

**AGENDA ITEM REQUEST FORM**

**Hays County Commissioners Court**

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

**AGENDA ITEM**

Discussion and possible action to authorize the County Judge to enter into a Communications Co-Location License Agreement with the Lower Colorado River Authority allowing Hays County telecommunication infrastructure at the Canyon site.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	July 25, 2017	

**LINE ITEM NUMBER**

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**AUDITOR USE ONLY**

**AUDITOR COMMENTS:**

**PURCHASING GUIDELINES FOLLOWED:** N/A      **AUDITOR REVIEW:** N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Smith	COBB	N/A

**SUMMARY**

The LCRA is currently constructing a new tower and substation within Hays County. This lease is a no cost agreement to utilize the site for Hays County communication infrastructure allowing access to both the LCRA and Hays County.

**COMMUNICATIONS FACILITIES CO-LOCATION  
LICENSE AGREEMENT  
LOWER COLORADO RIVER AUTHORITY TO  
HAYS COUNTY**

**DATE:** \_\_\_\_\_, 2017

**LICENSOR:** Lower Colorado River Authority, referred to herein as Licensor or "LCRA"

**LICENSOR'S MAILING ADDRESS:** P.O. Box 220  
Austin, Texas 78767

**LICENSEE:** Hays County, referred to herein as Licensee or "Hays County"

**LICENSEE'S MAILING ADDRESS:** 111 E. San Antonio Street, Suite 300  
San Marcos, TX 78666

**CONSIDERATION:** The exchange of good and valuable consideration, as recited herein, the receipt and sufficiency of which are hereby acknowledged.

**SITE:** Canyon Substation Tower Site located in Hays County, Texas (hereinafter "the Site Property" or "Site").

**EQUIPMENT:** The antennas, cabling, hardware and associated electronics, and other equipment approved for installation at the Site location as provided in the attached Exhibit A (hereinafter "the Equipment").

**RECITALS**

- A. LCRA is the current owner or operator of the tower at the Site.
- B. Licensee desires to locate, build, access, operate, maintain, rebuild, and replace the Equipment on the communications tower located on the Site.
- C. Licensee desires, and LCRA has agreed to provide, a license agreement permitting Licensee sufficient tower space to install, construct, locate, build, access, operate, maintain, rebuild, repair, replace, and remove the Equipment on the Site and to operate facilities within the existing communications house, if applicable.
- D. Hays County desires and LCRA agrees to provide to Hays County, as part of the consideration for this License, tower space for installation of Hays County's communication facilities on LCRA's microwave tower necessary to expand and enhance Hays County's

telecommunications requirements to support its electric distribution system, so long as said installations do not interfere with pre-existing antennas and other installations on said tower.

E. This agreement modifies, rescinds, and replaces all previous agreements with regard to telecommunications installations by Hays County at the Site, including the "Communications Facilities Sharing Agreement" by and between LCRA and Hays County, executed July 10, 1989, with an initial term of 10 years, and amended by a Modification dated March 29, 1990, regarding placing and operation of communications equipment on LCRA communication sites and towers, and the said Sharing Agreement shall be of no further force and effect after the Date of this agreement.

## **AGREEMENT**

Licensor and Licensee further agree to the following terms and conditions:

### **1. GRANT OF LICENSE.**

(A) In consideration of the mutual exchange of promises and the payments and consideration recited herein, LCRA hereby grants and demises to Hays County the right and privilege to install, construct, locate, build, access, operate, maintain, rebuild, repair, replace, and remove the Equipment and related appurtenances, in consideration in accordance with the terms and conditions of this Agreement.

(B) Hays County shall have nonexclusive right of ingress and egress to, from, and across the Site and communications houses at all times for purposes of this License.

### **2. INSTALLATION OF EQUIPMENT AND REIMBURSEMENTS.**

(A) Hays County will provide the engineering, studies, project management, FCC regulatory licensing and fees, and labor associated with installing and providing the Equipment listed in Exhibit A.

