

AN ORDINANCE

2006-05-18-0606

APPROVING A TWO YEAR PROFESSIONAL SERVICES AGREEMENT FOR AIR SERVICE DEVELOPMENT CONSULTING WITH INTERVISTAS-GA2 CONSULTING, INC. IN AN AMOUNT NOT TO EXCEED \$300,000.00, \$150,000.00 OF WHICH IS CONTINGENT UPON FY 2007 BUDGET APPROVAL, WITH OPTIONS FOR TWO ADDITIONAL TWO YEAR TERMS SUBJECT TO FUNDING AND COUNCIL APPROVAL.

* * * * *

WHEREAS, the City of San Antonio is the owner and operator of the San Antonio International Airport, hereinafter referred to as "the Airport"; and

WHEREAS, encouraging air service is one of four goals stipulated in the Aviation Industry Strategic Plan as a facilitator of the City's overall goals of economic development and business expansion, in particular the convention and visitor industry; and

WHEREAS, the CITY has determined that because of San Antonio's continued growth in the global market and because of the economic impact associated with increased air travel, a long-term contractual relationship with an air service development professional who is an expert in such strategic planning, is in the best interests of the City; and

WHEREAS, proposals were solicited by the City of San Antonio from qualified air service development experts or firms to provide this service; and

WHEREAS, three qualifying proposals were received in response to the City's Request for Proposals and each was rated by a selection committee comprised of City staff from the Economic Development, Convention and Visitors Bureau, International Affairs, and the Aviation Department, in addition to representatives of the Greater San Antonio Chamber of Commerce and the Air Transportation Advisory Commission; and

WHEREAS, the proposals were rated giving consideration to proposed plan, experience/background/qualifications, price, and compliance with SBEDA requirements; and

WHEREAS, based on the ratings, the selection committee determined InterVISTAS-Ga2 to be the most qualified respondent; and

WHEREAS, it is now necessary to select and authorize execution of a contract with InterVISTAS-Ga2 to provide air service development consulting services to the San Antonio International Airport; **NOW THEREFORE:**

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

SECTION 1. The proposal of InterVISTAS-Ga2 Consulting, Inc., submitted to the City of San Antonio on April 18, 2006 in response to its Request for Proposals for Air Service Development Consulting, is hereby accepted, except to the extent such terms shall be modified or conflict with the final Agreement between the parties; a copy of such proposal is on file in the Office of the Aviation Director and is incorporated herein by reference. All other proposals for Air Service Development Consulting shall be rejected upon the execution of a contract by all parties.

SECTION 2. The City Manager, or her designee, is hereby authorized to execute a Professional Services Contract in substantially the same form as the document set out in "Attachment 1"

SECTION 3. Revenues generated by this agreement shall be deposited into Fund 51001000, entitled "Airport Operations & Maintenance Account", Cost Center 3301010003, and General Ledger Account 5201040.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

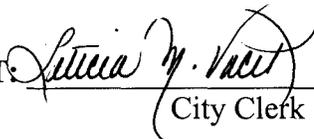
SECTION 5. This Ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 18th day of May, 2006.



M A Y O R

PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Voting Results

Name: 19.

Date: 05/18/06

Time: 10:43:07 AM

Vote Type: Multiple selection

Description: An Ordinance approving a two year Professional Services Agreement for Air Service Development Consulting with InterVISTAS-ga2 Consulting, Inc. in an amount not to exceed \$300,000.00, \$150,000.00 of which is contingent upon FY 2007 budget approval, with options for two additional two year terms subject to funding and Council approval. [Presented by Mark Webb, Interim Director, Aviation; Roland A. Lozano, Assistant to the City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1	Not present			
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

ATTACHMENT 1

**PROFESSIONAL SERVICES AGREEMENT
FOR
AIR SERVICE DEVELOPMENT CONSULTING**

**STATE OF TEXAS §
 §
COUNTY OF BEXAR §**

This Agreement is entered into by and between the **City of San Antonio**, ("City") a Texas Municipal Corporation acting by and through its City Manager, or her designated representative pursuant to Ordinance No. _____ passed and approved on the _____ day of May, 2006 and **InterVISTAS-ga2 Consulting, Inc.**, ("Consultant") acting by and through its duly authorized Senior Vice President, Mark E. Kiehl,, both of which may be referred to herein collectively as the "Parties".

The Parties hereto 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.

I. DEFINITIONS

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

1.1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns. Whenever this Agreement calls for approval by City, unless otherwise stated herein, such approval shall be in writing and signed by the Director of City's Aviation Department, or his designee.

