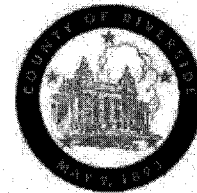


SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.58
(ID # 8641)

MEETING DATE:

Tuesday, December 11, 2018

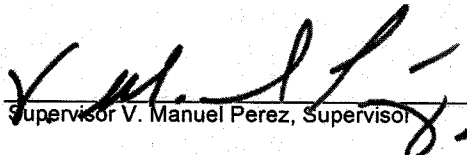
FROM : SUPERVISOR V. MANUEL PEREZ:

SUBJECT: SUPERVISOR V. MANUEL PEREZ: Memorandum of Understanding for Fire Protection Services between the County of Riverside and Desert Harvest, LLC regarding the Desert Harvest Solar Project, Fourth Supervisorial District [0].

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Memorandum of Understanding for Fire Protection Services between the County of Riverside and Desert Harvest, LLC regarding the Desert Harvest Solar Project and authorize the Chairman of the Board to execute the agreement on behalf of the County.

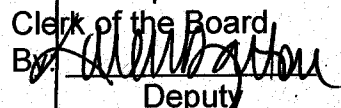
ACTION:


Supervisor V. Manuel Perez, Supervisor 12/7/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Jeffries 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: December 11, 2018
xc: Supvr. Perez, Fire

Kecia Harper-Ihem
Clerk of the Board
By 
Deputy

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

BACKGROUND:

Summary

The Desert Harvest Solar Project (Project) was previously approved by the Board in 2014. The Project is a 150 megawatt photovoltaic (PV) solar power plant proposed off of Kaiser Road in the Desert Center area. The Project involves two main components: (1) a PV solar array field and (2) a 220 kilovolt ("kV") transmission line ("Gen-Tie Line"). The majority of the Project, including the solar array field, consists of approximately 1,208 acres of BLM-administered public lands. The solar array field proposes a generation area including fifteen-foot tall PV arrays, a switchyard, inverters, overhead lines, and access roads; an operations and maintenance facility; an on-site substation and switchgear; and site security, fencing and lighting. The solar array field is not within the County's land use jurisdiction. A Record of Decision approving the Project was issued by the U.S. Department of the Interior in March 2013.

The second component of the Project is the Gen-Tie Line that will connect the electrical output of solar power plant to Southern California Edison's Red Bluff Substation where the power would feed into SCE's existing Devers Palo Verde No. 1 500-kV interconnection line. The entire Gen-Tie Line would be 12.1 miles long and a portion of it will run under, along, across or upon the County of Riverside's Kaiser Road rights-of-way (a total distance of approximately 5.8 miles) requiring an encroachment permit and a franchise agreement with the County for use of the County's road rights-of-way for placement of the transmission poles and lines. On June 17, 2014, in agenda item 16-1, the Board of Supervisors approved a Public Use Permit (PUP 914) for the portions of the Gen-Tie line that would be in the County's road right of way. On July 1, 2014, in agenda item 3-52, the Board also approved a Franchise Agreement (Ordinance No. 922) to compensate the County for the use of that right of way. Ordinance No. 922 complies with Board of Supervisors Policy No. B-29 regarding solar power plants.

One of the mitigation measures in the Environmental Impact Statement prepared by BLM for the overall Desert Harvest Solar Project requires that the applicant develop and implement a fire services agreement with Riverside County and BLM. The mitigation measure states in its entirety, "MM PHS-7 Develop and implement fire services agreement with Riverside County Fire Department and BLM. The project owner shall enter into an agreement with Riverside County Fire Department/CAL FIRE and BLM. To address project impacts, the project owner, based on consultation with CAL FIRE, shall ensure that either (a) a sufficient number of permanent project employees are trained as volunteer fire fighters or (b) the project owner will provide fire protection training to its permanent employees. This will allow the project's on-site work force to combat and be first responders to any potential fires occurring on-site or within the vicinity of the project site prior to back up by CAL FIRE staff."

The attached Memorandum of Understanding for Fire Protection Services satisfies the mitigation measure. In the agreement, Desert Harvest, LLC ("DH") shall organize a workplace fire brigade for the Project pursuant to the requirements of the Occupational Safety and Health

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

Administration standards of 29 Code of Federal Regulations (C.F.R.) § 1910.156 for the organization, training, and personal protective equipment of fire brigades established by employers. The workforce fire brigade will be the first responders to fires at the Project site, entirely on BLM land, until such time as the Riverside County Fire Department arrives at the

remote Project site. The agreement sets forth the general training, equipment and communication requirements, all of which are to be done by DH at its own cost. All training is to be certified through the California State Fire Marshal and must include training on the Incident Command System (ICS) and Communications. Additionally, the agreement makes clear that the members of the DH workplace fire brigade are not employees of the COUNTY or the California Department of Forestry and Fire Protection (CALFIRE) and DH is required to defend, indemnify and hold harmless the County, Riverside County Fire Department and CALFIRE for any liability whatsoever arising out of, or in any way, relating to the agreement or the performance of DH's workplace fire brigade.

