

AN ORDINANCE

2009-10-29-0865

APPROVING AN ANNUAL CONTRACT WITH FLORES HOLDINGS, LLC IN THE AMOUNT OF \$96,000.00 FOR RAMON FLORES TO SERVE AS EXECUTIVE DIRECTOR TO THE WESTSIDE DEVELOPMENT CORPORATION.

* * * * *

WHEREAS, on June 8, 2006, the San Antonio City Council approved the creation of a local government corporation called the Westside Development Corporation (the "WDC") for the purpose of creating economic development opportunities in a historically underserved area of San Antonio; and

WHEREAS, the WDC staff currently resides within the City's Economic Development Department, but is planning to establish itself as an independent, non-profit organization; and

WHEREAS, Mr. Ramon Flores of FLORES HOLDINGS, LLC has been serving as the Executive Director of the WDC since November 2006 through a contract with the City, formerly administered by the Economic Development Department; and

WHEREAS, staff has recommended that the City renew its contract with Mr. Flores for a period of up to 12 months in the amount of \$8,000.00 per month, not to exceed \$96,000.00; and

WHEREAS, in consideration of funds received under this Agreement, Mr. Flores has the following tasks:

1. Manage and oversee all aspects of the day-to-day operations of the WDC;
2. Execute the WDC's strategic work plan as directed by the WDC Board of Directors within the parameters of the goals and objectives for the WDC established by the City Council;
3. Coordinate with community stakeholders on the development and implementation of the strategic plan and economic development initiatives;
4. Suggest and implement solutions to address new or ongoing challenges faced by the WDC;
5. Establish performance measures for the WDC and coordinate WDC activities with the City's Center City Development Office;
6. Promote the Westside Development Corporation to community and business organizations;

7. Provide monthly detailed reports to the City on WDC activities and accomplishments and outline how those activities respond to the goals and objectives of the WDC;
8. Represent the WDC and make presentations at community meetings, workshops, and other forums as requested;
9. Provide reports to the City Council Economic and Community Development Committee when requested;
10. Identify available property for redevelopment and make recommendations to the WDC Board and City staff on potential redevelopment projects;
11. Seek and obtain additional sources of revenue to support WDC operations; and
12. Continue coordination with the City and WDC Board toward achieving the goals of the WDC transition plan to become a self-sustaining, nonprofit entity independent from the City and make recommendations to the City regarding such transition; and

WHEREAS, until the WDC can obtain independent status, whereby its staff is contracted directly by the Corporation, the City Council finds that it is in the best interest of the City to approve the subject contract; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council approves the contract with FLORES HOLDINGS, LLC, a copy of which is included in substantially final form as Attachment I, in the amount of up to \$96,000 for Ramon (Ray) Flores to serve as the Executive Director of the Westside Development Corporation (WDC), contingent upon approval by the WDC Board of Directors.

SECTION 2. Funding for this ordinance is available in Fund 29644000 Westside Development, Cost Center 1606010001 Westside Development, General Ledger 5201040 Fees to Professional Contractors as part of the FY10 WDC Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Flores Holdings LLC and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective on the tenth (10th) day after passage.

PASSED AND APPROVED this 29TH day of October, 2009.



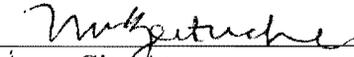
M A Y O R
JULIÁN CASTRO

ATTEST:



City Clerk

APPROVED AS TO FORM: _____



for City Attorney

Agenda Item:	23 (in consent vote: 5, 6, 7, 8, 9, 11, 13A, 13B, 15, 16, 19, 22A, 22B, 22C, 22D, 22E, 22F, 22G, 22H, 22I, 22J, 22K, 23, 24, 25)						
Date:	10/29/2009						
Time:	09:38:59 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving an annual contract with Flores Holdings, LLC in the amount of \$96,000.00 for Mr. Ramon Flores to serve as Executive Director to the Westside Development Corporation (WDC). [Pat DiGiovanni, Deputy City Manager/Interim Director, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

ATTACHMENT I

**PERSONAL SERVICES AGREEMENT
FOR
EXECUTIVE DIRECTOR
OF THE WESTSIDE DEVELOPMENT CORPORATION**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas home rule municipal corporation (“City”), and Ramon (“Ray”) Flores of Flores Holdings, L.L.C., referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- “Consultant” shall mean Ramon “Ray” Flores.
- “Director” shall mean the Center City Development Office Director of City.
- “WDC” shall mean the Westside Development Corporation.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on November 1, 2009 and terminate on October 31, 2010. However, if during the term of this Agreement the City Council approves a separate Operating Agency Agreement with the WDC making the WDC staff employees of the WDC and not the City, then this Agreement will automatically terminate and Consultant could contract directly with the WDC. This Agreement may be renewed annually upon mutual agreement of the Parties, subject to appropriation. Renewals shall be reflected in writing and signed by both Parties, as evidenced by the passage of City Council ordinance.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV (Compensation), as the Executive Director of the WDC;

3.2 Consultant shall manage and oversee all aspects of the day-to-day operations of the WDC;

3.3 Consultant shall execute the WDC's strategic work plan as directed by the WDC Board of Directors within the parameters of the goals and objectives for the WDC established by the City Council;

