

RESOLUTION NO. 24-R-57

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO AMEND THE CURRENT INTERLOCAL COOPERATION AGREEMENT (ILA) BETWEEN THE LOWER COLORADO RIVER AUTHORITY (“LCRA”) AND THE CITY OF SCHERTZ TEXAS (“SCHERTZ”) FOR DEPLOYING AND MAINTAINING RADIO COMMUNICATIONS FOR PUBLIC SAFETY OPERATIONS.

WHEREAS, The City of Schertz seeks to work cooperatively with LCRA for communications equipment, facilities, and technical services required for the installation and operation of 700MHZ/800MHz radio equipment; and

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. LCRA’s electric system includes a communications network, including a regional, trunked radio system, which has been installed for LCRA’s use along transmission line right-of-way and elsewhere around the State for purposed of operating the electric system, for public safety, and for community development; and

WHEREAS, Schertz is authorized by law to provide law enforcement, fire protections, and emergency services for its citizens; and

WHEREAS, the ILA provides for LCRA to assist Schertz with deploying and maintaining radio communications for public safety operations, response to catastrophic or large-scale incidents or natural disasters, and radio communications support for local emergency and other public services; and

WHEREAS, the Schertz and LCRA are authorized to enter into such an arrangement by Chapter 791 of the Texas Government Code, commonly referred to as the Interlocal Cooperation Act, and more particularly Section 791.025, Texas Government Code; and

WHEREAS, the City Council has determined that it is in the best interest of the City to amend and extend Interlocal Cooperation Agreement dated July 1, 2012, for deploying and maintaining radio communications for public safety operations with LCRA, pursuant to the ILA amendment attached hereto as Exhibit A (the “supporting documentation”).

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to amend and extend the Interlocal Cooperation Agreement with LCRA.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

EXHIBIT A
AGREEMENT

**AMENDMENT TO
INTERLOCAL COOPERATION AGREEMENT
FOR MOBILE RADIO SERVICES AND EQUIPMENT
BETWEEN CITY OF SCHERTZ
AND LOWER COLORADO RIVER AUTHORITY**

This Amendment to Interlocal Cooperation Agreement (this "**Amendment**") is entered into by and between the Lower Colorado River Authority ("**LCRA**"), 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 Schertz, Texas ("**USER**"), a home rule municipality and a political subdivision of the State of Texas, as of April 29, 2024. LCRA and USER may also be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

A. LCRA and USER have heretofore entered into that certain Interlocal Cooperation Agreement dated as of July 1, 2012 (the "**Agreement**"), pursuant to which LCRA agreed to provide communications equipment, facilities, and technical services required for the installation and operation, of 700/800 MHz radio equipment to assist USER with deploying and maintaining radio communications for public safety operations, response to catastrophic or large scale incidents or natural disasters, and radio communications coordination support for local emergency and other public services. Capitalized terms used but not otherwise defined herein shall have the respective meanings given to them in the Agreement.

B. LCRA and USER desire to extend the term of the Agreement pursuant to the terms of this Amendment.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual benefits received by both Parties under the terms of the Agreement and this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. A new Section 7.4 of the Agreement is hereby added:

"7.4 The extended term of this Agreement shall commence on June 1, 2024 and shall terminate on May 31, 2027 (the "**Extended Term**"), unless automatically further extended as provided below. This Agreement shall automatically extend past the Extended Term 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 by giving to the other Party written notice at least thirty (30) 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."

2. Except as is expressly established and amended by this Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

3. This Amendment may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original, but all such counterparts taken together shall constitute but one agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid a binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

The Parties have caused their authorized officers or representatives to execute this Amendment as of the date first set forth above.

LOWER COLORADO RIVER AUTHORITY

By: _____

Name: _____

Title: _____

CITY OF SCHERTZ, TEXAS

By: _____

Name: _____

Title: City Manager – City of Schertz

ATTACHMENT A

(LCRA Interlocal Cooperation Agreement Signed June 1, 2012)

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF SCHERTZ
AND THE 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 Schertz, Texas ("**Schertz**"), 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 June 1, 2012 (the "**Effective Date**").

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 (the "**Trunked Radio System**"), which has been installed for LCRA's use along transmission line rights-of-way and elsewhere around the State for purposes of operating the electric system, for public safety, and for community development.

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 for operation of the Trunked Radio System, which has the capability to provide interconnectivity and a key communications link between public safety entities throughout the central Texas region.

Schertz is authorized by law to provide law enforcement, fire protection, and emergency services for its citizens.

