

FORM APPROVED COUNTY COUNSEL 2/3/15
 BY: GREGORY P. PRAMOS DATE

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

210



FROM: FIRE

SUBMITTAL DATE:
 January 27, 2015

SUBJECT: Approval of the Cooperative Agreement with the City of Menifee for the transfer of Sun City Fire Station Development Impact Fee (DIF) Committed Balance; [\$3,112,655]; District 3; 100% DIF Western County Fire Facilities

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Cooperative Agreement between the County of Riverside and the City of Menifee for the transfer of Sun City Fire Station Development Impact Fee (DIF) commitment balance of \$3,112,655; and,
2. Authorize the Chairman of the Board to execute this Cooperative Agreement on behalf of the County.

BACKGROUND:

Summary

Continued on Page 2.

[Signature]
 John R. Hawkins,
 Fire Chief

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 3,112,655	\$ 0	\$ 3,112,655	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: 100% DIF Western County Fire Facilities
 Fund 30505

Budget Adjustment: No
 For Fiscal Year: 14/15

C.E.O. RECOMMENDATION:

APPROVE

BY: *[Signature]*
 Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- Positions Added
- Change Order

- A-30
- 4/5 Vote

Prev. Agn. Ref.: 7/31/07 3.17; 7/30/13 3-30

District:3

Agenda Number:

3-20

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of the Cooperative Agreement with the City of Menifee for the transfer of Sun
City Fire Station Development Impact Fee (DIF) Committed Balance; [\$3,112,655]; District 3; 100%
DIF Western County Fire Facilities
DATE: January 27, 2015
PAGE: 2 of 2**

BACKGROUND:

Summary (continued)

On July 31, 2007, Agenda 3.17, the County approved and committed the use of DIF in the amount of \$3.4 million for the construction of a new Sun City Fire Station. The Fire Department immediately began working on the project of a new Fire Station and \$287,345 of funds was expended.

On October 1, 2008, the City of Menifee incorporated from the County and a Cooperative Agreement to provide fire protection, rescue and medical emergency services was enacted between the County and the City of Menifee effective July 1, 2013. The Cooperative Agreement was enacted by the Board of Supervisors on July 30, 2013, Agenda 3-30.

The City of Menifee now desires to continue the construction of a new Fire Station and has requested the transfer of the remaining committed DIF balance to the City. The balance of the DIF commitment is \$3,112,655. These funds must be used to build the Fire Station and must be encumbered or expended by June 30, 2017. The City will own and maintain the Fire Station. This includes all repairs, maintenance, and capital improvements.

In addition, the Fire Department has been and will continue to work closely with the City through the entire process of construction and the opening of the new station. The Agreement includes audit provisions and the County will have the right to review any records pertaining to the performance of this Agreement.

Impact on Citizens and Businesses

There is no impact to the citizens and businesses.

SUPPLEMENTAL:

Additional Fiscal Information

A transfer of \$3,112,655 from the Western County Fire Facilities DIF fund will be completed in FY 14/15 to the City of Menifee. There are no additional costs to the County. The City will own and maintain the new station.

Contract History and Price Reasonableness

The City of Menifee began contracting with the Riverside County Fire Department for fire protection services on July 1, 2013.

**A COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF MENIFEE
AND
THE COUNTY OF RIVERSIDE
FOR THE TRANSFER OF THE SUN CITY FIRE STATION NO. 7
DEVELOPMENT IMPACT FEE COMMITTED BALANCE**

THIS COOPERATIVE AGREEMENT (“**Agreement**”), made and entered into as of this _____ day of _____, 2014, by and between the County of Riverside, a political subdivision of the State of California, on behalf of the Riverside County Fire Department, (“**COUNTY**”) and the City of Menifee, a California municipal corporation, (“**CITY**”), whereby it is agreed as follows:

RECITALS

WHEREAS, per the Riverside County Board of Supervisor’s meeting on July 31, 2007, Agenda Item 3.17; COUNTY approved the use of Development Impact Fees (hereinafter referred to as “**DIF**”) in the amount of Three Million Four Hundred Dollars (\$3,400,000) for the construction of a new Sun City Fire Station (hereinafter referred to as the “**STATION**”), and added the STATION to the Public Facility needs list for the 3rd & 5th District;

