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February 25, 2025

VIA ELECTRONIC MAIL

Jennifer Solito
Interim Director
Sonoma County Department of Health Services
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RE: Request for Second-Level Reviews of Contract Performance Data for Q4 2024

Dear Ms. Solito:

As you know, this firm represents the Sonoma County Fire District ("SCFD") on all matters related to the Professional Services Agreement Between the County of Sonoma and Sonoma County Fire District for Advanced Life Support Ground Ambulance Services in County Exclusive Operating Area One ("EOA-1 Contract").

SCFD's provision of EMS and ambulance services pursuant to the EOA-1 Contract and in collaboration with its private subcontractor, Medic Ambulance, Inc., is a proven success. SCFD is proud to be in full compliance with its response time performance obligations for Q4 (October, November, and December) of 2024, as shown by the following *preliminary* figures:

EOA-1 COMPLIANCE ZONE	OCT. 2024	NOV. 2024	DEC. 2024
Zone 1-Oakmont Urban	94.44%	92.97%	94.31%
Zone 2-Rohnert Park Urban	96.42%	98.02%	96.99%
Zone 3-Santa Rosa Urban	98.83%	98.43%	98.85%
Zone 4-Sebastopol Urban	92.42%	93.71%	92.21%
Zone 5-Semi-Rural	93.33%	94.56%	90.54%
Zone 6-Rural	100.00%	100.00%	100.00%
Zone 8-Emergency ALS IFT	100.00%	100.00%	100.00%
Overall Total	97.81%	97.66%	97.73%
Grand Total			97.74%

Nonetheless, SCFD's performance under the EOA-1 Contract must be evaluated against all objective standards established through the parties' contractual relationship. As such, SCFD is requesting a second level review of certain decisions by County of Sonoma, the Sonoma County Department of Health Services, and the Coastal Valley EMS Agency (collectively, "County")

regarding SCFD's requests for response time corrections and exemptions¹ for purposes of a final evaluation of SCFD's contract performance for Q4 of 2024.

I. Second-Level Review Requests Submitted Through OCU

Earlier today, SCFD submitted through OCU 22 requests for second-level review of various correction requests. These requests involve various contract rules and metrics the parties do not dispute and turn on the individual facts of each response. SCFD will not repeat those requests for second-level review in this letter but is willing to answer any questions County has regarding those requests.

II. Second-Level Review of Code 2 Responses

This category of requests for second-level review arises out of a difference of opinion between the parties regarding how so-called Code 2 responses should be evaluated and measured, including applicable response time standard(s), under the EOA-1 Contract. SCFD acknowledges that the parties' disagreements appear to arise from potential ambiguities in the EOA-1 Contract but maintains that its interpretation of the contract provisions is correct. Nevertheless, the parties should clarify and memorialize the correct interpretation of the relevant provisions in amendments to the agreement on a moving forward basis.

Enclosed, please find a spreadsheet identifying 80 responses where County denied SCFD's requests for a time correction based on a disagreement over the appropriate response time standard for ambulances dispatched at Code 2 response mode. SCFD understands that its and County's positions in the instant second level reviews are not binding on any such amendments, which are subject to approval by County's and SCFD's respective governing bodies, be within the scope of County's RFP #22-023 ("RFP") and SCFD's winning proposal, and otherwise comply with applicable laws, regulations, and policies.

A. Background.

1. The Relevant Contract Provisions.

The EOA-1 Contract sets forth response time standards for advanced life support ("ALS") and basic life support ("BLS") ambulance responses based on the Priority Level for each response. (EOA-1 Contract, Ex. 1, Scope of Services ("SOS") § 3.2.G.3.) These standards are based well-established ambulance industry methodology for prioritizing ambulance responses:

Priority Dispatching and EMD Determinant – A structured method of prioritizing requests for an ambulance and first responder services, based upon highly

¹ Sections 3.5 and 3.6 of the EOA-1 Contract provide for requests for response time corrections, *exceptions*, and exemptions. As memorialized in my letter to Jordan Kearney dated February 14, 2025, the parties have agreed that exception requests should be submitted as correction requests through the FirstWatch Online Compliance Utility ("OCU"). Consistent with the parties' agreement, this refers to exception requests as correction requests.

structured telephone protocols and dispatch algorithms. Its primary purpose is to safely allocate available resources among competing demands for service.

