

CITY OF SEBASTOPOL
CITY COUNCIL

ADDED AGENDA ITEM TO SEP 6TH 2022 CITY COUNCIL MEETING

Added: 9:00 am / September 1, 2022 (Posted Within Brown Act Requirements)

Meeting Date: September 6, 2022
To: Honorable City Councilmembers
From: Director of Emergency Services
Administrative Services Director/City Administration
Subject: Cal OES Request for Assignment Regarding Kincaide Fire
Recommendation : That the Mayor and City Council Approve and Authorize Subrogation and Assignment of Claims ("Agreement") Arising out of the Kincaide Fire
Funding: Currently Budgeted: _____ Yes _____ No XX N/A
Net General Fund Cost: N/A
Amount: \$

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

INTRODUCTION/PURPOSE:

This item is to request that the City Council Approve and Authorize Subrogation and Assignment of Claims ("Agreement") Arising out of the Kincaide Fire.

BACKGROUND:

On the evening of October 23, 2019, the Kincaide Fire ignited in an area northeast of Geyserville in Sonoma County, California. The ignition coincided with an ongoing power de-energization event due to Red Flag weather conditions.

Ultimately, the fire would become the largest fire of the 2019 fire season in California and the physically largest fire in Sonoma County's history.

DISCUSSION

The California Governor's Office of Emergency Services (Cal OES) and the County of Sonoma and Sonoma County cities have maintained a strong relationship since the 2017 wildfires and have continued building on the coordination and lessons learned following those events, which help facilitate recovery efforts related to the Kincaide fire today.

As part of the Kincaide Fire, the City of Sebastopol submitted to Cal OES invoices for police services provided (overtime salaries) as well as a vehicle that was damaged. The total amount approved for reimbursement to the City was \$25,540 and the breakdown is listed below:

The total approved project amount is \$26,615.18.

The breakdown of the \$25,450 payment is as follows:

The federal cost share is 75%, or \$19,961.39.

The state cost share is 18.75%, or \$4,990.

The state administrative allowance is 10% of the state cost share, or \$499.

The California Office of Emergency Services (Cal OES) has reached out to the City of Sebastopol seeking assignment agreements to formalize Cal OES' authorization to sue to recover those funds from the party or parties responsible for the fire.

Cal OES is preparing litigation concerning the Kincaide Fire on behalf of the California Office of Emergency Services and since the City of Sebastopol received emergency funds distributed by OES in response to the Kincaide fire, and has not brought its own lawsuit resulting from this fire, has requested an assignment agreement to try to recover funds from the third party or parties responsible for the fire.

Pursuant to federal and state regulations, parties that receive emergency funds from FEMA, due to the negligence of a third party, are obligated to take "all reasonable steps to recover all costs attributable to the negligence of the third party." 44 C.F.R., § 204.62(c); see also 19 Cal. Code Reg. § 2910. FEMA would then be entitled to reimbursement of any costs recovered from the culpable third party. 44 C.F.R., §204.62(a),(c). Accordingly, in exchange for the funds Assignor received from Assignee, it was obligated to pursue "reasonable efforts" to recover those costs from the responsible party whose negligence contributed to the Event.

The right to recover damages usually lies with the bereaved or injured party but the law recognizes that if another has already paid the bereaved or injured party then the person who has paid the compensation has the right to recover damages. As the City of Sebastopol received most of the claimed approved project amount of \$26,615.18 for the Kincaide Fire, the City of Sebastopol is obligated to use reasonable efforts to recover costs. As part of our reasonable efforts to recover costs, Cal OES is seeking assignments from Sebastopol as well as Rohnert Park. Cloverdale, Healdsburg, and Windsor already sued and have settled their suits. Cal OES is also seeking assignments from several state agencies and special districts (e.g., fire protection districts, community services districts).

The City recognizes Cal OES's right to recover costs from a Third Party and supports the request to subrogate and assign claims arising out of the Kincaide Fire.

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, if staff receives public comment from interested parties following the publication and distribution of this staff report such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the "Public Comment" portion of the City Council discussion of this item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

FISCAL IMPACT:

There is no fiscal impact with approval of this item tonight as the City has received some of the cost to support the Kincaide fire. The item is to allow Cal OES assignment agreement to recover funds already submitted to the City from the third party or parties responsible for the fire.