1.1.2 "Consultant" is defined in the preamble of this Agreement and includes its successors.

1.1.3 "Department" shall mean the City of San Antonio's Department of Aviation.

1.1.4 "Director" shall mean the Director of City's Department of Aviation

II. TERM

2.1 The term of this Agreement shall be two (2) years, and shall commence ten (10) days following the passage of an ordinance by the City Council approving such action, and authorizing the execution of the Agreement; and shall terminate (unless otherwise extended by the exercise of the option set forth below or earlier terminated in accordance with this agreement) at midnight of the last day of the two (2) year term. If such renewal option(s) are exercised the Agreement shall terminate at midnight of the last day of the last option term validly exercised.

2.2 Notwithstanding the term set forth in the foregoing Paragraph, and provided that Consultant is not in default under this Agreement, Consultant shall have the option to renew this Agreement for two (2) additional two year terms by notifying the Director of Aviation in writing, by certified or overnight mail, notice of its election to do so at least ninety (90) days prior to the date of the expiration of the then current term. In the event that the option is exercised, all terms and conditions of the Agreement shall remain in full force and effect.

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in this Article III, Scope of Services in exchange for the compensation described in Article IV, Compensation, to Consultant. All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. Services rendered hereunder shall include:

3.1.1 Airline Business Case Development and Presentations at Industry Conferences - For each Network and Jumpstart Airline conference, which occurs during the term of the contract, Consultant, at the direction of the Department, will:

3.1.1.1 Assist the Department in determining which air carriers and underserved markets are to be targeted

3.1.1.2 Prepare and produce five (5) to ten (10) brief business cases tailored to selected air carriers which include a brief analysis of supportable technical city-pair route analysis for the particular targeted route(s) and information on San Antonio's industries and demographics.

3.1.1.3 Submit drafts of the business cases to the Department for review and approval at least ten (10) working days prior to Network and JumpStart conference start dates.

3.1.1.4 Finalize, produce, and transport to the industry conference locations, a minimum of three copies of the approved business cases as formal, printed and bound presentations and provide electronic copies of the business cases, in PDF version on compact disc.

3.1.1.5 Attend and participate in, along with the Department staff, scheduled meetings with air carriers. Selected Respondent shall be responsible for taking the bound and electronic copies of the business cases to be presented at each meeting.

3.1.2 Airline Business Case Development and Presentations at Air Carrier Headquarters - For each scheduled air carrier headquarters meeting, Consultant, at the direction of the Department, will:

3.1.2.1 Prepare in-depth business cases with detailed route analysis and profit potential data for selected route(s),

3.1.2.2 Accompany Department staff to the air carrier's headquarters to attend and participate in the presentation.

3.1.3 **On Call Research** – At the direction of the Department, Consultant will prepare appropriate responses and/or provide other assistance to address questions and inquiries on issues such as start up airlines, new entrant airlines, incumbent airlines (currently serving San Antonio), international air service possibilities, air service incentives, and others as may arise.

3.1.4 **Community Presentations** – At the direction of the Department, Consultant will prepare and present workshops and/or presentations on various air service development topics.

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 for various services according to the following schedule:

\$ 1,950.00 Per Airline	for Business Case Development/Presentations at Industry Conferences
\$10,500.00 Per Case	for Business Case Development/Presentations at Air Carrier Headquarters
\$ 165.00 Per Hour	for On Call Research Projects
\$ 165.00 Per Hour	for Community Presentation Projects

4.2 Total compensation under this Agreement ("Maximum Contract Amount") shall not to exceed **Three Hundred Thousand Dollars (\$300,000.00)** without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Business Case Development and Presentations at Industry Conferences charges per airline shall be inclusive of all Consultant's fees and costs, including but not limited to, Consultant's research, time, materials, reproduction, shipping/transportation of cases to conference locations, conference registration, travel, and time spent in attendance at scheduled meetings and at other business development functions, as requested by City.

4.4 Business Case Development for Air Carrier Headquarter Meetings charges per case shall be inclusive of all Consultant's fees and costs including but not limited to: Respondent's research, time, materials, reproduction, shipping/transportation of cases to City or meeting location (as specified by City).

4.5 Actual expenses related to Consultant's travel to Air Carrier Headquarters Meetings and Community Presentations will be reimbursed to Consultant by City based on a travel budget which shall be submitted by Consultant to City and approved by City in advance of the travel. Lodging, meals, and incidental expenses may not exceed amounts established as the U.S. General Services Administration's Maximum Per Diem Rate for the destination city.

