

STATE OF TEXAS

COUNTY OF BEXAR

§ INTERLOCAL AGREEMENT FOR THE
§ 36th STREET PHASE IIIB (Billy Mitchell
§ to General Hudnell Dr) 40-00287, CSJ
0915-12-496

THIS INTERLOCAL AGREEMENT FOR THE 36th STREET PHASE IIIB - Billy Mitchell to General Hudnell Dr PROJECT (hereafter referred to as "Agreement") is effective as of the _____ day of _____, 20____ (hereafter referred to as "Effective Date"), by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "City"), a Texas Home Rule Municipality and the **PORT AUTHORITY of SAN ANTONIO** (hereafter referred to as "Port Authority"), a Texas defense base development authority and political subdivision of the state of Texas, established by the City of San Antonio pursuant to Chapter 379B, Subtitle A, Title 12 of the Texas Local Government Code, acting by and through its Board of Directors and duly authorized President and CEO. City and Authority collectively shall be referred to herein as "the Party" or "the Parties." This Agreement is entered into by City and Port Authority pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791. This Agreement is intended to further the purpose of the Interlocal Cooperation Act by joint payment of road construction and improvements.

WITNESSETH

WHEREAS, City's Transportation and Capital Improvements Department, formerly Capital Improvements Management Services, is designated as City's managing department; and

WHEREAS, City and Port Authority desire to cooperate on construction of the 36th Street Phase IIIB - Billy Mitchell to General Hudnell Dr.; and

WHEREAS, the 36th Street Phase IIIB – Billy Mitchell to General Hudnell Dr. is an approved Port Authority project, creating a corridor through Port San Antonio in an effort to connect Highway 90 to IH35, extending 36th Street through Port San Antonio from Billy Mitchell to General Hudnell;

WHEREAS, City has proposed the 36th Street Phase IIIB (Billy Mitchell to General Hudnell Dr.) Project, a 2012 General Obligation funded project with design and environmental participation from Port Authority and TxDOT participation on construction and construction-related costs; and

WHEREAS, City supports Port Authority's project and desires to enter into this Agreement with Port Authority, in order to establish the rights and obligations of the Parties, with regard to the design, environmental assessment, construction, operations and maintenance of the Project and to establish the procedures for funding the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

ARTICLE I **PURPOSE**

1.01 The purpose of this Agreement is to establish the terms and conditions for the Project in the areas of: (1) environmental assessment and clearance; (2) construction services; (3) design services; (4) funding, and (5) operating and maintaining the Project upon completion.

ARTICLE II

TERM

- 2.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement. The Agreement performance period shall begin no later than fifteen (15) days after the last signatory approves this Agreement and shall end upon completion of the Project.
- 2.02 Port Authority shall maintain the landscaping in the right-of-way of the Project limits after Project completion, at its own expense. The duty to maintain the remaining areas of the Project and enforcement of warranties is City's responsibilities and survives the termination of this Agreement.

ARTICLE III

FUNDING

- 3.01 TxDOT grant funding of a not-to-exceed amount of \$1,745,608.80 has been established for construction and construction-related expenses and may be modified once letting for the project is completed.
- 3.02 City General Obligation funds, in a not-to-exceed amount of \$6,000,000.00, have been established for construction, City administration, material testing, project management and direct State costs. This Project is part of City's 2012-2017 Bond Program.
- 3.03 It is expressly agreed by City and Port Authority that any payments shall be made from current revenues available to the paying party.
- 3.04 It is expressly understood and agreed by City and Port Authority that City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet City's commitment hereunder.
- 3.05 Utility adjustments and/or modifications by SAWS and CPS will be handled by the service provider prior to construction (to the extent possible), by joint-bid items on the construction solicitation or by the utility provider during construction when project conditions dictate such.
- 3.06 Port Authority shall fund the costs associated with design and environmental related services.
- 3.07 If actual costs are greater than the project funding, as stated above, the project scope will be adjusted accordingly. Once under construction, any conditions which increase project costs will be evaluated by City and Port Authority Teams and project adjustments will be made, if necessary, in order to maintain the overall budget. An estimate of the breakdown of the project budget is included as Attachment A.
- 3.08 City and Port Authority may list alternate items on the bid documents which can be accepted or denied based on final budget constraints.

