

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



ITEM
3.32
(ID # 6399)

MEETING DATE:

Tuesday, February 27, 2018

FROM : FIRE DEPARTMENT:

SUBJECT: FIRE DEPARTMENT: Ratification and Approval of the Non-Exclusive License and Purchase Agreement for Fuel Use between Riverside County Fire Department and the City of Desert Hot Springs for five (5) years. District: 4 [\$111,700 - Total Cost] 23.8% General Fund, 33.2% Structural Fire Taxes & Prop 172, 43% Contract Revenue

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and Approve the attached Agreement between the County of Riverside and the City of Desert Hot Springs; and
2. Ratify and Authorize the Chairman of the Board to execute this Non-Exclusive License and Purchase Agreement for Fuel Use for the fire stations' fuel needs.

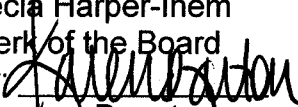
ACTION:


Daniel Talbot, Chief Cal Fire Riverside County 2/9/2018

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, Perez and Ashley
Nays: None
Absent: None
Date: February 27, 2018
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	\$ 22,340	\$ 22,340	\$ 111,700	\$ 22,340
NET COUNTY COST	\$ 5,317	\$ 5,317	\$ 26,585	\$ 5,317
SOURCE OF FUNDS: 23.8% General Fund, 33.2% Structural Fire Taxes & Prop 172, 43% Contract Revenue			Budget Adjustment: No	
			For Fiscal Year: 17/18 – 21/22	

C.E.O. RECOMMENDATION:

BACKGROUND:

Summary

Riverside County Fire Department desires to contract with The City of Desert Hot Springs for Fuel, and as such, the two agencies have reached an agreement as to the level of service the City will be providing to the Fire Department. Due to where Station 36 and Station 37 are located, the Fire Department desires to purchase fuel at the City of Desert Hot Springs for their daily use. By entering into this agreement, the staff from Station 36 and Station 37 will no longer have to drive 20 to 30 minutes to the nearest gas station. The Fuel is used to operate fire engines to provide Fire Protection, Rescue and Medical Emergency Services in the City of Desert Hot Springs, neighboring Cities and Unincorporated Areas.

There are no County positions involved in this Agreement. The term of this agreement is for five (5) years, from July 1, 2017 through June 30, 2022. The Riverside County Fire Department estimates to spend annually the amount of \$22,340 to fuel the engines for Station 36 and Station 37. We estimate expending \$111,700 for the duration of this agreement, which is 5 years.

The agreement has been reviewed and approved by Riverside County Counsel.

Impact on Residents and Businesses

There is no direct impact on the citizens and businesses due to the approval of this Agreement. This is the first year the Fire Department enters into the Non-Exclusive License and Purchase Agreement with the City of Desert Hot Springs.

SUPPLEMENTAL:

Additional Fiscal Information

Entering into this agreement does not contain new additional impact to the general fund or the Department budget. The Fuel used by RCFD covered under this Agreement is not an additional cost for the Fire Department. This Agreement provides us another source to obtain fuel for our Department vehicles. The fuel costs are part of our normal operating budget and budgeted each fiscal year; regardless of where the fuel is obtained. We estimate expending \$22,340 annually each fiscal year under this Agreement.

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

Contract History and Price Reasonableness

The City of Desert Hot Springs has been contracting with Riverside County Fire Department for Fire Protection and Emergency Services since 1991. The Fuel is used to operate fire engines to provide Fire Protection, Rescue and Medical Emergency Services in the City of Desert Hot Springs, neighboring Cities and Unincorporated Areas. There is no previous Non-Exclusive License and Purchase Agreement with the City of Desert Hot Springs and the Riverside County Department.


Diane Sinclair, Deputy Director-Fire Admin 2/21/2018


Gregory V. Priamos, Director County Counsel 2/10/2018

**NON-EXCLUSIVE LICENSE AND PURCHASE AGREEMENT FOR
FUEL USE**

This agreement is made and entered into this 1st day of FEBRUARY, 2018, 2018 ("Agreement"), by and between the CITY OF DESERT HOT SPRINGS, (hereinafter referred to as "DHS"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, on behalf of the Fire Department (hereinafter referred to as "RCFD"), with DHS and RCFD sometimes herein being referred to individually as a "Party," or collectively as "Parties."