4.6 Community Presentation expenses, such as reproduction and shipping costs, for materials requested and approved by City, shall be submitted to the City for reimbursement.

4.7 For On Call Research Projects and Community Presentation Projects, City and Consultant shall agree upon the maximum number of hours for the project when assigned. If additional hours are required, Consultant must notify City as soon as the additional time requirement becomes apparent, and obtain written approval from City prior completing the additional hours of work.

4.8 Payment will be made to Consultant only following City's approval and acceptance of the final work product and services, and City's receipt of Consultant's fully documented and supported invoice which shall: (1) include a SAP generated purchase order number, as provided by City, and (2) be issued by the Consultant within 30 days of completion of the services and associated travel or Community Presentation expenses.

4.9 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 AND INTELLECTUAL PROPERTY

5.1 Any and all documents, papers, records, writings, media or information in whatever form and character created by Consultant pursuant to the provisions of this Agreement and pertinent to the services rendered hereunder, (hereinafter "Documents") shall be the exclusive property of City; and such Documents shall not be the subject of any copyright or proprietary claim by Consultant. Consultant understands and acknowledges that as the exclusive owner of any and all Documents, City has the right to use all Documents as City desires, without restriction.

5.2 Consultant shall pay all royalties and licensing fees for the use of third party intellectual property. Selected Respondent agrees to indemnify and hold City harmless from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. Selected Respondent shall defend and indemnify City against all suits for infringement of any Intellectual Property rights. Further, if the selected Respondent has reason to believe that the service, process or product specified is an infringement of the Intellectual Property rights of a third party, it shall immediately (within 24 hours) give such information to the City.

5.3 Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof

VI. RECORDS RETENTION

6.1 Consultant shall retain any and all Documents for a period of four (4) years from the date of termination of this Agreement or acceptance of the work product by the Director, (hereinafter "Document Retention Period"). In addition, if at the end of the Document Retention Period, there is ongoing litigation or questions arising from, involving or concerning the Documents or services provided hereunder, Consultant shall retain the records until the resolution of such litigation or questions.

6.2 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all Documents, and shall make such materials available to the City at Consultant's offices, at all reasonable times and as often as City may deem necessary during the Agreement Term, including any extension or renewal hereof, and the Documents 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. City may, at its election, require Consultant to return said Documents to City prior to or at the conclusion of said Documents Retention Period.

6.3 Consultant shall notify City immediately, in the event Consultant receives any request for information from a third-party, which pertains to the Documents referenced herein. Consultant understands and agrees that City will process and handle all such requests and agrees not to deliver any information or documents directly to any third-party, without prior written authorization.

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by either party upon ten (10) calendar days written notice, provided in accordance with Article VIII, Notice.

7.3 Termination For Cause. Upon written notice provided in accordance with Article VIII, Notice, City may terminate this Agreement, in whole or in part, as of the date provided in the notice, upon the occurrence of one (1) or more Events for Cause, Events for Cause include, but are not limited to, fraud, defalcation, violation of the City Ethics Code, the sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI, Assignment and Subcontracting, the filing of Bankruptcy by the Consultant, or the sale or assignment of substantially all of Consultant's assets.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the satisfactory performance of any of the terms of this Agreement, comply with any warranty or covenant contained herein, including failure to maintain insurance coverage required under Article IX, Insurance, the same shall be considered an event of default. In the event of default, City shall deliver to Consultant written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII, Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.5 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.

7.6 Except when terminated by completion, upon request by the City, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, 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. Any such 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 in

accordance with the City's request, and shall be subject to offset to cover unpaid costs of the transfer. If no request is made by the City or this Agreement is terminated by completion, the above described documents shall be retained by Consultant in accordance with Article VI. Records Retention.

7.7 Within forty-five (45) calendar days of the effective date of completion, 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.

7.8 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.

7.9 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

8.1 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 Federal Express 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.

<u>If intended or City, to:</u> City of San Antonio Attn: Aviation Director 9800 Airport Blvd. San Antonio, Texas 78216-9990	<u>If intended for Consultant, to:</u> Mr. Mark Kiehl, Senior Vice President InterVISTAS-ga2 Consulting, Inc. 1800 K Street NW, Suite 1104 Washington, D.C. 20006
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IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the City's Aviation Department, Attn: Barbara Prossen which shall be clearly labeled "*Air Service Development Services*" 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 certificate shall have been delivered to City's Aviation Department, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 Consultant agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officials, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

9.3 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 coverage and its 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.

