

RESOLUTION NO. 19-R-143

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A PERSONAL SERVICES AGREEMENT WITH CHARMAIN SANCHEZ FOR SERVICES RELATED TO MARKETING AND DEVELOPING CERTAIN CITY PROPERTY FOR THE PURPOSE OF THE INSTALLATION AND OPERATION OF WIRELESS COMMUNICATIONS EQUIPMENT AND SYSTEMS AND THE CONTINUED MANAGEMENT OF THE CITY'S TELECOMMUNICATIONS TENANTS, AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the "City") has determined that the City requires personal services relating to marketing and developing certain City property or the purpose of the installation and operation of wireless communications equipment and systems and the continued management of the City's telecommunications tenants; and

WHEREAS, City staff has determined that Charmain Sanchez is uniquely qualified to provide such services for the City; and

WHEREAS, pursuant to Section 252.022(a)(4), the City is not required to seek bids or proposals with respect to a procurement for personal, professional, or planning purposes; and

WHEREAS, the City Council has determined that it is in the best interest of the City to contract with Charmain Sanchez pursuant to the Personal Services Agreement attached hereto as Exhibit A (the "Agreement").

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

Section 1. The City Council hereby authorized the City Manager to execute and deliver the Agreement with Charmain Sanchez in substantially the form set forth on Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of the 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of the Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 hereof 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 22nd day of October 2019.

ATTEST:

CITY OF SCHERTZ, TEXAS

Michael R. Carpenter, Mayor

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A
PERSONAL SERVICES AGREEMENT

A-1

PERSONAL SERVICES AGREEMENT

This Personal Services Agreement (the “Agreement”) dated to be effective as of October 1, 2019 (the “Effective Date”) is between the City of Schertz, Texas, a Texas municipal corporation (the “City”), and Charmain Sanchez, an individual (the “Consultant”).

GENERAL RECITALS

WHEREAS, the City and the Consultant entered into that certain Personal Services Agreement dated as of August 5, 2008 (the “Original Agreement”), which Original Agreement through a series of extensions, terminated on September 30, 2019.

WHEREAS, the City and the Consultant desire to enter into this Agreement to allow for the Consultant to continue to provide personal services to the City as set forth herein.

WHEREAS, the City holds title to certain real properties described in Exhibit A attached hereto. Additional properties may be added to Exhibit A by way of amendments provided to the Consultant by the City. The properties and any additional properties that will be added to Exhibit A shall hereinafter be referred to as the “Property”.

WHEREAS, the Consultant represents that she is experienced in the business of marketing real estate for telecommunication development and providing certain other real estate consulting services associated with the deployment of wireless communication equipment and systems.

WHEREAS, the City desires to continue to engage the services of the Consultant to market and develop the Property for the purposes of the installation and operation of wireless communications equipment and systems, and the continued management of telecommunications tenants and the Consultant desires to continue to provide such services pursuant to the terms and conditions included herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOLLOWING MUTUAL PROMISES AND THE MUTUAL BENEFITS TO BE DERIVED BY THE PARTIES HERETO, IT IS UNDERSTOOD, CONTRACTED AND AGREED AS FOLLOWS:

SECTION I

RELATIONSHIP OF PARTIES; STANDARD OF WORK; SERVICES GENERALLY

1.1 The City hereby contracts with the Consultant to negotiate on the City’s behalf in the leasing of the Property for the sole purpose of telecommunications development and the installation on the Property and the operation of telecommunications equipment and systems

owned by entities other than the City (the “Services”). The Services shall include, but not be limited to the services listed on the attached Exhibit B. The Consultant may, by separate written agreement with the City, provide various additional real estate services.

1.2 The City and the Consultant agree that the Consultant is an independent contractor and not an agent or employee of the City. The City and the Consultant agree that their relationship arising from this Agreement does not constitute a general agency, a joint venture, partnership, employment relationship, or franchise between them.

1.3 The Consultant acknowledges that she will control the conduct and means of performing the Services required of the Consultant under this Agreement. The Consultant will provide all the Services herself, and she will not utilize any employees or independent contractors. She promises to adhere to all appropriate professional standards, including the maintenance of all licenses and permits required by law for any of the Services to be performed, and to complete all work in a timely manner, consistent with generally accepted marketing and property management procedures and standards of the real estate industry.

1.4 This Agreement is non-exclusive. The Consultant acknowledges that the City may enter into agreements with other persons or entities to provide any or all the Services described in this Agreement.