(SOS p. 82.)

Thus, as provided for in the subsection captioned “Priority Levels”:

Response Times shall be prioritized consistent with IAED’s Priority Dispatching and EMD Determinant standards for Alpha, Bravo, Charlie, Delta, and Echo responses:

- a. Alpha: Code 2 all units;
- b. Bravo: Code 3 first due resource, Code 2 second due resource;
- c. Charlie: Code 3 first ALS resource, Code 2 second ALS or BLS resource (as approved by the CVEMSA Medical Director);
- d. Delta: Code 3 all units; and
- e. Echo: Code 3 all units.

(*Id.* § 3.2.F.1.)

Understanding this provision requires unpacking its industry jargon. The International Academies of Emergency Dispatch’s (“IAED”) Medical Priority Dispatch System (MPDS) is a type of Emergency Medical Dispatch (EMD) system used to prioritize 911 calls and optimize resource allocation, wherein “dispatchers use a series of scripted questions to assign determinants to calls based on chief complaint and acuity.” (K. Sporer N. & Johnson, N. J, *Detailed analysis of prehospital interventions in medical priority dispatch system determinants* (2011), 12(1) *Western J. of Emerg. Med.*, 19, 19.) The MPDS system’s protocols use the callers’ responses “to categorize cases into numerical complaint-based categories, which are further assigned a priority (Alpha, Bravo, Charlie, Delta, or Echo).” (*Id.* at 20.) Alpha, Bravo, Charlie, Delta, or Echo are the determinants: “Alpha and Bravo represent the lowest acuity calls, with Charlie, Delta and Echo representing higher acuity calls that may require advanced assessment and/or intervention.” (*Id.*)

In contrast, “Code 3” and “Code 2” are EMS and fire industry terms, alternatively referred to as “response mode” or “Priority Dispatching,” which denote how an emergency vehicle will respond to a request for assistance. This is Code 3 means the unit responds with red lights and sirens (which automatically activates traffic light preemption systems), while Code 2 means the unit responds without activating its red lights or sirens and adhering to traffic rules like any other vehicle. (*See, e.g.*, REDCOM Standard Operating Procedure 2, §§ 2.10, 2.11.)

Thus, the “Priority Level” for any given call has two components: (1) the EMD Determinant (i.e., the acuity level for the call); and (2) the Response Mode (i.e., how the ambulance is authorized to respond).

However, the EOA-1 Contract’s response time standards are based on the EMD Determinant and expressly limited to Code 3 responses only:

ALS RESPONSE TIME REQUIREMENTS (CODE 3)			
AMBULANCE, FRALS, OR QRV		AMBULANCE WITH FRALS AGREEMENT, OR DISTRICT FRALS / QRV RESPONSE	
Zones 1-4 (Urban)		Zones 1-4 (Urban)	
Charlie, Delta & Echo	6:59	Delta & Echo	10:59
Alpha & Bravo	11:59	Alpha, Bravo, & Charlie,	15:59
Zone 5 (Semi-Rural)		Zone 5 (Semi-Rural)	
Charlie, Delta, & Echo	13:59	Charlie, Delta, & Echo	17:59
Alpha & Bravo	17:59	Alpha & Bravo	21:59
Zone 6 (Rural)		Zone 6 (Rural)	
Charlie, Delta, & Echo	28:59	Delta & Echo	32:59
Alpha & Bravo	32:59	Alpha, Bravo, & Charlie	37:59
Wilderness		Wilderness	
Charlie, Delta & Echo	ASAP*	Charlie, Delta & Echo	ASAP*
Alpha & Bravo	ASAP*	Alpha & Bravo	ASAP*
Zone 8 (Emergency ALS IFT)		Zone 8 (Emergency ALS IFT)	
All Responses	20:00	All Responses	20:00

*Wilderness responses are not a separate Compliance Zone and do not have set Response Time standards; however, each Wilderness response shall be audited.

