

**INTERLOCAL AGREEMENT
BETWEEN
CITY OF SAN ANTONIO
AND
PORT AUTHORITY OF SAN ANTONIO**

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as, the "CITY"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Port Authority of San Antonio (formerly known as Greater Kelly Development Authority) (hereinafter referred to as "PORT AUTHORITY"), a defense base development authority and political subdivision of the State of Texas, established by the CITY of San Antonio pursuant to Chapter 379B of the Texas Local Government Code acting by and through its Board of Directors, and duly authorized Chief Executive Officer. PORT AUTHORITY and the CITY desire to enter into this Interlocal Agreement pursuant to Ch. 791, Texas Government Code.

RECITALS

A. PORT AUTHORITY is organized for the purpose of formulating, adopting and implementing objectives associated with the conversion and redevelopment of the property formerly known as Kelly Air Force Base. The purpose of the conversion and redevelopment is to promote and encourage new businesses to locate and to increase local employment opportunities as well as developing the facility as a multi-use, commercial, industrial and technology center known as "Port San Antonio."

B. The area formerly known as Kelly Air Force Base ("KAFB") was annexed by the CITY on December 31, 1996 by Ordinance No. 85092 and the United States Government has conveyed fee simple title ownership of Port San Antonio to PORT AUTHORITY.

C. The CITY and PORT AUTHORITY executed a Memorandum of Understanding (MOU) in 1999 that was approved by City Council by Ordinance 90549, which addressed platting and zoning issues between the two entities and that both Parties have complied with the terms of the MOU.

E. During the tenure of Kelly Air Force Base, the CITY's building code requirements did not apply to buildings and other structures under the previous ownership, control, administration or jurisdiction of the United States Government and its military departments. It is the acknowledged intent of PORT AUTHORITY, through its redevelopment efforts to voluntarily and gradually upgrade buildings, structures, facilities infrastructure and land uses at Port San Antonio, toward meeting applicable CITY and national code standards. This effort will be accomplished through a combination of publicly and privately financed construction renovations, upgrades, capital improvements and PORT AUTHORITY tenant "build-outs," generally accomplished where existing physical configurations and constraints allow in accordance with CITY ordinances, codes and national code standards.

A G R E E M E N T

Therefore, PORT AUTHORITY and the CITY agree as follows:

1. PORT AUTHORITY intends to retain ownership of the majority of the land that will be redeveloped at Port San Antonio. As a result of this ownership, PORT AUTHORITY will comply with current CITY procedures in platting and amending its zoning designation. PORT AUTHORITY'S zoning for the property at Port San Antonio was approved by the City Council on January 12, 2006, Zoning Case No. Z2005273, Ordinance No. 2005-01-12-62. Any deviation from the approved zoning plan will be submitted to the City as a request for re-zoning.

2. PORT AUTHORITY shall require all new occupancies to construct and renovate buildings, structures, facilities and infrastructure to meet or exceed applicable CITY code standards, which are in effective at the time of construction.

3. PORT AUTHORITY and its tenants located at Port San Antonio will not be required to obtain permits, inspections or certificates of occupancy for new building or renovations utilizing the CITY's process. PORT AUTHORITY must however, certify that new construction or renovations comply with all provisions of the CITY's technical codes in effect at the time of the permitting. PORT AUTHORITY will provide the CITY with copies of detailed plans for new construction or renovation projects upon request by the CITY. PORT AUTHORITY will conduct and be responsible for all plan reviews and inspections not identified in paragraph four. PORT AUTHORITY will insure that the Architect/Engineer (A/E), Contractor and all design and construction or renovation, complies with all provisions of the CITY's technical codes.

PORT AUTHORITY will select a qualified Building Official to oversee the permitting and inspection program. The Building Official selected by PORT AUTHORITY must possess the qualifications and experience necessary to perform the duties and responsibilities as outlined by the current edition of the International Building Code. PORT AUTHORITY will notify the CITY as to the Building Official selected and will provide the CITY a copy of the Building Official's qualifications.

