

**CITY OF SAN ANTONIO
COMMUNITY INITIATIVES DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager

FROM: Dennis J. Campa, Director, Department of Community Initiatives

SUBJECT: Legally Binding Agreement Regarding Homeless Assistance with the Port Authority of San Antonio relinquishing property at the former Kelly Air Force Base

DATE: April 6, 2006

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a Legally Binding Agreement (LBA) between the City of San Antonio and the Port Authority of San Antonio [formerly Greater Kelly Development Authority (GKDA) and Greater Kelly Development Corporation (GKDC)] that relinquishes the City's rights and obligations to property at the former Kelly Air Force Base (AFB).

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Subsequent to the 1995 base closure of KellyAFB, a redevelopment plan and homeless assistance application was submitted for KellyUSA by GKDC, the Local Redevelopment Authority, to the United States Department of Housing and Urban Development. The plan described the City's interest to act as a homeless assistance representative for distribution of property that included Bay A of Building 3060 and associated land; 12 units of military family housing named the Calgary Apartments; a portion of Calgary Avenue; a strip of land adjacent to Calgary Avenue; and various items of personal property.

The LBA required by the Base Realignment and Closure Act of 1990, as amended, sets forth the terms and conditions by which the Port Authority of San Antonio through the City has provided assistance to the Representatives of the Homeless (ROHs) in San Antonio, as indicated in the amended Port Authority's Master Plan for the Reuse and Redevelopment of Kelly.

The LBA states that the surplus personal property has been distributed to ROHs by GKDA on the City's behalf, pursuant to the requests of the ROHs to provide homeless assistance and to meet gaps in the Continuum of Care. On December 9, 2003, the City of San Antonio completed the conveyance of agreed upon surplus government personal property, available as a result of the closure of KellyAFB.

The LBA further outlines the Department of Community Initiatives' (DCI's) recommendation to not accept title of the Calgary Apartments because of potential environmental remediation issues and the significant cost for renovations to the buildings. DCI also recommends that the City not acquire the portion of Calgary Avenue and the associated strip of land in front of Calgary Apartments through the LBA.

The recommended LBA also states the City has no interest in the acquisition of Building 3060 and associated land. On December 15, 2005, City Council passed ordinance #101857 that authorized

the execution of a letter of consent from the Port Authority of San Antonio, which stated that the City of San Antonio has no objections to the demolition of KellyUSA warehouse building 3060. There were several factors that were evaluated in making the City's decision, including environmental issues associated with contaminated groundwater beneath the warehouse.

POLICY ANALYSIS

Ordinance No. 85793 (1997) and Ordinance No. 87310 (1998) authorized the City to execute a Legally Binding Agreement with GKDC to receive leasehold possession of Bay A of Building 3060; to accept fee simple title conveyance from the United States Air Force of the Calgary Apartments; and to receive surplus personal property for homeless assistance purposes from the USAF in accordance with an USAF Record of Decision (ROD) issued in 1997. Due to ensuing and lengthy litigation concerning the GKDA Homeless Assistance Plan, the 1997 LBA was never executed and the City did not take possession of any portion of Building 3060 and the Calgary Apartments. Approval of this ordinance absolves the City of all rights and obligations to property at KellyUSA.

FISCAL IMPACT

This ordinance requires no General Fund commitment.

COORDINATION

Coordination has occurred with the Port Authority of San Antonio, the United States Air Force Real Property Agency, the City Attorney's Office, the Department of Environmental Services and the Department of Neighborhood Action.

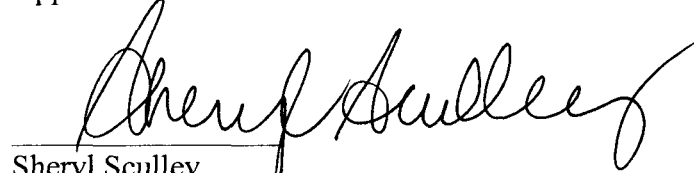
SUPPLEMENTARY COMMENTS

Provisions of the City's Ethics Ordinance do not apply.