(B) Hays County shall reimburse LCRA for the cost of installing and providing any facilities which Hays County requests that LCRA install on its behalf.

(C) Hays County's antennas, associated cables, hardware and other Equipment provided by Hays County shall remain Hays County's personal property and shall not become fixtures, whether or not attached to towers, communications houses, or the Site Property.

(D) All designs and plans for Hays County's installations at the Site shall be coordinated with and approved in writing by LCRA before Hays County starts the work.

(E) Except in the case of an emergency, LCRA's personnel or contractors will not perform work on the Equipment.

(F) LCRA shall not be liable for losses or damage to Hays County's equipment due to burglary, vandalism, or tower failure or any other cause outside of the control of LCRA.

(G) Drawings and specifications of Licensee's Equipment and facilities to be installed, modified, added or relocated, including electric power hookups, surge protection and either safety devices for equipment and personnel shall be made available to Licensor, upon request by Licensor.

### **3. RESERVATIONS & PROHIBITIONS.**

(A) LCRA reserves the right to operate its own equipment at the Site and to allow third parties to enter the Site, provided that the operations of third parties do not unreasonably interfere with those of Hays County. Hays County shall not have exclusive possession of any of the Site, except for any equipment house that Hays County installs.

(B) Occasional outages may be necessary for Site maintenance and repairs, during which time, LCRA may require Hays County to power down or shut down equipment to facilitate such work. LCRA and Hays County agree to cooperate with each other and with any other licensees to schedule and expedite these outages.

(C) LCRA shall have access at all times to Hays County's Equipment in case of emergency.

**4. EXPANDED SCOPE OF OPERATIONS.** After the initial installation is complete, Hays County may expand the footprint of its installation or modify the Equipment only with LCRA's prior, written consent and only if the Site will reasonably accommodate the expanded or modified installation. Hays County shall pay the cost of modifications of the Site necessary to accommodate any of LCRA's requested additions or modifications beyond the scope of the original installation. LCRA's consent to add or modify the footprint of the installation shall not be unreasonably withheld.

### **5. TERM OF LICENSE.**

(A) Initial Term. The initial License term shall begin on the Date of this License and shall automatically terminate five (5) years from the Date.

(B) If the purpose of either party's operations at the Site should be defeated or terminate because of government or regulatory action, loss of FCC licenses, economic or business necessity, or other material impairment, either party shall have the right to terminate the License without further obligation or liability, by giving at least one-hundred-twenty (120) days written notice to the other party.

### **6. FEES, CHARGES & REIMBURSEMENTS.**

(A) Fees and charges for LCRA services shall be as shown on Exhibit B, which is attached to and incorporated for all purposes into this License.

(B) LCRA shall invoice LCRA for any of its services LCRA provides at Hays County's request. LCRA shall pay all charges and fees within 30 calendar days of the invoice.

(C) Hays County shall be responsible for the cost of all structural studies, engineering, and analysis necessary to accommodate any future installation of Equipment at the Site.

**7. SITE MAINTENANCE.** LCRA shall have the right to make emergency repairs to any of Hays County's Equipment on the Site Property without first notifying Hays County, if the repairs are necessary to protect the Site from damage.

**8. LICENSEE'S CONTRACTORS.** Hays County may engage its own contractors to install and maintain the Equipment. If, in accordance with the provisions of this License, Hays County engages a contractor to perform work at the Site Property, the contractor shall be required to furnish an insurance certificate to LCRA showing its liability insurance coverage before such contractor's personnel or subcontractors enter the Site Property. If any Hays County contractors, subcontractors, workers or suppliers file any mechanics or materialmen's liens, Hays County shall at Hays County's expense promptly take whatever action is necessary to remove them.

