

CONSENT CALENDAR - AGENDA ITEM NO. 8
EXECUTIVE COMMITTEE MEETING
August 26, 2010

TO: Executive Committee, Orange County Fire Authority

FROM: Jorge Camargo, Assistant Chief
Operations Department

SUBJECT: **First Amendment to Agreement between the Orange County Fire Authority and Shoreline Ambulance Corporation**

Summary:

This agenda item is submitted for approval of a contract amendment between Orange County Fire Authority (OCFA) and Shoreline Ambulance Corporation (Shoreline) related to emergency medical services provided to the City of Westminster.

Recommended Action:

Authorize the Fire Chief to execute the First Amendment to Agreement between the Orange County Fire Authority and Shoreline Ambulance Corporation.

Background:

Ambulance service is currently provided to the City of Westminster utilizing OCFA vehicles that are purchased and maintained by the OCFA, with the emergency transportation personnel employed by Shoreline under contract to the City of Westminster. On July 27, 2010, the City of Westminster renewed its current contract for emergency transportation personnel with Shoreline (Attachment 2), subject to the approval of the proposed amendment between OCFA and Shoreline.

The attached amendment (Attachment 1) updates the current agreement between OCFA and Shoreline to further integrate the agreement between the City of Westminster and Shoreline. The amendment also clearly defines Shoreline's obligation to indemnify and defend OCFA against any and all existing or future claims arising during the performance of the contract. Approval of this new amendment is requested to ensure that OCFA will not be liable for wrongful acts of Shoreline personnel and that all involved parties have clear definition of their legal responsibilities, liabilities, and protections. The proposed amendment has been reviewed by OCFA Legal Counsel.

Impact to Cities/County:

Not Applicable.

Fiscal Impact:

Not Applicable.

Staff Contacts for Further Information:

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Operations Department
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(714) 573-6014

Jim Bailey, Battalion Chief
Emergency Medical Services
jimbailey@ocfa.org
(714) 573-6071

Attachments:

1. First Amendment to Agreement between the OCFA and Shoreline Ambulance
2. Professional Services Agreement between the City of Westminster and Shoreline Ambulance
(On file in the Clerk's Office or available on-line at www.ocfa.org)

**FIRST AMENDMENT TO AGREEMENT BETWEEN THE
ORANGE COUNTY FIRE AUTHORITY
AND
SHORELINE AMBULANCE CORPORATION
RELATED TO EMERGENCY MEDICAL SERVICES ("EMS") TO CITY OF
WESTMINSTER**

This first amendment to agreement ("First Amendment to OCFA Agreement"), dated _____, 2010, which date is for purposes of reference only, is by and between the Orange County Fire Authority ("OCFA") and Shoreline Ambulance Corporation ("City Contractor") and is made with respect to the following matters:

RECITALS

WHEREAS, in November, 2007, the City of Westminster ("City") awarded a contract for the provision of emergency transportation personnel to the City to operate the City's ambulance service from OCFA Fire Station Nos. 64 and 66 (the "City Agreement"); and

WHEREAS, concurrently, on November 28, 2007, the OCFA and City Contractor entered into an agreement related to Emergency Medical Services ("EMS") to City of Westminster (the "OCFA Agreement"), a copy of which is attached hereto as **Exhibit "A"** and by this reference made a part hereof;

WHEREAS, on June 30, 2010, the City Agreement was amended to extend the Term of the City Agreement thirty (30) days and to add other terms and conditions (the "City's First Amendment"), so that the City Contract was then set to expire on July 30, 2010; and

WHEREAS, the City and City Contractor contemplate a further 11-month extension of the Term of the City Contract, which, if approved, will cause the Term of the City Contract to expire at midnight on June 30, 2011, subject to additional terms and conditions (the "City's Second Amendment");

WHEREAS, the emergency transportation personnel will continue to be provided housing at OCFA stations 64 and 66 and will operate two vehicles provided by the City/OCFA; and

WHEREAS, City Contractor is the employer of the emergency transportation personnel; and

WHEREAS, it is intended that this First Amendment to OCFA Agreement, and the City's First Amendment and City's Second Amendment be included as part of the "Contract Documents" between City and City Contractor;

NOW, THEREFORE, based upon the recitals set forth above and agreed upon mutual consideration, OCFA and City Contractor agree as follows:

1., 2., 3. Subject to the amendments set forth hereinbelow, Sections 1 through 3 of the OCFA Agreement are incorporated herein by this reference.