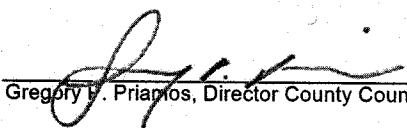
The Riverside County Fire Department and County Counsel provided input on the final language of the Memorandum of Understanding for Fire Protection Services.

Impact on Residents and Businesses

An Environmental Impact Statement ("EIS") prepared by the BLM studied the overall Desert Harvest Solar Project and its impacts. The Board of Supervisors certified the EIS as an equivalent EIR on June 17, 2014 in agenda item 16-1. The Project will aid in the transmission of renewable energy to the power grid.

ATTACHMENTS:

- A. Memorandum of Understanding



Gregory E. Priamos, Director County Counsel 12/6/2018

MEMORANDUM OF UNDERSTANDING FOR FIRE PROTECTION SERVICES

BETWEEN

THE COUNTY OF RIVERSIDE AND

AND

DESERT HARVEST, LLC

This memorandum of understanding for Fire Protection Services ("Agreement") is entered into this 11th day of December 2018 between the County of Riverside ("COUNTY", a political subdivision of the State of California, on behalf of the Riverside County Fire Department ("RCFD") and Desert Harvest, LLC, a Delaware limited liability company ("DH") (individually "Party", collectively referred to as "Parties").

RECITALS

1. WHEREAS, DH seeks to construct, operate and decommission the Desert Harvest project, a 150-megawatt solar photovoltaic ("PV") electric generation facility ("Project") proposed on approximately 1,200 acres of federal public lands administered by the Bureau of Land Management ("BLM") approximately 6 miles north of Desert Center in Riverside County, California.
2. WHEREAS, Mitigation Measure PHS-7 of an Environmental Impact Statement ("EIS") certified by the Board of Supervisors of the County of Riverside on June 17, 2014 by Resolution No. 2014-146, and made a condition of approval of Public Use Permit No. 914, requires DH to reach an agreement with RCFD to ensure a sufficient number of permanent project employees receive adequate fire protection training to combat any fires at the Project prior to the arrival of RCFD staff.
3. WHEREAS, Mitigation Measure PHS-7 states the following:

MM PHS-7 Develop and implement fire services agreement with Riverside County Fire Department and BLM. The project owner shall enter into an agreement with Riverside County Fire Department/CAL FIRE and BLM. To address project impacts, the project owner, based on consultation with CAL FIRE, shall ensure that either (a) a sufficient number of permanent project employees are trained as volunteer fire fighters or (b) the project owner will provide fire protection training to its permanent employees. This will allow the project's on-site work force to combat and be first responders to any potential fires occurring on-site or within the vicinity of the project site prior to back up by CAL FIRE staff.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing promises and the mutual covenants contained herein and subject to the terms and conditions set forth below, COUNTY, on behalf of RCFD, and DH agree as follows:

- A. DH shall organize a workplace fire brigade for the Project pursuant to the requirements of the Occupational Safety and Health Administration standards of 29 Code of Federal Regulations (C.F.R.) § 1910.156 for the organization, training, and personal protective equipment of fire brigades established by employers.
- B. DH shall prepare and maintain an organizational statement conforming to the standards of 29 C.F.R. § 1910.156 which establishes the existence of a fire brigade for the Project; the basic organizational structure; the type, amount, and frequency of training to be provided to fire brigade members; the expected number of members in the fire brigade; and the functions that the fire brigade is to perform at the workplace. The organizational statement shall be available for inspection by the U.S. Assistant Secretary of Labor, by RCFD, and by DH employees or their designated representatives.
- C. It is understood and agreed by the parties that members of the DH workplace fire brigade are not employees of the COUNTY, RCFD, or the California Department of Forestry and Fire Protection ("CALFIRE"). It is expressly understood and agreed that the workplace fire brigade employees shall in no event be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and DH shall hold the COUNTY, RCFD, and CALFIRE harmless from any and all claims that may be made against COUNTY, RCFD and CALFIRE based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement.
- D. Training and education.
1. DH shall provide training and education for all Project fire brigade members commensurate with those duties and functions that fire brigade members are expected to perform at a utility-scale solar PV facility, as informed by RCFD. Such training and education shall be provided to fire brigade members before they perform fire brigade emergency activities. Fire brigade leaders and training instructors shall be provided with training and education which is more comprehensive than that provided to the general membership of the fire brigade.
 2. DH shall provide annual training and education to each member of the fire brigade to ensure they are able to perform their assigned duties and functions satisfactorily and in a safe manner so as not to endanger fire brigade members or other employees. In addition, any fire brigade members who are expected to perform interior structural fire fighting shall be provided with an education session or training at least quarterly.
 3. The quality of the training and education program for fire brigade members shall be similar to those conducted by such fire training schools as the Maryland Fire and Rescue Institute; Iowa Fire Service Extension; West Virginia Fire Service Extension; Georgia Fire Academy, New York State Department, Fire Prevention and Control; Louisiana State University Firemen Training Program, or Washington State's Fire Service Training Commission for Vocational Education. All training shall be certified

through the California State Fire Marshal. Training shall include the Incident Command System (ICS) and Communications.