Schertz wishes to acquire and LCRA wishes to provide communications equipment, facilities, and technical services required for the installation and operation of 800MHz radio equipment, as more specifically set out herein, to assist Schertz with deploying and maintaining radio communications for public safety operations, response to catastrophic or large-scale incidents or natural disasters, and radio communications support for local emergency and other public services.

The Parties are authorized to enter into such an arrangement by 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 purpose, terms, rights, and duties of the contracting Parties as stated in this Agreement, the receipt of which is hereby acknowledged, the Parties agree as follows

1. Scope of Project

1.1 LCRA will provide Schertz with programmed radios and equipment necessary to operate on the 800 MHz radio system operated by the City of Live Oak and which will be interoperable with LCRA's Trunked Radio System. Schertz shall purchase from LCRA the radios, control stations, and other accessories listed on the schedule attached hereto as **Attachment A** and are collectively referred to herein as the "Equipment".

1.2 Schertz will acquire independently from the City of Live Oak, or other radio frequency providers, licenses for the use of radio frequencies for daily operations.

1.3 If Schertz requests that LCRA maintain any radios or accessories after the applicable warranty period, LCRA shall charge its then current labor fees similar to those listed in **Attachment B**, which charges may change from time to time.

1.4 LCRA shall not own any of the 800 MHz radio frequencies or licenses used by Schertz, and LCRA shall not operate any of the Equipment as a common carrier. Radios and base station units shall be purchased and owned by Schertz for use in providing emergency services and public safety functions.

1.5 Schertz must obtain a separate, written approval prior to LCRA programming radios for interoperability or use in daily operations for use by any agencies other than Schertz.

2. Services to be Provided.

2.1. After installation of the Equipment, LCRA will maintain the Equipment on site but only any Equipment covered by the manufacturer's warranty during the warranty period. Excluded from this scope of services are repairs to any of the Equipment that:

1. is not under a manufacturer's warranty during the warranty period;
2. is unrelated to Schertz's contractual use of the Equipment;
3. are facilities owned by Schertz, other than the Equipment provided by LCRA.
4. any Equipment damaged by fire, lightning, water damage, acts of war or insurrection, abuse, misuse, or acts of God.

2.2. LCRA shall perform the services in a good and workmanlike manner and in a manner consistent with the highest customs, standards, and practices prevailing in the industry. LCRA represents that it holds or will hold all permits and licenses necessary or required for the performance of the services and installation of the equipment. LCRA agrees to comply with all laws and regulations applicable to the services it has agreed to perform under this Agreement. LCRA shall have the right to contract or subcontract engineering and professional services, construction work, testing, repair, and technical services, under the supervision of LCRA when providing the services under this Agreement.

2.3. LCRA will provide the services described in this Agreement on a cost recovery basis only. LCRA will not expand, upgrade, or replace the Equipment unless LCRA determines that there will be a basis for recovering its costs, which may require further cash reimbursement.

3. Compensation.

3.1. Schertz agrees to compensate LCRA in accordance with the terms of this Agreement for the Equipment and for the services LCRA provides pursuant to this Agreement at the stated fees or rates. Any Equipment purchased under this Agreement will be provided free and clear of all liens.

3.2. LCRA shall bill Schertz for the goods and services provided by LCRA. Invoices will be itemized as to the number of radios actually used and shall be paid by Schertz to LCRA within sixty (60) days after the date of an invoice. Overdue invoices shall incur interest at 1.5% per month until paid.

3.3 Schertz shall pay LCRA for any additional radios and accessories ordered by Schertz at the then current cost charged by LCRA.

3.4 Any additional labor not covered by other provisions of this Agreement shall be billed and paid at the then current rates charged by LCRA. The current rates for labor charges as of the Effective Date are listed on the attached **Attachment B**.

3.5 Each party to this Agreement paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

4. Site Access

4.1. LCRA and its contractors providing services under this Agreement shall have nonexclusive ingress and egress rights to the Equipment at all times for construction, installation, operation, inspection, maintenance, repair, and removal of the Equipment. No other permit, ordinance, or franchise shall be required by Schertz for LCRA's access and installation of the Equipment.

5. Survivability of Actions.

5.1. The Parties' obligations pursuant to this Agreement shall survive termination of this Agreement with respect to any act, occurrence, or omission occurring prior to termination of this Agreement.

6. Consequential, Incidental Damages and Liability.

6.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR REVENUE, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT OR SERVICES, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY; PROVIDED, HOWEVER, THAT DAMAGES FOR WHICH A PARTY MAY BE LIABLE TO THE OTHER PARTY UNDER ANY OTHER AGREEMENT BETWEEN THE PARTIES WILL NOT BE CONSIDERED TO BE SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES HEREUNDER.