WHEREAS, the estimated balance remaining of COUNTY DIF committed for the construction of the STATION is Three Million One Hundred Twelve Thousand Six Hundred Fifty Five Dollars and Nine Cents (\$3,112,655.09);

WHEREAS, CITY incorporated on October 1, 2008, from COUNTY and has contracted with COUNTY, individually pursuant to that certain Cooperative Agreement dated July 1, 2013, and attached hereto as Exhibit A, to provide fire protection, disaster preparedness and response, fire prevention, rescue, hazardous materials mitigation, technical rescue response, medical emergency services, and public service assists for the City of Menifee, by and between the City of Menifee and the County of Riverside;

WHEREAS, CITY has collected approximately Eight Hundred Thousand Dollars (\$800,000.00) in DIF designated for the development of future fire stations within CITY’S jurisdiction;

WHEREAS, this Agreement is to coordinate the transfer of the remaining balance of COUNTY DIF committed for the construction of a new STATION to the CITY for the specific purpose of constructing a new STATION;

WHEREAS, the current STATION, located at 27860 Bradley Road, Sun City, CA 92586, (Station No. 7) will be repurposed within the COUNTY Fire Department and will remain under COUNTY ownership.; and

NOW, THEREFORE, based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and COUNTY hereby agree as follows:

I. TRANSFER OF DIF

A. COUNTY will coordinate with Riverside County Executive Office to transfer the remaining COUNTY DIF committed for the construction of the Sun City Fire Station, as approved by COUNTY in 2007. These funds must be used to build the STATION. These funds must be used to build the STATION and encumbered or expended by June 30, 2017. The CITY will own and maintain STATION. This includes all repairs, maintenance, and capital improvements to the STATION.

B. CITY will utilize the above-referenced CITY DIF, in the amount of Eight Hundred Thousand Dollars (\$800,000), to purchase the property on which the STATION will be built, with any remaining balance of DIF after land acquisition going towards the construction costs for the STATION.

C. The land acquisition and construction of the STATION will be the responsibility of CITY.

II. INDEMNIFICATION AND HOLD HARMLESS

To the fullest extent permitted by applicable law, CITY shall and does agree to indemnify, protect, defend, and hold harmless COUNTY, its agencies, departments, directors, officers, agents, Board of Supervisors, elected and appointed officials, volunteers, and representatives (collectively, "**COUNTY Indemnitees**") for, from, and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments, and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind, or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the services performed hereunder, by CITY, or any part thereof, (2) this Agreement, including any approved amendments or modifications, or (3) any negligent act or omission of CITY its officers, employees, subcontractors, agents, or representatives (collectively, "**CITY Liabilities**"). Notwithstanding the foregoing, the only CITY Liabilities with respect to which CITY'S obligation to indemnify, including the cost to defend, the COUNTY Indemnitees does not apply is with respect to CITY Liabilities resulting from the negligence or willful misconduct of a COUNTY Indemnitee, or to the extent such claims do not arise out of, pertain to or relate to this Agreement.

III. AUDIT

A. COUNTY and CITY agree that their designated representative shall have the right to review and to copy any records and supporting documentation of the other party hereto, pertaining to the performance of this Agreement. COUNTY and CITY agree to maintain such records for possible audit for a minimum of three (3) years after deliverance of COUNTY DIF to the CITY is made, unless a longer period of records retention is stipulated or as required by law,

and to allow the auditor(s) of the other party access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. COUNTY and CITY agree to a similar right to audit records and interview staff in any subcontract related to performance of this Agreement. (See Gov. Code § 8546.7 and Pub. Contract Code §§ 10115 *et seq.*)

