



Revision to ASR and/or Attachments

Date: June 22, 2020
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Supervisor Doug Chaffee, Fourth District Supervisor
Re: ASR Control #: N/A, Meeting Date 6/23/20, Item No. # S661
Subject: Out of Area Service Agreement with City of Placentia and the Local Area Formation Commission

Doug Chaffee

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS
2020 JUN 22 AM 11:49

RECEIVED

Explanation:

There was an update to Attachment A removing Orange County LAFCO as a party to the Agreement and a new copy of the Agreement is being provided.

Revised Recommended Action(s)

Make modifications to the:

Subject Background Information Summary Financial Impact

Revised Attachments (attach revised attachment(s) and redlined copy(s))

Attachment A - Out-Of-Area Service Agreement for Provision of Fire Protection and Emergency Medical Services to Unincorporated Area Within the City of Placentia

OUT-OF-AREA SERVICE AGREEMENT

FOR PROVISION OF FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

TO UNINCORPORATED AREA WITHIN THE CITY OF PLACENTIA

THIS OUT-OF-AREA SERVICE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2020 (the “Effective Date”), by and between the City of Placentia, a charter city (“City”) and the County of Orange, a political subdivision of the State of California (“County”). The City and County may each be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. The City previously contracted with the Orange County Fire Authority (“OCFA”), a joint powers authority governed by an Amended Orange County Fire Authority Joint Powers Agreement (the “JPA Agreement”), to provide fire suppression, protection, and prevention and emergency medical services, as well as those incidental services related to each (collectively “Fire & EMS Services”) since 1995.
- B. On June 19, 2018, the City served OCFA with a “Notice of Withdrawal from Agreement and Automatic Term Renewal,” to terminate its membership in OCFA effective June 30, 2020.
- C. On June 5, 2019, the City Council awarded a professional services agreement to Lynch EMS, Inc., for the provision of emergency medical services in the City beginning July 1, 2020. The City Council further directed staff to take the necessary actions to staff, equip, and fully implement the Placentia Fire and Life Safety Department to officially take command starting July 1, 2020.
- D. An unincorporated area of the County, known as the “Hamer Island,” is located entirely within the City’s geographic boundaries and sphere of influence, and is comprised of approximately 75.9 acres of inhabited property depicted in Exhibit A hereto. The Hamer Island currently receives Fire & EMS Services from OCFA pursuant to the JPA Agreement.
- E. Placentia Fire Station No. 2 is located approximately ¼ of a mile from Hamer Island. OCFA Station No. 10 is located approximately 2 ¼ miles away from Hamer Island.
- F. City and County have separately requested OCFA to enter into an automatic aid agreement with the City, which is the standard utilized by all Orange County fire departments, to ensure that the residents of the Hamer Island will still have the opportunity to receive the shortest response times if calls for service are dispatched from Placentia Fire Station No. 2. However, OCFA declined those requests.
- G. The County and City deem that it is in the best public safety interest of the residents of Hamer Island to receive Fire and EMS Services from the closest available station, to ensure there is no increase in response times.

