

**LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY**

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DATE: MAY 6, 2013



FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #11 – Consideration of Exemption from Government Code Section 56133 for LAFCO SC#376 – Agreement between San Bernardino County Fire Protection District and Crest Forest Fire Protection District for Fire Protection and Emergency Medical Services

RECOMMENDATION:

Determine that LAFCO SC#376 complies with the exemption criteria listed within Government Code Section 56133 Subsection (e) and, therefore, does not require Commission approval to proceed.

BACKGROUND:

Beginning January 1, 2002, contracts between two or more public agencies were required to be reviewed and approved by the Commission pursuant to the provisions of Government Code Section 56133. However, when the Legislature amended these provisions to require LAFCO review of contracts between public agencies, they also noted that there could be instances where an exemption would remain appropriate. Included in this legislative amendment was specific exemption language contained in Subsection (e) which reads in part:

“This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider...”

On April 30, 2013, the San Bernardino County Fire Protection District (hereafter SBCFPD), through Chief Mark Hartwig, submitted its request that the Commission

determine that the proposed Fire Protection Services Agreement between SBCFPD and the Crest Forest Fire Protection District (hereafter Crest Forest FPD or the “District”) is exempt from the provisions of Government Code Section 56133 as authorized by Subsection (e). The proposed contract would be for the SBCFPD to provide to the Crest Forest FPD fire prevention, fire investigation, fire suppression, rescue, advance life support, and ambulance transport along with “value added services” which include items such as hazardous materials, household hazardous waste collection, all budget and fiscal services and Office of Emergency Services to the same extent it provides those services within its own boundaries. A copy of the exemption request letter (Attachment #1) and draft agreement (Attachment #2) are included as a part of this report.

Over the last two years, the Crest Forest FPD has looked at mechanisms to provide services to the Crest Forest community within its limited resources. As outlined in the District’s Service Review conducted in December 2010 it had experienced revenue reductions and cost increases which placed it in a deficit spending position. In response to these issues, the District conducted an extensive Request for Proposal and contract negotiation process, ultimately choosing to contract with SBCFPD. Some issues which were cause for continued negotiations on the agreement were the issues of unfunded liabilities for retirement within the San Bernardino County Employees Retirement Association (SBCERA) (the retirement provider for both districts) which required a funding mechanism. LAFCO staff has participated in discussions with both districts and has presented an outline of alternatives to the Crest Forest FPD – such as annexation rather than an out-of-agency service agreement. During the months of April and May 2013, the Crest Forest FPD determined that its preferred course was to pursue the contract with SBCFPD to provide its fire protection services, remaining an independent special district with an elected board of directors, retaining financial management obligations including, but not limited to, placement of special taxes on the tax roll, establishing its annual appropriation limit, conducting its annual audit and other management requirements.

The exemption determination is required to move forward with the completion of this agreement since the territory of Crest Forest FPD is not within the sphere of influence of the SBCFPD. During the consideration of the County Fire Reorganization (LAFCO 3000/3001) the jurisdiction of independent fire providers was specifically excluded from the sphere of influence and boundary of the SBCFPD. After reviewing the materials presented for SC#376, it is the staff’s position that the findings identified in Subsection (e) of Section 56133 are applicable; therefore, the agreement between SBCFPD and CFFPD should be exempted from further LAFCO review. The findings are as follows:

1. The Fire Protection Services Agreement is between the SBCFPD and Crest Forest FPD both of which are legally defined public agencies.
2. The public service to be provided includes a wide range of fire protection services, advanced life support (paramedic), ambulance, and rescue services –

services already being provided by the Crest Forest FPD as identified in the proposed Fire Protection Services Agreement. The services to be provided by SBCFPD are an alternative to the Crest Forest FPD providing the service on its own.

3. The Crest Forest FPD is contracting to receive these services for the area defined as its current service area through funds derived from its share of the general ad valorem property tax and through special taxes for its Service Zones identified as PM-A and PM-1. The Crest Forest FPD retains the obligation and responsibility to assure that the special tax revenues generated are spent only within the areas in which they were generated and for the purposes they were designed to fund.
4. The level of service to be provided through this contract is consistent with the level of service contemplated by the Crest Forest FPD, existing service provider, as negotiated in the proposed Fire Protection Services Agreement. In making this determination it is understood that due to the current financial situation of the Crest Forest FPD, a failure to move forward with the contract will require a reduction in service levels to be provided by the District.

CONCLUSION:

On the basis of the findings outlined above, staff recommends that the Commission determine that pursuant to Government Code Section 56133 Subsection (e), the Fire Protection Services Agreement to be entered into by the Crest Forest FPD and the SBCFPD is exempt from further review and approval by the Commission. This determination is made with the understanding that negotiations are ongoing between the two agencies with their expressed desire to achieve a change over in service on July 1, 2013. It is the staff's understanding that the outstanding issues do not affect the determinations required of the Commission, rather relate to personnel issues and payments.

/krm

Attachments:

1. [San Bernardino County Fire Protection District Letter Dated April 29, 2013 Requesting Exemption](#)
2. [Draft Fire Protection Services Agreement](#)