Dennis J. Campa, Director
Department of Community Initiatives


Frances A. Gonzalez
Assistant City Manager

Approved for Council Consideration:


Sheryl Sculley
City Manager

**LEGALLY BINDING AGREEMENT
REGARDING HOMELESS ASSISTANCE
AT FORMER KELLY AIR FORCE BASE, TEXAS**

This Legally Binding Agreement Regarding Homeless Assistance ("LBA") at former Kelly Air Force Base, Texas ("Kelly") is by and between Port Authority of San Antonio ("Port Authority"), a Texas defense base development authority, and the City of San Antonio ("COSA"), a Texas home-rule municipal corporation acting by and through its City Manager, pursuant to Ordinance No. _____ dated _____. Port Authority and COSA may also be referred to as a Party or Parties.

**I
PURPOSE**

The purpose of this LBA is to set forth the terms and conditions by which Port Authority, through COSA, has provided assistance to the Representatives of the Homeless ("ROH") in San Antonio as contemplated in Port Authority's Master Plan for the Reuse and Redevelopment of Kelly, as amended ("Master Plan").

The Master Plan was submitted by Greater Kelly Development Corporation ("GKDC"), acting as the duly authorized Local Redevelopment Authority ("LRA") to the Department of Housing and Urban Development ("HUD"), required by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the "Act"), as implemented through 24 CFR Part 586, published July 11, 1997 ("the final Federal rule"), and includes the GKDC's Homeless Assistance Submission, as amended.

**II
PARTIES**

A. PORT AUTHORITY. Port Authority, formerly known as Greater Kelly Development Authority ("GKDA"), successor in interest to Greater Kelly Development Corporation ("GKDC"), is a Texas defense base development authority, a political subdivision of the State of Texas created under the provisions of Chapter 379B, Subtitle A, Title 12 of the Local Government Code of Texas on November 4, 1999, by the City Council of the City of San Antonio, Texas pursuant to City Ordinance No. 90826, to act as the duly authorized and designated LRA as provided under the Act. Port Authority is recognized by the Secretary of the Department of Defense, through the Office of Economic Adjustment, as the LRA responsible for the redevelopment of the non-realigned portion of Kelly and submittal of the Master Plan.

B. COSA. COSA is a home-rule municipal corporation, which, through its Department of Community Initiatives ("DCI"), provides and coordinates the activities of other local agencies in providing housing and services to homeless persons in the City of San Antonio and Bexar County, Texas. COSA facilitates San Antonio's Continuum of Care ("Continuum of Care"), a group of organizations providing services for homeless persons, and develops an annual Consolidated Plan that identifies the needs of the homeless and gaps in the local provision of

services to the homeless. Port Authority has designated COSA the sole Representative of the Homeless ("ROH") for purposes of receiving, distributing, and allocating federal surplus real and personal property located at Kelly for the benefit of the homeless.

III RECITALS

A. Kelly was designated for closure and realignment in June 1995 and was officially closed on July 13, 2001.

1. The United States Air Force by and through its Secretary of the Air Force ("USAF") issued its surplus property determination March 28, 1996, which made certain real and personal property on Kelly available to the community for reuse, including Bay A of Building 3060 and the associated land, 12 units of military family housing in Billy Mitchell Village, Kelly known as Buildings 1940, 1941, 1942, and 1944 ("Calgary Apartments"), a portion of Calgary Avenue and a strip of land adjacent to Calgary Avenue and various items of personal property. This real property with improvements thereon were designated as Parcel C and Parcel D, respectively, in the USAF ROD.
2. The Act, as implemented by the final Federal rule, requires the LRA to develop a local redevelopment plan that reflects considerations of multiple interests and strikes a balance between economic redevelopment, other types of development, and homeless assistance.
3. GKDC, as the LRA responsible for developing a local redevelopment plan outlining planned uses for personal and real property, completed its Master Plan in March 1997.

B. In developing its Master Plan, GKDC, seeking means of utilizing eligible surplus property to benefit the homeless, conducted property screening and implemented a community outreach process that included the publication of a Notice and Availability of Property ("NOA") and solicited Notices of Interest ("NOIs") from ROHs.

1. In September 1996, in response to its outreach efforts, GKDC received NOIs from nine organizations interested in federal surplus property to assist the homeless and disadvantaged in the community. COSA was one of nine organizations that submitted an NOI on behalf of the homeless, and used the Continuum of Care analysis and Consolidated Plan to identify the needs of and gaps in the provision of services to the homeless. COSA, in its NOI, identified certain surplus properties as suitable for uses requested by ROHs for homeless assistance purposes. These were the Calgary Apartments, Bay A of Building 3060 (40,000 square feet) located on former East Kelly, and various items of surplus personal property.
2. COSA, which addresses the needs of the homeless in San Antonio, Texas, also requested designation in its NOI, as the entity responsible for distributing USAF surplus property to the ROHs with approved NOIs.

