

AGREEMENT FOR FIRE DEPARTMENT AUTOMATIC ASSISTANCE

THIS AGREEMENT FOR FIRE DEPARTMENT AUTOMATIC ASSISTANCE (this “Agreement”) is entered into as of the Effective Date (defined herein) by and among the political subdivisions and non-profit corporations or entities that are named as signatories to this Agreement below, each of which are hereinafter referred to, individually, as a “Party”, or collectively, as the “Parties.”

I. RECITALS

1.1. This Agreement serves to maximize cooperation among the Parties and promote a stronger homeland security effort through regionalism as promulgated by the Department of Homeland Security.

1.2. The governing officials of the Parties, political subdivisions of the State of Texas and United States of America, and/or participating non-profit corporations or entities, desire to secure for each such entity the benefits of automatic assistance in the protection of life and property from fire and other disasters as well as provision of aid in the event of medical emergencies.

1.3. For the reasons stated above and in consideration of the covenants and conditions set forth below, the Parties enter into this agreement.

II. AGREEMENT

2.1. In consideration of each Party’s automatic assistance to one or more of the other Parties upon the occurrence of an emergency condition in any portion of the designated area where this Agreement for Fire Department Automatic Assistance is in effect, a predetermined number and amount of rescue equipment and personnel, firefighting equipment and/or emergency medical equipment or personnel of one or more of the Parties shall be dispatched, to such point where the emergency condition exists in order to assist in the protection of life and property subject to the conditions hereinafter stated. The Parties acknowledge and agree that the services and assistance described herein relate only to firefighting and emergency medical services provided by the fire departments of the respective Parties. This Agreement does not require the provision of mutual aid through any other departments or agencies of the Parties, which mutual aid may be (and in some cases are) covered under other mutual aid agreements between or among one or more of the Parties.

2.2. For the purposes of this Agreement the following words and phrases shall have the meanings set forth below unless the context otherwise clearly indicates another meaning:

2.2.1. “MAA” means any Mutual Aid Agreement relating to the provision of mutual aid assistance relating to disaster and emergency events entered into between two or more of the Parties before the effective date.

2.2.2. “Emergency Condition” means any condition requiring water rescue, fire

protection, or emergency medical services, inclusively.

2.2.3. “Receiving Party” means the Party within whose corporate limits the location of the site where the Emergency Condition is occurring.

2.2.4. “Responding Party” means the Party responding to a call relating to an Emergency Condition pursuant to this Agreement the site of which is within the incorporated limits of another Party.

2.3. Details as to amounts and types of assistance to be dispatched, methods of dispatching and communications, training programs and procedures and areas to be assisted will be developed by the Parties’ Fire Chiefs. These details will be stipulated in one or more Memoranda of Understanding (“MOU”) signed by the Fire Chiefs of the Parties to which the MOU applies. Each MOU may be revised or amended at any time by mutual agreement of the Fire Chiefs whose departments are parties to the MOU. The MOUs entered pursuant to this Agreement may include and apply to any number of the Parties as necessary to carry out the purpose of this Agreement. In the event of a conflict between an MOU and the main body of this Agreement, this Agreement shall control.

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

2.4.1. The predetermined amount of aid, type of equipment, and number of personnel shall be sent by the Responding Party in accordance with the applicable MOU, unless such amount of assistance is unavailable due to emergency conditions confronting the Receiving Party’s or Responding Party’s forces at the time of need for assistance under this Agreement.

2.4.2. In fulfilling their obligations provided for in this Agreement, the Parties agree to comply with the procedures set forth in the MOU’s which their respective Fire Chiefs have signed pursuant to this Agreement, a copy of which shall be placed on file in the office of the Secretary of each Party in reference to this Agreement and made part hereof for all purposes upon its completion and execution by the Chiefs.

2.5. Each Party waives all claims against the other Parties for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement and each MOU entered pursuant to this Agreement. THE ASSIGNMENT OF LIABILITY UNDER THIS AGREEMENT IS INTENDED TO BE DIFFERENT THAN LIABILITY OTHERWISE ASSIGNED UNDER TEXAS GOVERNMENT CODE SECTION 791.006, SUBSECTION (a). INSTEAD, LIABILITY, IF ANY, SHALL BE AS SET OUT IN THIS AGREEMENT, AS PROVIDED BY TEXAS GOVERNMENT CODE SECTION 791.006, SUBSECTION (a1). EACH PARTY SHALL BE RESPONSIBLE FOR ANY LIABILITY RESULTING FROM ITS OWN ACTIONS OR OMISSIONS, AND THOSE OF ITS OWN EMPLOYEES, REGARDLESS OF WHICH PARTY WOULD HAVE BEEN RESPONSIBLE, IN THE ABSENCE OF THIS AGREEMENT, FOR FURNISHING THE SERVICES PROVIDED. THIS PROVISION IS FOR THE BENEFIT OF THE PARTIES AND

IS NOT INTENDED TO CREATE A THIRD-PARTY CAUSE OF ACTION OR WAIVE ANY IMMUNITIES OR DEFENSES AVAILABLE TO THE PARTIES.

