

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: January 20, 2022

Item description/summary:

Revised Mutual Aid Agreements: Attached is the revised mutual aid agreement between OPUD Fire Department and Beal Air Force Base. Beal Air Force Base has a new mandated clause regarding firefighter foam. I have attached our MMA for review. This is the only change from our previous agreement with Beal Air Force Base Fire Emergency Services.

Fiscal Analysis:

Employee Feedback

Sample Motion:

Consider approving and authorizing staff to sign the MOU between OPUD Fire Department and Beal Air Force Base Fire Department with new mandated clause regarding firefighting Foam.

Prepared by:

Chief Randy York



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 9TH RECONNAISSANCE WING (ACC)
BEALE AIR FORCE BASE, CALIFORNIA

This Mutual Aid Agreement (the "Agreement"), is made and entered into this ___ day of _____ 20___, between the Secretary of the Air Force (the "Air Force") acting by and through the Commander, *Beale AFB*, pursuant to the authority of 42 U.S.C. § 1856a and the Fire Department of *Olivehurst Public Utilities District Fire Department*. Together the Air Force and Olivehurst Public Utilities District 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 *Beale AFB* fire department by a representative of the *Olivehurst Public Utilities District Fire Department*, fire protection equipment and personnel of the *Beale AFB* fire department will be dispatched to any point within the area for which the *Olivehurst Public Utilities District Fire Department* normally provides fire protection services as designated by the representatives of the *Olivehurst Public Utilities District Fire Department*.
- d. On request to a representative of the *Olivehurst Public Utilities District Fire Department* by a representative of the *Beale AFB* fire department, fire protection equipment and personnel of the *Olivehurst Public Utilities District Fire Department County* will be dispatched to any point

within the jurisdiction of the *Beale AFB* as designated by the representative of the *Olivehurst Public Utilities District Fire Department* 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). 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.

(5) 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 *Olivehurst Public Utilities District Fire Department* normally provides fire protection services, the chief of the *Beale AFB* fire department or his or her representative may assume full command on arrival at the scene of the crash.

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. 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), *Olivehurst Public Utilities District 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. Furthermore, *Olivehurst Public Utilities District 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 ***Olivehurst Public Utilities District 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 ***Olivehurst Public Utilities District 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 ***Olivehurst Public Utilities District Fire Department***, which obligation shall survive such termination.

(6) Where local agencies do not assign an incident safety officer, an Air Force representative will be assigned to act as the incident safety officer for ***Beale AFB*** to observe Air Force operations.

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 ***Olivehurst Public Utilities District Fire Department*** in carrying out this Agreement will, at the time of action hereunder, be owned by it; and all personnel acting for ***Olivehurst Public Utilities District Fire Department*** under this Agreement will, at the time of such action, be an employee or volunteer member of ***Olivehurst Public Utilities District 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 (insert Fire department organization) 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:

Beale AFB

Heather A. Fox, Colonel, USAF

9 RW/CC

6451 B Street

Beale AFB, CA 95903

And:

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

And:

Beale AFB

Kevin Smith, GS-13 (Fire Chief)
7195 Fire House Rd
Beale AFB, CA 95903

For Olivehurst Public Utilities District Fire Department

Olivehurst Public Utilities District Fire Department
Fire Chief Randy York
1962 9th Street
Olivehurst, CA 95961

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 (_____) from that date (the “Term”) and automatically renews for an additional five year period with the right to renew for additional two five year terms not to exceed a total of 20 years. 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.

p. 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.

q. 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.

r. 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 *Olivehurst Public Utilities District*
Fire Department

By: _____

Name: _____

FIRE CHIEF

Date: _____

THE UNITED STATES OF AMERICA
by the Secretary of the Air Force

By: _____

Name: _____

COMMANDER, Beale AFB

Date: _____