**9. SAFETY REQUIREMENTS.** All work performed at the Site Property by either party or its contractors shall be in accordance with applicable federal and state safety requirements and the best industry practice. LCRA shall be responsible for job site safety while LCRA's crews or LCRA's contractors or subcontractors are working at the Site. Hays County shall be responsible for job site safety while Hays County crews or Hays County contractors are working at the Site. If personnel of both Hays County and LCRA are working at the Site, both parties shall cooperate to achieve appropriate job site safety.

**10. INTOXICANTS & DRUGS; EMPLOYEE CONDUCT.** No intoxicants, illegal drugs, nor employees or agents under the influence of any substance that may impair their performance shall be allowed on the Site Property at any time. Hays County shall promptly remove from the Site Property any person within its control who is or appears to be under the influence of any of these substances or is otherwise unsafe or disorderly. Hays County shall ensure that its employees, contractors, subcontractors and their employees avoid excessive noise, exceeding speed limits or reckless driving, use of weapons, or trespass on land not owned by or under easement to LCRA. If private property other than the Site Property and access roads must be entered or crossed to perform Hays County's work, Hays County shall obtain permission from the property owner before entering.

**11. SITE CLEANUP.** Hays County shall ensure that its crews, contractors and subcontractors keep the Site Property clean and properly dispose of debris resulting from their work. If Hays County or its contractors allow any debris to accumulate or dispose of wastes improperly, LCRA shall have the right to remove and remediate it, and Hays County shall reimburse LCRA for its reasonable costs.

**12. INTERFERENCE.**

(A) Hays County shall install, operate and maintain its equipment and facilities in a manner which will not physically or electronically interfere with or cause signal degradation to LCRA's communications systems. However, as stated in 12(C)(i), Hays County's equipment and operations installed prior to the Date of this License shall have top priority. Hays County shall, at Hays County's full cost, make the necessary changes to its equipment to accommodate its operational needs. Hays County will reimburse LCRA for the reasonable cost of modifying any LCRA equipment installed prior to the Date of this License, if necessary to correct any electronic interference caused by Hays County.

(B) If operation of the Equipment should electronically interfere with the operation of LCRA's Site, Hays County shall at its own expense promptly correct the interference. If Hays County fails to promptly eliminate the interference, LCRA shall have the right to temporarily shut down Hays County's Equipment and operations until Hays County can eliminate the interference.

(C) In the event of electronic interference among the operations of multiple occupants of the Site, the requirements for eliminating interference shall be according to the following priorities:

(i) Hays County's equipment and operations installed prior to the Date of this License shall have top priority; none of LCRA's later installed equipment or operations shall interfere with Hays County's pre-installed equipment or operations;

(ii) Hays County's equipment and operations shall have priority over subsequent licensees or sublicensees, which shall mean other licensees whose occupation of the Site were initiated later than Hays County's License;

(iii) Hays County's Equipment and operations shall yield to licensees whose licenses at the Site were in existence earlier than Hays County's License, including their successors or assigns;

(iv) If, after the initial installation, Hays County should modify its equipment or operations or change the tower or antenna configuration, and should these modifications or changes introduce interference, then Hays County shall be treated as a subsequent licensee with respect to these modifications or changes, and shall yield to the other Site occupants. However, Hays County's original Equipment, operations, and antenna configuration shall not lose their original priority, in the event Hays County reverses the changes and returns to its original mode of operation.

(D) If Licensee and Licensor disagree on the existence, source, or extent of interference, Licensee may engage an independent engineering firm to perform impartial analyses to determine the cause of the interference. Licensee shall be entitled to reimbursement for the cost of such analyses by Licensor if equipment or facilities installed by Licensor subsequent to the execution of this License is found to be causing the interference.

