

AN ORDINANCE 2008-06-19-0606

APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT TO USE FUNDS WITH THE PORT AUTHORITY OF SAN ANTONIO IN THE AMOUNT OF \$100,000.00 TO BE USED TOWARD AN AVIATION MUSEUM FEASIBILITY STUDY.

* * * * *

WHEREAS, the Port Authority of San Antonio requested financial support from the City to conduct a feasibility study for the construction of an aviation museum that would serve as a destination for tourists and conventioners interested in the City's prominent place in military aviation history; and

WHEREAS, the City Council appropriated \$100,000.00 in the Fiscal Year 2008 budget for the purpose of contributing to such a study; and

WHEREAS, the Port Authority of San Antonio issued a Request for Qualifications and received nine (9) responses which were evaluated by a six-member selection panel that included a representative from the City's Economic Development Department; and

WHEREAS, the panel selected ConsultEcon, Inc. based upon its experience in conducting aviation museum feasibility studies and in preparing business plans for such projects; and

WHEREAS, the feasibility study will determine whether the construction of an aviation museum would support growth in the City's tourism and aviation industries; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of an Agreement to Use Funds between the City and the Port Authority of San Antonio are hereby approved. A copy of the Agreement to Use Funds in substantially final form is attached hereto and made a part of this Ordinance as Exhibit "A." A copy of the fully executed Agreement will be attached to this Ordinance and will replace Exhibit "A."

SECTION 2. The City Manager is authorized to enter into an agreement in accordance with Section 1 of this Ordinance.

SECTION 3. Funding for this Ordinance is available in Fund No. 29006000 Hotel Motel Tax, Cost Center 2801010007 Art Initiatives, General Ledger No. 5201040, entitled "Fees to Professional Contractors," as part of the Fiscal Year 2008 Budget.

SECTION 4. Payment not to exceed \$100,000.00 is authorized to Port Authority of San Antonio and should be encumbered upon issuance of a purchase order.

SECTION 5. 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 and Fund Numbers as necessary to carry out the purpose of this Ordinance

SECTION 6. This ordinance shall be effective on and after the tenth (10th) day after passage hereof.

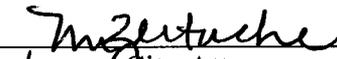
PASSED AND APPROVED this 19th day of JUNE 2008.


M A Y O R
PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM: _____


for City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 65

Name:	65
Date:	06/19/2008
Time:	05:10:23 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving the terms and conditions of an Agreement to Use Funds with the Port of San Antonio in the amount of \$100,000.00 to be used toward an aviation museum feasibility study. [Pat DiGiovanni, Deputy City Manager; Robert Peche, Director, Economic Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor	x					
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x			x	
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					

STATE OF TEXAS

COUNTY OF BEXAR

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§
§
§

**AGREEMENT TO USE FUNDS
OF THE
CITY OF SAN ANTONIO**

This Agreement to Use Funds of the City of San Antonio (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, hereinafter referred to as "City", by and through its City Manager or her designee, and the Port Authority of San Antonio, a defense base development authority and political subdivision of the State of Texas, established pursuant to Chapter 379B of the Texas Local Government Code, acting by and through its Board of Directors and duly authorized President and CEO, hereinafter referred to as "PSA."

WHEREAS, PSA is engaged in project consisting of the performance of a study that will determine the feasibility of constructing and developing an aviation museum to be located within the city limits of the City of San Antonio which is anticipated to promote tourism activity in the City of San Antonio; and

WHEREAS, PSA has requested funding assistance for the purpose of deferring costs associated with the feasibility study and CITY has identified funds to use to carry out this purpose; and

WHEREAS, the City Council of CITY authorized the City Manager or designee to enter into this Agreement with PSA as reflected in Ordinance No. _____, passed and approved on _____, 2008 and CITY now wishes to engage PSA to carry out such project; **NOW THEREFORE:**

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

SECTION 1. AGREEMENT PURPOSE AND SCOPE OF WORK

PSA shall complete or cause to be completed a feasibility study to determine the viability of constructing, developing and operating an aviation museum within the city limits and such a project's impact on tourism in the City of San Antonio and surrounding community. Specifically, PSA shall deliver or cause to be delivered to CITY a final work product meeting the requirements of the Scope of Work as defined in Exhibit A, attached hereto and made a part of this Agreement.

CITY is supporting this project through this Agreement to provide funding for the purpose of defraying a portion of costs associated with the solicitation and award of a professional service agreement to perform a study in accordance with Exhibit A.

SECTION 2. AGREEMENT PERIOD

This Agreement shall commence upon its execution and shall terminate upon final acceptance of the work product by CITY. PSA shall submit final work product for approval prior to August 1, 2008 but in no case later than September 30, 2008.

SECTION 3. PSA PERFORMANCE

A. PSA shall ensure complete compliance with Exhibit A and all other terms and conditions of this Agreement.

B. PSA shall comply with all applicable laws and regulations of the State and municipality in the performance of this Agreement.

