

File No. 220295

Committee Item No. 4

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date September 28, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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#### OTHER (Use back side if additional space is needed)

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Completed by: Brent Jalipa Date September 22, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Authorization to Join the Federal Excess Personal Property Program - Acceptance of Loans  
2 of Equipment to the Fire Department]

3 **Resolution authorizing the Fire Department to enter into a Cooperative Agreement for**  
4 **the Federal Excess Personal Property Program under which the Department may**  
5 **receive temporary loans of equipment for fire suppression and pre-suppression use for**  
6 **an initial term of five years.**

7  
8 WHEREAS, Federal law has authorized the creation of the Federal Excess Personal  
9 Property (FEPP) Program as an element of the Cooperative Fire Protection Program (16  
10 U.S.C. § 2106(b)); and

11 WHEREAS, Under the FEPP Program, the United States Department of Agriculture  
12 (USDA) Forest Service lends federal excess personal property needed for wildland and rural  
13 community fire protection to states and local fire departments for their use; and

14 WHEREAS, The California Department of Forestry and Fire Protection (CAL Fire) has  
15 been authorized by the USDA Forest Service to administer the FEPP Program in California;  
16 and

17 WHEREAS, Under the FEPP Program, the USDA Forest Service lends excess  
18 personal property to CAL Fire and CAL Fire then lends the property to local fire departments  
19 for fire suppression and pre-suppression use; and

20 WHEREAS, To be eligible to receive federal excess personal property from CAL Fire  
21 through the FEPP Program, a fire department must enter into a Cooperative Agreement with  
22 CAL Fire; and

23 WHEREAS, A fire department that receives property under the FEPP Program must  
24 primarily use the property for activities directly related to wildland and rural community fire  
25

1 protection and is responsible for the proper care, maintenance, security, and storage of such  
2 property; and

3 WHEREAS, The San Francisco Fire Department has evaluated the FEPP Program and  
4 determined that the Department could significantly benefit from joining as a cooperator so that  
5 it would have access to such property for use in the Department's fire suppression activities;  
6 and

7 WHEREAS, The Fire Department believes that the benefits of having access to the  
8 property for fire suppression and pre-suppression purposes outweigh any costs associated  
9 with transporting, insuring, maintaining, securing, and storing such property; and

10 WHEREAS, By entering into the Cooperative Agreement, the Department is not  
11 obligated to receive any property, but will have the ability to review and submit requests to  
12 obtain property available through the FEPP Program that it believes would be of use to the  
13 Department; and

14 WHEREAS, Administrative Code, Section 10.100-305 generally requires the Board of  
15 Supervisors to approve the acceptance and expenditure of any gift of cash or good with a  
16 value of \$10,000 or more; and the Fire Department anticipates that its participation in the  
17 FEPP Program under the Cooperative Agreement could result in the acceptance of loans of  
18 equipment valued at \$10,000 or more; and

19 WHEREAS, The Fire Department recommends that the Board of Supervisors approve  
20 the Fire Department's participation in the FEPP Program and authorize it to execute the  
21 Cooperative Agreement for an initial term of five years; and

22 WHEREAS, A copy of the Cooperative Agreement is on file in Board of Supervisors  
23 File No. 220295; now, therefore, be it

24

25

1           RESOLVED, That the Board of Supervisors approves the Fire Department's  
2 participation in the FEPP Program and approves the Department's acceptance and use of  
3 equipment as provided under that agreement without further approval by the Board; and, be it  
4           FURTHER RESOLVED, That within 30 days of the Cooperative Agreement being fully  
5 executed by all parties, the Fire Department shall provide a copy of the final agreement to the  
6 Clerk of the Board for inclusion in File No. 220295.

