, Texas (OWNER) and Schaumburg & Polk, Inc. (ENGINEER) providing for various professional engineering services. The Additional Services of Engineer as described in Section 2.1 of the Agreement are amended or supplemented as indicated below.
2. ENGINEER shall provide additional services, Section 2.1 of the agreement, related to updates to the wastewater plant pretreatment program. A description of the services provided and the owner's responsibilities are enumerated in Exhibit B of this Authorization
3. Payment for services: Services shall be billed on a time and materials basis per the attached rate sheet, not to exceed the agreed amount without prior authorization.

<u>Service</u>	<u>Agreement Section</u>	<u>Not to Exceed Amount</u>
Pretreatment Modification	2.1	\$75,000.00

2016 Schedule of Hourly Rates and Expenses

ENGINEER IX	\$245.00 /HOUR
ENGINEER VIII	\$200.00 /HOUR
ENGINEER VII	\$175.00 /HOUR
ENGINEER VI	\$155.00 /HOUR
ENGINEER V	\$140.00 /HOUR
ENGINEER IV	\$125.00 /HOUR
ENGINEER III	\$105.00 /HOUR
ENGINEER II	\$95.00 /HOUR
ENGINEER I	\$85.00 /HOUR
DESIGN TECHNICIAN IV	\$110.00 /HOUR
DESIGN TECHNICIAN III	\$95.00 /HOUR
DESIGN TECHNICIAN II	\$75.00 /HOUR
DESIGN TECHNICIAN I	\$55.00 /HOUR
SURVEYOR III	\$95.00 /HOUR
SURVEYOR II	\$75.00 /HOUR
SURVEYOR I	\$55.00 /HOUR
ADMINISTRATIVE ASSISTANT	\$60.00 /HOUR
CONSTRUCTION REPRESENTATIVE III	\$95.00 /HOUR
CONSTRUCTION REPRESENTATIVE II	\$85.00 /HOUR
CONSTRUCTION REPRESENTATIVE I	\$70.00 /HOUR

REIMBURSABLE EXPENSES	
Mileage	IRS Allowable Rate
Travel and Meals	Actual Cost x 1.10
Misc. Reimbursable Expenses	Actual Cost x 1.10
Color Plots	\$3.00 per Square Foot

OUTSIDE CONSULTANT RATES		
Associate Engineer	Civil, Electrical, Environmental, Mechanical, etc.	up to \$175.00/HOUR
Subconsultants		Actual Cost x 1.10

Schaumburg & Polk, Inc. furnishes General Liability Insurance, Professional Liability Insurance and State of Texas mandatory limits of Worker's Compensation insurance.

Preparation for and furnishing expert witness testimony will be billed at three times the hourly rates shown above for the various classifications.

Rates Effective: January 1, 2016 (*adjusted annually*)

General Services Agreement  
Authorization Number 37

EXHIBIT B.37

AUTHORIZATION OF SERVICES

### **AUTHORIZATION OF SERVICES**

Schaumburg & Polk, Inc. will provide services to assist the City in the modification to the pretreatment program. The following outlines the specific scope of services and responsibilities to be provided by the ENGINEER and OWNER.

The ENGINEER will provide services as described or required to provide the following deliverables.

1. Review the March 24, 2016 TCEQ letter regarding the submitted 2012 Pretreatment Program and provide comments.
2. Review and amend pretreatment documents in accordance with TCEQ comments and recommendations of the March 24, 2016 letter. Meet with the Owner to review the changes and incorporate other modifications desired by the Owner.
3. Define with Owner data to be used in analysis of Technical Based Local Limits "TBLL". Reevaluate calculations based on TCEQ recommended methodology and revised flow recording period.
4. Engineer to reevaluate calculation of Allowable Headworks Loading "AHL" for selected POCs based on EPA guidance, and TCEQ comments. Meet with Owner to select the Maximum Allowable Headworks Loading "MAHL" based on the most restrictive AHL.
5. Review method of distribution of MAHL to Industrial Users based on TCEQ comments. Reevaluate calculations of Maximum Allowable Industrial Limits based on this distribution.
6. Provide additional information to describe plant operations; and provide flow diagram schematic with sampling points indicated.
7. Assist the Owner in developing the contents and outline for final submittal package to TCEQ. Provide final copies of work performed by Engineer (i.e. amended pretreatment documents, calculation spreadsheets and completed checklist) to Owner for inclusion in final submittal to TCEQ.