SECTION II TERM; EXTENSION; TERMINATION

2.1 Subject to Section 2.03, this Agreement shall be for a term beginning October 1, 2019 and ending on September 30, 2020 (the “Initial Term”). At the expiration of the Initial Term of this Agreement, upon mutual agreement between the City and Consultant the agreement will be renewed annually, for up to five (5) option periods in one (1) year term increments.

2.2 The City and the Consultant may agree to further renewals hereof.

2.3 Either party shall have the right to terminate this Agreement for any or no reason, upon delivery of thirty (30) days’ prior written notice to the other. Further, either party may terminate this Agreement at any time for cause or for failure of the other to comply with the terms, representations, and conditions of this Agreement. Such termination shall not affect the Consultant’s right to receive any Management Fees relating to lease or rental agreements before the date of termination as described in Section 4.01.

SECTION III
LEASING OF PROPERTY; COLLECTION OF RENT AND OTHER FEES

3.1 The Consultant shall make reasonable efforts to negotiate for the lease of available space on the Property for wireless communications services by entities other than the City. The City shall identify whether space on any particular piece of the Property is “available”. The Consultant shall be responsible for negotiations with prospective tenants and shall have the right to propose reasonable concessions aimed at inducing occupancy and use, subject to final approval by the City Manager. The Consultant shall not, without the prior written consent of the City council, propose any lease for a term of less than sixty (60) months or more than two hundred forty (240) months. The City Manager shall execute all lease and rental agreements on behalf of the City, before such agreements shall become effective and following approval by the City Council.

3.2 The Consultant shall not be responsible for the collection of any lease payments, planning zoning, or permit fees required by the City. These fees shall be paid directly to the City by the tenant or lessee and not to the Consultant.

3.3 All application fees, rents, and other income issuing from the Property shall be paid directly to the order of the City. Compensation due to the Consultant under Section IV shall be paid by the City to the Consultant after the corresponding Gross Receipts (as defined in Section 4.01) are received by the City from the tenant.

SECTION IV
COMPENSATION

4.1 For the continuation of Services under the Agreement, the Consultant shall receive a Management Fee equal to thirty percent (30%) of the “Gross Receipts” collected by the City from lease or rental agreements executed during the term of the Original Agreement and for the term of this Agreement and any renewal(s) hereof. “Gross Receipts” means all revenues collected by the City from leases or rental agreements entered into by the City pursuant to the Original Agreement and this Agreement, less refundable deposits.

4.2 Unless otherwise provided for in this Agreement, the Management Fee provided in Section 4.01 includes all compensation receivable by the Consultant.

4.3 Unless otherwise agreed in writing by the City in advance, the Consultant shall be responsible for providing at her sole cost all equipment and supplies necessary or appropriate for performing the Services hereunder.

SECTION V
RECORDS AND REPORTS

5.1 The Consultant shall furnish the City, on a quarterly basis beginning December 2019, a detailed statement of all activities by the Consultant pursuant to this Agreement.

5.2 The Consultant shall report to the City promptly any conditions concerning the Property that, in the opinion of the Consultant, require the attention of the City.

SECTION VI
INDEMNIFICATION

6.01 The Consultant agrees to indemnify and hold the City of Schertz, Texas and all of its Present, Future, and Former Agents, Employees, Officials and Representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgements, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the work or goods performed or provided by consultant—expressly including those arising through strict liability or under the Constitutions of the United States.

SECTION VII
GOVERNMENT REGULATIONS

7.01 The Consultant agrees to perform the Services hereunder in full compliance with all laws and regulations of any federal, state, county, or municipal authority having jurisdiction over the Property.

SECTION VIII
ASSIGNMENT; BINDING EFFECT

8.1 This Agreement and the rights, obligations and liabilities created hereunder shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors, and assigns of each of the parties hereto, but no rights, obligations, or liabilities hereunder shall be assignable or delegable by the Consultant without the prior written consent of the City. The City may assign or delegate the rights, obligations, or liabilities created hereunder to its successor in interest without the consent of the Consultant.

8.2 All obligations by either party which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their

nature or within one year of termination, provided however that any obligations regarding protecting confidential information shall continue in perpetuity.