4. **Recitals.** The foregoing recitals are true and correct and are a substantive part of this Agreement.

5. **Term.** Section 3 of the OCFA Agreement shall be amended to read in its entirety as follows:

3. The term of the OCFA Agreement shall remain coextensive with the duration of City Contractor's provision of emergency transportation services pursuant to its contract with City, including the City's First Amendment and City's Second Amendment (if approved), and any renewal(s) or extension(s) thereof. This extension shall specifically include, but not be limited to, indemnity and defense obligations in the City Agreement and Amendments.

6. **Existing Claims.** By entering into this First Amendment to OCFA Agreement extending the term of the Agreement, neither the OCFA nor the City waives any rights under Section 8 of the City Agreement (entitled Indemnification). By entering into this First Amendment to OCFA Agreement, Shoreline agrees, as a material condition of this Amendment, to address the following "Existing Claims" through the "Claim Response Provisions" as set forth in subsections (a) and (b) below:

(a) "Existing Claims" refers to the claims (and any subsequent claims, demands, lawsuits, judgments and costs of defense relating to the claims) of (1) Mrs. Susan Tomlinson; and (2) Mrs. De Ta;

(b) "Claim Response Provisions" refers to the following

(1) Before the effective date of this Amendment, Shoreline agrees to both:

i. deliver to the City and to OCFA letters signed by the President of Shoreline, and authorized by Shoreline's Board of Directors, accepting the tender of defense and indemnity of both Existing Claims as of the date of tender of those Existing Claims (October

1, 2009, in the case of the Susan Tomlinson claim and January 21, 2010 in the case of the Mrs. De Ta);

ii. deliver letters to both City and to OCFA identifying by name, address and phone number the attorney or attorneys proposed by Shoreline to defend the City and OCFA against the Existing Claims. The attorney must be in good standing with the California Bar, and will be subject to approval by the City and OCFA;

(2) At all times (prior to, during and after any termination or expiration of the Agreement and this Amendment), Shoreline agrees to:

i. fund all defense costs of the Existing Claims incurred on or after the date of tender thereof, including but not limited to attorney fees, litigation, discovery and expert costs, and filing fees, and

ii. pay any resulting judgment, cost award, fee award or settlement that arises from the Existing Claims arising out of the performance of Shoreline, its employees, agents and/or authorized subcontractors, of the work undertaken pursuant to the Agreement, specifically including but not limited to the Emergency Services.

(c) The foregoing provisions regarding Existing Claims are in addition to Shoreline's obligations to provide insurance and to indemnify and defend the City and OCFA against future claims and against other claims otherwise unknown to the City and/or OCFA as otherwise set forth in this or other agreements (and amendments thereto) with the City and/or OCFA.

(d) The foregoing provisions regarding Existing Claims are material terms of this First Amendment to OCFA Agreement, and the breach of any such provision will constitute a material default hereunder. Breach of the terms hereof may be enforced by the OCFA through set-off, legal proceedings and/or through refusal to provide further use of OCFA vehicles, and any combination thereof, until determination by OCFA or a court of competent jurisdiction (whichever occurs first) that Shoreline or Shoreline's insurer is current in its obligation to defend and indemnify the City and OCFA.

(e) Nothing herein limits the rights of the City or OCFA in

relation to the Existing Claims under any existing agreements with Shoreline, with insurers or with others.