RECOMMENDATION

That the City Council Approve and Authorize Subrogation and Assignment of Claims ("Agreement") Arising out of the Kincaide Fire.

Attachment:

Agreement On The Subrogation And Assignment Of Claims Arising Out Of The Kincaide Fire

AGREEMENT ON THE SUBROGATION AND ASSIGNMENT OF CLAIMS ARISING OUT OF THE KINCAIDE FIRE

This Subrogation and Assignment of Claims (“Agreement”) is entered into by and among the following parties:

- i. The City of Sebastopol (“Assignor”); and
- ii. The California Governor’s Office of Emergency Services (“Assignee”).

WHEREAS, after the October 2019 Kincaide Fire (the “Event”), Assignee made significant expenditures to numerous public entities to assist with public health and safety efforts and other public works to address the various damage suffered from the Event.

WHEREAS, these expenditures, including but not limited to funds originally distributed by the Federal Emergency Management Agency (“FEMA”) to Assignee, covered a number of different categories of costs, including repairs to public infrastructure and buildings, debris and ash removal, search and rescue efforts, and/or evacuation and shelter operations, among others.

WHEREAS, Assignor received funds from Assignee and used those funds to take necessary actions to safeguard public health and/or remedy harms arising from the Event.

WHEREAS, pursuant to federal and state regulations, parties that receive emergency funds from FEMA, due to the negligence of a third party, are obligated to take “all reasonable steps to recover all costs attributable to the negligence of the third party.” 44 C.F.R., § 204.62(c); see also 19 Cal. Code Reg. § 2910. FEMA would then be entitled to reimbursement of any costs recovered from the culpable third party. 44 C.F.R., §204.62(a),(c). Accordingly, in exchange for the funds Assignor received from Assignee, it was obligated to pursue “reasonable efforts” to recover those costs from the responsible party whose negligence contributed to the Event.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignee and Assignor (individually a “Party” and jointly the “Parties”) agree as follows:

1. Assignor assigns and transfers to Assignee any and all claims, demands, and causes of action of whatever kind and nature that Assignor has or may later have, under any legal or equitable theory of recovery, relating to harms Assignor suffered as a result of the Event, and for which Assignor received funds from Assignee (“Assigned Claims”). By virtue of Assignee’s payments for damage and loss of Assignor arising from the Event, the Assignee subrogates to Assignor’s rights on the Assigned Claims.
2. Assignee will assume any and all responsibility Assignor has under state and federal law to pursue reimbursement from any third party for expenditures by Assignee or FEMA that were made to address effects caused by the Event.
3. Assignee further agrees to indemnify and defend Assignor against any allegation that it did not adequately pursue reimbursement of any expenditures it received to address the effects of the Event from FEMA or any other federal agency.

4. This assignment satisfies any legal obligation on behalf of the Assignor that may exist under the California Disaster Assistance Act (CDAA) and its implementing regulations to pursue the reimbursement of any expenditures Assignor received from Assignee pursuant to the CDAA to address the effects of the Event.
5. Assignee shall have no obligation to pursue from any potentially responsible third party any expenditure made directly by Assignor as a result of the Event.
6. Assignor retains the right to pursue claims against any third party for injuries arising from the Event so long as said claims do not constitute or include an Assigned Claim under this Agreement.
7. This Agreement is effective upon execution by the Parties, and may be signed in counterparts.
8. This Agreement contains the entire Agreement between the Parties, and no statement, promise, or inducement made by any Party to this Agreement that is not set forth in this Agreement shall be valid or binding, nor shall it be used in construing the terms of this Agreement as set forth herein.
9. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of California. The terms of this agreement shall be specifically enforceable by the Parties.
10. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this agreement and to legally bind such Party to all terms and conditions of this document. This agreement shall be binding upon the Parties.

SIGNATURES

The California Governor's Office of Emergency Services consents to the terms and conditions of this Agreement by its duly authorized representative on this ____ day of September, 2022.

By: _____

The City of Sebastopol consents to the terms and conditions of this Agreement by its duly authorized representative on this 6th day of September, 2022.

By: _____

Larry McLaughlin

City Manager/City Attorney