- H. The County has encouraged the City to seek the annexation of Hamer Island into the City. As a preliminary step in that process, the County has also encouraged the City to apply to the Orange County Local Agency Formation Commission (“LAFCO”) for approval of the City’s extension of Fire & EMS Services to the Hamer Island, in order to ensure that the shorter response times from Fire Station 2 continue to be available to the residents of the Hamer Island.
- I. California Government Code Section 56133 authorizes the City to provide new or extended services by contract or agreement outside its jurisdictional boundaries if the City requests and receives approval from LAFCO, and LAFCO may authorize the City to provide new or extended services outside its jurisdictional boundaries, but within its sphere of influence, in anticipation of a later change of organization. Pursuant to California Government Code section 56133(a), an out-of-area service agreement must be approved by LAFCO. Subsection 56133(b) authorizes LAFCO to, at its discretion, approve an out-of-area service agreement for unincorporated territory within the City’s sphere of influence if the agreement is “in anticipation of a later change of organization.” To comply with section 56133(b), Orange County LAFCO’s “Policy & Procedures for the Review and/or Processing of Out-Of-Area Agreements by the Executive Officer (Gov’t Code §56133),” require that such out-of-area agreements “be considered in connection with future applications for related changes of organization” (*OCLAFCO Bylaws, Policies and Procedures*, pp. 201-203). This Agreement is not effective until approved by LAFCO.
- J. The parties have determined that this is not a “fire protection contract” within the meaning of Government Code Section 56134.
- K. Based upon the goals of the County and LAFCO to promote island annexations, the City intends to apply to LAFCO for annexation of Hamer Island into the City within 12 months. LAFCO may revoke its approval of this Agreement if, unless caused by LAFCO or the County, the City fails to comply with this deadline or LAFCO deems the City’s application for annexation of the Hamer Island is abandoned.
- L. Annexation of the Hamer Island would require LAFCO approval, and would result in the transfer of all municipal services currently provided by the County to the City. Because the Hamer Island qualifies for the streamlined change of organization provisions of California Government Code Section 56375.3(a), LAFCO cannot deny a proper application for annexation submitted by the City, and protest proceedings would be waived.
- M. The County supports the annexation of the Hamer Island by the City of Placentia, and in anticipation of the City providing Fire & EMS Services to the Hamer Island will pay the City’s costs of providing Fire & EMS Services to the Hamer Island.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises herein contained, it is hereby agreed by and between the City and County as follows:

AGREEMENT

1. Recitals

The foregoing Recitals are true and correct and are expressly made part of this Agreement by this reference.

2. Fire & EMS Services in the Hamer Island

- 2.1. City Provision of Services. The City shall provide Fire & EMS Services to the unincorporated area of the County known as the “Hamer Island,” and depicted in Exhibit A hereto as if it were within the City’s corporate boundaries.
- 2.2. Term of Service. The City shall provide Fire & EMS Services to the Hamer Island from the Effective Date of this Agreement until such time as the City annexes the Hamer Island, at which time this Agreement shall self-terminate through the annexation process.
- 2.3. Level of Service. The City shall maintain the same or better level of Fire & EMS Services to the Hamer Island as it maintains within the City in accordance with all applicable federal, State, and local laws and regulations.

3. Compensation for Services

- 3.1. The City shall bear all costs of providing Fire & EMS Services to the Hamer Island except as provided in Section 3.2.
- 3.2. As part of the annexation process, both parties will negotiate a transfer of property taxes associated with the Hamer Island to the City effective upon the finalization of the annexation.

4. Indemnification

- 4.1. Definition. As used in this Section 4, “Proceeding” means any threatened, pending, or completed claim, cause of action, civil liability, action, suit, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal, or any other proceeding, whether civil, criminal, administrative, investigative, or any other type whatsoever, whether formal or informal, including a proceeding initiated by the County to enforce the County’s rights hereunder.
- 4.2. Indemnification of County by City. The City shall indemnify, defend, and hold the County, its officers, employees, agents, and those entities for which the County’s Board of Supervisors acts as governing body (“County Indemnitees”) harmless from and against all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys’ fees and disbursements, arising from or related to:
 - 4.2.1. Any Proceedings arising from Fire & EMS Services provided to the Hamer Island by the City.

4.2.2. Upon assumption by the City of the delivery of Fire and EMS Services to Hamer Island pursuant to this Agreement, any and all claims, lawsuits, or causes of action alleging that the City has failed to provide Fire & EMS Services to the Hamer Island in accordance with all applicable legal and regulatory requirements and standards of care.

4.2.3. Any breach of the representations or warranties made in Section 6 of this Agreement.

4.3. Indemnification of the City by the County. The County shall indemnify, defend, and hold the City, its officers, employees, and agents harmless from and against all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursements, arising from or related to any breach of the representations or warranties made in Section 6 of this Agreement.

5. City Personnel

5.1. It is understood and agreed that City employees are independent of the County. City's assigned personnel shall not be entitled to any benefits payable to employees of the County. The County is not required to make any deductions or withholdings from the compensation payable to City personnel under the provisions of this agreement, City hereby indemnifies and holds the County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

5.2. If, in the performance of this agreement, any third persons are employed by City, such person shall be entirely and exclusively under the direction, supervision, and control of City. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by City, and the County shall have no right or authority over such persons or the terms of such employment.