9.4 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- (vii) or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

1. Worker's Compensation & Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Professional Liability (Claims Made Form)	\$1,000,000 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.

9.5 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 evidence of an acceptable policy replacement. All notices shall be given to the City at the following addresses:

City of San Antonio, Director
Terminal 1 – Mezzanine
9800 Airport Blvd.
San Antonio, Texas 78216-9990

9.6 If Consultant fails to maintain the aforementioned insurance or provide proof thereof in compliance with this Article, 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.

9.7 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, Consultant's or its subcontractors' negligence in connection with its performance of its work under this contract, nor shall provision of insurance relieve Consultant of its full performance under the Indemnification provisions contained herein.

9.8 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.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this AGREEMENT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this INDEMNITY 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The 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.

10.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION (SECTION X) IS AN INDEMNITY EXTENDED BY CONSULTANT TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF CITY'S OWN NEGLIGENCE, provided, however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of CITY is a CONTRIBUTORY CAUSE of the resultant injury, death or damage, and shall have no application when the negligent act of CITY is the sole cause of the resultant injury, death or damage. CONSULTANT further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death or damage, for which this INDEMNITY shall apply, as set forth above.

10.3 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.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 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.

11.2 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 prior written consent of the Aviation 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.

11.3 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void, and shall confer no rights upon any third person. Notwithstanding any other remedy available to City under this Agreement, 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. 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.

XII. INDEPENDENT CONTRACTOR

12.1 Consultant covenants and agrees that it 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.

XIII. EQUAL EMPLOYMENT OPPORTUNITY/ MINORITY PARTICIPATION ASSURANCES

13.1 Consultant agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. In the event noncompliance occurs, Consultant upon written notification by City will commence compliance procedures within thirty (30) days.

XIV. CONFLICTS OF INTEREST

14.1 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.

14.2 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.

XV. AMENDMENTS

15.1 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.

15.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVI. SEVERABILITY

16.1 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.

XVII. LICENSES/CERTIFICATIONS

17.1 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.

XVIII. COMPLIANCE

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

XIV. NON-WAIVER OF PERFORMANCE

19.1 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. 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.

XX. LAW APPLICABLE

20.1 **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.**

XXI. LEGAL AUTHORITY

21.1 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.

XXII. PARTIES BOUND

22.1 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.

XXIII. CAPTIONS

23.1 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.

XXIV. TIME OF THE ESSENCE

24.1 It is understood that the time within which the work is to be performed is of primary importance and of the essence in this Agreement.

XV. ENTIRE AGREEMENT

25.1 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 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 XV, Amendments.

EXECUTED and AGREED to this the _____ day of _____, 2006.

CITY: CITY OF SAN ANTONIO _____ Sheryl Sculley, City Manager	CONSULTANT: InterVISTAS-ga2 Consulting, Inc. _____ Mark Kiehl, Senior Vice-President
Approved as to Form: _____ City Attorney	Federal Tax ID: _____

**CITY OF SAN ANTONIO
AVIATION DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager
FROM: Mark H. Webb, Interim Aviation Director
SUBJECT: Contract Approval for InterVISTAS-ga2 Consulting, Inc.
DATE: May 18, 2006

SUMMARY & RECOMMENDATION

An ordinance approving a contract not to exceed \$300,000.00 with InterVISTAS-ga2 Consulting, Inc. to provide air service consulting for an initial two-(2)-year term and two additional two-year terms upon mutual agreement of the parties with approval by City Council, and appropriating funds.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Encouraging air service is one of four goals stipulated in the Aviation Industry Strategic Plan as a facilitator of the City's overall goals of economic development and business expansion, in particular the convention and visitor industry. Initiation of an Air Service Development Program, using an air service development expert, was recommended by the Aviation Industry Strategic Plan.

The Aviation Department has utilized air service development experts since 2001 to provide professional assistance in air service route analyses. These same experts also recommended the use of an air service development incentive program. Since 2005, the Aviation Department has worked with InterVISTAS-ga2 Consulting, Inc. (InterVISTAS-ga2) on a short-term contract basis for targeted business case development and presentation to air carriers where non-stop flights could be proven economically viable. Their efforts, in conjunction with the City's Air Service Development Incentive Program, have resulted in the successful launch of multiple new non-stop flights from San Antonio (to San Francisco, Washington Dulles, Chicago Midway, San Diego, Albuquerque, Colorado Springs, Oklahoma City, Tulsa, Omaha and New Orleans) over the last 18 months.

