

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
ROBERT ALDRICH, Consultant

TO: LOCAL AGENCY FORMATION COMMISSION



SUBJECT: AGENDA ITEM #11 – DISCUSSION OF IMPLEMENTATION ISSUES ON
CONDITIONS OF APPROVAL FOR LAFCO 3198 – CITY OF SAN
BERNARDINO ANNEXATION INTO SAN BERNARDINO COUNTY FIRE
PROTECTION DISTRICT ET AL AND LAFCO 3200 – TWENTYNINE
PALMS COMMUNITY ANNEXATION INTO SAN BERNARDINO COUNTY
FIRE PROTECTION DISTRICT ET AL

RECOMMENDATION:

Staff recommends that the Commission:

1. For LAFCO 3198 – City of San Bernardino LAFCO Resolution No. 3211 acknowledges that implementation of the conditions of approval for this proposal requires the following administrative changes:
 - a. Shall be amended to read: **Condition No. 5.** Upon the effective date of the reorganization including annexation, pursuant to the terms specified in the Plan for Service, attached as Exhibit "B", as amended May 4, 2016, and the updated Transition Action Plan, attached as Exhibit "C", all current City Fire Department employees, suppression, prevention, and administrative, shall transfer to the San Bernardino County Fire Protection District Valley Service Zone with comparable position classifications, rates of pay, accrued vacation and sick leave, vacation and sick leave accrual rates, seniority rights, and shall become subject to the terms and conditions set forth in said Plan for Service...
 - b. Shall be amended to read: **Condition No. 7.** Condition No. 7. Prior to the issuance of the Certificate of Completion, the City of San Bernardino shall provide to the Executive Officer of LAFCO, *and the San Bernardino County Fire Protection District documentation that funds meeting the 75% confidence level of the Worker's Compensation Claim*

Reserve for all City fire suppression personnel and non-fire suppression personnel transitioning to County Fire and/or CONFIRE have been allocated and isolated in a trust account for the benefit of County Fire and CONFIRE. The amount of the trust funds must be supported by the City of San Bernardino's current actuarial report. The trust funds will be transferred to the successor agency, the Valley Service Zone, by the effective date of LAFCO 3198 and shall be impressed with the public trust, use or purpose for the payment of Worker's Compensation claims for transition employees and said Successor District shall separately maintain such funds in accordance with the provisions of Government Code Section 57462.

No later than July 15 of each year, the Successor District shall certify to the City of San Bernardino the amount in the trust fund, and an actuarial assessment of what is required to maintain funding at the 75% confidence level established above, and that the trust funds remain available for the use or purpose of the payment of Worker's Compensation claims for transition employees. The Successor District shall make such certification to the City of San Bernardino until all such Worker's Compensation claims have been retired. To the extent that funding falls below the 75% threshold the City of San Bernardino must make a further payment to the trust fund to meet the threshold. To the extent the funding exceeds the 75% threshold along with any funds remaining following retirement of all claims shall become general funds of the Successor District for use within the boundaries of the City of San Bernardino.

- c. Authorize the creation of a sub-Service Zone of FP-5, identified as "FP-5 San Bernardino" as a function of LAFCO 3198 approval to provide for cost savings and implementation of the isolation of revenues and expenditures upon the effective date of the reorganization as a function of Condition No. 11.
2. For LAFCO 3200 – Twentynine Palms Water District LAFCO Resolution No. 3216 acknowledges that implementation of the approval of this proposal requires the following administrative changes:
 - a. Shall be amended to read: **Condition No. 7.** Prior to the issuance of the Certificate of Completion, the Twentynine Palms Water District shall provide to the Executive Officer of LAFCO, *and the San Bernardino County Fire Protection District* documentation *that funds meeting the anticipated payment cost of the single Worker's Compensation Claim proposed for settlement have been allocated and isolated in a trust account for the benefit of County Fire for the transferring employee. The amount of the trust funds must be supported by the District's current settlement claim. The trust funds will be transferred to the*

successor agency, the South Desert Service Zone, by the effective date of LAFCO 3200 and shall be impressed with the public trust, use or purpose for the payment of Worker's Compensation claim for the transitioning employee and said successor District shall separately maintain such funds in accordance with the provisions of Government Code Section 57462. Any funds remaining following retirement of all claims shall become general funds of the Successor District for use within the boundaries of the Twentynine Palms Community as identified by LAFCO 3200.