Owner will be responsible for the following items:

1. Coordination with City's legal counsel regarding review of amended documents.
2. Communication with the Texas Commission on Environmental Quality "TCEQ".
3. Conduct necessary public meetings and issuing notifications for such meetings.
4. Provide Engineer with copies of required test and flow data (electronically if available).
5. Arrange and coordinate for any additional testing.
6. Assembly of final submittal package to TCEQ.

## **ENGINEER'S COMPENSATION**

For and in consideration of the services to be rendered by the ENGINEER, the OWNER shall pay and the ENGINEER shall receive the compensation hereinafter set forth. Services will be invoiced monthly. Services reimbursed on lump sum basis will be based on a percentage of the work completed. Services on reimbursable basis will be based on hourly rates and expense schedule in affect at time of service. All remittance by the OWNER of such compensation shall be mailed or delivered to the ENGINEER's office at

Schaumburg & Polk, Inc.

8865 College Street

Beaumont, Texas 77707

EXHIBIT C.37 TO AGREEMENT BETWEEN  
OWNER AND ENGINEER FOR PROFESSIONAL  
SERVICES April 4, 2006.

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CITY OF NACOGCOCHES

SCHAUMBURG & POLK, Inc.

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Signature

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Signature

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Date

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Date

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James P. Jeffers

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Mark Mann, P.E.

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Name

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Name

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City Manager

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Vice President

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Title

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Title

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Witness

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Witness

**ITEM/SUBJECT:**

**EXECUTIVE SESSION:**

- A. Consultation with City Attorney pursuant to Texas Government Code Section 551.071 to seek or receive legal advice regarding a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.
- B. Deliberation regarding Economic Development negotiations under Local Government Code Section 551.087 as follows:
  1. Discuss or deliberate regarding commercial or financial information the City has received from business projects the City body seeks to have locate in the City of Nacogdoches and with which the City is conducting economic development negotiations; and
  2. Deliberate offer of financial or other incentive to business prospects described by Subdivision 1 above

**PRESENTER:** Jim Sevey, Chief of Police

**ITEM/SUBJECT:** Consider entering into a contract with Lower Colorado River Authority (LCRA) to provide and manage procurement and installation of the public safety radio system.

**SUMMARY/BACKGROUND:** City Council received presentations in past meetings regarding the current public safety radio system and a proposal for a replacement system. LCRA was chosen as the vendor/project manager for the replacement system and is requesting the City enter into a contract with LCRA to provide and manage procurement and installation of the new radio system.

**FINANCIAL:**

There is no financial impact associated with this item

Item is budgeted: ( \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ ) In the amount of \$ \_\_\_\_\_

Item is not budgeted (Budget Amendment required; please attach BA ordinance)

Amount: **\$1,655,488.00** GL Account #: \_\_\_\_\_

Item is estimated to generate additional revenue: \_\_\_\_\_

**CITY CONTACT:** Jim Sevey, Chief of Police  
jsevey@ci.nacogdoches.tx.us  
936-559-2601

**ATTACHMENTS:** Contract



**INTERLOCAL COOPERATION AGREEMENT  
FOR MOBILE RADIO SERVICES AND EQUIPMENT  
BETWEEN THE CITY OF NACOGDOCHES  
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 Nacogdoches ("**USER**"), a Home Rule Municipality and a political subdivision of the State of Texas, 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 \_\_\_\_\_, 2016 (the "**Effective Date**"). (LCRA and USER may also be referred to individually as a "**Party**" and collectively as the "**Parties.**")

**RECITALS**

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. 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.

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. 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.