3.4 Consultant shall coordinate with community stakeholders on the development and implementation of strategic plan and economic development initiatives;

3.5 Consultant shall suggest and implement solutions to address new or ongoing challenges faced by the WDC;

3.6 Consultant shall establish performance measures for the WDC and coordinate WDC activities with the City's Center City Development Office;

3.7 Consultant shall promote the Westside Development Corporation to community and business organizations;

3.8 Consultant shall provide monthly detailed reports to the City on WDC activities and accomplishments and outline how those activities respond to the goals and objectives of the WDC;

3.9 Consultant shall represent the WDC and make presentations at community meetings, workshops, and other forums as requested by the WDC Board or the City;

3.10 Consultant shall provide reports to the City Council Economic and Community Development Committee when requested;

3.11 Consultant shall identify available property for redevelopment and make recommendations to the WDC Board and City staff on potential redevelopment projects;

3.12 Consultant shall seek and obtain additional sources of revenue to support WDC operations;

3.13 Consultant shall continue coordination with the City and WDC Board toward achieving the goals of the WDC transition plan to become a self-sustaining, nonprofit entity independent from the City and make recommendations to the City regarding such transition; and

3.14 All work performed by Consultant hereunder shall be performed to the satisfaction of Director and the WDC Board of Directors. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII (Termination), in whole or in part, should Consultant's work not be satisfactory to Director and the WDC Board; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed the sum shown below as total compensation to be paid to Consultant as follows:

Ray Flores - \$96,000.00 (\$8,000 per month) for forty (40) hours of service per week, with ten (10) days of paid personal leave within the one-year term of the Agreement, upon advance request and approval by the Director or Assistant Director of the Center City Development Office. Leave requests must be documented in writing, with copies maintained by the Department's time keeper.

4.2 Payment shall occur within 30 days of receipt and approval of an invoice therefore. Consultant shall invoice City with documentation of the hours expended per week and work performed for the month.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The Parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing and approved by City Council ordinance.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be the Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services

rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II (Term), or earlier termination pursuant to any of the provisions hereof.

7.2 Termination for Cause or Convenience. This Agreement may be terminated by City upon 14 calendar days' written notice for convenience, upon City Council approval of the WDC's independence from City and execution of a separate Operating Agency Agreement between the City and the WDC, or upon the effective date stated in a written notice if terminating for a material breach of the Agreement. Notice shall be provided in accordance with Article VIII.

7.3 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.4 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI (Records Retention). Any record transfer shall be completed within thirty (30) calendar days of

a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.5 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.6 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as FedEx or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Center City Development Office, Director
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Consultant, to:

Ray Flores
Flores Holdings, L.L.C.
P.O. Box 15069
San Antonio, Texas 78212

IX. RESERVED

[This section is intentionally left blank.]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the Director's office, which shall be clearly labeled "Executive Director of the Westside Development Corporation" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificates shall have been delivered to Director's office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

Professional Liability (Claims Made Form)	\$100,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
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10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

10.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Consultant shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Consultant knows of said change in advance, or ten (10) days notice after the change, if the Consultant did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address: City of San Antonio, Director - Center City Development Office, P.O. Box 839966, San Antonio, Texas 78283-3966.

10.6 If Consultant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Consultant to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.7 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that Consultant's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

XI. INDEMNIFICATION

11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and authorized representatives of CITY, individually or collectively, from and against any and all defense costs, claims, liens, damages, judgments, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature: (1) arising out of or in connection with CONSULTANT's use of the facilities; and (2) arising out of any act or omission of CONSULTANT or any of CONSULTANT's employees, agents, consultants, contractors, representatives, guests, or invitees and their respective officers, agents, employees, directors and representatives, including any damage to or loss of any property belonging to: (a) CONSULTANT or CONSULTANT's employees exhibitors, contractors, representatives, patrons, guests or invitees and their respective officers, agents, employees, directors and representatives, or (b) CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY.

The indemnity provided for in the foregoing paragraph shall not apply to any liability resulting from the sole negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

11.2 IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

CONSULTANT shall promptly advise CITY in writing of any claim or demand against CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's or CITY's activities under this Agreement. Further, CONSULTANT shall see to the investigation and defense of any such claim or demand against CONSULTANT or CITY at CONSULTANT'S sole cost until such time as CITY is found to be negligent by a court of competent jurisdiction. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City-approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding, and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, in writing, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the advanced written consent of Director. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII (Termination), notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and

consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. NON-DISCLOSURE

Consultant shall not disclose any information, verbally or in writing, related to this Agreement without the express written consent of Director. Consultant shall immediately notify the Director in the event that a third party submits a request for information related to this Agreement.

XV. CONFLICT OF INTEREST

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, approved by City Council ordinance.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such

invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by Director. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XVI (Amendments).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

EXECUTED by the Parties below on _____, 200__. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
Ramon (Ray) Flores

Sheryl Sculley
City Manager

Ramon Flores
President, Flores Holdings, L.L.C.

ATTEST:

Leticia Vacek
City Clerk

Approved as to Form:

Michael Bernard
City Attorney