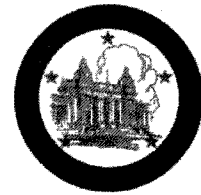


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
3.48
(ID # 3653)

MEETING DATE:


Tuesday, March 7, 2017

FROM : FIRE DEPARTMENT:

SUBJECT: FIRE DEPARTMENT: Approve and Execute the Donation Agreement for three (3) Rail Tank Cars with BNSF Railway Company; All Districts; [\$20,000 25% General Fund, 40% Contract Reimbursement, 35% Structural Fire Taxes & Prop 172]

RECOMMENDED MOTION: That the Board of Supervisors approve and execute the donation agreement for three (3) tank railcars #880057, #880119, #880128 with BNSF Railway Company for the Riverside County Fire Department.

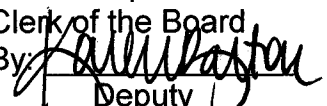
ACTION: Policy


John Williams, Chief of Fire Riverside County 2/22/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Ashley
Nays: None
Absent: None
Date: March 7, 2017
xc: Fire

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:
COST	\$ 20,000	\$ 0	\$ 20,000	\$ 0
NET COUNTY COST	\$ 5,000	\$ 0	\$ 5,000	\$ 0
SOURCE OF FUNDS: 25% General Fund, 40% Contract Reimbursement, 35% Structural Fire Taxes & Prop 172			Budget Adjustment:	No
			For Fiscal Year:	16/17

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Fire Department proposes to accept the donation of three (3) Railcars from Burlington Northern Santa Fe (BNSF) Railway Company. These railcars will be used at Ben Clark Public Safety Training Center (BCTC) in Riverside as training props / aids in hazardous materials and other railcar emergency response scenarios. Training on these types of props is a component of the Hazardous Materials Specialist certification which is a minimum required training for the Hazardous Materials Response Team members as a Cal OES (CA Office of Emergency Services) Type II Hazardous Materials Response Team. These include personnel from both CAL Fire/Riverside County Fire Department and Riverside County Environmental Health. The cars will be placed on an actual rail spur that has already been installed. The railcar props will include access ladders and catwalks incorporating them into other fixed objects and containment vessels to mirror that of an offloading site for any number of chemicals transported by rail. The railcars will also be plumbed with fittings to allow for simulated pressurized leaks to be mitigated during hazmat and other emergency response training. With the increase in crude oil transportation in Riverside County, the need continues to grow for specialized training for Hazmat personnel as well as first responders.

It is a very rare opportunity to train on these types of railcars without traveling to one of the railroad training centers which are in Texas and Colorado or to a certified hazmat training center such as California Specialized Training Institute (CSTI) in San Luis Obispo which has a very limited mock railcar prop. Traveling to these locations for this type of specialized training is very costly. Our current Hazmat training requires us to send employees out of the county for up to six weeks, covering backfill and overtime costs, as well as providing hotel, rental car and meal re-imbusement. This donation will result in a significant cost savings to the county.

For our training center to become recognized and certified by Cal OES and CSTI as a Hazardous Materials training site, we are required to have these types of training aids / props. By acquiring these cars and becoming a certified Regional Hazmat Training site, we will have the opportunity to provide local access for hazmat and other potential railcar emergency training to not only our agency but also other agencies in the region including our fellow CHOG members (Countywide HazMat Operations Group). We will be able to build a training cadre

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

around the props and allow us to train Hazmat Technicians to the level of Hazmat Specialist locally. These railcar props are the final requirement needed to meet the site certification for Cal OES and CSTI.

The cost for removal of all three (3) Rail Tank cars from the (BNSF) property and transport to BCTC utilizing a heavy crane with a certified rigger, four transport trucks with pilot cars and all associated permits is approximately \$20,000. The process is expected to take two working days.

Railcars have an estimated service life of 50 years based on the American Association of Railroads. These cars have been decommissioned and certified as cleaned and purged. Once they are on our property, they are no longer considered in service and are expected to last indefinitely.