BLS RESPONSE TIME REQUIREMENTS (CODE 3)			
AMBULANCE, FRALS, FRBLS, OR QRV		AMBULANCE WITH FRALS OR FRBLS AGREEMENT, OR DISTRICT FRALS / QRV RESPONSE	
Urban		Urban	
Alpha, Bravo & Charlie	11:59	Alpha, Bravo, & Charlie	15:59
Semi-Rural		Semi-Rural	
Alpha, Bravo & Charlie	17:59	Alpha, Bravo & Charlie	21:59
Rural		Rural	
Alpha, Bravo & Charlie	32:59	Alpha, Bravo, & Charlie	37:59

(SOS, § 3.2.G.3.)

2. The Course of Performance.

The parties met in May 2024, to review SCFD's performance under the EOA-1 Contract for the first three months of 2024 and to discuss certain contract compliance issues that had arisen during that time. At that meeting, and in subsequent discussions, it became clear that the parties were interpreting the EOA-1 Contract's response time standards tables differently.

SCFD understood the “Code 3” language in the tables’ captions to mean what it says: those response time standards applied only when an ambulance was responding Code 3 (red lights and sirens) and thus, the EOA-1 Contract did not specify any response time standards for Code 2 (no red lights and sirens) responses.²

In contrast, County understood the response time standards in the tables to apply to all ambulance responses, whether at Code 3 or Code 2, notwithstanding the table’s captions or the limitations on an ambulance responding Code 2 versus Code 3.

To resolve this disagreement, SCFD proposed clarifying the Code 2 response time standard by adding 15 minutes to the existing Code 3 response time standards. County rejected the proposal.

The parties continued to meet and confer over this, and other, performance requirements and metrics. On July 18, 2024, SCFD Fire Chief Mark Heine emailed DHS Assistant Director Dr. Gabriel Kaplan, PhD, and offered to reduce the additional time for Code 2 responses from 15 to 10 minutes, correctly observing: “This would still make Sonoma County one of the strictest code 2 response times in the State of California, as many systems have much relaxed code 2 response compliance, if any measure at all.” County again rejected SCFD’s proposed solution.

SCFD and County representatives met, in person, on August 20, 2024, to resolve this and other issues. At that meeting, Chief Heine offered a seven-minute extension for Code 2 responses. Former DHS Director Tina Rivera accepted.

Unfortunately, Ms. Rivera separated from County three days later. County subsequently reverted to its original position, even though County staff, including Dr. Kaplan and CVEMSA Director Brian Cleaver, had actual knowledge of Ms. Rivera’s acceptance of SCFD’s third proposal.

3. The County’s Evaluation of SCFD’s Code 2 Response Times.

In a letter to Chief Heine dated December 17, 2024, you restated County’s position: “All calls, including Code-2 calls, have response time standards. . . . The [EOA-1 Contract response time standards] chart includes response time standards that apply to both Code-2 and Code-3 calls.” (*Id.* at 2.) The parties have since referred to County’s position colloquially as “Rule 3.”

In a subsequent letter to Chief Heine dated January 22, 2024, you summarized Rule 3 as follows: “All calls have response time requirements. All calls, including Code-2 calls, have response time standards.” (*Id.* at 1.) Notably, your letter did not assert that the response time standards in the EOA-1 chart applied to both Code 3 and Code 2 responses.

² This is not unusual: other county ambulance services contracts awarded pursuant to competitive processes, such as the Ambulance Services Agreement between Solano Emergency Medical Services Cooperative and Medic Ambulance Service, Inc., do not provide response time standards for Code 2 responses. (*See id.*, §§ 6.1.1, 6.2, 6.3; <https://www.solanocounty.com/civicax/filebank/blobdload.aspx?BlobID=8682>.)

On February 3, 2024, I wrote to Jordan Kearney, County’s outside counsel, “to reiterate and confirm [SCFD’s] long-standing interpretations of certain provisions of the EOA-1 Contract,” including the lack of Code 2 response time standards in the agreement, along with “supporting commentary and observations, some of which SCFD has not previously shared.”