Due to the substantial investment involved, airlines are not willing to build new markets unless a community can demonstrate, through economic analysis, that sufficient demand for a market exists and the investment in operating new flights will be profitable. The necessary economic analysis is generally accomplished through the development of business cases by consultants whose companies are focused on the airline industry and working with airports for growing air

service. Increasing non-stop flights and attracting new airlines is a long-term process. For example, San Antonio worked with Frontier Airlines for four years before it entered the San Antonio market.

Because of San Antonio's continued growth in the global market and, because of the economic impact associated with increased air travel, it is recommended that air service development continue to be strategically planned using a long-term contractual relationship with an air service development expert. A majority of airports across the country utilize these experts since they possess proprietary software, which enable them to forecast route profitability, along with taking advantage of their long-term relationships with air carriers (most of these industry experts have worked for airlines in their planning and scheduling departments) to arrange for national and international airline headquarter meetings.

In an effort to determine the availability, qualifications and cost of services, staff issued a Request for Proposals (RFP) on March 17, 2006, to solicit submissions from qualified air service development experts. On April 18, 2006, staff received proposals from the following firms:

1. InterVISTAS-ga2 Consulting, Inc.
2. BACK Aviation Solutions
3. Sixel Consulting Group

An evaluation committee was formed consisting of City staff from Economic Development, Convention and Visitors Bureau, International Affairs, and the Aviation Department. In addition, representatives of the Greater San Antonio Chamber of Commerce and the Air Transportation Advisory Commission served on the evaluation committee, which reviewed and scored the proposals using the following evaluation criteria:

1. Proposed Plan (25%)
2. Experience, Background, Qualifications (30%)
3. Price to City (25%)
4. Small Business Economic Development Advocacy Program (20%)

Based on the scores reflected in Attachment I, InterVISTAS-ga2 ranked highest and is being recommended for City Council consideration. InterVISTAS-ga2 has broad strengths, including strategic planning experience for both domestic and international route development, similarly required experience provided at other comparably-sized airports, and proven past successes at San Antonio International, as well as a depth of resources that includes state-of-the-art data analysis and modeling systems.

POLICY ANALYSIS

This action is consistent with City Council's policy to increase the number of destinations served by non-stop flights from San Antonio, with added emphasis on international markets.

FISCAL IMPACT

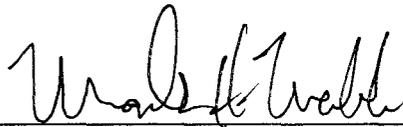
Total compensation under the initial two-year contract term shall not exceed \$300,000.00. The Aviation Department's FY 2006 budget includes \$150,000.00 with an additional equal amount subject to and contingent upon a FY 2007 appropriation. Should additional funding in the amount of \$150,000.00 not be appropriated in FY 2007's budget process or following expiration of the initial contract term or during future budget appropriation processes, the City retains the right to terminate the contract.

COORDINATION

This request for ordinance has been coordinated with the following departments: Finance, Management & Budget, and the City Attorney's Office.

SUPPLEMENTARY COMMENTS

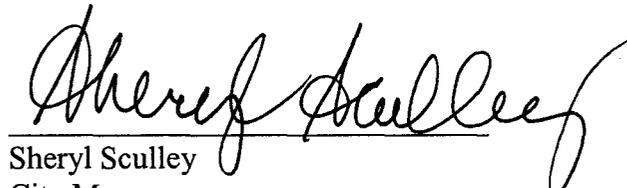
The Ethics Disclosure form signed by InterVISTAS-ga2 Consulting, Inc. is attached.



Mark H. Webb
Interim Aviation Director


Roland A. Lozano
Assistant to the City Manager

Approved for Council Consideration:


Sheryl Sculley
City Manager

**ATTACHMENT I
Proposal Scores**

	Maximum Points	BACK	Intervistas	Sixel
Proposed Plan	25	18.29	23.86	12.86
Experience/Background/Qualifications	30	16.86	28.43	13.43
Proposed Fee Schedule	25	25.00	16.91	13.98
SBEDA	20	7.05	3.55	8.65
TOTAL SCORE	100	67.19	72.75	48.91

City of San Antonio Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

InterVISTAS-ga² Consulting, Inc.

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or

List subcontractors:

- 1) Innovative Strategies
- 2) Cutting Edge Communications

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: Sr. Vice President Company or D/B/A: InterVISTAS	Date: 4/14/06
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.