SECTION 4. CITY OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by this Agreement, including Exhibit A, CITY will disburse grant funds not to exceed _____ \$XXXXXX.00 to PSA. Such disbursements are subject to the following:

(i) PSA shall expend funds in the amount of fifty percent of the total costs prior to seeking disbursement of City's funds.

(ii) PSA shall contribute funds for the remaining fifty percent (50%) to the completion of the feasibility study.

B. CITY is not liable to PSA or any other entity for any costs incurred by PSA in reliance of this or other agreements.

C. PSA is only entitled to funds for the costs of actual expenses incurred and not in any amounts exceeding the allocations in Section 4(A) of this Agreement. Allowable costs will be determined in accordance with this Agreement by CITY's Economic Development Department. Should CITY determine after payment that a cost is unallowable under this Agreement PSA shall reimburse CITY for such payment not later than 30 days after notification by CITY.

SECTION 5. RETENTION AND ACCESSIBILITY OF RECORDS

A. PSA shall maintain the fiscal records and supporting documentation for all expenditures of funds to be reimbursed or credited to PSA under this Agreement in a manner that conforms to this Agreement. PSA shall retain such records, and any supporting documentation, for the greater of: (1) four [4] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. PSA shall give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by PSA pertaining to the funds expended by PSA which are reimbursed or credited under this Agreement. Such rights to access shall continue as long as the records are retained by PSA. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to suspend or terminate the Agreement as provided for in Section 14 and 15, or any portion thereof, for reason of default. All records and other information shall be retained by PSA for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. PSA agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

SECTION 6. MONITORING

A. CITY reserves the right to confirm PSA's compliance with the terms and conditions of this Agreement. CITY will provide PSA with a written report of the monitor's findings. If the monitoring report notes deficiencies in PSA's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by PSA and a reasonable amount of time in which to attain compliance. Failure by PSA to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

SECTION 7. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that this Agreement does not create an agency relationship, joint venture, or other such relationship between the City and PSA. PSA is Independent of City and PSA, its employees and subcontractors are not employees of the CITY.

SECTION 8. CONFLICT OF INTEREST

A. PSA shall ensure that no employee, officer, or agent of PSA shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. PSA shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

B. No employee, agent, consultant, officer, or elected or appointed official, of either PSA or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. PSA shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by PSA under this Agreement shall involve, and no portion of the funds received by PSA under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. PSA shall include the substance of this Section 9 in all subgrant agreements.

SECTION 10. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either PSA or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. PSA is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Section 10.

SECTION 11. LITIGATION AND CLAIMS

A. PSA shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against PSA arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, PSA shall furnish immediately to CITY copies of all pertinent papers received by PSA with respect to such action or claim. PSA shall notify the CITY immediately of any legal action filed against the PSA or any subPSA, or of any proceeding filed under the federal bankruptcy code. PSA shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.

B. CITY and PSA acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 12. CHANGES AND AMENDMENTS

A. Except as specifically provided in Section 12(C) of this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of PSA.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing City funding as set forth this date, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 13. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event PSA fails to comply with the terms of any Agreement with the CITY, CITY shall provide PSA with written notification as to the nature of the non-compliance. CITY shall grant PSA a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such Agreement. Should PSA fail to cure any default within this period of time, the CITY may, upon written Notice of Suspension to PSA, suspend this Agreement in whole or in part and withhold further payments to PSA, and prohibit PSA from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of default for causes beyond PSA's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that PSA shall: (1) immediately upon receipt of Notice of Suspension advise CITY of PSA's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 13 may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, CITY shall not be liable to PSA or to PSA's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 14. TERMINATION

A. CITY shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this Agreement whenever CITY determines that PSA has failed to comply with any term of any Agreement with the CITY. CITY will provide PSA with written notification as to the nature of the non-compliance, and grant PSA a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such Agreement. Should PSA fail to cure any default within this period of time, the CITY may, upon issuance to PSA of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to PSA, and prohibit PSA from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond PSA's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that PSA shall: (1) immediately upon receipt of Notice of Termination advise CITY of PSA's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 14(A), awards may be terminated in whole or in part only as follows:

1. By the CITY (with the consent of the PSA) in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By the PSA upon written notification to the CITY, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be

terminated. However, if, in the case of partial termination, the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the CITY may terminate the award in its entirety under Section 14(A).

D. Upon receipt of Notice of Termination for non-compliance under Section 14(A), PSA shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement or the part of this Agreement to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Agreement shall be terminated and CITY will not be liable to PSA or to PSA's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by CITY of its right of suspension under Section 13 of this Agreement, or of early termination pursuant to this Section 14, PSA shall not be relieved of any liability to CITY for damages due to CITY by virtue of any breach by PSA of any Agreement with CITY. CITY may withhold payments to PSA until such time as the exact amount of damages due to CITY from PSA is agreed upon or is otherwise determined.