7. **Evidence of Insurance.** Before the Effective Date of this First Amendment to OCFA Agreement, and as a condition precedent to provision by OCFA of housing of personnel or vehicles pursuant to the OCFA Agreement and this First Amendment to OCFA Agreement, Shoreline must provide the City and OCFA all evidence of insurance and all required endorsements of such insurance as required in Section 7 of the City Agreement. Such insurance must be maintained throughout the extended term subject to the terms and conditions set forth in Section 7 of the City Agreement, except as follows:

(a) The liability insurance must be procured and maintained without exclusions applicable to the use of all OCFA-supplied emergency vehicles in use by Shoreline, and the policy/policies must be expressly endorsed to provide coverage whether or not the vehicle operated by Shoreline is owned, supplied or maintained by the City, the OCFA or any other third party; and

(b) Endorsements of policies will require the insurer to provide City and OCFA with 30 days prior written notice of any termination, expiration, reduction or non-renewal of coverage. Any less-committal language in the endorsement regarding such notice (such as the language that the insurer will "endeavor to provide" such notice) will not be accepted by the OCFA; and

(c) The parties agree that the "Right to Cure" provisions in Section 6.B. of the Agreement will not apply to the obligations to maintain in continuous effect the insurance required in (a) this First Amendment to OCFA Agreement and (b) Section 7 of the City Agreement.

8. In all other respects the original OCFA Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to OCFA Agreement as of the day and year first written above.

**ORANGE COUNTY FIRE AUTHORITY,
a California Joint Powers Authority**

Date: _____

By: _____

Keith Richter
Fire Chief

APPROVED AS TO FORM:


**TERRY C. ANDRUS
GENERAL COUNSEL**

Date: _____

By: _____

**"CITY CONTRACTOR"
SHORELINE AMBULANCE CORPORATION**

Date: 8/15/10

By: 

Giovanni Chiarella
President

Exhibit A

**AGREEMENT BETWEEN THE
ORANGE COUNTY FIRE AUTHORITY
AND
SHORELINE AMBULANCE CORPORATION
RELATED TO EMERGENCY MEDICAL SERVICES ("EMS") TO CITY OF
WESTMINSTER**

This agreement ("Agreement"), dated November 28, 2007, which date is for purposes of reference only, is by and between the Orange County Fire Authority ("OCFA") and Shoreline Ambulance Corporation ("City Contractor") and is made with respect to the following matters:

RECITALS

WHEREAS, the City of Westminster ("City") intends to award a contract for the provision of emergency transportation personnel to the City to operate the City's ambulance service from OCFA Fire Station Nos. 64 and 66; and

WHEREAS, the emergency transportation personnel will be provided housing at those OCFA stations and will operate two (2) vehicles provided by the City/OCFA; and

WHEREAS, City Contractor is the successful bidder for such contract and is the employer of such emergency transportation personnel; and

WHEREAS, it is intended that this Agreement be included as part of the "Contract Documents" between City and City Contractor, all as set forth in the City's Request For Proposal.

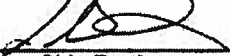
NOW, THEREFORE, based upon the recitals set forth above and agreed upon mutual consideration, OCFA and City Contractor agree as follows:

1. The foregoing recitals are true and correct and are a substantive part of this Agreement.

2. All of City Contractor's duties, obligations and responsibilities to OCFA that are set forth in the "Contract Documents" by and between City and City Contractor, including but not limited to City Contractor's indemnification and insurance obligations to OCFA, are intended for the benefit of OCFA and may be enforceable by OCFA, who shall be deemed a third party beneficiary thereto.

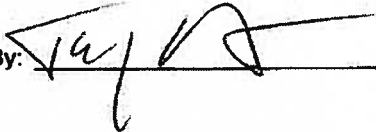
3. The term of this Agreement shall be coextensive with the duration of City Contractor's provision of emergency transportation services pursuant to its contract with City and any renewal thereof.


ORANGE COUNTY FIRE AUTHORITY,
a California Joint Powers Authority

Date: 2/5/2008 By: 
Chip Prather
Fire Chief

APPROVED AS TO FORM:

TERRY C. ANDRUS
GENERAL COUNSEL

By:  Date: 2-1-08

Date: 12/12/07 By: 
Title: President