### **13. PERSONAL INJURY & PROPERTY DAMAGE INDEMNITY.**

(A) Hays County agrees, to the extent allowed by law, to indemnify and hold harmless LCRA, its owners, officers, directors, employees, agents and affiliates from and against any and all claims, losses, and damages, arising out of any negligent or willful act or omission of Hays County's personnel, contractors or subcontractors of any tier that causes personal injury or property damage in connection with this License. Hays County shall be liable for the cost of restoration, repair or replacement of any LCRA facilities to the extent such facilities are damaged or destroyed as a result of a negligent or willful act of Hays County, its employees, contractors or subcontractors while working at the Site Property or defects in the condition of equipment owned by Hays County or its sublicensees. Hays County shall pay the costs of any road damage caused by its vehicles or those of its contractors, subcontractors or suppliers while working at or entering the Site.

(B) To the extent allowed by law, LCRA agrees to indemnify and hold harmless Hays County, its officers, directors, employees, agents, and affiliates from and against any and all claims, losses, and damages, arising out of any negligent or willful act or omission of LCRA's personnel, contractors, or subcontractors of any tier that causes personal injury or property damage during the performance of any work at the Site Property. LCRA shall be liable for the cost of restoration, repair, or replacement of any Hays County facilities to the extent such facilities are damaged or destroyed as a result of a negligent or willful act of LCRA, its employees, contractors or subcontractors.

(C) Notwithstanding any other provisions of this agreement, *neither party shall be liable to the other for special, incidental, consequential, punitive, or indirect damages or for any loss of use, revenue, or profit* suffered by the other party or its successors or assigns, customers, or affiliates in connection with any breach of obligation under this agreement, nor as a result of premises defect, interference, failure or unavailability of a tower or any equipment, facility or service to be provided by Hays County or by LCRA under this agreement, or under any other circumstance.

(D) **Equipment Security.** LCRA shall not provide security for Licensee's equipment and shall not be liable for burglary, vandalism, losses or damage, irrespective of the circumstances. Licensee may take advantage of the Site fencing and existing protections, if any; however, any other measures Licensee finds necessary shall be furnished and paid for by Licensee. LCRA shall not be liable for losses or damage to Licensee's antennas, cabling, or equipment resulting from a failure of towers, electric substation equipment, communications houses, electric power or other Site facilities, regardless of the cause of the failure.

(E) It is agreed that in the use of the Site, Licensee is acting independently and not as an agent, employee, or representative of Licensor. It is further agreed that neither Licensee nor Licensor shall be considered a partner, joint venturer of or in a joint enterprise with the other in the exercise of rights and responsibilities under this License.

#### **14. FORCE MAJEURE.**

(A) 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, terrorist act, government or regulatory action, including withholding of approvals, strikes, embargoes or delays beyond the control of vendors or contractors. .

(B) A party whose performance is hindered or delayed shall use its best efforts to reduce the length of the delay and to mitigate the effects of it.

**15. NO THIRD-PARTY BENEFICIARIES; NO PROPERTY RIGHTS.** The terms and conditions of this License are intended for the sole benefit of Hays County and LCRA. Nothing in this License, express or implied, is intended to confer any benefits, rights, or remedies upon a third party. Nothing in this Agreement or in its performance shall create or vest in either party or its successors or assigns any title, ownership, easement, or any other permanent property rights in the other party's systems, lands, or other property.

**16. LAWS, REGULATIONS, PERMITS.** Hays County shall acquire the necessary permits and licenses to install and operate the Equipment, and shall comply with applicable laws, government regulations, and ordinances therefor. In the event Hays County is unable to obtain or maintain any FCC license or other governmental approval necessary to its operations, Hays County may terminate this License upon 30 days written notice to LCRA.

**17. CHOICE OF LAW.** This License shall be interpreted and governed in accordance with the laws of the State of Texas without regard to conflict of laws.

**18. NOTICES.** Any written notice to be given under this License shall be mailed to each party at the address shown below. All notices shall be sent by registered or certified mail with postage prepaid and shall be deemed given when so mailed.