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STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE)

COOPERATIVE AGREEMENT FOR THE  
USDA FOREST SERVICE  
FEDERAL EXCESS PERSONAL PROPERTY (FEPP) PROGRAM  
Under the United States Forest Service Cooperative Forestry Assistance Act (CFAA) of 1978

This agreement is entered into by and between

THE STATE OF CALIFORNIA  
DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE)

AND

**SAN FRANCISCO FIRE DEPARTMENT**

This agreement made and entered into this        day of        , 20    , by and between the State of California acting by and through the Director of the Department of Forestry and Fire Protection (CAL FIRE), hereinafter referred to as the STATE and the **San Francisco Fire Department**, hereinafter referred to as the COOPERATOR, covenants as follows:

I.        PURPOSE

The STATE has been approved as an agent of the United States Department of Agriculture (USDA) Forest Service for administering Federal Excess Personal Property (FEPP) as part of the Cooperative Fire Protection Program, which allows the COOPERATOR to take custody and use FEPP property for wildland and rural community fire protection services.

II.       MUTUAL INTEREST OF PARTIES

Both the STATE and the COOPERATOR have a mutual interest in the prevention, protection and suppression of all wildland and rural community fires near and adjacent to the property and the people of California.

III.      AUTHORITIES

The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 483) and the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. § 2106(c)) authorizes the FEPP Program as an element of the Cooperative Fire Protection Program (16 U.S.C. § 2106(b)). Under these authorities, the USDA Forest Service may lend FEPP property needed for wildland and rural community fire protection to the STATE and to local paid or unpaid fire departments for their use.

IV.      RESPONSIBILITIES

THE COOPERATOR AGREES:

1. Primary use of FEPP property must be 90 percent for activities directly related to wildland and rural community fire protection; however, situations may occur that make this exclusive use impractical. Non-fire emergency use of FEPP property is authorized and limited to no more than 10 percent total usage. Abuse of the 10 percent non-fire use standard could result in recall of the property on loan, suspension from the program, or other sanctions.

2. FEPP property acquired by the COOPERATOR is not permitted to be rented, leased, loaned, or traded to another party; no exceptions. FEPP property is not permitted to be transferred or sold without prior approval from the STATE or the USDA Forest Service. FEPP property is for official use only; personal use of FEPP property is prohibited, violates the law, and this Cooperative agreement. Any personal use violations found, subjects the COOPERATOR to penalties and FEPP property recall as determined by the STATE and the USDA Forest Service.
3. To immediately notify the STATE of receipt of FEPP property during the acquisition process.
4. To bear the entire cost of transportation, retrofit, modification, maintenance, repairs, and operation of acquired FEPP property while in the COOPERATOR's possession.
5. The COOPERATOR must paint any FEPP rolling stock acquired directly from the USDA Forest Service that has the distinct Forest Service green color. If the FEPP property is acquired from the Department of Defense (DoD) and has military colors or markings, it must be painted. This is mandatory per the STATE and the USDA Forest Service. The painting of the FEPP vehicle must be accomplished within one (1) calendar year of the acquisition.
6. To register all FEPP rolling stock with the California Department of Motor Vehicles (DMV) within 60 days of receipt of property. Lien Holder will remain as the USDA Forest Service. This is mandatory as ownership remains with the USDA Forest Service. Registered Owner will be the COOPERATOR.
7. To obtain prior to operation of any FEPP property the minimum liability insurance in the amount required by State law to cover the operation of FEPP rolling stock. The COOPERATOR must maintain adequate insurance to cover damages or injuries to cover persons or property relating to the use of the property. Proof of insurance coverage must be provided to the STATE in the form of an insurance policy or a self-insured statement on an official letterhead.
8. Drivers of FEPP property must take the necessary equipment training and have a valid California operator license to operate the loaned vehicle(s).
9. To make FEPP property operable and ready to be placed into service for wildland and rural community fire protection, including fire suppression and prevention. Operational condition of the property will be achieved within one (1) year to the date of property pick up/receipt.
10. FEPP property cannot be modified or cannibalized without prior authorization from the STATE and the USDA Forest Service. The COOPERATOR shall contact the STATE with a request and justification to modify or cannibalize any FEPP property. The request must be submitted for approval before any modification or cannibalization to FEPP property takes place.
11. The COOPERATOR is responsible for the proper care, maintenance, security and storage of all acquired FEPP property.
12. All FEPP property must be identified as property belonging to the USDA Forest Service and for fire use only. The STATE will provide USDA Forest Service property tags along with a property number assigned to accountable FEPP property.