_In the event that the Claim is settled prior to the issuance of the Certificate of Completion, the signed documentation closing the Claim being provided to County Fire and to the LAFCO Executive Officer will signify compliance with this condition.

- b. Authorize the creation of sub-Service Zone of FP-5, identified as "FP-5 29 Palms" as a function of LAFCO 3200 approval to provide for cost savings and implementation of the isolation of revenues and expenditures upon the effective date of the reorganization as a function of Condition No. 10.

BACKGROUND:

Since the Commission's approval of LAFCO 3198 (City of San Bernardino annexation into the San Bernardino County Fire Protection District (hereafter County Fire) and its affiliated service zones for service and funding) on January 27, 2016 and LAFCO 3200 (Twentynine Palms Water District annexation into County Fire and its affiliated service zones) on February 17, 2016, staff has been working with the affected parties to assure that the terms and conditions assigned to the proposals are met so that they can be completed prior to July 1, 2016. These terms and conditions address issues related to financing, operations, and transfer of employees, facilities and equipment. As these discussions have been ongoing, a few issues have arisen that require a review with the Commission to provide that the intent of the condition is met through a substitute compliance method. All of the issues were identified after the 30-day reconsideration period for the proposals. The issues that have arisen unless addressed today will imperil the ability to complete these changes of organization through issuance of the Certificates of Completion.

Government Code Section 56883 provides for a mechanism to address these issues which are a surprise or inadvertence. That section reads as follows:

56883. The executive officer may, before the completion of a proceeding, on good cause being shown, correct clerical errors or mistakes made through inadvertence, surprise, or excusable neglect that may be contained in the resolution adopted by the commission making determinations, upon written request by any member of the commission, by the executive officer, or by any affected agency. A correction made

pursuant to this section shall not be cause for filing a request pursuant to Section 56895.

As the Executive Officer, I am proposing that the Commission accept three specific changes to the terms and conditions for LAFCO 3198 – City of San Bernardino and two specific changes for LAFCO 3200 – Twentynine Palms Water District to address compliance with the conditions of approval through a substitute methodology to be reflected in the final resolutions of approval. Those changes are outlined as follows:

1. Condition No. 7 in the resolutions approving both proposed fire reorganizations outlines a mechanism to assure the ability to fund Workers' Compensation Claims by the transferring agencies. It was identified through discussions with County Fire that this obligation would be addressed through the acquisition of "tailing insurance" by each affected transferring entity. However, as both the City of San Bernardino and Twentynine Palms Water District looked into acquiring these policies, it became clear that they would be unable to acquire the insurance as outlined. LAFCO staff has worked with County Fire, the County's Risk Management Division, the City of San Bernardino and the Twentynine Palms Water District to provide for a means to address this requirement. The response is different based the unique circumstance of each entity.

For the City of San Bernardino Fire Department Personnel: On April 20, 2016 a joint letter from the City of San Bernardino and County Fire requested that a substitute condition be provided to address the financial obligation envisioned by Condition No. 7. A copy of this letter is included as Attachment #1 to this report. On May 3rd a meeting was held with all the affected agencies to review the language of a potential substitute condition. LAFCO staff outlined its position that additional information would need to be included in the proposed condition to address an annual "true up" of the funds to be held in trust, the requirement that the funds upon transfer are impressed with a public trust responsibility, and that upon retirement of all claims any funds remaining on account will go toward the delivery of service within the City of San Bernardino following closure of the claims. There was consensus among all the entities on the additions proposed by LAFCO staff.