SECTION 15. SUBAGREEMENTS

A. PSA shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by PSA. PSA shall bear full responsibility for performance by all subcontractors.

B. PSA, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, CITY is in no way liable to PSA's subcontractor(s).

C. PSA assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. As subcontracts become necessary to carry out the requirements of this Agreement, PSA covenants to comply with the CITY's SBEDA Program, currently identified under Ordinance No. 2007-04-12-0396, and as amended.

SECTION. 16. DEBARMENT

By signing this Agreement, PSA certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

SECTION 17. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any Agreement between PSA and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 18. NON-ASSIGNMENT

This Agreement is not assignable. Notwithstanding any attempt to assign the Agreement, PSA shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions herein. PSA shall be held responsible for all funds received under this Agreement.

SECTION 19. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 20. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

CITY shall grant relief from performance of the Agreement if the PSA is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the PSA. The burden of proof for the need for such relief shall rest upon the PSA. To obtain release based upon *force majeure*, the PSA must file a written request with the CITY.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 200__ :

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number _____, dated _____, 2008, and the Port Authority of San Antonio pursuant to the authority of its Resolution Number _____, dated _____.

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

PORT AUTHORITY OF SAN ANTONIO
A Defense Base Development Authority and a political subdivision of the State of Texas

Sheryl L. Sculley
CITY MANAGER

Name: Bruce Miller
Title: CHIEF EXECUTIVE OFFICER

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 65
Council Meeting Date: 6/19/2008
RFCA Tracking No: R-3518

DEPARTMENT: Economic Development

DEPARTMENT HEAD: Robert Peche

COUNCIL DISTRICT(S) IMPACTED:
City Wide, Council District 6

SUBJECT:
Aviation Museum Feasibility Study

SUMMARY:

An ordinance authorizing the City to enter into an Agreement with the Port of San Antonio to contribute \$100,000.00 toward a feasibility study for the construction and development of an aviation museum.

BACKGROUND INFORMATION:

San Antonio is the number one tourist destination in the State of Texas and is in the top ten destinations in the United States. It is also the birthplace of military aviation. The first military flight occurred at Fort Sam Houston in 1910. Military aviation then became a prominent fixture in the landscape of San Antonio with operations and training conducted at Kelly Field, Brooks Field and Randolph Field. Military aviation continues to play a major role in San Antonio, and the legacy at Kelly continues even with the closing of the Air Force Base in 2001 and the establishment of Port San Antonio.

In 2007, the Port of San Antonio requested City support to conduct a feasibility study for an aviation museum. In FY 2008, City Council appropriated \$100,000.00 toward this study. City staff has assisted the Port of San Antonio in seeking a firm to conduct a feasibility study to determine the viability of constructing, developing and operating an aviation museum. Along with the suitability of the sites for a museum, the feasibility study will include an analysis of the Port of San Antonio as a destination for visitors and residents in an effort to promote local economic development and stimulate business and commercial activity.

The Port of San Antonio issued a Request for Qualifications (RFQ) on March 13, 2008, for an Aviation Museum Feasibility Study. A six-member selection panel, including a City Economic Development Department (EDD) staff representative, reviewed the nine proposals and selected three finalists for personal interviews. The three finalists included:

- ConsultEcon, Inc. (Cambridge, MA.)
- Logic, Inc. (Seattle, WA.)

- E. Verner Johnson & Associates (Boston, MA.)

The panel evaluated the firms for experience in conducting aviation museum feasibility studies and in preparing a business plan for such a project. The panel has selected ConsultEcon, Inc. from Cambridge, Massachusetts, to complete the feasibility study by the end of 2008.

ISSUE:

This study will help the Port of San Antonio and the City determine the feasibility of pursuing the construction of an aviation museum at the Port. If found feasible, such a project could potentially support growth in the City's tourism and aviation industries.

ALTERNATIVES:

If City Council does not approve this proposed grant with the Port of San Antonio, the Port will have to incur the total cost and may not fund the study.

FISCAL IMPACT:

The City of San Antonio is supporting this project through an economic development grant in the amount of \$100,000.00 toward the total cost of \$190,000.00 for the aviation museum feasibility study. The Port of San Antonio will fund the remainder of the cost. City Council approved \$100,000.00 in the FY 2008 Budget from the Cultural Affairs Department's Hotel Occupancy Tax Fund in support of this project.

RECOMMENDATION:

Staff recommends approval to enter into an Agreement with the Port of San Antonio to provide \$100,000.00 to help fund an aviation museum feasibility study.

ATTACHMENT(S):

File Description	File Name
Voting Results	
Ordinance/Supplemental Documents	200806190606.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Ed Davis Assistant Director Economic Development

APPROVED FOR COUNCIL CONSIDERATION:

Pat DiGiovanni Deputy City Manager