13. To promptly report any FEPP property when it is no longer needed by the COOPERATOR to the STATE and the USDA Forest Service for disposal authority. The COOPERATOR is not to release FEPP property to anyone unless the STATE and the USDA Forest Service have provided the proper authorization and documentation needed. The COOPERATOR is to provide reasonable access to authorized personnel for inspection and removal of FEPP property.
14. Ownership of all accessories, tools, light bars, sirens and equipment which is added to the loaned FEPP property remains with the COOPERATOR and must be removed prior to the disposal process.
15. Accidents involving FEPP property must be reported directly to the STATE within 10 days of the situation. This includes accidents that result in death, injury, illness, or property damage (more than \$350). Depending on the type of accident, the STATE will provide direction to the COOPERATOR on the information required to be submitted to the USDA Forest Service.
16. Lost, stolen, damaged or destroyed FEPP property shall be reported to the STATE for proper documentation and handling.
17. When FEPP property is lost, damaged, destroyed or stolen, a determination is required whether there was negligence on the part of the COOPERATOR. The STATE shall make a recommendation to the USDA Forest Service Property Management Officer (PMO) whether there was negligence or gross negligence.
  - a. Negligence: The failure to abide by Federal rules and regulations.
    - i. Repeated instances of negligent damage to FEPP property by staff of the COOPERATOR may be cause for the STATE to suspend further acquisitions by the COOPERATOR until the reasons for the negligence are identified and steps taken to prevent further instances.
  - b. Gross negligence: The intentional, willful, or wanton failure to exercise a reasonable degree of care to protect FEPP property in one's custody in reckless disregard of the consequences of the actions.
    - i. If the STATE determines that there is apparent gross negligence on the part of the COOPERATOR staff, the findings plus all supporting documentation shall be forwarded by the STATE to the USDA Forest Service PMO for a final determination.
    - ii. Should the USDA Forest Service submit the final determination is one of gross negligence and sends the STATE a Bill of Collection for FEPP property under the COOPERATOR's care, the COOPERATOR will reimburse the STATE for all the costs listed on the Bill of Collection.
    - iii. The COOPERATOR shall be suspended from acquiring any additional FEPP property for a set time as determined by the STATE.
    - iv. A second case of gross negligence will cause the COOPERATOR to lose all privileges of participation in the FEPP program as determined by the STATE.
18. To perform/participate in the physical inventory process on FEPP property in the COOPERATOR's possession every two (2) years.
19. The STATE and the USDA Forest Service will periodically conduct joint reviews of the FEPP program to ensure compliance with the USDA Forest Service and other applicable statutes, regulations and policies are being followed. The COOPERATOR must participate and provide access to all physical FEPP property along with access to all FEPP documentation during the review. The STATE is authorized to perform audits and reviews by STATE personnel, in between joint reviews, to provide the USDA Forest Service information for FEPP program improvements.

20. To retain all documentation on all inventoried FEPP property for six (6) years and three (3) months after the year designated for the disposal of the property. The STATE will send all mandatory documentation required for acquisition, management and disposal of FEPP property to the COOPERATOR as these processes occur.
21. The COOPERATOR must provide access to and the right to examine all records, books, papers or documents relating to the FEPP program to the USDA Forest Service, the USDA Office of the Inspector General (OIG), the Comptroller General of the United States, the STATE and their authorized representatives.
22. To comply with Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or natural origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination, under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. To comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) prohibiting discrimination where discriminatory practices will result in unequal treatment of persons who are or should be benefiting from the activity.