3. GKDC appointed a Citizens Advisory Panel that approved four of the nine NOIs submitted by ROHs, including COSA's, and advised that its recommendations for individual ROHs be carried out using a single LBA with COSA, through a consolidated umbrella approach.
 4. GKDC designated COSA as the ROH to act on behalf of the Continuum of Care, and included such designation in the Homeless Assistance exhibit to the Master Plan. In such capacity, COSA could redistribute the surplus real and personal property identified by USAF to ROHs and other interested not-for-profit, public service and humanitarian organizations for the purpose of providing services to homeless individuals and families, and to implement homeless programs that fill gaps in the existing local Continuum of Care.
 5. GKDC submitted its Master Plan and Homeless Assistance Submission to HUD and the USAF in March 1997. The Master Plan included an appendix relating to Homeless Assistance that was amended in December 1998, resubmitted to HUD, and approved by HUD in April of 2001. Although the GKDC Homeless Assistance Submission was challenged in Federal court by a local ROH, this litigation is now completed and all appeals exhausted as of August 2005.
- C. In July 1997, the USAF issued its Disposal Record of Decision, ("ROD") detailing distribution of surplus Kelly real and personal property. The ROD authorized the conveyance to COSA of fee simple title to the Calgary Apartments, for use by representatives of the homeless, along with a portion of Calgary Avenue, one bay of Building 3060 and the associated land, and certain surplus personal property for redistribution to ROHs and other not-for-profit, public service, and humanitarian organizations deemed by COSA to be primarily addressing the needs of the homeless in San Antonio.
- D. As a part of the NOI process, 20,000 square feet of Building 3060 was set aside for the benefit of the Veterans Enterprises of Texas and/or the American GI Forum/National Veterans Outreach Program ("NVOP"). These organizations no longer have a need for this property and therefore Port Authority will not be required to lease the 20,000 square feet to NVOP to meet the terms of NVOP's NOI. In addition, as a part of the NOI process, 7,000 square feet of Building 3060 was set aside for the benefit of the transitional housing program of San Antonio Metropolitan Ministry ("SAMM"). SAMM no longer has a need for the space and, therefore, Port Authority will not be required to lease the 7,000 square feet to SAMM to meet the terms of SAMM's NOI.
- E. Since 1998, COSA has endeavored to find a use by ROHs for the Calgary Apartments and Bay A of Building 3060. Due to the lack of proximity to the downtown area, the condition of said properties, and other factors, COSA has determined that use of this property by ROHs is no longer feasible, desirable or practicable. In the interim, however, COSA has facilitated the distribution of certain surplus personal property on Kelly from Port Authority to various ROHs as stated below.

IV AGREEMENT

Based on the foregoing recitals, the Parties hereto enter into the following Legally Binding Agreement:

A. BINDING EFFECT. The terms and conditions contained herein are intended to be binding on the parties hereto, and are in compliance with: 1) the Amended Homeless Assistance Submission and the Master Plan submitted to and approved by HUD in April 2001; 2) the Act; and 3) the final Federal rule.

B. TERMS AND CONDITIONS. The following terms and conditions constitute the final agreement by which COSA and Port Authority have endeavored to satisfy the homeless assistance requirements of the Act and final Federal rule at Kelly:

1. Surplus Real Property.

a. Calgary Apartments:

COSA no longer desires use of the Calgary Apartments for the reasons set forth in section III E. of this agreement, which includes 12 multi-family units and other improvements on the property, as shown on the survey map which is attached hereto and incorporated herein for all purposes as **Appendix "A."** The metes and bounds survey and survey map of this property will be provided by Port Authority. Port Authority agrees to request USAF to amend the ROD to otherwise dispose of the property. COSA has no objection to Port Authority requesting the USAF to lease or convey said property to Port Authority or a third party.

b. Calgary Avenue/Strip:

COSA no longer desires use of a portion of Calgary Avenue and a strip of land adjacent to Calgary Avenue. ("Calgary Avenue"), which is shown on **Appendix "A."** Port Authority agrees to request USAF to amend the ROD to otherwise dispose of the property. COSA has no objection to Port Authority requesting the USAF to lease or convey said property to Port Authority or a third party.