ARTICLE IV
OBLIGATIONS OF CITY

- 4.01 Pursuant to this Agreement, City shall perform and provide the following:
- a. City shall oversee and manage the construction of the Project, as outlined in Article IX herein. Oversight shall include management of material testing consultant.
 - b. City shall be responsible for the staging of construction and all necessary street closures during construction.
 - c. City shall provide timely review of design, environmental and construction contract documents for the Project and submit all documents to TxDOT for review and approval.
 - d. City shall participate in all Project meetings.
 - e. City has the duty to obtain warranties from third parties and enforce the warranties on behalf of the Parties, if necessary.
 - f. Funding, in the amount outlined in Article III herein.
 - g. Coordination with TxDOT on behalf of Port Authority on funding, design, environmental and construction related items.
 - h. Assistance to Port Authority on design and environmental clearance processes for the Project.
 - i. Recording of right-of-way documents with the Bexar County.
 - j. Ensure that environmental permits and commitments outlined in the approved environmental document and EPIC sheet are fulfilled during construction.
 - k. Reimbursement to Port Authority for construction administration services, by its design consultant, in an amount to be agreed upon by City and Port Authority. The amount shall not exceed one hundred fifty thousand dollars (\$150,000) and is included in City's obligated funding listed in Article III herein.

ARTICLE V
OBLIGATIONS OF PORT AUTHORITY

- 5.01 Pursuant to this Agreement, Port Authority shall perform and/or provide/obtain the following:
- a. Dedication of, and documents for, transferring right-of-way for the limits of the 36th Street Phase IIIB – Billy Mitchell to General Hudnell Dr. to City at no cost.
 - b. Project design, including plans and specifications, in accordance with TxDOT and City of San Antonio standards.
 - c. Environmental assessment documentation, including studies and public involvement, in

accordance with TxDOT, FHWA and City requirements/regulations.

- d. Funding and management of design and environmental assessment and related services.
- e. All necessary permits and regulatory approvals for environmental clearance.
- f. Assistance to City on environmental and construction related items.
- g. Communications to Port Authority tenants throughout Project.
- h. Facilities for on-site, Project-related, coordination meetings between Port Authority and City.
- i. Use of Port Authority property within Project limits, until right-of-way transfer is established.
- j. Removal, remediation or mitigation required by the environmental assessment, risk assessment (Phase I/II studies) or asbestos surveys, if any.
- k. Actual construction administration invoices from Port Authority's Designer entered into City's payment system for reimbursement.

ARTICLE VI

JOINT OBLIGATIONS OF THE PARTIES

- 6.01 Pursuant to this Agreement, Port Authority and City shall perform and/or provide the following:
- a. Coordination with one another on a regular basis, regarding the Project.
 - b. Assistance to the other, in the event of a claim on the Project.
 - c. Prompt payment to all persons supplying labor, services and materials in the prosecution of the work provided for in this Agreement and any and all duly authorized modifications of said Agreement that may hereafter be made.
 - d. A drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991.
 - e. Costs claimed under this Agreement will not be claimed under another contract or grant from another agency.

ARTICLE VII

DESIGNATION OF REPRESENTATIVES

- 7.01 City hereby appoints the City of San Antonio Transportation and Capital Improvements Director or his/her designee (hereafter referred to as "City Project Manager") as its designated representative under this Agreement. City's Project Manager shall be the primary point of contact for City.

- 7.02 Port Authority hereby appoints the Chief Executive Officer or his/her designee, (hereafter referred to as “Port Authority Project Manager”), as its designated representative under this Agreement. Port Authority’s Project Manager shall be the primary point of contact for Port Authority.