V. OTHER AGREEMENT TERMS  
IT IS MUTUALLY AGREED THAT:

1. Title to all FEPP property shall remain vested in the United States federal government.
2. The COOPERATOR shall complete a resolution, or a statement from their governing board/council, approving participation in the FEPP program. The resolution must be received with this Cooperative agreement as a requirement of the Terms and Conditions before the STATE will prepare or continue (in the case of a renewal agreement) the COOPERATOR's access to screen and manage FEPP property.
3. All FEPP property loaned to the COOPERATOR shall be for an indefinite period of time, unless the COOPERATOR is negligent of program requirements as detailed in the Terms and Conditions of this Cooperative agreement as well as any Federal regulations that govern the FEPP program. The agreement may be terminated by either party after giving notice 60 days in advance of such termination to the other party.
4. The STATE will not be responsible for furnishing spare parts for FEPP property and the COOPERATOR accepts all FEPP property "as is" without any warranties of any kind, either expressed or implied.
5. Amendments to this Cooperative agreement covering acquisitions and disposals of FEPP property will be submitted by the STATE to the COOPERATOR for review and signature. These Amendments will be sent upon completion of the action taken and must be returned signed and dated by the COOPERATOR to the STATE to maintain accurate record keeping as required by the USDA Forest Service.
6. COOPERATORS with any FEPP property will cooperate with regulatory agencies to ensure compliance with Federal and State regulations, program and property management requirements.
7. In the event of any dispute over FEPP loaned equipment or any terms or conditions contained herein, the dispute shall be decided by the STATE and its decision shall be binding and final.



8. The parties hereto agree that the COOPERATOR, their officers, employees, agents, servants, contractors, volunteers, paid firefighters, and all others acting on behalf of the COOPERATOR, performing under the terms of this Cooperative agreement, are not acting as officers, employees or agents of the State or the Federal government.
9. The COOPERATOR agrees to defend, indemnify, save and hold harmless the STATE as defined herein, and the Department of Forestry and Fire Protection (CAL FIRE), their officers, agents and employees against all claims, demands, causes of action or liability of any kind whatsoever arising out of the acts of the COOPERATOR, its agents or employees in the performance of any function provided for under the terms of this agreement or the use of property transferred.
10. The period of this agreement is for five (5) years from the date of last signature on page six (6) and entered on page one (1), if no violations or signatory changes occur. Thereafter, the agreement shall be reviewed every other year for compliance by the STATE during the agreement review process and extended if no violations or changes have occurred, not to exceed a five (5) year term renewal. This Cooperative agreement supersedes all prior agreements related to the FEPP program.
11. Either party may terminate this agreement by providing written notice to the other party 60 days prior to the termination date. If the agreement is terminated, the COOPERATOR shall be ineligible to continue participation in the FEPP program. Upon termination of this Cooperative agreement, all FEPP property assigned to the COOPERATOR shall be returned to the STATE. Prior to terminating a COOPERATOR's eligibility for cause, the STATE shall attempt alternative resolutions.
12. Any information provided to the STATE under this Cooperative agreement is subject to the Freedom of Information Act (5 U.S.C. §§ 551 *et seq.*).
13. The primary contact information of the parties hereto, for all notices, payments, repayments, or any other activity required or contemplated under the terms of this Cooperative agreement are:

Cooperator Name: San Francisco Fire Department	Department of Forestry and Fire Protection (CAL FIRE) Federal Property Programs
Contact Name: Book Mancinelli	
Title: Lieutenant, Training Division	
Street Address: 698 2 <sup>nd</sup> Street	Street Address: 710 Riverpoint Court West Sacramento, CA 95605
Mailing Address:	Mailing Address: P.O. Box 944246
City: San Francisco	City: Sacramento
Zip: 94107	Zip: 94244-2460
Phone Number: (415) 558-3200 Ext.	Phone Number: (916) 894-9804
Cell Phone Number: (925) 330-1886	Fax Phone Number: (916) 894-9880
Email: brook.mancinelli@sfgov.org	Email: <a href="mailto:FederalProperty@fire.ca.gov">FederalProperty@fire.ca.gov</a>

14. Local CAL FIRE Unit contact information:

CAL FIRE Unit: San Mateo - Santa Cruz Unit (CZU)	Point of Contact: CZU Forestry Logistics Officer
Physical Address: 6059 Highway 9	
City: Felton	Zip Code: 95018
Phone Number: (831) 335-5355 Ext.        :	

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the day and year of the last signature below.