4. The CITY will continue to conduct plan reviews and inspections for Zoning, Historic, Drainage/Stormwater, Health, and conduct Fire inspections under applicable CITY Code provisions. PORT AUTHORITY agrees to establish a notification process to indicate when such plan review and inspections are required. The CITY agrees to conduct such inspections in accordance with the City Code of San Antonio, Texas. PORT AUTHORITY will pay fees for these plan reviews and inspections as required by the City Code. (See **APPENDIX A**, PORT AUTHORITY and COSA Plan Review & Inspection Notification/Timeframe).

5. PORT AUTHORITY will make all buildings, structures, facilities, infrastructure and land uses available for inspection by CITY. The CITY will conduct routine inspections during normal business hours. PORT AUTHORITY agrees to periodic inspections and review of plans by CITY staff to ensure compliance with applicable codes. Any non-compliance issues

found by the CITY will be communicated to PORT AUTHORITY and addressed by PORT AUTHORITY within a reasonable time period. The CITY will notify PORT AUTHORITY in writing of issues not resolved to the CITY'S satisfaction and PORT AUTHORITY shall comply with City standards.

PORT AUTHORITY agrees to abide by CITY'S demolition ordinance and review and issuing permits for demolition of buildings.

6. The streets located on PORT AUTHORITY'S property are private streets that are maintained by PORT AUTHORITY. Many of the existing streets do not meet the CITY's street standards. Any new construction or existing street upgrades by PORT AUTHORITY will be constructed in accordance with the CITY'S street standards. Streets located on PORT AUTHORITY property will be dedicated to the CITY through the platting process. Plans and specifications for all street infrastructure to be dedicated to the CITY will be reviewed by the Transportation and Capital Improvements Department (TCI) and will be inspected by the CITY during construction. The CITY will only accept streets approved by the TCI Department. Any streets not meeting the current standards will need to be improved before the CITY will accept them as public streets.

7. PORT AUTHORITY and the CITY acknowledge 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. This agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement will be in Bexar County, Texas. This Agreement is made and is to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

8. NO JOINT ENTERPRISE – There is no intention on the part of the Parties hereto to create or otherwise form a joint enterprise under or pursuant to this Agreement. The Parties to this Agreement are undertaking a governmental function or service pursuant to the Texas Local Government Code §§ 379B.003 and 379B.004. The Parties to this Agreement do not have a pecuniary purpose. The purpose of this Agreement is to further the public welfare by carrying out a base efficiency project. The Parties do not have an equal right of control. PORT AUTHORITY has a superior right to control the direction and management of the enterprise solely for liability purpose under the Agreement and/or solely by virtue of its responsibility for the day-to-day management and control of the premises.

9. **PORT AUTHORITY covenants and agrees to the extent allowed by law to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 PORT AUTHORITY'S activities under this AGREEMENT, including any**

acts or omissions of PORT AUTHORITY activities under this AGREEMENT, including any acts or omissions of PORT AUTHORITY'S agent, officer, director, representative, employee, consultant or subcontractor of PORT AUTHORITY, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph will not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence is the sole cause of personal injury, death, or property damage. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH WILL APPLY TO ANY LIABILITY ATTRIBUTABLE TO CITY BASED ON A JOINT ENTERPRISE LIABILITY THEORY OF RECOVERY. IN THE EVENT PORT AUTHORITY AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, ON A BASIS OTHER THAN JOINT ENTERPRISE LIABILITY, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY OR PORT AUTHORITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSE OF THE PARTIES UNDER TEXAS LAW.

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.

PORT AUTHORITY will advise the CITY in writing within 24 hours of any claim or demand against the CITY or PORT AUTHORITY known to PORT AUTHORITY related to or arising out of contractor's activities under this Agreement.

10. This Agreement will commence on the date of execution by the CITY and continue for an initial term of four (4) years. The CITY and PORT AUTHORITY, upon mutual agreement, may renew this Agreement, on the same terms and conditions, for up to two (2) additional successive three (3) year terms. On behalf of the CITY, the City Manager or the City Manager's designee is authorized to affect the renewals without further action on the part of the San Antonio City Council, and on behalf of PORT AUTHORITY, the President is authorized to affect the renewals without further action on the part of its Board of Directors. All renewals will be in writing and signed by either the City Manager or the City Manager's designee, and the President of PORT AUTHORITY.