ARTICLE VIII
RIGHTS UNDER THIRD PARTY CONTRACTS

- 8.01 Port Authority agrees that City shall have the authority to contract on behalf of the Parties for all services necessary for the construction of the Project.
- 8.02 Port Authority agrees that City shall not be obligated to any third parties (including any Contractor, Subcontractors, Consultants, Sub-Consultants or third party beneficiaries of Port Authority). Further, no liens may be imposed on any City property by Port Authority or by any of its agents, Contractors, Subcontractors, Consultants and/or Sub-Consultants for any purpose.
- 8.03 City shall make available to Port Authority a fully executed copy of each contract entered into by City for the Project. In all Project contracts entered into by City, in which Port Authority has a financial obligation, City shall include provisions reflecting:
- a. With regard to insurance coverage, City shall require all Consultants, Sub-Consultants, Contractors, Subcontractors and Suppliers to maintain the insurance coverage limits set out in the solicitation documents. A summary of Project costs and Project description also shall be required. Port Authority shall be named as an additional insured on all policies, naming City as an additional insured, and shall be entitled to make claims, to the extent of Port Authority’s interest in the Project, under all insurance coverage. Prior to the commencement of any work by any service provider, vendor, Consultant, Sub-Consultant, Contractor or Subcontractor under this Agreement, City shall provide Port Authority’s Project Manager with copies of the completed Certificates of Insurance which Certificates completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. Port Authority shall have no duty to pay for any services or work performed under this Agreement until the Certificates of Insurance, relating to the services or work for which payment is being requested, have been delivered to Port Authority’s Project Manager. Port Authority reserves the right to review the insurance requirements during the effective period of this Agreement, any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by Port Authority, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. City shall not allow any modifications whereupon Port Authority may incur increased risks.
 - b. City shall require all Contractors and service providers, including but not limited to all Sub-consultants and Subcontractors, to maintain statutory worker’s compensation insurance for all of their employees with a waiver of subrogation in favor of City and Port Authority.
 - c. City and Port Authority shall require in its contracts for services, construction and materials that the contracting parties, along with all Sub-Consultants and Subcontractors, be required to indemnify Port Authority and City and their respective officials, employees and agents for claims by third parties, as allowed by law.
 - d. City shall require all Consultants, Sub-Consultants, Contractors, and Subcontractors to

provide all statutorily required payment and performance bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, City shall determine whether to require performance bonds.

- e. City shall state in all agreements with third-parties that Port Authority is a third-party beneficiary to the agreement.

ARTICLE IX

PROJECT MANAGEMENT DURING CONSTRUCTION

- 9.01 City shall manage, oversee, administer and carry out all of the activities and services required for construction of the Project, to insure that this Project is constructed, equipped, furnished and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the design and construction documents. This includes solicitation of construction bids.
- 9.02 City shall enforce substantial compliance with the terms of the agreements with the Contractors and Subcontractors and require that work continuously and diligently be performed to achieve Substantial Completion on or before the scheduled completion date set out in the Project schedule.
- 9.03 Upon approval of this Agreement by the governing bodies of the Parties, the Parties' respective Directors, or designees, shall schedule a meeting to finalize the team structure and develop the procedures and processes necessary to coordinate design and construction in accordance with the standard business practices of those disciplines.
- 9.04 City's Project Manager shall provide written notice to Port Authority's Project Manager a minimum of ten (10) business days prior to the issuance of a Notice to Proceed for the start of construction on the Project. City Project Manager shall provide Port Authority's Project Manager with written notice a minimum of five (5) business days prior to any street or sidewalk closures.
- 9.05 For information purposes, City shall provide Port Authority's Project Manager, as and when available, the schedule for permitting and construction of the Project. Said schedule, when revised from time to time throughout the duration of the Project, shall be made available to Port Authority on City's project management system. The schedule(s) shall establish a date for Substantial Completion of each phase, in sufficient detail to allow Port Authority to monitor the progress of the construction of the Project, and a Substantial Completion date for the entire Project.
- 9.06 In addition to the requirements of Article XX herein, City promptly shall furnish Port Authority's Project Manager with copies of all legal notices received by City affecting the Project including, without limitation, notices from governmental authorities, notices from any party claiming default in any payment obligation and any other notice not of a routine nature. City promptly shall give notice under Article XX herein of any suit, proceeding or action that is initiated or threatened to be initiated in connection with the construction of the Project or against City and/or Port Authority in connection with construction of the Project.
- 9.07 For any environmental event that is caused by or at the direction of either City or Port Authority employees at the Project site, the party hiring the event-causing employee(s) shall be liable. An environmental event, as used herein, shall mean spills, discharge, leakage, pumpage, drainage, pourage, emission, emptying, injecting, dumping, disposing or other release of a contaminated or