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

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;

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.

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;

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;

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**

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 document, including Attachments A, B, C, D and D-1, 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. In the absence of written acceptance of these terms, acceptance of services hereunder shall constitute an acceptance of these terms and conditions by USER. This agreement shall supersede and replace the previous interlocal agreement for trunked radio services between the parties dated February 1, 2015.

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) and monthly usage charges, as set out in the LCRA Mobile Radio Service Rate Table (Attachment B). 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 execution of this Agreement, USER's equipment will be activated and service and service related charges shown on Attachment A will commence 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 performed by LCRA 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. LCRA shall ensure and warrants that all contractors are knowledgeable and experienced in the work they may perform.

## **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, such as telephone interconnection; 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 execution date of this Agreement shall not be increased except by mutual agreement of the Parties made in writing.

3.3 All monthly rates, charges, and fees for services provided under this Agreement shall accrue beginning 30 days after the initial installation of the equipment or performance of the services. 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, charges for telephone interconnection and other optional services shall be invoiced at the end of each monthly billing cycle. Late payments shall be subject to interest or reasonable service charges. However, any delay in payment by USER resulting solely from failure by LCRA to send an invoice shall not constitute late payment by USER. Charges for equipment purchased or installed shall be invoiced immediately following delivery or installation with payment due within 30 days of the invoice date.

#### **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 Maintenance Price Sheet (Attachment C). At USER's option, USER shall have the right to engage other maintenance suppliers, subject to LCRA's approval which shall not be unreasonably withheld, 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**

5.1 LCRA may, at its sole and exclusive discretion, agree to provide services to other participants on the Trunked Radio System. The provision of radio system services to other participants will not diminish the capability of USER to use the Trunked Radio System as agreed to be provided in this Agreement. 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.

## **6. TERM - AUTOMATIC RENEWAL**

6.1 The initial term of this Agreement shall commence on the Effective Date as set forth above and shall end five years later, unless automatically extended. The 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 five year 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. If, after such notification, USER does not terminate this Agreement and allows it to automatically renew, charges for the next term shall be the new charges set out by LCRA in its notification prior to the automatic renewal date, subject to modification as herein set out.

## **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 for one 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 promptly 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 unless LCRA enters into a new written agreement with that person or entity. LCRA reserves the right to subcontract any of its obligations under this Agreement. LCRA may assign this Agreement upon written approval of USER, which approval shall not be unreasonably withheld. 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, firm, corporation or other entity not a Party to this Agreement.

## **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 reasonable control of LCRA are 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. Within these parameters, the geographical area of radio service shall include, at a minimum, the current city limits of Nacogdoches.

9.2 USER further acknowledges 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 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, 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 obligations, the non-defaulting Party shall deliver written notice to the defaulting Party describing the 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 If LCRA fails to provide the services set forth in this Agreement and said failure results in chronic and sustained periods of outages which materially impede User's ability to utilize its mobile radio system 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 USER to LCRA, LCRA 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 obligations, the non-defaulting Party shall deliver written notice to the defaulting Party describing the default. If the default continues for more than 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.

10.3 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.

10.4 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 service to equipment identified herein, and impose a reasonable separate charge for disconnect and a separate reasonable charge for any reconnect expenses. If disconnect takes place and the equipment requires reprogramming, USER will also be subjected to reasonable 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.

10.5 . The financial obligations of the USER for monthly service related charges, if any, under this Agreement are contingent upon the availability and appropriation of sufficient funds. USER may withdraw from this Agreement without penalty in the event funds are not available or appropriated. However, no Party will be entitled to a refund of amounts previously contributed in the event of withdrawal for lack of funding. The USER shall not be liable for payment of charges for disconnecting and similar charges but shall be charged amounts set by LCRA if USER wishes to reconnect at a future date, such amounts to cover the charges of disconnection, reconnection and administrative overhead associated with such actions. All payments, if any made pursuant to this Agreement shall be made from current revenues available to the paying party.