One question that requires specific language for the City of San Bernardino is the requirement to annually review the trust account to assure its maintenance of the 75% confidence level. The proposed new language for Condition No. 7 for the City of San Bernardino to address the substitute mechanism for Workers' Compensation Claims is as follows (amendments in italics and underline):

Condition No. 7. Prior to the issuance of the Certificate of Completion, the City of San Bernardino shall provide to the Executive Officer of LAFCO, *and the San Bernardino County Fire Protection District documentation that funds meeting the 75% confidence level of the Worker's Compensation Claim Reserve for all City fire suppression*

personnel and non-fire suppression personnel transitioning to County Fire and/or CONFIRE have been allocated and isolated in a trust account for the benefit of County Fire and CONFIRE. The amount of the trust funds must be supported by the City of San Bernardino's current actuarial report. The trust funds will be transferred to the successor agency, the Valley Service Zone, by the effective date of LAFCO 3198 and shall be impressed with the public trust, use or purpose for the payment of Worker's Compensation claims for transition employees and said Successor District shall separately maintain such funds in accordance with the provisions of Government Code Section 57462.

No later than July 15 of each year, the Successor District shall certify to the City of San Bernardino the amount in the trust fund, and an actuarial assessment of what is required to maintain funding at the 75% confidence level established above, and that the trust funds remain available for the use or purpose of the payment of Worker's Compensation claims for transition employees. The Successor District shall make such certification to the City of San Bernardino until all such Worker's Compensation claims have been retired. To the extent that funding falls below the 75% threshold the City of San Bernardino must make a further payment to the trust fund to meet the threshold. To the extent the funding exceeds the 75% threshold along with any funds remaining following retirement of all claims shall become general funds of the Successor District for use within the boundaries of the City of San Bernardino.

For the Twentynine Palms Water District Fire Department Personnel:

There were two Worker's Compensation claims identified as being related to its Fire Department, one is closed and the other appears ready for settlement. The settlement requires a determination by the State Department of Worker's Compensation Appeals Board with no guarantee that it will be fully settled prior to the issuance of the Certificate of Completion. Therefore, either an insurance policy for tailings or other means is required to guarantee the payment. However, the Twentynine Palms Water District has identified by email and participation in meetings on this topic that it too is unable to acquire the required tailing insurance identified in Condition No. 7 to address the one claim not yet closed. In working with the County Fire, the County's Risk Management Division and the District it has been identified that a simplified requirement for a trust fund would be appropriate for LAFCO 3200. The proposed condition is as follows:

Condition No. 7. Prior to the issuance of the Certificate of Completion, the Twentynine Palms Water District shall provide to the Executive Officer of LAFCO, and the San Bernardino County Fire Protection District documentation that funds meeting the anticipated

payment cost of the single Worker's Compensation Claim proposed for settlement have been allocated and isolated in a trust account for the benefit of County Fire for the transferring employee. The amount of the trust funds must be supported by the District's current settlement claim. The trust funds will be transferred to the successor agency, the South Desert Service Zone, by the effective date of LAFCO 3200 and shall be impressed with the public trust, use or purpose for the payment of Worker's Compensation claim for the transitioning employee and said successor District shall separately maintain such funds in accordance with the provisions of Government Code Section 57462. Any funds remaining following retirement of all claims shall become general funds of the Successor District for use within the boundaries of the Twentynine Palms Community as identified by LAFCO 3200.

In the event that the Claim is settled prior to the issuance of the Certificate of Completion, the signed documentation closing the Claim being provided to County Fire and to the LAFCO Executive Officer will signify compliance with this condition.

These actions will assure that the employees of all agencies transitioning to County Fire and/or CONFIRE receive the benefits they are due, that County Fire is not held liable for payments of prior Workers' Compensation claims for employees transitioning to County service, and each entity can fund its obligations closing out its fire function.

2. In the presentations before the Commission regarding the proposals for annexation to County Fire, LAFCO staff has outlined its concerns that the revenues generated through the imposition of the special tax upon the properties within the City of San Bernardino and the Twentynine Palms community be accounted for and isolated for use only within the boundaries of the respective agencies. This question of transparency was of equal concern to the Commission during its deliberations, which is reflected in Condition No. 11 in the Resolution for the City of San Bernardino reorganization and Condition No. 10 for the Twentynine Palms community. These conditions outline the requirement that the San Bernardino County Fire Protection District undertake the process as outlined in Health and Safety Code 13950 to create sub-zones of FP-5 for San Bernardino and Twentynine Palms.