hazardous material which may cause a threat or actual injury to human health or the environment.

- 9.08 City shall notify Port Authority in writing upon the Substantial Completion of construction, whereupon Port Authority may inspect the completed work to determine if construction has been completed in a satisfactory and workmanlike manner and substantially completed in accordance with the plans and specifications for such work.
- 9.09 Both City and Port Authority shall participate in a walk through at the point of claimed Substantial Completion of the Project to identify the punch list items. City shall supervise and coordinate the completion of punch list items and warranty work. Both Parties shall participate in a final walk through, to determine whether all punch list items have been resolved.
- 9.10 Within fifteen (15) business days of information availability, City shall:
- a. make available to Port Authority all permits, inspection reports and letters relating to Project completion.
 - b. submit "record" drawings to Port Authority, along with copies of all warranties and operations documents.
- 9.11 City shall maintain the books, records and documents pertaining to those portions of the Project for which City has participation. Port Authority representatives shall have access to and the right to examine same, upon reasonable notice to City's Project Manager. City's books, records and documents relating to the Project must be maintained separately from other City projects so that an examination by Port Authority representatives shall be limited to the documents for this Project.

ARTICLE X

RECORDS, REPORTING, AND COPYRIGHTS

- 10.01 Port Authority agrees to maintain in confidence all information pertaining to this Agreement or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data and other related information (collectively and individually referred to as "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Port Authority shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a court of competent jurisdiction, Port Authority shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement.
- 10.02 The Public Information Act, Government Code Section 552.021, requires City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Port Authority receives inquiries regarding documents within its possession pursuant to this Agreement, Port Authority shall, within twenty-four (24) hours of receiving the requests, forward such requests to City for disposition.

ARTICLE XI
INSURANCE AND INDEMNITY REQUIREMENTS

11.01 Port Authority and the City acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, § 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

11.02 No Joint Enterprise. There is no intention on the part of Port Authority or City to create or otherwise form a joint enterprise under or pursuant to this Agreement. Port Authority and City are undertaking a governmental function or service. Port Authority is engaging in creating a corridor through the Port San Antonio in an effort to connect Highway 90 to IH35, extending 36th Street through the Port San Antonio from Billy Mitchell to General Hudnell Dr. The purpose of this Agreement is to further the public good, not gain a profit.

11.03 City covenants and agrees to have each of its Contractors and Subcontractors FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, volunteers and representatives of the CITY) and the Port Authority (and the officials, employees, officers, directors, volunteers and representatives of the Port Authority), 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, including but not limited to, personal or" bodily Injury, death and property damage, made upon the CITY and/or Port Authority directly or indirectly arising out of, resulting from or related to City's Contractor's or Subcontractor's activities under this Agreement.