2.6. A Responding Party, whether one or more, shall not be reimbursed by the Receiving Party for costs incurred pursuant to this Agreement. It is understood and agreed that each Party has previously entered into the MAA to the extent of a conflict between this Agreement and the previous MAA, this Agreement shall govern. An employee of a Responding Party who is assigned, designated or ordered by the employee's Fire Chief to perform duties pursuant to this Agreement shall receive the same wage, salary, pension, and all other compensation and rights for the performance of such duties, including injury or death benefits, and Worker's Compensation benefits, as though the service had been rendered within the corporate limits or the authority having jurisdiction's district boundaries of Responding Party where the person is regularly employed. Moreover, all medical expenses, wage and disability payments, pension payments, damage to equipment and clothing, and expenses of travel, food, and lodging shall be paid by the Party with which the employee in question is regularly employed.

2.7. All equipment used by each Party's fire department in carrying out this Agreement will, during the time response services are being performed, be owned by the Responding Party; and all personnel acting for each Party's fire department under this Agreement will, during the time response services are required, be paid or volunteer employees of the Party where they are regularly employed.

2.8. At all times while equipment and employees of a Responding Party's fire department are traveling to, from, or within the incorporated limits or the authority having jurisdiction's district boundaries of the Receiving Party in accordance with the terms of this Agreement, such personnel and equipment shall be deemed to be employed or used by the Responding Party. Further, such equipment and personnel shall be deemed to be engaged in a governmental function for the Responding Party.

2.9. In the event that any person performing duties subject to this Agreement shall be cited as a defendant party to any state or federal civil lawsuit arising out of the person's official acts while performing duties pursuant to the terms of the Agreement, such person shall be entitled to the same benefits that the person would be entitled to receive had such civil action arisen out of an official act within the course and scope of the person's duties as an employee or volunteer of the Party where the person is regularly employed and occurred within the jurisdiction of the Party where the person is regularly employed. The benefits described in this Subparagraph 2.9 shall be supplied by the Party with whom the person is regularly employed. However, in situations where the other Receiving Party may be liable, in whole or in part, for the payment of damages, then the Receiving Party may intervene in such cause of action to protect its interests.

2.10. Each Party shall have the right to terminate its participation in this Agreement by providing written notice to the other Parties not later than 90 days prior to the date of termination of such Party's participation.

2.11. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Hays County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

2.12. In case 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 invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

2.13. This Agreement is made for the Parties' respective fire departments as automatic assistance pursuant to V.T.C.A., Government Code, Chapter 418, commonly referred to as the Disaster Act of 1975; and nothing in this Agreement is intended to limit the availability of benefits to each Party's personnel under Texas Government Code Chapter 615, as amended, and as it may be amended in the future.

2.14. Any notice required or permitted to be delivered hereunder shall be deemed received when sent by hand-delivery or email the following address:

If intended for the City of San Marcos:

City of San Marcos
Attn: City Manager
630 East Hopkins Street,
San Marcos, TX 78666
Email:

[ADD OTHER PARTIES]

2.15 In the performance of this Agreement, none of the Parties waive, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any persons or entities who are not parties to this Agreement.

III. MISCELLANEOUS

3.1. This Agreement and the MOU's entered pursuant to this Agreement represent the

entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

3.2. The recitals to this Agreement are incorporated herein.

3.3. This Agreement may be amended by the mutual written agreement of all Parties.

3.4. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to sign this Agreement. The persons signing this Agreement hereby represent that they have authorization to sign on behalf of their respective Party.

3.5. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

3.6. No Party may assign, transfer, or otherwise convey this Agreement without the prior written consent of the other Parties.

3.7. Unless expressly stated otherwise, whenever the consent or the approval of a Party is required herein, such Party shall not unreasonably withhold, delay or deny such consent or approval.

3.8. Whenever a dispute or disagreement arises under the provisions of this Agreement, the Parties agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Parties shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation (unless delaying the filing of a lawsuit might result in the lawsuit being barred, including but not limited to a bar by a statute of limitations). The provisions of this Subparagraph 3.8. shall survive termination.

3.9. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Parties, pertaining to a period following the termination of this Agreement shall survive termination.

3.10. Each Party paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying Party or from funds otherwise lawfully available to the Party for use in the payment of the Party's obligations pursuant to this Agreement.

3.11. No Party shall be liable to any or all of the other Parties for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the Party's respective control or because of applicable law, including, but not limited to, pandemic, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a Party is

not legally responsible or which is not reasonably within its power to control (“a *Force Majeure* Event”). The affected Party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the Party whose performance is affected by a Force Majeure Event shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

3.12. This Agreement shall be effective and enforceable as to those Parties that have signed this Agreement on the date it has been signed by an authorized representative of such Parties, but in no case earlier than the date at least two Parties have duly executed the Agreement (“the Effective Date”).

SIGNED AND AGREED as of the Effective Date.

[NAME OF ENTITY]

By: _____ Date: _____
[Name and title]