WHEREAS, on or about May 17, 2016, the Parties entered into an agreement titled "A Cooperative Agreement to Provide Fire Protection, Fire Prevention, and Rescue and Medical Emergency Services for the City of Desert Hots Springs" (Cooperative Agreement").

WHEREAS, pursuant to Section III(C), the City shall pay RCFD actual costs for Fire Services pursuant to Exhibit A of the Cooperative Agreement.

WHEREAS, Exhibit A of the Cooperative Agreement provides that for the year 2017 the City will pay to the County approximately \$54,970 for Fleet Services, which Fleet Services include fuel costs; Exhibit A of the Cooperative Agreement provides that for the year 2018 the City will pay to the County approximately \$58,818 for Fleet Services, which Fleet Services include fuel costs.

WHEREAS, RCFD desires to purchase fuel from DHS from DHS owned and maintained fuel pumps at Desert Hot Springs Maintenance Facility ("DHS Facility" or "Property") in an effort to reduce actual fuel costs mentioned in the Cooperative Agreement.

WHEREAS, the intent of this Agreement is to define the respective roles and responsibilities of each Party solely with respect to the substance of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, with the recitals incorporated into the Agreement, the Parties hereto agree as follows:

A. PURCHASE AND SALE OF FUEL

RCFD shall purchase gasoline and diesel fuel stored at the DHS Facility from DHS (hereinafter collectively referred to as "Fuel"), and DHS shall sell Fuel to authorized personnel of RCFD, for a price that mirrors the actual cost of FUEL paid by DHS. RCFD shall pay for only Fuel that is used. In no way shall DHS be responsible for providing FUEL to RCFD should DHS not have the FUEL to provide. In other words, DHS has no obligation to purchase FUEL specifically for RCFD.

B. AUTHORIZED PURCHASERS OF FUEL

DHS shall only sell Fuel to authorized personnel of RCFD. RCFD represents and warrants that any and all persons purchasing the Fuel at the DHS Facility are authorized

employees of the RCFD who are authorized to purchase the Fuel. Further, Fuel purchased at the DHS Facility by RCFD authorized personnel shall be dispensed into a fuel tank of a motor vehicle, equipment, or other container owned and used by the RCFD, for the RCFD's sole use.

C. EQUIPMENT

DHS hereby agrees to maintain fueling equipment at DHS Facility, as well as any licenses, permits, inspections, and use taxes potentially subject to said equipment.

D. PROCEDURE FOR TRACKING FUEL USAGE

All Fuel obtained by the Parties must be tracked and submitted to DHS personnel on a separate AO-78a form (fuel log) attached as Exhibit "FUA-1".

All OA-78a forms shall be submitted by the end of each month to DHS Maintenance Facility at 65-950 Pierson Boulevard, Desert Hot Springs, CA 92240 Attention: City Manager.

E. BILLING AND PAYMENTS

DHS shall sell Fuel to authorized personnel of RCFD, for a price that mirrors the actual cost of FUEL paid by DHS.

The billing for Fuel used by RCFD covered under this Agreement will be generated quarterly. The billing will be invoiced off the total dollar amount of Fuel used each quarter.

Under no circumstances shall the DHS be doubled-billed for FUEL under this Agreement and the Cooperative Agreement.

A comprehensive invoice will be prepared by DHS and forwarded to RCFD. RCFD agrees to pay DHS the invoiced amount in the manner set forth above upon receipt of said invoice.

F. OWNERSHIP

DHS shall maintain ownership of each Fuel pump, including but not limited to hardware, accessories, and license/permits.

G. MAINTENANCE AND/OR REPLACEMENT

DHS agrees to maintain the daily care and usage of each Fuel pump with due diligence. RCFD will be liable for each Fuel pump if clearly damaged by negligent and/or wrongful misuse. DHS agrees at its discretion to repair or replace all or any Fuel pump as needed for reasonable wear and tear, or for unforeseen and unintentional damage or loss, not covered under warranty.