SECTION IX
IMPOSSIBILITY OF PERFORMANCE

9.01 Neither the City nor the Consultant shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from (a) compliance with any law, ruling, order, regulation, requirement, or instruction of any federal, state, or municipal government or any department or agency thereof or court of competent jurisdiction; (b) acts of God; (c) acts or omissions of the other party; or (d) fires, strikes, embargoes, war, insurrection, or riot. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

SECTION X
SURVIVAL

10.01 The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.

SECTION XI
CONFIDENTIAL INFORMATION

11.1 Any specifications, plans, drawings, sketches, models, samples, data, computer programs or documentation, or technical, or business information (“Information”) furnished or disclosed by the City to the Consultant hereunder shall be deemed the exclusive property of the City, including title to copyright in all copyrightable material, and, when in tangible form, shall be returned to the City by the Consultant upon completion or termination of the related Services. Unless such information was previously known to the Consultant free of any obligation to the City to keep it confidential; or has been or is subsequently made public by the City, it shall be held in confidence by the Consultant, shall be used only for the purposes hereunder, and may be used for other purposes only upon such terms and conditions as may be mutually agreed upon in writing.

11.2 If the Consultant is served with process to obtain information, the Consultant shall immediately notify the City in writing, which shall have the right to seek to quash such process.

SECTION XII
INTEGRATION; MODIFICATION; SEVERABILITY; GOVERNING LAW

12.1 This Agreement embodies the entire understanding of the parties as to the subject matter hereof, and there are no further or other agreements or understandings, written or oral, in effect between the parties as to the subject matter hereof. The drafting, execution, and delivery of this Agreement by the parties have been induced by no representations, statements, warranties, or agreements other than those expressed in this Agreement, and except as expressly provided to the contrary, the provisions of this Agreement are for the benefit of the parties solely and not for the benefit of any other person(s) or entities.

12.2 A waiver, alteration, or modification of any of the provisions of this Agreement shall not be binding unless in writing and signed by authorized representatives of the parties to this Agreement.

12.3 A determination by a court of law with competent jurisdiction that a section or any part of a section of this Agreement is void, invalid, or unenforceable for any reason shall not render void, invalid, or unenforceable any other section or any part of any other section of this Agreement.

12.4 Nothing contained in this Agreement shall be deemed to create or shall be construed as creating in the Consultant any property interest in or to the Property.

12.5 Except to the extent governed by United States law that preempts state law, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Proper venue for any dispute or litigation shall be only in Guadalupe County, Texas.

SECTION XIII
MEDIATION; ATTORNEY'S FEES

13.1 Each party agrees that it or she shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the reach thereof ("disputes") to an alternate dispute resolution process before filing a suit concerning this Agreement.

13.2 Each party shall have the right to collect from the other all damages, reasonable costs and expenses, including reasonable attorneys' fees, incurred by a successful party in exercising or enforcing any of its rights or remedies hereunder or in enforcing any of the terms, conditions, or provisions of this Agreement in a court of law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY OF SCHERTZ

By: _____
Mark Browne, City Manager

CHARMAIN SANCHEZ

By: _____
Charmain Sanchez

EXHIBIT A

The Property

The Property is comprised of those water tank locations noted as “Cell Capable” on the graphic on the following page.

(will need to attach an updated aerial map of the water tanks to include the new Corbett tank property)

EXHIBIT B

The Services

1. The Consultant shall provide non-exclusive consulting services, advice, and assistance sufficient for the City as determined by other means suitable to accommodate wireless telecommunications facilities and/or switching buildings or towers on the Property, to an extent previously authorized by the City.
2. The Consultant shall obtain Entry and Testing Agreements signed by the prospective tenant and the City when appropriate for site access, to survey the proposed site, to have an E-911 address assigned to the site and any environmental testing when required or determined by the prospective tenant (at such tenant's expense).
3. Upon approval by the City of a Tower Site Application, the Consultant will enter into final negotiations with the prospective tenant. Leases will be negotiated by the Consultant with appropriate assistance and approval of the City Attorney, subject to final approval by the City Council.
4. The Consultant will submit to the City a lease package which shall include a Lease Summary Sheet identifying the lease terms and other pertinent data necessary for lease administration, the required number of executed originals by the tenant and the City of the Lease, and, if requested by the City, a Memorandum of Lease Agreement for signature. The lease package will also include related documents with the Lease that may include the following:
 - Lease Summary Sheet (to be completed when the Lease is ready to be signed by the City)
 - Entry and Testing Agreement (to be signed before/during lease negotiations)
 - Construction Drawings (the Consultant to coordinate the City's receipt of signed Construction Drawings for its records)