The Railcars are identified as:

#880057

#880119

#880128

Impact on Residents and Businesses

The training opportunities that will be made possible with this donation will allow for our staff to be trained to the highest caliber. The increase in crude oil transportation in Riverside County drives the need for specialized training for Hazmat personnel as well as first responders. This will result in better service for our citizens and businesses in the County of Riverside.

SUPPLEMENTAL:

Additional Fiscal Information

The rail cars have no value. The cost to transport the cars to BCTC is estimated at \$20,000 and will be expended in FY16/17. This cost is part of our FY16/17 budget and will be cost allocated to the County and our City Partners via our FY16/17 Cost Allocation Plan.

Contract History and Price Reasonableness

This is the first donation agreement with the BNSF Railway Company. The cost to transport the railcars will be completed utilizing the established procurement procedures with the County.


Gregory P. Priamos, Director County Counsel

2/22/2017


Tina Grande, Principal Management Analyst

2/27/2017



Lena. Kent
Director, Public Affairs

BNSF Railway Company
740 E. Carnegie Drive
San Bernardino, CA 92408
Office 909-386-4140
Fax 909-386-4140

Lena.Kent@bnsf.com

February 8, 2017

County of Riverside
c/o Jodie Gray, Battalion Chief
Riverside County Fire Dept

DONATION AGREEMENT

BNSF Railway Company (hereinafter called, "BNSF") hereby agrees to donate to the hereinafter called, "Donee") the following item(s) (hereinafter called, the "Item(s)") on the terms and conditions set forth below:

BNSF Tank Cars - #880057 #880119 #880128

In consideration of the donation described in this Donation Agreement, Donee and BNSF agree as follows:

- 1) **Compliance with Laws.** Donee and its contractors shall comply with all applicable federal, state and local laws and regulations (environmental or otherwise) concerning the use, disposition and condition of the Item(s). To the extent allowed by applicable law, Donee shall, immediately upon demand, indemnify, defend and hold harmless, BNSF of, from and against all claims, liabilities, obligations, actions, causes of action, damages or legal proceedings, and including legal fees and expenses incurred with respect to investigation or defending any of same, which arise out, relate to or are incurred in connection with the use, disposition or condition of the Item(s) or any breach, nonobservance, nonperformance or violation, actual or alleged by Donee, or anyone acting on its behalf or being under its direction or control, of any of the terms or provisions of this Donation Agreement.
- 2) **Authorized Entrance.** Donee must contact James Farner **prior** to entering BNSF property to pick up the Item(s). Each employee, representative, or agent of Donee will be required to execute a release and waiver prior to entering BNSF property. Donee and its employees, representatives or agents may enter BNSF property during regular business hours to remove the Item(s) donated under this Donation Agreement at Donee's sole cost and expense after delivery of the fully executed original of this Donation Agreement. Donee and its employees, agents or invitees shall comply with all federal, state and local safety rules and regulations and with BNSF safety rules and regulations while on BNSF property under this Donation Agreement. In any event, all items are to be removed from

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BNSF property within 90 days from date of this Agreement.