H. LICENSE

DHS hereby grants to the Logistics and Operations Coordinator of the RCFD Station 36 & 37 and its agents, employees, a revocable, nonexclusive, license, right, privilege, and permission to enter onto the Property for the purpose of using the fuel pump and purchasing the FUEL and for no other purpose. RCFD shall defend, indemnify and hold harmless DHS, and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities of whatsoever kind and nature arising from death, personal injury, property damage or other cause asserted or based upon any act or omission of RCFD, its employees, agents, or any subcontractors, agents or representatives of RCFD, or the obligations contemplated by this Agreement, to or in any way connected with the use of the Property. Such indemnification shall include all costs and fees, including attorney's fees. The obligations set forth in this paragraph shall survive the termination of this Agreement.

I. TERM

This Agreement shall be in effect as of the day and year hereinabove first written, and shall continue through June 30, 2022, unless sooner terminated as provided for below.

In the event the Parties intend to renew this Agreement at the end of the term, and the Parties have not yet finalized a renewal agreement, the terms and conditions of this Agreement will continue in full force and effect, on a month-to-month basis, not to exceed six (6) months, until a new agreement can be completed, approved and signed by the Parties. In the event costs to the RCFD increase with the renewal agreement, once a renewal agreement has been signed, RCFD shall make up the difference between the current rate and the new rate.

J. TERMINATION

Either party may terminate this Agreement for convenience by giving sixty (60) days' notice, in writing, to the other party or by mutual Agreement. Upon termination or expiration of this Agreement, RCFD agrees to pay DHS for any Fuel usage not previously invoiced at the point of termination or expiration, as a final billing.

Notwithstanding the provision above, this Agreement may be terminated by either party upon the failure of the other party hereto to perform or fulfill, at the time and in the manner herein provided, any material obligation or condition required to be performed or fulfilled by such party hereunder. Any such failure, upon its occurrence, shall constitute a breach, and termination shall be effective immediately following not less than thirty (30) days after written notice thereof from the non-breaching party.

K. ASSIGNMENT

RCFD shall not have the right to assign or otherwise transfer any of its rights or obligations under this Agreement. Any prohibited assignment or attempted assignment shall be null and void.

L. ACKNOWLEDGEMENT

RCFD hereby acknowledges that DHS is not the manufacturer of the Fuel equipment, and makes no representations or warranties regarding the quality or its fitness for a particular purpose.

M. INSURANCE

a) Both Parties represent and warrant that they are self-insured with respect to both commercial general liability and vehicle liability insurance, in amounts of a minimum of \$1,000,000 per occurrence combined single limit and \$2,000,000 in the aggregate. Both Parties shall name the other Party as an additional insured for all insurance required herein.

b) General Insurance Provision – All Lines:

1. The insurance provided by the policies required hereunder shall not be canceled except after thirty (30) days written notice has been mailed to the other Party and ten (10) day notice if cancellation is for nonpayment of premium.

2. It is understood and agreed by the RCFD that the insurance provided by them shall be primary insurance and DHS' insurance and/or deductible and/or self-insured programs shall not be construed as contributory.

3. The RCFD agrees to notify DHS of any claim by a third party or any incident that may give rise to a claim arising from their use of the DHS Facility or entry onto the Property.

4. The specified insurance limits herein shall in no way limit or circumscribe obligations to indemnify and hold DHS or RCFD free and harmless herein.

N. INDEMNIFICATION

RCFD shall defend, indemnify and hold harmless DHS, its affiliated agencies, their employees, officers, agents, representatives and volunteers, from any liability whatsoever, including all costs, costs of investigation, defense and settlements or awards, and all fees and attorney's fees, based or asserted upon any activities under this Agreement by RCFD, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to for property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of RCFD, its officers, agents, employees, subcontractors, agents or representatives from this Agreement.