## **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 during the term of this Agreement USER shall not re-sell service, interconnect, nor patch any equipment with another radio user or another radio system without written consent of LCRA. The above stated rights and obligations set forth in this section shall expire upon the termination of this Agreement.

11.3 LCRA agrees to warrant and maintain the four Zetron consoles and site electronics identified on Attachment D. through monthly fees identified on Attachment A. If this Agreement is terminated within the first year, LCRA will continue to provide warranty/maintenance coverage on the four Zetron consoles and maintenance of the site electronics for a period of one year from the initial installation at no additional charge to USER.

11.4 The transfer of any manufacturer's warranties to USER shall survive termination of this Agreement.

11.5 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 radio equipment, and LCRA hereby disclaims all representations and warranties, direct or indirect, express or implied, written or oral, in connection with the equipment (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 will acknowledge receipt of any and all such manufacturers' warranties upon delivery of same.

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 provided hereunder. Without limiting the above, LCRA shall have no liability or obligation to USER, in either contract or tort, for special, incidental, 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 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 negligent or willful act of LCRA.

### **13. INTERRUPTION OF SERVICE; FORCE MAJEURE**

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**

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' 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.

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 USER hereby agrees to employ reasonable measures to prevent the use of the radio system for the transmission of libelous, slanderous, and copyrighted material in any form.

14.5 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 non-negligent installation or presence of radios and ancillary equipment.

14.6 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 other than those expressly set forth in this Agreement.

14.7 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 the criminal laws.

## **15. NOTICES**

15.1 Any notice or demand required or permitted to be made hereunder shall be made 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 payment of all taxes, if any, on its own facilities or the equipment provided to USER under this Agreement.

## **18. AMENDMENT; WAIVER; SEVERABILITY**

18.1 Except for revisions of the LCRA Mobile Radio Service Rate Table (Attachment B), amendments to the Interlocal Agreement, additions of additional participants and users or the expansion provisions set forth in Section 19 hereinafter, 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. EXPANSION OF TRUNKED RADIO SYSTEM**

19.1 LCRA may, at its sole and exclusive discretion, provide Trunked Radio System services to other entities. USER acknowledges that LCRA has previously entered into other interlocal agreements 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. USER also acknowledges and agrees that LCRA has or will expand the area covered by its Trunked Radio System. LCRA agrees that any expansion of the system will not diminish the ability of USER to use the Trunked Radio System as contemplated in this Agreement.

## **20. NO ORAL AGREEMENTS.**

21.1 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 commencement date of this Agreement, except for charges and fees incurred and remaining unpaid under any previous agreement.

## **23. REVIEWS**

22.1 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.

## **24. INTERLOCAL CERTIFICATION**

23.1 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.

## **25. APPLICABLE LAW AND VENUE**

25.1 This Agreement shall be governed by the laws of the State of Texas. Venue for any dispute between the Parties shall lie in Nacogdoches County, Texas.

[signatures on following page]

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

Agreed by:

**Lower Colorado River Authority:**

By: \_\_\_\_\_

Name: Bill Hatfield

Title: Vice President of Transmission Operations

USER

**City of Nacogdoches:**

By: \_\_\_\_\_

Name: Jim Jeffers

Title: City Manager - Nacogdoches

**ATTACHMENT A**



Mobile Radio Service Agreement

**Attachment A  
PARTICIPANT INFORMATION**

AGENCY NAME (PLEASE PRINT)  
**City of Nacogdoches, Texas**

AGENCY ADDRESS  
**312 W. Main Street**

CITY <b>Nacogdoches</b>	STATE <b>Texas</b>	ZIP <b>75961</b>	PHONE <b>936.559.2607</b>	FAX
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CONTACT NAME <b>Jim Sevey</b>	PHONE <b>936.559.2607</b>	FAX
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BILLING ADDRESS, IF DIFFERENT FROM ABOVE

CITY	STATE	ZIP	TAX EXEMPT <b>Yes</b>	FEDERAL TAX ID 75-600062
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PURCHASE ORDER \_\_\_\_\_ EFFECTIVE DATE **4/19/2016**

<b>LCRA 700 MHz System</b>	No. of Units	Cost per Unit Per Month	
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**BASIC SERVICE**

Mobiles and Portables	293	\$25.00	\$7,325.00
			\$0.00
Conventional Interface	3	\$50.00	\$150.00
			\$0.00
Zetron Consoles	4	\$150.00	\$600.00
			\$0.00
			\$0.00
			\$0.00

\*All radios are Harris Corporation Radios  
\* LCRA does not charge a monthly fee for spare radios not being utilized.

