LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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OUT-OF-AGENCY AGREEMENTS/CONTRACTS FOR SERVICE GOVERNMENT CODE SECTION 56133 ADMINISTRATIVE GUIDELINES

BACKGROUND

Beginning January 1, 1994 the Local Agency Formation Commission was charged with the responsibility for reviewing and taking action on a city or district contract to extend service outside its jurisdiction. As a part of the major review of LAFCO law, Government Code Section 56133 has been amended by enactment of AB 2838. This amended code section reads, in its entirety, as follows:

"(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional

boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requestor, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions, the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services, that do not involve the acquisition, construction or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries."

(Amended January 1, 2003, Stats. 2002, Chapter 548)

As identified above, there are three instances when such contracts are not subject to LAFCO review and approval prior to contracting for service:

1. It does not apply to contracts between two or more public agencies where the service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of

of service to be provided is consistent with the level of service contemplated by the existing service provider.

2. It does not apply to contracts for the transfer of non-potable or non-treated water.

3. It does not apply to contracts solely involving the provision of surplus water to agricultural lands for projects that serve conservation purposes or that directly support agricultural industries. However, if the surplus water would support or induce development, the city or district would have to obtain approval from the commission prior to extending the service.

With these specific exceptions, the provisions of Code Section 56133 are quite specific in that all the agencies serving within San Bernardino County are precluded from providing their services outside their boundaries without first receiving written approval of the Commission.

IMPLEMENTING POLICIES

LAFCO has adopted policy declarations, which affect the implementation of its obligations under Section 56133. They are:

1. **DEFINITIONS:**

The definition of terms that follows has been developed to assist in the implementation of Section 56133 since its terminology, in some areas, is not reflective of current statutory definitions or has no statutory definition within Cortese-Knox-Hertzberg:

a. "New or extended services":

shall mean for Cities the provision of those services authorized a city under its enabling legislation, and for Special Districts service shall remain as defined in Govt. Code Section 56074. It should be pointed out that a District would be precluded from providing a "new service" unless it has been first authorized that service under existing special district regulations regarding activation of latent powers.

b. "Contract or agreement":

shall mean a contract, agreement, will-serve letter, or other legal instrument, which requires or agrees to the delivery of service to property.

c. "Written approval of the Commission":

shall mean for development related contracts, the adoption of a resolution of the Commission approving the service agreement/contract at a noticed public hearing; for non-development related contracts written approval of the Commission shall mean the document signed by the Executive Officer authorizing the completion of the contract.

d. "Affected County":

shall be defined in the same manner as Govt. Code Section 56012 but relating to the area to which contractual service will be delivered.

e. "Anticipation of a later change of organization":

The inclusion of the area to be served within the sphere of influence of the serving agency shall be sufficient to comply with this provision.

f. "Public Agency":

shall be defined in compliance with Govt. Code Section 56070. The statutory definition of Public Agency is "the state or any state agency, board or commission, any city, county, city and county, special district or other political subdivision, or any agency, board or commission of the city, county, city and county, special district, or other political subdivision".

The definition of public agency does not include a private or mutual water company. Any contract by a city or district to extend service to these types of service companies would require approval from the Commission prior to contract execution.

g. "Health and safety emergency concern":

shall mean the extension of service to alleviate an immediate health and/or safety problem. Such connections would be limited to existing dwelling unit(s) to provide for the provision of water or sewer service, or the connection to a failing mutual or private water system requiring auxiliary service.

2. OPERATING POLICIES:

At the December 20, 2000 hearing the Commission adopted the following policy:

> *The Commission has determined that the Executive Officer shall have the authority to approve or conditionally approve proposals to extend services outside jurisdictional boundaries in cases where the service extension is proposed to remedy a clear health and safety concern. In addition, the Executive Officer shall have the authority to approve or conditionally approve service extensions where the services in question will not facilitate development (for example, an inter-agency contract for fire protection services). In cases where the Executive Officer recommends denial of a proposed service extension that proposal shall be placed on the next agenda for which notice can be provided. After the public hearing, the Commission may approve, conditionally approve or deny the contract." (Adopted December 20, 2000)*

The second operating policy relates to the acquisition of a private water system by a public jurisdiction. This acquisition would require the city or district to continue the service and allow additional connections to the infrastructure without regard to the question of spheres of influence. In order to address this concern and provide a framework for the agency's continuing obligations, LAFCO has adopted the following policy:

"In the case where a city or district has acquired the system of a private or mutual water company prior to the enactment of this legislation, those agencies shall be authorized to continue such service and provide additional connections within the certificated service area of the private or mutual water company defined by the Public Utilities Commission or other appropriate agency, at the time of acquisition without LAFCO review or approval as outlined in Govt. Code Section 56133. The continuation of service connections under this policy shall not be constrained by the sphere of influence of that local agency at the time.

Proposals to extend service outside this previously defined certificated area would come under the provisions of Govt. Code Section 56133 for the review and approval by the Commission prior to the signing of a contract/agreement for the provision of the service."

In order for cities and districts to utilize this special policy it requires that they provide the LAFCO staff with documentation of the certificated service area of the system acquired. This documentation will be maintained on file by LAFCO for future reference.