



# San Bernardino County

## Legislation Text

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**File #: 4938, Agenda Item #: 55**

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### **REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS OF SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND RECORD OF ACTION**

**October 5, 2021**

#### **FROM**

**DAN MUNSEY, Fire Chief/Fire Warden, San Bernardino County Fire Protection District**

#### **SUBJECT**

Cooperative Fire Protection Agreement with the U.S. Forest Service, San Bernardino National Forest

#### **RECOMMENDATION(S)**

Acting as the governing body of the San Bernardino County Fire Protection District, approve a Cooperative Fire Protection Agreement with the U.S. Forest Service, San Bernardino National Forest to provide for reciprocal fire protection, including mutual aid, reimbursable assistance, and coordination for the prevention, detection, management, and suppression of wildland fires on property within the protection areas or jurisdiction of the parties for a term of five years, effective upon signature by both parties.

(Presenter: Dan Munsey, Fire Chief/Fire Warden, 387-5779)

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.**

#### **FINANCIAL IMPACT**

Approval of this item will not result in the use of additional Discretionary General Funding (Net County cost). In accordance with this Cooperative Fire Protection Agreement, the San Bernardino County Fire Protection District (SBCFPD) and the U.S. Forest Service, San Bernardino National Forest (U.S. Forest Service) will provide the services on a contractual basis. On multi-jurisdictional incidents and incidents that threaten or burn across protection boundaries, SBCFPD and the U.S. Forest Service will jointly develop and execute a written cost share agreement which will describe a fair distribution of financial responsibilities. Individual cost share agreements will be brought to the Board of Directors (Board) for approval in the form of the Cost Share Agreement attached as Exhibit "D" to the Cooperative Fire Protection Agreement.

#### **BACKGROUND INFORMATION**

SBCFPD has numerous mutual aid/cooperative agreements with local, state and federal agencies. These agreements allow one party to assist the other party by providing personnel, equipment, materials/supplies, and other services, as needed, for fire and other emergency incidents.

SBCFPD and the U.S. Forest Service desire to enter into the recommended mutually beneficial Cooperative Fire Protection Agreement (Agreement) for the prevention, detection, management, and suppression of wildland fires in and adjacent to their areas of responsibility. Reciprocal/Mutual Aid responses from either party shall include equipment, material, and supplies such as are usually and customarily used within the sending

party's jurisdiction. The guiding principle for dispatch of initial attack suppression resources is to use the closest available and appropriate resource regardless of which party owns or controls the resources, and regardless of which party has protection responsibility or jurisdiction.

Initial attack is the immediate dispatch of a fire unit within the jurisdictional boundary set forth under the terms and conditions of the Agreement. Mutual Aid/Initial Attack response will be initiated by each agency's primary dispatch facility. The Agreement outlines response criteria to include the pre-identified emergency equipment to be used for each emergency incident. The Agreement allows for the most expeditious and cost-effective response to suppress fires and other emergency services.

The Agreement is authorized by the Reciprocal Fire Protection Act of May 27, 1955 (42 USC § 1856a), as amended, and the Fire Protection District Law of 1987 (California Health and Safety Code § 13800 et seq.). The U.S. Forest Service and SBCFPD will mutually benefit from this arrangement by allowing resources to cross jurisdictional boundaries and providing equipment and apparatus that are unavailable from within the jurisdiction. The service to the communities will be enhanced by decreasing response times to emergencies, allocating specialized equipment to incidents and developing partnerships and a spirit of cooperation amongst agencies. In the event of multiple calls for service within a short time frame, the Agreement identifies the closest, most appropriate resource and reduces travel delays from units located at a further distance. This provides for a more streamlined approach to addressing fire and other emergency incidents.

The term of the Agreement is for five years, effective from the date it is signed by both parties, but may be terminated by either party with 90 days written notice. If the Agreement expires during an incident, the terms of the Agreement will apply until the end of the incident.

The Agreement also includes, but is not limited to, the following non-standard contract terms:

1. Assignment
  - SBCFPD standard term of approving any assignment of the contract is not included.
  - Potential Impact: Because the Agreement is with the U.S. Forest Service, there are no significant impacts associated with the lack of SBCFPD's standard assignment term.
2. Insurance
  - The Agreement does not include any of SBCFPD's standard insurance terms.
  - Potential Impact: SBCFPD will not benefit from its standard insurance terms that include the types and amounts of insurance coverage required by its vendors, including provisions governing additional insured coverage and waiver of subrogation rights. Because the Agreement is with the U.S. Forest Service, the impacts are not as significant, as the U.S. Forest Service has sufficient resources to address any of its legal or contractual obligations.
3. Indemnity
  - The Agreement does not include SBCFPD's standard indemnification provision.
  - Potential Impact: There is no contractual indemnity provision in favor of SBCFPD associated with third party claims. In the event of a lawsuit that names both the U.S. Forest Service and SBCFPD, SBCFPD will be responsible for its own defense costs even if the negligence was due to the U.S. Forest Service.
4. Waiver of Claims
  - Pursuant to 42 U.S.C. § 1856a et seq., each party to the Agreement waives any claim against any other party for loss or damage of its property and/or personal injury or death of its employees or agents occurring as a consequence of the performance of the Agreement; provided, this provision does not relieve any party from responsibility for claims from third parties for losses for which the party is otherwise legally liable.
  - Potential Impact: SBCFPD and the U.S. Forest Service each waives any claim against each other for loss or damage of its property and/or personal injury or death of its employees or agents occurring as a consequence of the performance of the Agreement.
5. Governing Law and Venue

- The Agreement is silent on which law governs the Agreement and which court venue applies to the Agreement.
- Potential Impact: Because the Agreement is with the U.S. Forest Service, San Bernardino National Forest, there are no significant impacts associated with the lack of SBCFPD's standard governing law and venue terms.

Notwithstanding the non-standard provisions, SBCFPD is recommending that the Board approve the Agreement with the U.S. Forest Service given the benefits provided to SBCFPD and its residents associated with this mutual aid agreement.

Exhibit "B," Operating Plan, to the Agreement identifies the protection area maps, rates, personnel, dispatching procedures, and other items necessary for implementation. It is anticipated this document will be updated on annual basis, subject to Board approval.

#### **PROCUREMENT**

N/A

#### **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Scott Runyan, Supervising Deputy County Counsel, 387-5455) on September 14, 2021; Finance (Tom Forster, Administrative Analyst, 387-4635) on September 15, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on September 19, 2021.