- 3) **Disclaimer of Warranties.** BNSF expressly disclaims any past, present or future warranty (express, implied or statutory), guaranty, or representation (oral or written) as to or concerning the Item(s), including, without limitation, the condition of the Item(s), the value or whether the Item(s) is/are in compliance with any laws, rules, ordinances or regulations of any city, county, state, regulatory and/or other governmental entity. **PURSUANT TO THIS DONATION AGREEMENT, BNSF IS DONATING THE PROPERTY TO DONEE "AS IS", "WHERE IS" AND "WITH ALL FAULTS". DONEE EXPRESSLY ACKNOWLEDGES THAT BNSF MAKES NO REPRESENTATION OR WARRANTY TO DONEE, EXPRESS, IMPLIED OR STATUTORY, OR ARISING BY OPERATION OF LAW, AND INCLUDING, BUT WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Donee acknowledges that it is sophisticated in the purchase of personal property and is entering into this Donation Agreement in reliance on its own abilities and investigation and not on any representation, warranty or agreement of BNSF. Donee acknowledges that no representations have been made by BNSF or its agents or employees to induce Donee to enter into this transaction. Additionally, Donee acknowledges that it has made such investigations of the Property and performed such due diligence with respect thereto as it deemed necessary or advisable, and accepts such Property in its present condition. This Section shall survive donation contemplated herein and the termination of this Donation Agreement.
- 4) **Indemnification.** Donee realizes that its presence on BNSF property involves potential danger and risk to Donee and BNSF, including the possibility of injury or death to persons and/or damage to or loss of property. In consideration of Donee's entry onto BNSF property, to the extent allowed by applicable law, Donee agrees to and does hereby waive, release, indemnify, defend and hold harmless BNSF and BNSF's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including without limitation court costs and attorneys' fees) of any nature, kind or description of any person or entity (including employees, agents and invitees of BNSF and Donee) directly or indirectly arising out of, resulting from or related to (in whole or in part) (i) the acts or omissions of Donee or its agents, representatives or employees, (ii) Donee's failure (including the failure of its employees, representatives or agents) to perform any obligation hereunder (actual or alleged), or (iii) use of the items by Donee or its agents, representatives or employees. This Section shall survive any termination of this Donation Agreement and any donation of the Item(s).
- 5) **General Provisions**
- a) **Entire Agreement.** This Donation Agreement (including any exhibits) contains the entire agreement between BNSF and Donee. Oral statements or prior written matter not specifically incorporated into this Donation Agreement have no force and effect. No variation, modification, or change to this Donation Agreement binds either party unless

set forth in a document signed by the parties or their duly authorized agents, officers, or representatives.

b) Assigns. This Agreement inures to the benefit of and binds the parties and their respective legal representatives, successors, and permitted assigns. Donee may not assign its rights or obligations under this Agreement without BNSF's prior written consent, which BNSF may withhold in its sole discretion. If Donee assigns its rights and obligations under this Agreement in accordance with this Section, Donee will nevertheless remain liable for the performance of all covenants and obligations of Donee under this Agreement.

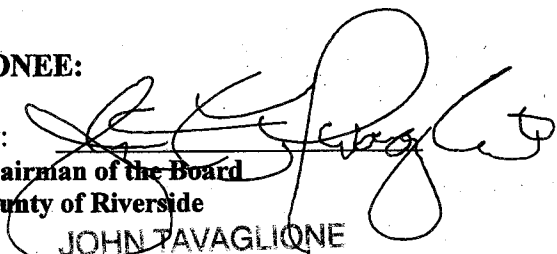
c) Governing Law. All questions concerning the interpretation or application of provisions of this Donation Agreement (including any exhibits or schedules attached to or referred to in this Donation Agreement) shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions. Donee acknowledges and stipulates that this Donation Agreement (including any exhibits or schedules attached hereto) has been executed or delivered in Tarrant County, Texas, and that the place of performance of all obligations hereunder is deemed to be Tarrant County, Texas.

d) Venue. The parties consent that venue of any action brought under this Agreement will be in Tarrant County, Texas.

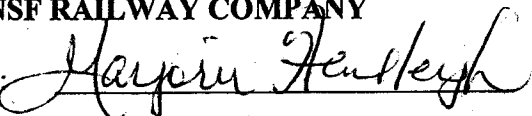
e) Severability. If any provision in this Donation Agreement is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Donation Agreement must be construed as if the invalid, illegal, or unenforceable provision had never been included.


IN WITNESS WHEREOF, the parties hereto have caused this Donation Agreement to be executed as of the date first written above.

DONEE:

By: 
Chairman of the Board
County of Riverside
JOHN TAVAGLIONE

BNSF RAILWAY COMPANY

By: 
Marjorie Hensleigh
Title: Manager, Strategic Sourcing

ATTEST:
KECIA HARPER-IHEM, Clerk
BY: 
DEPUTY

FORM APPROVED COUNTY COUNSEL
BY: 
GREGORY P. PRIAMOS
DATE: 3/27/17