6.2

The Parties agree to be responsible for their own acts and sole negligence for any and all claims, demands, costs or expenses for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of each Party's respective activities under this Agreement committed by its agents, servants, contractors or employees.

7. Term.

7.1. Initial Term: The Agreement shall begin June 1, 2012 and shall terminate May 31, 2015, unless terminated earlier in accordance with the provisions of this Agreement.

7.2. Renewal Terms: This Agreement will be automatically renewed for 3 – 3 year renewals periods unless a party gives the other party at least 30 days notice of non-renewal prior to the end of the then existing initial or renewal term.

7.3. Termination: Either Party may terminate this Agreement upon thirty (30) days prior written notice of the Party's intent to terminate sent to the other Party. If the Agreement is terminated under this section, each Party shall take all reasonable measures to mitigate any further costs to the other Party. In accordance with the section of this Agreement entitled "Compensation," Schertz shall compensate LCRA for any goods provided and all services performed for Schertz pursuant to this Agreement through and including the date on which the termination becomes effective.

8. Notices.

8.1. Correspondence, notices, and invoices shall be in writing and mailed to the Parties' representatives set forth below. If a Party changes the designated recipient of notices, written notification of the change shall be provided to the other Party. All notices shall be effective upon receipt and shall be deemed to be received when actually delivered by hand delivery, facsimile transmission, or 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, addressed as follows:

LCRA:

P.O. Box 220
Austin, Texas 78767-0220
Phone: (512) 473-3200
Fax: (512) 356-6047

Schertz:

John Kessel
City Manager
1400 Schertz Parkway
Schertz, Texas 78154
Phone: (210) 619-1000
Fax: (210) 619-1009

9. Authority.

9.1. 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.

9.2. Schertz further certifies that it has the authority to contract for the services described herein by authority granted in Chapter 791, Texas Government Code.

9.3. LCRA further certifies that it has authority to perform the services contracted for by authority granted in the LCRA Act and Chapters 49 and 152 of the Texas Water Code.

10. Miscellaneous.

10.1. If either party fails to perform in accordance with the terms and conditions of this Agreement, the party claiming injury from the alleged default shall give the allegedly defaulting party thirty (30) days' written notice to cure such default. In the event the default is not cured within such 30-day period, the party claiming injury may terminate this Agreement.

10.2. Whenever the context of this Agreement requires, the masculine, feminine, or neuter gender and the singular of plural number shall each be deemed to include the others. Any portion of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, which shall remain in full force and effect in accordance with the original intent of the Parties, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

10.3. This is the complete and entire Agreement between the parties with respect to the matters herein and supersedes all prior negotiations, agreements, representations, and understandings, if any, but does not amend or modify any other existing agreements on other matters. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the parties hereto. No official, representative, or employee of either party has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the governing body of the Party.

10.4. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. It is expressly understood and agreed that in the execution of this Agreement, no Party waives, nor shall be deemed to waive, any immunity or defense otherwise available to it against any claims by third parties.

10.5. It is understood and agreed that, under the terms of this Agreement and in providing the services, LCRA personnel are not employees of Schertz for any purpose. This Agreement does not create any partnership, employee, fiduciary, insurance, or agency relationship between the Parties or any of their agents, employees, volunteers, or officers. No Party to this Agreement will be responsible for the acts of the other Party or any agent or officer of the other Party by virtue of this Agreement, except as may be decreed against that Party by a judgment of a court of competent jurisdiction.

10.6. 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 those acts and liability specifically waived by statute.

10.7. 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.

10.8. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Jurisdiction and venue for any litigation between the Parties shall be exclusively in the state courts located in Guadalupe County, Texas.


10.9. This Agreement and its attachments may be signed in several counterparts, each of which shall be an original for all purposes but all of which taken together shall constitute a single agreement. Headings used in this Agreement are for convenience and shall not control the meaning or interpretation of this Agreement.

10.10. 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 in 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 ensure non-interruption of official duties and services.

10.11. This Agreement is binding on and shall inure to the benefit of the Parties and their successors and assigns; provided, however, neither Party shall assign this Agreement without written consent from the other.

10.12. By executing this Agreement, the individuals signing below acknowledge and warrant they are duly authorized and are acting with full authority to bind their respective Parties and their respective governing board or council to these terms and conditions.

LOWER COLORADO RIVER AUTHORITY

By:  _____

Date: 8-6-12, 2012



CITY OF SCHERTZ, TEXAS

By:  _____
John Kessel
City Manager – Schertz

Date: 7/26, 2012