In the weeks following the approval of these proposals, County Fire began its analysis of complying with the conditions to isolate the revenues and expenditures. It was determined that the same process that was being conducted by LAFCO (individual notice to all landowners with a public hearing) would be replicated a third time for County Fire to provide for this division including the associated costs. In addition, since it would take place after LAFCO filed its Certificate of Completion with the State Board of Equalization, it would have to file with this State agency as well. The County has expressed its concern that these are financially impacted

agencies who have paid substantially to fulfill the notice requirements for consideration of the proposal by the Commission and through its required protest proceeding. They are requesting that the Commission consider amending the condition to create the new sub-zone of FP-5 at the same time as each reorganization proposal is completed. This would save the cost of notices -- \$16,700 for San Bernardino and \$6,200 for 29 Palms plus the filing cost for the State Board. This would also benefit the affected areas as there have been questions whether they could meet the August 8th deadline for filing the special tax to identify the new subzone. Staff has reviewed this question with Legal Counsel who has indicated that since the notification process identified in Health and Safety Code 13950 has been accomplished through the LAFCO process for both proposals and the questions on transparency of the revenues and expenditures were a focal point of the Commission's discussion, that the Commission can modify this condition to allow for the creation of the sub-zone as a function of the issuance of the Certificate of Completion. Staff recommends that the Commission:

For San Bernardino: Authorize the creation of a sub-Service Zone of FP-5, identified as "FP-5 San Bernardino" as a function of LAFCO 3198 approval to provide for cost savings and implementation of the isolation of revenues and expenditures upon the effective date of the reorganization as a function of Condition No. 11.

For Twentynine Palms: Authorize the creation of sub-Service Zone of FP-5, identified as "FP-5 29 Palms" as a function of LAFCO 3200 approval to provide for cost savings and implementation of the isolation of revenues and expenditures upon the effective date of the reorganization as a function of Condition No. 10.

3. The final element relates to the Plan for Service submitted and approved by the Commission as a part of Condition No. 5 for LAFCO 3198 (City of San Bernardino reorganization). During the ongoing efforts to put together the transition of employees, facilities, equipment and vehicles between the City of San Bernardino and County Fire it was determined that an update to the Plan was needed. The City of San Bernardino submitted a letter, dated April 20, 2016, outlining the revisions necessary to the Plan for Service and on May 4, 2016 County Fire submitted an updated Exhibit A to its Plan for Service outlining transferred Facilities and Vehicles. The primary changes are to outline that all CERT trailers will remain with the City Police Department, that one Fire Department vehicle has been salvaged, and one Fire Department vehicle was totaled in an accident and the insurance payoff would be provided to the Valley Service Zone of County Fire. Staff is recommending that the Commission accept these updates and include them as a part of the Plan for Service Exhibit to the final resolution by making the following amendment shown in italics:

Condition No. 5. Upon the effective date of the reorganization including annexation, pursuant to the terms specified in the Plan for Service, attached as Exhibit “B”, as amended May 4, 2016, and the updated Transition Action Plan, attached as Exhibit “C”, all current City Fire Department employees, suppression, prevention, and administrative, shall transfer to the San Bernardino County Fire Protection District Valley Service Zone with comparable position classifications, rates of pay, accrued vacation and sick leave, vacation and sick leave accrual rates, seniority rights, and shall become subject to the terms and conditions set forth in said Plan for Service...

CONCLUSION:

The approach identified in this report will allow for the completion of the proposals for transfer of fire operations from the City of San Bernardino and the Twentynine Palms Water District. The changes proposed maintain the positions taken by the Commission in approving the terms and conditions for the proposals while addressing the circumstances which affect the methodology for achieving the desired results. As has been reiterated time and time again through these processes, one of the most important functions to be provided to the citizens of this County and its cities and districts is to provide for emergency medical response and fire protection. Approval of staff’s recommendation will allow for the process of maintaining these services to proceed.

KRM/

Attachments:

1. [Letter Dated April 20, 2016 from City of San Bernardino and San Bernardino County Fire Protection District on Requested Amendment to Condition No. 7](#)
2. [Letter Dated April 20, 2016 from City of San Bernardino Related to Updated to Plan for Service and Updated Exhibit A to Plan for Service Signed May 4, 2016](#)
3. [LAFCO Resolution No. 3211 for LAFCO 3198 \(San Bernardino\)](#)
4. [LAFCO Resolution No, 3216 for LAFCO 3200 \(Twentynine Palms\)](#)