**TOTAL BASIC SERVICE I \$8,075.00**

**OPTIONS**

I-CALL	\$5.00	\$0.00
DATA - Status Messaging	\$10.00	\$0.00
DATA - AVL	\$10.00	\$0.00

**TOTAL OPTION FEES \$0.00**

**TOTAL MONTHLY FEES \$8,075.00**

Please Note:  
The monthly fees include the costs to operate the site electronics, the radio switch in Austin, the four dispatch consoles and the Conventional interfaces used for interoperability. The fees also include maintenance and software upgrades for the site electronics, the switch, and four dispatch consoles for the duration of the contract.

Participant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

LCRA Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

**Attachment B**  
**LCRA Mobile Radio Service Rate Table**  
**Basic Service Rates**  
**Effective 2/1/2016**

	<b>Service Level/Coverage Area*</b>	<b>\$ Unit / Month Initial Rate</b>
<b>1</b>	<b>Standard Service - all LCRA sites</b>	\$25.00
<b>2</b>	<b>Zetron Console</b>	\$150.00
<b>3</b>	<b>Conventional Interface</b>	\$50.00
<b>4</b>	<b>I-Call</b>	\$5.00
<b>5</b>	<b>Data</b>	\$10.00

**Service Description**

Standard Service Includes:

1. System Access - 24 hours per day, 7 days per week with unlimited air time
2. Telecommunications Operations Center (TOC) Support - 24 hours per day, 7 days per week
3. Emergency Call

# Attachment C

## Lower Colorado River Authority

Post Office Box 220, Austin, Texas 78767 \* (512) 473-3200 Ext. 6330

### TELECOM INSTALLATION & MAINTENANCE PRICE SHEET

TYPE	DESCRIPTION	COST
<b>I. Installations;</b>		
1. Underdash/RemoteMount	Installation includes: Programming, testing & standard single band antenna. (Dual or Multi-Band antennas will incur additional material cost)	<b>\$250.00</b>
2. Custom Installations	Integration of additional components and/or vehicles requiring additional labor. (Buses, Trains)	<b>\$300.00</b>
3. Control Station	<b>Labor Only:</b> (4 hours) (Note: Required Radio and additional materials quoted separately as needed.) ** Tower work and external device work quoted separately**	<b>\$260.00</b>
4. Outside Speaker	➤ Installation of Mobile outside speaker combined with a mobile installation (does not include cost of speaker.)	<b>\$ 32.50</b>
<b>II. Removals</b>		
1. Radio Removal	Includes: Removal of existing radio and antenna	<b>\$ 50.00</b>
2. AVL Removal	Includes: Removal of existing AVL unit with radio removal	<b>\$ 25.00</b>
<b>III. Programming</b>		
1. LCRA Radio Shop	Radio Reprogramming at LCRA Radio Shop	<b>\$ 25.00</b>
2. Customer Location	Radio Reprogramming at Customer Location	<b>\$ 25.00 + Mileage</b>
3. System Key	P25 Non Harris radio or purchased other than LCRA (initial purchase and programming) (N/C if customer provided)	<b>\$200.00</b>
4. Code Plug	Single system and single Band Radio (700/800 radio) Multi-Band System and radio (Multi-Band radio)	<b>\$200.00</b> <b>\$500.00</b>
<b>IV Radio Repairs</b>	Radio diagnostics and bench repairs in LCRA Radio Shop – Flat Rate for labor and materials. (Does not include new batteries & antennas) Radios needing factory repair will require customer approval.	<b>\$125.00</b>
<b>V. Labor</b>		
1. Regular time (scheduled)	Hourly rate during normal hours (7:00am - 3:30pm). Next day / 24 hour response time.	<b>\$ 65.00</b>
2. Overtime (unscheduled)	Hourly rate outside normal hours. Same day response.	<b>\$ 97.50</b>
3. Call out (emergency)	Hourly rate for emergency or call out. Two hour response. (Two hour minimum.)	<b>\$110.00</b>