If to LCRA:                   Manager, Telecommunications  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767  
512-473-3200

If to Hays County:       Hays County Judge  
111 E. San Antonio Street, Suite 300  
San Marcos, TX 78666

Copy To:  
The Office of General Counsel  
111 E. San Antonio Street, Suite 202  
San Marcos, TX 78666

With Email Copy To:     [mark.kennedy@co.hays.tx.us](mailto:mark.kennedy@co.hays.tx.us)  
[lon.shell@co.hays.tx.us](mailto:lon.shell@co.hays.tx.us)

**19. ALTERNATIVE DISPUTE RESOLUTION.** In the event of a contract dispute or alleged default, the parties shall attempt in good faith to resolve any disagreements through alternative means such as mediation or arbitration, before resorting to litigation.

**20. ASSIGNMENT AND SUBLETTING.** This License is personal to Hays County and may not be sold, assigned or transferred, in whole or in part, by Licensee without the prior written approval or consent of Licensor. Licensee shall not share the use of its Equipment with any third party without the prior written approval or consent of Licensor. Licensor may assign or transfer its rights and obligations under this License to a third party or affiliate of Licensor if the assignee agrees to assume the rights, duties, and obligations under the License.

**21. UNDERLYING EASEMENTS OR LEASES; OWNER CONSENT.** Approval of Licenses for Sites which LCRA occupies under easements or leases from third-party owners or which LCRA owns or leases jointly with other entities are contingent on successful negotiations with the various owners for expansion of easement or lease rights to accommodate Licensee's proposed installations. Licenses for Sites that LCRA occupies under easements or leases are subject to the terms and provisions of the underlying easements or leases and to any pre-existing restrictions, encumbrances or covenants. Notwithstanding anything to the contrary in this Agreement, if the Site is subject to an underlying easement or lease, the License for that Site issued by LCRA shall automatically terminate upon the termination of LCRA's easement or lease for that Site. Upon Licensee's request, LCRA shall furnish copies of easements, owner consent agreements, or other documentation pertaining to underlying property rights affecting the Site.



**22. ENTIRE AGREEMENT & MODIFICATIONS.** This license, including all Exhibits, constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes previous negotiations, understandings, discussions, correspondence, or representations. Neither the License nor its Exhibits shall be modified or changed except by a writing executed by both parties. No oral representation of any negotiator, engineer, officer, employee or agent of either party shall vary the written terms of this License. No waiver of any right under this License shall be effective unless in a writing signed by the party granting the waiver.

This License is executed by the parties below to be effective on the above Date.

**LICENSEE:  
HAYS COUNTY  
HAYS COUNTY, TEXAS**

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

Name: Bert Cobb, M.D.

Title: Hays County Judge

Date signed: \_\_\_\_\_

**LICENSOR:  
LOWER COLORADO RIVER AUTHORITY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

**EXHIBIT A**

**LIST OF EQUIPMENT**

SITE NAME: Canyon Substation S229

Antennas & Cabling:

(1) 6 ft. Microwave dish mounted at the 98 ft. level centerline with an azimuth of 194.21 degrees using (1) coax feed line.

Electronics:

N/A

Equipment House (specify whether joint occupancy of LCRA house or Licensee-built house):

N/A

Related Appurtenances:

N/A

**EXHIBIT B**

**FEES & OTHER CONSIDERATION**

SITE NAME: Canyon Sub S229

- A. Antenna and Rack Space (See Page 1)
- B. Direct cost for LCRA services that may be required\*\*
  - 1. Labor — Regular Time (Scheduled) 7:00am - 3:30pm  
Next day/24 hour response time \$92.50/hr
  - 2. Labor — Overtime (Unscheduled) Same Day Response \$138.75/hr
  - 3. Call Out (Emergency) Two Hour Response \$185.00/hr.
  - 4. Mileage — No labor charges during travel \$.95/mile

\*\* LCRA shall invoice Licensee for these services at LCRA's standard service rates currently in effect at the time the services are performed.

Special Conditions: N/A