County thereafter informed SCFD that it would apply Rule 3 to evaluate SCFD’s performance of its response time obligations, but invited SCFD to formally assert its position on Code 2 compliance issues in second-level reviews, so that County could evaluate SCFD’s position and arguments within the context of actual requests and decisions made by SCFD and County.

On February 14, 2024, I again wrote to Ms. Kearney regarding the ongoing contract compliance evaluation process. Among other things, SCFD informed County that it had adopted certain protocols for its submission of correction and exemption requests, in part to improve and expedite the evaluation process. SCFD explained:

The protocol standardizes the mechanics and contents for certain types of requests, including requests that implicate the four compliance rules (“Four Rules”) articulated by County in Director Solito's letter to Fire Chief Heine, dated January 22, 2024. Because County will apply the Four Rules and SCFD has a different interpretation regarding two of the Four Rules, SCFD designed the protocol to accurately communicate the nature and factual substance of each correction or exemption request, while preserving SCFD's rights and different interpretations.

(*Id.* at 3.)

SCFD’s protocol for requesting response time corrections for responses implicating Rule 3 was to submit the request as a time correction, add seven minutes to the response time standard, and append the following comment:

Correction of response time standard for Code 2 response. EOA-1 Contract does not specify response time standards for Priority Levels dispatched at Code 2. Corrected Code 3 response time standard consistent with methodology authorized by former DHS Director Tina Rivera on August 20, 2024.

(*Id.* at 4.)

County denied 80 such SCFD requests for corrections to Code 2 response times for Q4 2024 (*see* attachment). The following table summarizes those requests by acuity level (i.e., EMD Determinant):

SCFD CODE 2 RESPONSE TIME CORRECTION REQUESTS FOR Q4 2024		
ACUITY LEVEL	NO. OF REQUESTS	% OF TOTAL REQUESTS
Alpha	59	74%
Bravo	10	13%
Charlie	11	14%

Notably, the total number of SCFD's non-exempt responses for Q4 2024 is 9,326, which means that the 80 responses at issue in this second-level review request account for less than one percent (0.86%) of SCFD's evaluated responses during the relevant timeframe.

B. County Should Apply The Response Time Standards For Code 2 Responses Agreed Upon By Ms. Rivera On August 20, 2024.

Evaluation of SCFD's performance of its response time obligations under the EOA-1 Contract begins and ends with the contract's language. Contracts are interpreted to give effect to the mutual intention of the parties at the time the contract is formed. (Civ. Code § 1636; *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (Civ. Code § 1639; *TRB Investments, supra*, 40 Cal.4th at 27.)

On its face, the EOA-1 Contract does not provide any response time standards for Code 2 response. The chart in SOS § 3.2.G.3 is expressly limited to Code 3 responses. Where, as here, contractual language is clear and explicit, it governs. (Civ. Code § 1638; *Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390.)

Understanding that Code 2 response time standards were omitted from the EOA-1 Contract, SCFD proposed such standards, which County, through Ms. Rivera, accepted on August 20, 2024. The EOA-1 Contract expressly vested Ms. Rivera with the actual and ostensible authority to make such a bargain on behalf of County:

Only the Director of DHS, and such person's designees (collectively, the "Authorized Actor"), shall have the right and authority to act on behalf of COUNTY for all purposes under this Agreement, including with respect to any provision of this Agreement required or conditioned upon the consent, approval, waiver, or authorization (or other similar term) of, or providing rights to "COUNTY." As of the Effective Date, the Authorized Actor is Tina Rivera.

(EOA-1 Contract § 1.a.)

Thus, under the EOA-1 Contract's express language, Ms. Rivera unquestionably had the authority to agree to and bind County regarding Code 2 response times standards that were seven minutes more than the Code 3 response times. (Civ. Code §§ 2315, 2316, 2330, *McCartney v. Campbell* (1932) 216 Cal. 715, 720 [where contract's express terms gave agent authority to sell and to control all details of sales of real estate, contract authorized agent to enter into binding contracts on behalf of owner].)