4. The training and education program shall include training specific to the fighting of fires and hazards unique to utility-scale solar PV facilities. Training shall inform fire brigade members about special hazards associated with solar PV facilities, as well as hazards associated with the storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water reactive substances, to which they may be exposed during fire and other emergencies at the Project site. The fire brigade members will also be advised of any changes that occur in relation to the special hazards. DH shall develop, and make available for inspection by fire brigade members and RCFD, written procedures that describe the actions to be taken in situations involving the special hazards and shall include these in the training and education program.
5. All training, education and equipment identified and required under this Agreement shall be the cost of DH and not the COUNTY, RCFD or CALFIRE.

E. Fire fighting equipment.

1. DH shall provide and install at the Project site fire fighting equipment appropriate for first responder attack of fires at a utility-scale solar PV facility. DH shall maintain and inspect fire fighting equipment at least annually to assure the safe operational condition of the equipment. Portable fire extinguishers and respirators shall be inspected at least monthly. Fire fighting equipment that is in damaged or in unserviceable condition shall be removed from service and replaced.

F. Respiratory protection devices and protective clothing.

1. Pursuant to the requirements of 29 C.F.R. § 1910.156, DH shall provide (i) respiratory protection devices for fire brigade members; and (ii) protective clothing for any employees who perform interior structural fire fighting. The protective clothing requirements of 29 C.F.R. § 1910.156 do not apply to employees who use fire extinguishers or standpipe systems to control or extinguish fires only in the incipient stage.

G. Incident Command System (ICS) and Communications

1. The DH workplace fire brigade shall utilize the 9-1-1 system for all emergencies. This Agreement does not release DH, COUNTY, or RCFD from California state fire reporting laws. RCFD/CALFIRE shall be dispatched along with AMR for all medical emergencies. Upon arrival of RCFD/CALFIRE responding units, RCFD will take over the incident as the Incident Commander (IC) and/or go into unified command with the DH workplace fire brigade. Common communication will be set up and utilized per RCFD communication standards.

- H. This Agreement takes effect upon issuance by BLM of a Notice to Proceed issued authorizing ground-clearing activities (i.e., grubbing, grading) at the Project site ("Effective Date").
- I. This Agreement will terminate on the earlier to occur of (i) a termination of this Agreement pursuant to Paragraph J. hereof or (ii) the date of expiration or termination of the BLM right-of-way grant authorizing the Project.
- J. Either Party may terminate this agreement with sixty (60) days written notice in accordance with Paragraph L.5. below.
- K. The undersigned warrant and certify that the signatories to this Agreement are each fully authorized to execute this Agreement on behalf of and respectively bind COUNTY and its officers, directors, and employees and DH and its officers, directors, and employees.
- L. General Provisions.
 - 1. No Third-Party Beneficiaries. This Agreement is made solely for the benefit of the Parties hereto, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as a third-party beneficiary or otherwise.
 - 2. Modification. No provision of this Agreement may be amended, modified or waived other than by an instrument in writing signed by an authorized representative of COUNTY and DH. Such modifications may require approval from the County Board of Supervisors.
 - 3. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to fire protection services, and supersedes any prior or contemporaneous discussions, representations or agreements, whether written or oral. In the event of any conflict between the provisions of this Agreement and any other agreement between DH and COUNTY for fire protection services, the terms of this Agreement shall control.
 - 4. Severability. In the event any provision(s) of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision(s) had never been contained herein. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable because such provision is excessively broad as to duration, geographical scope, activity or subject, then such provision shall be construed as being limited to the duration, geographical scope, activity or subject that the court deems allowable under the applicable law.