DHS shall defend, indemnify and hold harmless RCFD, its directors, officers, Board of Trustees, employees, agents and representatives from any liability whatsoever, based on or asserted upon any activities under this Agreement by DHS, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to for property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of

DHS, its offices, agents, employees, subcontractors, agents or representatives from this Agreement.

O. FORCE MAJEURE

If either party's performance of any of its obligations hereunder are delayed or impaired by reason of any Act of God, or, civil disturbance, strike, adverse weather condition, inability to arrange for or delays in transportation, unavoidable casualty, inability to acquire or delays in acquiring any component from a manufacturer or supplies, inability to obtain or delays in obtaining any permits or any law, rule or order of any governmental agency or official or any cause not reasonably within either party's control including without limitation the non-renewal or termination of or inability to obtain license of any of the application programs, and not due to any fault, neglect, act or omission on the part of either party, that party shall be entitled to an extension of time for completion of same for a period equivalent to the time lost by reason thereof; provided, however, that such party gives the other party notice thereof within five (5) business days (unless circumstances require immediate notification) of the commencement of such claim of delay or impairment.

P. ENTIRE AGREEMENT

This Agreement, including any Exhibits attached hereto and by this reference incorporated herein, constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all previous proposals, oral or written, and all negotiations, conversation or discussions between the parties related to this Agreement. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver. In the event the Agreement is determined to be void in part, the remainder of the Agreement shall survive.

Q. AMENDMENT AND MODIFICATION

This Agreement shall not be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendment signed by each of the parties hereto. Any modification or amendment to this Agreement shall be of no force an effect unless it is in writing and signed by both parties.

R. DELIVERY OF NOTICES

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

RIVERSIDE COUNTY FIRE DEPARTMENT
County Fire Chief
210 West San Jacinto Avenue
Perris, CA 92570

CITY OF DESERT HOT SPRINGS
City Manager
65950 Pierson Boulevard
Desert Hot Springs, CA 92240

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 services is made.

S. ATTORNEY'S FEES AND LITIGATION EXPENSES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

T. DEFAULT

a) Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b) The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c) Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d) In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "material breach" shall be deemed to have occurred. In the event of a material breach, the injured party shall be entitled to seek any appropriate remedy or damages as otherwise set forth herein and by initiating legal proceedings.

U. REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

V. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

W. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

X. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Y. VENUE

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

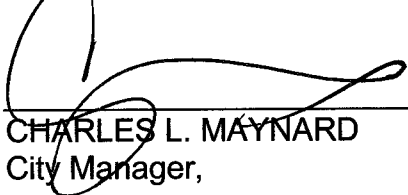
Z. NO THIRD PARTY BENEFICIARIES

The parties do not intend the benefits of this Agreement to inure to any third party, other than DHS, nor shall any provision of this Agreement be so construed.

IN WITNESS WHEREOF, the duly authorized officials of the parties hereto have, in their respective capacities, set their hands as of the date first hereinabove written.

DATE: 1/23/18

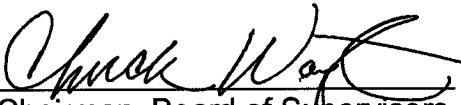
CITY OF DESERT HOT SPRINGS

BY: 
CHARLES L. MAYNARD
City Manager,

(SEAL)

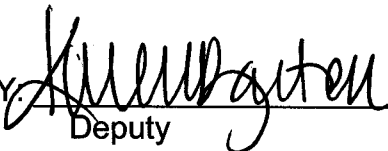
DATE: FEB 27 2018

COUNTY OF RIVERSIDE

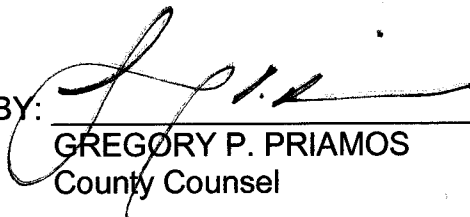
BY: 
Chairman, Board of Supervisors
CHUCK WASHINGTON

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

BY: 
Deputy

APPROVED AS TO FORM:
GREGORY P. PRIAMOS,
County Counsel

BY: 
GREGORY P. PRIAMOS
County Counsel

(SEAL)