- i Any work beyond the scope of the above will be billed by the hour with material cost plus 10%.
- i All installations are tested for correct SWR, Tx & Rx functions.
- i All work has a warranty of 90 days, which covers materials and labor due to defects in workmanship and manufacturing. This warranty does not include damage caused by misuse or by natural causes. Antennas and microphones are only covered under warranty due to defect in workmanship and manufacturing.



Attachment D  
Interlocal Cooperation Agreement Between LCRA and The City of Nacogdoches

Quantity	Description	Price
	Harris Corporation - Single Site Five Channel 700 MHz P25 Trunked Radio System, not including dispatch consoles. City of Nacogdoches is to provide Tower, Equipment Room, Power and Backup Generator. System includes five P25 channels, electronic components, antennas, cabling, tower top amplifiers, engineering, programing, and installation.	\$340,000.00
3	Conventional Interfaces for Interoperability including engineering, programing, and installation	\$33,000.00
4	Zetron Consoles including engineering, programing, and installation	\$248,000.00
293	Harris radios including engineering, programing, and installation: See detail radio count by department All radios are Harris Radio equipment and include a two year warranty. (See Attachment D1 for Departmental List of radios)	\$1,022,707.00
	•TOTAL COST AND INVESTMENT FOR THE ABOVE-DESCRIBED EQUIPMENT AND SERVICES:	\$1,643,707.00
	All rights of ownership of all equipment listed on Attachment D and Attachment D-1 passes to the City of Nacogdoches upon receipt of full payment of the total cost and investment listed on Attachment D.	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><u>Name and Title:</u></p> <p>Signature</p> </div> <div style="width: 35%; text-align: right;"> <p>Date</p> </div> </div>		

Attachment D-1  
Interlocal Cooperation Agreement Between LCRA and The City of Nacogdoches

Quantity	Description	Price
Departmental list of 293 Harris Radios		
<b>RADIO DETAIL TYPE AND DEPARTMENT BELOW: ALL RADIOS ARE HARRIS RADIOS</b>		
<b>•Police Department: 133 Radios</b>		
48	M7300 Mobiles	\$174,192
10	Unity Upgrades	\$11,407
75	XG 75 Portables	\$153,375
133	Encryption Features	\$47,082
75	Bluetooth Features	\$5,775
	Installation: (Mobile radio installations - includes antenna)	\$13,500
	<b>Total for Police Department</b>	<b>\$391,831</b>
<b>•Fire Department and Animal Control: 116 Radios</b>		
28	Unity Split Mt. Mobiles	\$133,840
2	M7300 split Mt. Mobiles	\$7,258
76	XL 200 Portable	\$327,864
4	XG 15 Portables	\$5,600
5	Unity Base Stations	\$28,150
1	M7300 Base Station	\$4,479
	Installation:	\$9,000
	<b>Total for Fire and Animal Control</b>	<b>\$507,191</b>
<b>•Utilities: 31 Radios</b>		
6	M7300 Mobile Radios Split Scan	\$21,774
22	XG 15 Portable Radios	\$30,800
3	M7300 Base Stations	\$13,437
	Installation	\$1,800
	<b>Total for Utilities</b>	<b>\$67,811</b>
<b>•Community Services: 13 Radios</b>		
6	M7300 Scan, Split Mount Mobiles	\$21,774
7	XG 15 Scan Portables	\$9,800
	Installation:	\$1,800
	<b>Total for Community Services</b>	<b>\$33,374</b>