c. Bay A of Building 3060 and associated land:

COSA no longer desires use of Bay A of Building 3060 and associated land. Port Authority agrees to request USAF to amend the ROD and convey the property directly to Port Authority. COSA has no objection to Port Authority requesting

the USAF to lease or convey said property to Port Authority. The location of Bay A of Building 3060 and associated land is shown on **Appendix "B."**

2. Surplus Personal Property. The USAF ROD authorized the conveyance of certain surplus personal property to ROH's. The personal property authorized for homeless assistance purposes is identified in **Appendix "C."** This personal property has been distributed to ROH's by Port Authority on COSA's behalf pursuant to the requests of the ROH's to provide homeless assistance and to meet gaps in the Continuum of Care and the requirements of the Amended Homeless Assistance Submission to HUD. Personal property requested by and transferred to NVOP is outlined on **Appendix "D"** attached. Personal property requested by and transferred to Baptist Child and Family Services ("BCFS") is outlined on **Appendix "E"** attached. Personal property requested by and transferred to SAMM is outlined on **Appendix "F"** attached. COSA and Port Authority agree that the requirement of the USAF ROD relating to surplus personal property has been fully complied with.

3. Environmental Liability/Environmental Due Diligence. COSA has done its due diligence in evaluating the need and feasibility of accepting conveyance of the real property, subject of this LBA, and has declined to accept such conveyance from USAF. Having declined conveyance of all real property, subject of this LBA, and notwithstanding any other provision in this agreement, COSA hereby declares that it has no interest in the real property subject of this LBA. Port Authority and COSA agree that COSA has no liability or responsibility for environmental impacts and damage that may have been caused by the USAF's use of toxic or hazardous waste, substances, or regulated materials on any portion of the real property subject of this LBA. Port Authority and COSA further agree that COSA has no obligation under this LBA to undertake the defense of any claim or action, whether in existence now or brought in the future, solely or apparently arising out of the generation, use of, or release of any toxic or hazardous wastes, deleterious substances, or regulated materials on or from any part of the subject properties, under any instrument entered into between Port Authority and any party. Finally, Port Authority and COSA agree that COSA has no obligation under this LBA to undertake environmental response, remediation, or cleanup relating to such generation, use, or release.

C. ACCOMMODATION OF REPRESENTATIVES OF HOMELESS. Port Authority and COSA acknowledge that the Calgary Apartments, a portion of Calgary Avenue, a small strip of land adjacent to Calgary Avenue and Bay A of Building 3060 and the associated land will be dealt with as otherwise described in this LBA and that all personal property requested for use by ROHs has been distributed by Port Authority through COSA in compliance with the ROD and other applicable requirements.

D. CURE DEFICIENCIES. If any court or administrative tribunal determines that this LBA is improper or otherwise does not comply with any statute, rule or regulation, then the parties will seek to reasonably cure any deficiency. If the deficiency cannot be cured or the improper provisions amended to comply with the relevant statute, rule or regulation, then this LBA will be deemed, and is, null and void and unenforceable by either party. In such case, the parties will reconvene a Homeless Negotiating Team for the purpose set forth in the federal law and guidelines.

E. ENFORCEMENT AND VENUE. This LBA will be enforceable pursuant to the laws of the State of Texas and venue shall lie in Bexar County, Texas. Prior to the filing of an action, the party alleging that a breach of this LBA has occurred will demand in writing that the breaching party cure the alleged breach. Upon the alleged breaching party's written notice of its failure or inability to cure, or 60 days after the written demand is made, whichever is earlier, then the complaining party may file a legal or equitable action. Nothing in this LBA waives any sovereign immunity to which COSA and/or Port Authority would otherwise be entitled.

F. ASSIGNMENT. Neither COSA nor GKDA may assign this LBA without the prior written consent of the other party.

G. SUCCESSORS AND ASSIGNS. This LBA inures to the benefit of and is binding on the successors and permitted assigns of each party to this LBA. This clause does not authorize any assignment not otherwise authorized.

IN WITNESS WHEREOF, the Parties hereto have executed this Legally Binding Agreement for the purposes herein expressed, the dates and year written below.

City of San Antonio

Port Authority of San Antonio

By: _____
City Manager or City Manager's Designee
City of San Antonio, Texas

By: _____
Bruce E. Miller, CEO
Port Authority of San Antonio

Printed Name: _____

Date: _____

Date: _____