Should PORT AUTHORITY desire to exercise this option to renew and extend the Agreement, it will provide CITY written notification 90 days prior to the expiration of the current term, advising CITY of PORT AUTHORITY'S intent to renew and extend the Agreement. Should the CITY desire not to renew the agreement, CITY must provide PORT AUTHORITY written notification 60 days prior to the expiration of the current term, advising PORT AUTHORITY of CITY'S intent not to renew this Agreement.

Should the CITY desire to terminate the agreement for convenience, prior to the expiration of the current term, or any renewal term of the agreement, CITY must provide 45 days notice to PORT AUTHORITY. CITY may terminate for cause for a material breach effective

immediately upon receipt of notification to PORT AUTHORITY. The City Manager will have authority to effect said termination for cause or convenience without further action by the City Council.

11. In case any one or more of the provisions hereof should be held to be illegal, invalid or unenforceable in any respect, the Parties agree to make a good faith effort to negotiate another agreement to fulfill the purpose and intent of the present Agreement. In addition, if any provisions hereof should be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability will not effect any other provision of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been included in this Agreement.

12. This Agreement constitutes the entire agreement and supersedes any prior understandings written or oral agreements between the Parties with respect to the subject matter of this Agreement. No amendment, modification or alteration of the terms of the Agreement will be binding on any Party unless the same is in writing, dated subsequent to the date hereof, and is duly executed by the Party against whom enforcement is sought.

13. Each person signing this Agreement confirms that any requisite approvals from the governing body of such Party have been obtained, and all prerequisites to the execution, delivery and performance have been obtained by or on behalf of that governmental entity.

PORT AUTHORITY and CITY have adopted this graduated development monitoring approach in recognition of developing a base efficiency project at Port San Antonio, realization of existing property conditions, the limited public and private financial resources available to gradually improve the current property conditions at Port San Antonio and the significant, primary, mutual goal of preserving and creating employment opportunities in PORT AUTHORITY'S economic redevelopment area, while protecting the health, safety and general welfare of both PORT AUTHORITY tenants and surrounding CITY residents.

EXECUTED this the _____ day of _____, 2017.

CITY OF SAN ANTONIO

PORT AUTHORITY OF SAN ANTONIO

Sheryl Sculley
City Manager

Roland Mower
President & CEO
Port Authority of San Antonio

ATTEST:

Name: _____
City Clerk

APPROVED AS TO FORM:

Andrew Segovia
City Attorney

DRAFT

APPENDIX A
PORT AUTHORITY AND COSA PLAN REVIEW AND INSPECTION
NOTIFICATION/TIMEFRAME

This **APPENDIX A** seeks to establish and maintain a working relationship between the City of San Antonio's Development Services Department, Transportation and Capital Improvements Department, the Metropolitan Health District, the Fire Department and the Port Authority of San Antonio.

Each City Department, which currently includes, Transportation and Capital Improvements, Office of Historic Preservation, Metropolitan Health District, and the Fire Department will provide a single point of contact ("POC") to represent and facilitate their department's plan review and/or inspections process with respect to this Agreement. Port Authority's POC will be the Permit Manager.

PLAN REVIEW

Port Authority will deliver drawings and specifications to (POC) for Development Services. Development Services will create the appropriate permits in Hansen, assess fees, and ensure delivery of plans to the appropriate City Department. Upon receipt, the POC will forward the submittal to reviewers. Whether conducting the initial review or subsequent re-submittals, the review period, from the time the submittal package is received to the time comments are issued will be within 10 calendar days. All comments communications will be forwarded Port Authority's Permit Manager. Disbursement of agreed upon fees, for services rendered, will be as directed by each department.

INSPECTIONS

Port Authority will contact all appropriate departments when their inspection services are required. Port Authority's Permit Manager will contact the Development Services POC to initiate the interface process. Whether conducting initial inspections or subsequent re-inspections, the time a request is made to the time an inspector is on site will be no later than 24 hours or by the end of the next business day or by an established appointment. All comments and communications, regarding inspections, will be forwarded to Port Authority's Permit Manager. Disbursement of agreed upon fees, for services rendered, will be as established by each department.