5. Notices. All notices to a Party pursuant to this Agreement must be in writing and shall be sent only by personal delivery, an overnight courier service which keeps records of deliveries, or electronic mail transmission. A Party may change its address or electronic mail address at any time by giving written notice of such change to the other Party in the manner provided herein. Notices sent by personal delivery or courier service shall be deemed given on the date of delivery or refusal to accept delivery. Notices sent by electronic mail transmission shall be deemed given when confirmed by a return electronic mail transmission from the recipient. For purposes of giving notice hereunder, the addresses and electronic mail addresses of the Parties are as set forth below:

RCFD: Riverside County Fire Department
c/o Riverside County Office of County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501
Telephone: (951) 955-6300
Fax: (951) 955-6363

Riverside County Service Fire Department
Attn: Shawn C. Newman, Fire Chief
210 W. San Jacinto
Perris, CA 92570
Telephone: (951) 940-6900
Fax: (951) 940-6373

DH: Desert Harvest, LLC
c/o EDF Renewables Development, Inc.
Attn: Corporate Land and Title
15445 Innovation Drive
San Diego, CA 92128
Telephone: (858) 521-3300
Fax: (858) 521-3333

6. Hold Harmless/Indemnification. DH, at its own expense, shall defend, indemnify and hold harmless the COUNTY, RCFD, and CALFIRE, and their respective directors, officers, elected and appointed officials, employees, agents, and representatives (individually and collectively hereinafter referred to as "Indemnitees") from and against any lawsuit, claim, action, proceeding, or liability (collectively referred to as "litigation") whatsoever based or asserted upon any services of DH, its officers, employees, subcontractors, agents, or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of the DH workplace fire brigade, its officers, employees, subcontractors, agents, or

representative Indemnitors of this Agreement. This defense and indemnification obligation shall include, but not be limited to, damages, fees and/or costs awarded against Indemnitees, if any, and cost of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such litigation whether incurred by DH, Indemnitees, and/or the parties initiating or bringing such litigation. Indemnitees shall have the absolute right to approve any and all counsel retained to defend Indemnitees in the litigation. DH shall pay the attorneys' fees and costs of the legal firm retained by DH to represent the Indemnitees in the litigation. Failure by DH to pay such attorneys' fees and costs may be treated as a default of DH's obligations under this Agreement. Payment for Indemnitee's costs related to the litigation shall be made on a deposit basis. Litigation costs include any associated costs, fees, damages, and expenses incurred by Indemnitees as a result of the litigation, including staff time. Within thirty (30) days of receipt of notice from Indemnitees that litigation has been initiated, Indemnitees shall initially deposit with the COUNTY the total amount of Twenty Thousand Dollars (\$20,000). DH shall deposit with COUNTY such additional amounts as COUNTY reasonably and in good faith determines, from time to time, are necessary to cover costs and expenses incurred by the Indemnitees, including but not limited to, the Office of County Counsel, RCFD, and the Riverside County Clerk of the Board associated with the litigation. Within ten (10) days of written notice from Indemnitees, DH shall make such additional deposits. Collectively, the initial deposit and additional deposits shall be referred to herein as the "Deposit." COUNTY shall return to DH any funds remaining on deposit after ninety (90) days have passed since final adjudication of the litigation. The defense, indemnification and hold harmless provisions of this subsection shall survive termination of the Agreement.

7. Successors and Assigns. These covenants and agreements set forth in this Agreement shall run with the land and shall be binding on, and shall inure to the benefit of, all Parties and their respective successors and assigns. DH may assign this Agreement to an affiliate or a new owner or lessee of all or a portion of the Project, provided that DH shall provide written notice of such assignment to COUNTY.
8. No Partnership. Neither this Agreement nor any acts of the Parties shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Parties.
9. Governing Law; Waiver of Jury Trial. This Agreement and the obligations of the Parties hereunder shall be interpreted, construed, governed and enforced in accordance with the laws of the State of California, without regard to any conflict of laws rules or principles that may refer the interpretation, construction, governance or enforcement of the laws of any other jurisdiction. Venue shall be the County of Riverside. **To the maximum extent permitted by law, the Parties hereby irrevocably waive their right to trial by jury in connection with any proceeding arising out, or otherwise relating in any way to, this Agreement or the subject matter hereof.**

- 10. Rule of Construction. No provision of this Agreement shall be interpreted or construed against any Party because such Party or its counsel was the sole or principal drafter of it. When the context requires, the plural shall include the singular and the singular the plural.
- 11. Counterparts. This Agreement may be executed in any number of counterparts and is effective vis-à-vis each Party as of the Effective Date. Additional parties may be added by mutual consent of the Parties.

IN WITNESS WHEREOF, COUNTY and DH have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

COUNTY:


COUNTY OF RIVERSIDE

CHUCK WASHINGTON

By: 

Chairman, BOARD OF SUPERVISORS

Date: DEC 11 2018
2018

ATTEST:
KECIA HARPER-IHEM, Clerk
BY:  DEPUTY

DH:

DESERT HARVEST, LLC

BY: EDF RENEWABLES
DEVELOPMENT, INC., ITS MANAGER

By: 

Name: Tristan Grimbert

Title: President & CEO

Date: _____
2018

FORM APPROVED COUNTY COUNSEL
BY:  DATE 12/5/18
TIFFANY NORTH