

RESOLUTION NO. 23-R-91

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUTUAL AID AGREEMENT WITH JOINT BASE SAN ANTONIO

WHEREAS, each of the Parties hereto maintains equipment and personnel for the suppression of fires and the management of other emergency incidents occurring within areas under their respective jurisdictions; and

WHEREAS, as set forth in 42 U.S.C. § 1856 the term ‘fire protection’ includes personal services and equipment required for fire prevention, the protection of life and property from fire, firefighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue incidents involving vehicular and water mishaps, and trench, building, and confined space extractions; and

WHEREAS, the Parties hereto desire to augment the fire protection capabilities available in their respective jurisdictions by entering into this Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City council hereby authorizes the city manager to enter into a mutual aid agreement with Joint Base San Antonio as attached in exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____, 2023.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit A

**SCHERTZ FIRE DEPARTMENT
MUTUAL AID IN FIRE EMERGENCY
SERVICES (US)**

SCHERTZ FIRE DEPARTMENT
MUTUAL AID IN FIRE EMERGENCY
SERVICES (US)

This Agreement will become effective on the date of the last signature to the Agreement and will remain in effect for five years. This Mutual Aid Agreement (the "Agreement") is made and entered between the Secretary of the Air Force (the "Air Force") acting by and through the Commander, Joint Base San Antonio and 502d Air Base Wing (JBSA - 502 ABW), pursuant to the authority of 42 U.S.C. § 1856a and the Fire Department of Schertz the "*Schertz Fire Department*". Together the Air Force and the *Schertz Fire Department* are hereinafter referred to as the "Parties".

WITNESSETH:

WHEREAS, each of the Parties hereto maintains equipment and personnel for the suppression of fires and the management of other emergency incidents occurring within areas under their respective jurisdictions; and

WHEREAS, as set forth in 42 U.S.C. § 1856 the term 'fire protection' includes personal services and equipment required for fire prevention, the protection of life and property from fire, firefighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue incidents involving vehicular and water mishaps, and trench, building, and confined space extractions; and

WHEREAS, the Parties hereto desire to augment the fire protection capabilities available in their respective jurisdictions by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements herein established, the Parties hereby agree as follows:

- a. The authority to enter into this Agreement is set forth in 42 U.S.C. § 1856a, and Title 15 United States Code Section 2210, the regulations implementing same at Title 44 Code of Federal Regulations Part 151 Emergency Management and Assistance and AFI 32-2001, Fire and Emergency Services Program.
- b. This Agreement will serve as the agreement between the Parties for securing to each mutual aid in fire protection services as defined above.
- c. On request to a representative of the JBSA - 502 ABW fire department by a representative of the *Schertz Fire Department*, fire protection equipment and personnel of the JBSA - 502 ABW fire department will be dispatched to any point within the area for which the *Schertz Fire Department* normally provides fire

protection services as designated by the representatives of the *Schertz Fire Department*.

d. On request to a representative of the *Schertz Fire Department* by a representative of the JBSA - 502 ABW fire department, fire protection equipment and personnel of the *Schertz Fire Department* will be dispatched to any point within the jurisdiction of the JBSA - 502 ABW as designated by the representative of the JBSA - 502 ABW fire department.

e. Any dispatch of equipment and personnel by the Parties pursuant to this Agreement is subject to the following conditions:

- (1) Any request for aid hereunder will include a statement of the amount and type of equipment and personnel requested and will specify the location to which the equipment and personnel are to be dispatched, but the amount and type of equipment and the number of personnel to be furnished will be determined by the responding organization. The requesting organization will ensure access to site for the responding organization.
- (2) The responding organization will report to the officer in charge of the requesting organization at the location to which the equipment is dispatched and will be subject to the orders of that official.
- (3) The responding organization will be released by the requesting organization when the services of the responding organization are no longer required or when the responding organization is needed within the area for which it normally provides fire protection.
- (4) Sharing of non-encrypted Radio Frequencies/INTEROPERABILITY capability between agencies specifically during Mutual Aids for accountability of personnel and assets, including sharing of valuable information between Incident Command and firefighters.
- (5) HAZMAT incident response will include the response to, and control and containment of any release or suspected release of any material suspected to be or known to be hazardous. Where the properties of a released material are not known, it will be considered hazardous until proven otherwise by the requesting organization using all technical resources available. Cleanup and removal of contained HAZMAT will be the responsibility of the requesting organization.
- (6) In the event of a crash of an aircraft owned or operated by the United States or military aircraft of any foreign nation within the area for which the *Schertz Fire Department* normally provides fire protection services, the chief of the JBSA - 502 ABW fire department or his or her representative may assume full command on arrival at the scene of the crash.
- (7) Regardless of local agencies assigning an incident safety officer, an Air Force representative will be assigned to act as the incident safety officer for 502 ABW Fire Department to observe Air Force support and operations at an incident. Local agencies are encouraged to assign a safety officer to observe the agencies support and operations at an incident on the installation.

f. Each Party hereby agrees that its intent with respect to the rendering of assistance to

the other Party under this Agreement is not to seek reimbursement from the Party requesting such assistance.

(1) Notwithstanding the above, the Parties hereby recognize that pursuant to the Section 11 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. § 2210) and Federal regulations issued there under (44 Code of Federal Regulations Part 151), *Schertz Fire Department* is permitted to seek reimbursement for all or any part of its direct expenses and losses (defined as additional firefighting costs over normal operational costs) incurred in fighting fires on property under the jurisdiction of the United States. Furthermore, under the authority of 42 U.S.C. § 1856a, and pursuant to any applicable state or local IAW each Party hereby reserves the right to seek reimbursement from the other for all or any part of the costs (defined as additional firefighting costs over normal operational costs) incurred by it in providing fire protection services to the other Party in response to a request for assistance.

(2) Furthermore, *Schertz Fire Department* agrees to indemnify and hold harmless the United States from any liability that may arise from the use of fire-fighting foams, chemicals, or other materials by the Air Force in providing fire protection services to the *Schertz Fire Department*, which agreement to indemnify and hold harmless includes, but is not limited to, such uses that may result in hazardous substance exposure or pollution of or contamination to air, land, water, person or property or such uses that may result in response actions under CERCLA, RCRA, or any other federal, state, or local laws. Notwithstanding any other provision of this Agreement, termination of this Agreement shall in no way affect *Schertz Fire Department's* obligation under this paragraph to indemnify and hold harmless the United States from any liability that may arise from the use of fire-fighting foams, chemicals, or other materials by the Air Force in providing fire protection services to the *Schertz Fire Department*, which obligation shall survive such termination.

g. Both Parties agree to implement the National Incident Management System during all emergency responses on and off Installations IAW National Fire Protection Association Standard 1561.

h. Each Party waives all claims against the other Party for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement. This provision does not waive any right of reimbursement pursuant to paragraph f.

i. All equipment used by *Schertz Fire Department* in carrying out this Agreement will, at the time of action hereunder, be owned by it; and all personnel acting for *Schertz Fire Department* under this Agreement will, at the time of such action, be an employee or volunteer member of *Schertz Fire Department*.

j. The rendering of assistance under the terms of this Agreement will not be mandatory; however, the Party receiving a request for assistance will endeavor to immediately inform the requesting Party if the requested assistance cannot be provided and, if assistance can be provided, the quantity of such resources as may be dispatched in response to such request.

k. Neither Party will hold the other Party liable or at fault for failing to respond to any request for assistance or for failing to respond to such a request in a timely manner or with less than optimum equipment and/or personnel, it being the understanding of the Parties that

each is primarily and ultimately responsible for the provision of fire protection services needed within their own jurisdictions.

l. Disputes.