11.04 The indemnity provided in the forgoing paragraph shall not apply to any liability resulting from the sole negligence of City (and the elected officials, employees, officers; directors, volunteers and representatives of City) or the Port Authority (and the officials, employees, officers, directors, Volunteers and representatives of the Port Authority), in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

11.05 IN THE EVENT CITY'S CONTRACTOR OR SUBCONTRACTOR AND CITY AND/OR THE PORT AUTHORITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY AND/OR THE PORT AUTHORITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

11.06 The Port Authority shall advise the CITY in writing within 24 hours of any claim or demand against City, or Port Authority known to Port Authority related to or arising out of activities under this Agreement. City and the Port Authority shall have the right, at their option and at their own expense, to participate in such defense.

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.

ARTICLE XII

DEFAULT

- 12.01 In the event of a material breach of this Agreement, the non-breaching party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching party by the end of the thirty (30) day period, the non-breaching party may give written notice of termination of this Agreement to the breaching party and seek to recover damages not to exceed the amount paid by the non-breaching party for the Project.

ARTICLE XIII

TERMINATION FOR CONVENIENCE

- 13.01 Whenever City, in its sole discretion, deems it to be in its best interest, it may terminate this Agreement for convenience. Such termination shall be effective thirty (30) days after written notice of termination for convenience is delivered to Port Authority. If the Agreement is terminated prior to completion of the Construction of the Project, Port Authority shall make payment for any unpaid obligations determined to be Port Authority's responsibility. The Parties shall have no additional liability to one another for termination under this Article XI.

ARTICLE XIV

PRIOR AGREEMENTS SUPERSEDED

- 14.01 This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE XV

ASSIGNMENT OR TRANSFER OF INTEREST

- 15.01 Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other party. Any attempt to assign without such approval shall be void.

ARTICLE XVI

LEGAL CONSTRUCTION

- 16.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XVII
COMPLIANCE WITH LAWS AND ORDINANCES

- 17.01 Both Parties shall comply with all federal, state and local laws and ordinances in connection with the work and services performed under this Agreement.

ARTICLE XVIII
TEXAS LAW TO APPLY

- 18.01 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.

ARTICLE XIX
AMENDMENT

- 19.01 No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and be duly executed by the Parties hereto.

ARTICLE XX
NOTICES

- 20.01 All notices required to be given under this Agreement shall be in writing and either shall be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith, unless a provision of this Agreement designates another party and provides a different address. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to Port Authority: John Farrow, Senior Project Manager
Port Authority of San Antonio
907 Billy Mitchell Blvd.
San Antonio, TX 78226-1802

If to City: David McBeth, Project Manager
Transportation and Capital Improvements
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

ARTICLE XXI
FORCE MAJEURE

- 21.01 Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control, including acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Article XXI, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XXII
MULTIPLE COUNTERPARTS

- 22.01 This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

ARTICLE XXIII
CITY-SUPPORTPORT AUTHORITYED PROJECTS

- 23.01 Port Authority shall publicly acknowledge that this Project is supported by City as directed by the Managing City Department.

ARTICLE XXIV
ASSIGNMENT

- 24.01 Port Authority shall not assign or transfer Port Authority's interest in this Agreement or any portion thereof without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or otherwise assign shall be void and shall confer no rights upon any third person or party.

ARTICLE XXV
PORT AUTHORITY SIGNATORY

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

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS _____ DAY OF _____, 20____.

CITY OF SAN ANTONIO

By: _____
SHERYL SCULLEY
City Manager

Date: _____

ATTEST:

LETICIA VACEK
City Clerk

APPROVED AS TO FORM:

MICHAEL BERNARD
City Attorney

PORT AUTHORITY OF SAN ANTONIO

By: _____
BRUCE MILLER
President & CEO

Date: _____

ATTACHMENT A

36th STREET PHASE IIB (Billy Mitchell to General Hudnell Dr) 40-00287, CSJ 0915-12-496 **Estimate of Project Budget Breakdown**

Design	by Port Authority
Environmental	by Port Authority
Advertising	\$1,000.00
Construction Administration, CEC	\$150,000.00
City Project Management	\$640,000.00
Construction	\$6,210,000.00
Material Testing	\$124,200.00
Contingency	\$620,408.80
Total Budget	\$7,745,608.80