5.3. It is further understood and agreed that as an independent contractor and not an employee of the County, neither the City nor City's assigned personnel shall have any entitlement as a County employee, right to act on behalf of the County in any capacity whatsoever as agent, nor to bind the County to any obligation whatsoever. City's assigned personnel shall not be covered by worker's compensation; nor shall City's assigned personnel providing services under this Agreement be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.

6. Representations and Warranties

The City represents and warrants that it has adequate financial, personnel, and physical resources to provide Fire & EMS Services to the Hamer Island in a manner at least consistent with its provision of Fire & EMS Services within the City's corporate boundaries. County represents that it will approve development or issue discretionary permits within the Hamer

Island after the Effective Date only as such approvals are consistent with the terms and conditions of this Agreement.

7. Term and Termination

- 7.1. This Agreement shall remain in effect until it has been terminated, or until the City has annexed the entirety of the unincorporated area of the County located within the City known as the "Hamer Island."
- 7.2. This Agreement may be terminated by either party as to its rights and obligations under this Agreement upon 90 days prior written notice to the other party.

8. Injunctive Relief

The Parties agree that the City's provision of Fire & EMS Services pursuant to this Agreement is unique and affects the health and safety of the public in and around the Hamer Island, and that no adequate remedy exists at law if the City fails to perform, or breaches, its obligations under this Agreement, that it would be difficult to determine the amount of damages resulting therefrom, and that such breach would cause irreparable injury to the County. Therefore, in addition to all other rights and remedies available at law or equity, the County shall be entitled to injunctive relief, including specific performance, to prevent or restrain any breach of this Agreement.

9. Subcontracts/Assignment

- 9.1. City shall obtain prior written approval from County before subcontracting any of the services delivered under this Agreement. However, the County acknowledges the City is contracting for provision of EMS services in the City using a private company that specializes in the provision of those services. County consents to the contract between Lynch EMS, Inc. and the City, and the use of Lynch EMS Inc. for the provision of EMS services in Hamer Island. City remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. City shall be held responsible by County for the performance of any subcontractor whether approved by County or not.
- 9.2. This Agreement is not assignable by City in whole or in part, without the prior written consent of County.

10. Miscellaneous Provisions

- 10.1. Entire Agreement. This Agreement contains the entire understanding between the Parties relating to the obligations of the City and County described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect.

- 10.2. Binding Effect. The provisions of this Agreement shall bind and inure to the benefit of each of the Parties and all successors or assigns of the Parties.
- 10.3. Waiver. Failure of any Party to insist upon strict performance of any of the terms, conditions or covenants in this Agreement will not be deemed a waiver of any right or remedy that Party may have and will not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants contained in this Agreement, nor will it constitute a precedent for interpretation of this Agreement.
- 10.4. Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 10.5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 10.6. Authority to Execute Agreement. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that, by so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.
- 10.7. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile or electronic signatures will be permitted.

11. Notice

Any notice or other communication required or permitted hereunder shall be in writing, and shall conclusively be deemed to have been given upon the date it is (i) enclosed in a sealed envelope addressed to the Party to whom it is intended, and deposited in the U.S. Mail with adequate postage; (ii) delivered to the office of the intended Party; (iii) sent by telefacsimile or other telegraphic communication in the manner provided in this Section with confirmation by U.S. Mail sent no later than the following day; or (iv) sent through other commercially reasonable means, such as overnight delivery by a reputable courier company. The addresses of the respective Parties for all notices shall be:

City of Placentia: Attn.: Damien R. Arrula, City Administrator
401 E. Chapman Ave.,
Placentia, CA 92870
Telefacsimile (714) 961-0283

County of Orange: Attn.: Frank Kim, County Executive Officer
333 W. Santa Ana Blvd.
Santa Ana, CA 92701
Telefacsimile (714) 834-3018

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers on the date first set forth above.