Parties to Negotiate. If a dispute should arise, the Parties agree to first attempt to resolve the dispute using unassisted negotiation techniques (i.e., without the assistance of a neutral third party). Either Party may request in writing that unassisted negotiations commence. As part of the unassisted negotiation, the Parties shall consider employing joint fact-finding, if material factual disputes are involved, and shall use other early resolution techniques appropriate to the circumstances. If the dispute involves material issues of fact, the Parties may employ a neutral third party to provide a confidential evaluation of the issues of fact.

m. Alternative Dispute Resolution.

(1) If the dispute is not resolved within sixty (60) days after the request for unassisted negotiations, and the Parties do not mutually agree to continue the unassisted negotiations, the Parties shall employ alternative dispute resolution procedures involving nonbinding mediation of the dispute by a neutral third party. The alternative dispute resolution procedures employed shall include a confidential evaluation of both the facts and the law and the issuance of confidential recommendations by the neutral third party.

(2) By entering into this Agreement, the Parties have voluntarily adopted alternative dispute resolution procedures IAW 5 United States Code. § 572(c). These procedures shall not be employed if determined by either Party to be inappropriate after taking into consideration the factors enumerated at 5 United States Code. § 572(b). A Party rejecting alternative dispute resolution as inappropriate shall document its reasons in writing and deliver them to the other Party. The Parties shall enter into a master written alternative dispute resolution Agreement governing alternative dispute resolution proceedings that may be amended as needed to fit individual proceedings. (A template of an acceptable alternative dispute resolution agreement may be found at www.adr.af.mil).

(3) The Government's obligation to make any payment arising out of an agreement resolving a dispute under this Agreement is contingent upon the availability of funds proper for such payment. The *Schertz Fire Department* obligation to make any payment arising out of an agreement resolving a dispute under this Agreement is contingent upon the availability of funds proper for such payment.

n. All notices, requests, demands, and other communications which may or are required to be delivered hereunder will be in writing and will be delivered by messenger, by a nationally-recognized overnight mail delivery service or by certified mail, return receipt requested, at the following addresses:

For the Air Force:

JBSA - 502 ABW
c/o Commander
2080 Wilson Way, Bldg 247
Joint Base San Antonio – Fort Sam Houston, Texas 78234-7680

And:

Department of the Air Force
Air Force Civil Engineer Center/CXF
139 Barnes Dr, Suite 1
Tyndall AFB FL 32403-5319

And:

JBSA - 502 ABW
c/o Installation Fire Chief
1910 Kenly Avenue
Joint Base San Antonio - Lackland, Texas 78236

For Fire Department of Schertz

Schertz Fire Department
attention to Security and Fire Protection Manager
1400 Schertz Parkway, Bldg #8
Schertz, TX 78154

TERMS OF THE AGREEMENT

- o. This Agreement will become effective on the date of the last signature to the Agreement and will remain in effect for five years. The Parties to this agreement shall conduct an annual review for currency to respective regulatory and policy guidance and shall acknowledge review by cover letter signature from both Parties' senior fire officers. Either Party may unilaterally terminate this Agreement during the Term by sending notification of its intent to terminate to the other Party at 180 days in advance of the proposed date of termination. Such notification will be in the form of a written submission to the other Party. Upon becoming effective, this Agreement will supersede and cancel all previous agreements between the Parties concerning the rendering of assistance from one to the other for the purposes stated in this Agreement.
- p. The modification or amendment of this Agreement, or any of the provisions of this Agreement, will not become effective unless executed in writing by both Parties.
- q. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates shown below:

FIRE DEPARTMENT

for City of Schertz

THE UNITED STATES OF AMERICA

by the Secretary of the Air Force

BY: _____

STEVE WILLIAMS
City Manager

BY: _____

RUSSELL D. DRIGGERS
Brigadier General, USAF
Commander,
Joint Base San Antonio and 502d A