B. Each party shall bear their own costs in performing a requested audit.

IV. DISPUTES

A. CITY shall select and appoint a “**Contract Administrator**” who shall, under the supervision and direction of CITY, be available for contract resolution or policy intervention with COUNTY, when, upon determination by the Fire Chief in charge of the STATION (“**Chief**”) that a situation exists under this Agreement in which a decision to serve the interest of CITY has the potential to conflict with COUNTY interest or policy. Any dispute concerning a question of fact arising under the terms of this Agreement which is not disposed of within ten (10) calendar days or less by the CITY and COUNTY employees normally responsible for the administration of this Agreement shall be brought to the attention of the City Manager of CITY and the Chief Executive Officer (or designated representative) of COUNTY. CITY and COUNTY agree to continue with the responsibilities under this Agreement during any dispute. Disputes that are not resolved informally by and between CITY and COUNTY representatives may be resolved, by mutual agreement of the parties, through mediation. The costs associated with mediator shall be shared equally among the participating parties. If the mediation does not resolve the issue(s), or if the parties do not agree to mediation, the parties reserve the right to seek remedies as provided by law or in equity. The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement. All legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, or in any other appropriate court in that County. Unless otherwise noted, each party shall bear their own costs in all dispute resolutions.

B. Any claims or causes of actions, whether they arise out of unresolved disputes as specified in this Section or claims by third parties that are made against COUNTY, shall be submitted to the Office of the Clerk of the Board for the County of Riverside in a timely manner.

V. DELIVERY OF NOTICES

A. Any notices to be served pursuant to this Agreement shall be considered delivered when deposited in the United States mail and addressed to:

COUNTY
County Fire Chief
210 W. San Jacinto Ave.
Perris, CA 92570

CITY
City Manager
City of Menifee
29714 Haun Road
Menifee, CA 92586

B. Provisions of this section do not preclude any notices being delivered in person to the addresses shown above. Delivery in person shall constitute service hereunder, effective when such service is made.

VI. GENERAL TERMS

A. INCORPORATION OF RECITALS. The Recitals of fact set forth at the beginning of this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

B. ENTIRE CONTRACT. This Agreement contains the whole contract between the parties for the Sun City Fire Station Relocation and Construction. It may be amended or modified upon the mutual written consent of the parties hereto. This Agreement does NOT supplement other specific agreements entered into by both parties for service, equipment, facilities, and excepting those service, equipment, or facilities agreements, this Agreement cancels and supersedes any previous agreement for the same or similar services.

C. SEVERABILITY. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

D. SECTION HEADINGS AND SUBHEADINGS. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

E. NONLIABILITY OF OFFICIALS AND EMPLOYEES. No member, official, employee, or contractor of CITY shall be personally liable to COUNTY in the event of any default or breach by CITY or for any amount which may become due to COUNTY or on any obligations under this Agreement. No member, official, employee, or contractor of COUNTY shall be personally liable to CITY in the event of any default or breach by COUNTY or for any amount which may become due to CITY or on any obligations under this Agreement.

F. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

G. NO CONFLICT OF INTEREST. For the Term of this Agreement, no member, officer, or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

H. THIRD PARTY BENEFICIARIES. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

I. AUTHORITY TO EXECUTE. COUNTY and CITY each warrant that the individual who has signed this Agreement has the legal power, right, and authority to make this Agreement.

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**SIGNATURE PAGE TO
A COOPERATIVE AGREEMENT BETWEEN
THE CITY OF MENIFEE AND THE COUNTY OF RIVERSIDE
FOR THE TRANSFER OF THE SUN CITY FIRE STATION NO. 7
DEVELOPMENT IMPACT FEE BALANCE**

IN WITNESS WHEREOF, the duly authorized officials of the parties hereto have, in their respective capacities, executed this Agreement by and through the signatures set forth below:

CITY OF MENIFEE

BY: _____

TITLE: _____

ATTEST:

APPROVED AS TO FORM:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

Dated: _____

COUNTY OF RIVERSIDE

BY: _____

CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

KECIA HARPER-IHEM
Clerk of the Board

GREGORY P. PRIAMOS,
County Counsel

BY:  _____

DALE A. GARDNER,
DEPUTY COUNTY COUNSEL

BY: _____

DEPUTY

(SEAL)