ATTEST:

CITY OF PLACENTIA:

By: _____
City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

APPROVED AS TO FORM:

COUNTY OF ORANGE:

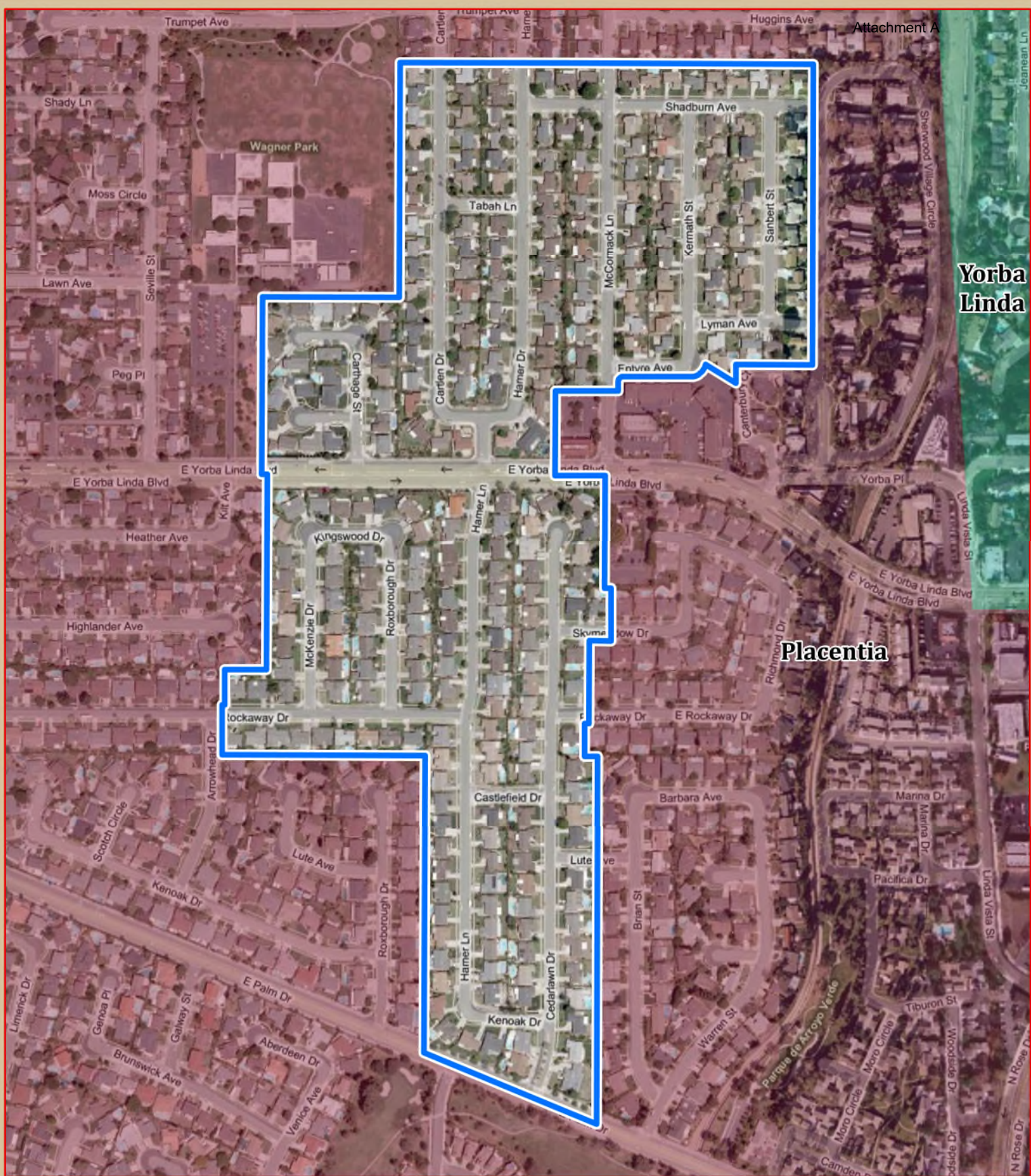
By:  _____
Supervising Deputy County Counsel

By: _____
County Executive Officer

Certification

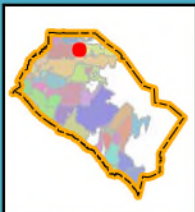
Based upon the recitals and the terms of this Agreement, the Orange County Local Agency Formation Commission authorizes the City of Placentia to provide Fire and EMS Services to the unincorporated County area referred to as the "Hamer Island" and shown in Exhibit A.

By: _____
LAFCO Executive Officer



Yorba Linda

Placentia



**City of Placentia
Hamer Island**

 Hamer Island