<b>COOPERATOR</b>	
NAME OF COOPERATOR:  <b>San Francisco Fire Department</b>	
BY (Authorized Signature):  	DATE SIGNED:
PRINTED NAME AND TITLE OF PERSON SIGNING:  <b>Jeanine Nichols, Fire Chief</b>	
<b>STATE OF CALIFORNIA</b> <b>Department of Forestry and Fire Protection (CAL FIRE)</b>	
BY (CAL FIRE Unit Chief):  	DATE SIGNED:
PRINTED NAME AND TITLE OF PERSON SIGNING:  <b>Nate Armstrong, Unit Chief, San Mateo-Santa Cruz Unit (CZU)</b>	
BY (CAL FIRE Property and Local Services Manager):  	DATE SIGNED:
PRINTED NAME AND TITLE OF PERSON SIGNING:  <b>Nicole Harner, Property and Local Services Manager</b>	

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE)

COOPERATIVE AGREEMENT FOR THE  
USDA FOREST SERVICE  
FEDERAL EXCESS PERSONAL PROPERTY (FEPP) PROGRAM  
Under the United States Forest Service Cooperative Forestry Assistance Act (CFAA) of 1978

**ATTACHMENT A**

**SAN FRANCISCO FIRE DEPARTMENT**

	<b>ITEM:</b>	<b>SERIAL #:</b>	<b>PROPERTY #</b>
1.	No Property At This Time		
2.			
3.			
4.			
5.			
6.			
7.			

Rev. June 2020

RESOLUTION AUTHORIZING APPLICATION  
FOR FEDERAL EXCESS PERSONAL PROPERTY (FEPP) PROGRAM  
IN ACCORDANCE WITH  
United States Forest Service Cooperative Forestry Assistance Act (CFAA) of 1978

\_\_\_\_\_ Date

The City Council of the \_\_\_\_\_ Fire Department has resolved:

WHEREAS, there is a need for Federal Excess Personal Property to help fight wildland,

rural, structure or other fires in the City of \_\_\_\_\_, and

WHEREAS, \_\_\_\_\_ is the Chief of the \_\_\_\_\_ Fire Department,

THEREFORE, be it resolved that the City Council of the \_\_\_\_\_ Fire

Department accepts the agreement between the State of California, Department of Forestry and

Fire Protection (CAL FIRE) and the \_\_\_\_\_ Fire Department,

\_\_\_\_\_ for the loan of Federal Excess Personal Property, and, authorizes  
Dated

Fire Chief \_\_\_\_\_ to sign the agreement for the City Council.

\_\_\_\_\_  
City Clerk

City Council of the \_\_\_\_\_ Fire Department

**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Scanlon, Olivia \(FIR\)](#); [Kaialoa, Shayne \(FIR\)](#)  
**Subject:** Mayor -- Resolution -- FEPP Program  
**Date:** Tuesday, March 22, 2022 4:03:23 PM  
**Attachments:** [Mayor -- Resolution -- FEPP Program.zip](#)

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Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution authorizing the Fire Department to enter into a Cooperative Agreement for the Federal Excess Personal Property Program under which the Department may receive temporary loans of equipment for fire suppression and pre-suppression use.

Please let me know if you have any questions.

Sincerely,  
Susanna

Susanna Conine-Nakano  
Office of Mayor London N. Breed  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 200  
San Francisco, CA 94102  
415-554-6147