While section 27 of the EOA-1 Contract provides that all modifications to the agreement must be in writing, it is well-established that "if a contract provides that a writing is necessary to amend it, the parties may, by their conduct, waive such a provision." (*Center for Biological Diversity v. Department of Conservation* (2018) 26 Cal.App.5th 161, 180-181.) And section 1.a of the EOA-1 Contract expressly vested Ms. Rivera with actual and ostensible authority to waive section 27.

Furthermore, SCFD detrimentally relied on Ms. Rivera's promises. County did not provide written notice that it would not be honoring Ms. Rivera's actions until nearly four months later, when it unilaterally articulated and declared its intention to apply Rule 4 in your letter dated December 17, 2024.³ County's actions had the effect of unfairly moving the goal posts on SCFD's contract performance months after SCFD could have taken action to address Rule 4, such as altering its performance to comply *or* seeking judicial assistance to resolve the parties' difference of opinion. Considering SCFD's detrimental reliance, Ms. Rivera's authorized promises on behalf of County effected a modification of the EOA-1 Contract providing Code 2 response times standards that are seven minutes more than the corresponding Code 3 response times standards. (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 321 ["a modification of the contract may be enforced when a party has made a promise that it should reasonably expect to induce action or forbearance on the part of the other party, and that does induce such action or forbearance"].)

Finally, the modification to the EOA-1 Contract is within the scope of the procurement and is therefore valid. Public contracts cannot be *materially amended* in favor of a winning bidder after bidding has closed and the contract has been awarded. (*See, e.g., Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1435, 1442 [trial court erred in not granting runner-up's petition to set aside contract awarded to the successful bidder where changes after bidding closed gave the successful bidder an "unfair advantage"].)

Here, the EOA-1 Contract, on its face, does not provide response time standards for Code 2 responses (SOS § 3.2.G.3), and requires that the compliance calculations include all non-exempted calls (SOS, § 3.6.B). Thus, under the plain, unambiguous language of the EOA-1 contract, which controls, all completed Code 2 responses are necessarily compliant (for lack of a response time standard) and must be included in calculations of SCFD's performance. A modification that adds new burdensome response time standards for Code 2 responses that do not otherwise exist (and which represent some of the most stringent standards in California for Code 2 responses), SCFD was not materially or unfairly advantaged by such modification. (*Valley Crest Landscape, supra*, 41 Cal.App.4th at 1435, 1442.)

C. County's Rule 3 Has No Legal Merit.

In contrast to SCFD's position, County's Rule 3 is unreasonable and, if applied, threatens a breach of the EOA-1 Contract.

First, County unsuccessfully attempts to find support for Rule 3 in the EOA-1 Contract itself. As explained in a single footnote in your letter dated December 17, 2024, County's position is that the "Code 3" language in the response time standard chart (SOS § 3.2.G.3), "is in error, as is clear within the chart itself. The chart includes response time standards that apply to both Code-2 and Code-3 calls. For example, the chart includes response time requirements for Alpha priority calls, when Alpha calls are 'Code-2 all units.' SOS 3.2(F)."

³ Notably, County did not provide written notice identifying any other Authorized Actor or designees before or after Ms. Rivera's acceptance of SCFD's seven-minute proposal on August 20, 2024, despite its contractual obligation to provide such notice. (EOA-1 Contract § 1.a.)

In other words, County seizes language from one part of the contract in an effort to label express contractual language as “error.” This is improper, the contract must be read as a whole “so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other” and to reject interpretations, such as County’s that would render express language surplusage. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495, 503.)

County’s interpretation is also improper because it results in unfair and absurd results. (*Hertzka & Knowles v. Salter* (1970) 6 Cal.App.3d 325, 337 [“In construing a contract the court . . . should avoid an interpretation which will make the contract unusual, extraordinary, harsh, unjust or inequitable [citations], or which would result in absurdity.”]; *Eucasia Schools Worldwide, Inc. v. DW August Co.* (2013) 218 Cal.App.4th 176, 182 [“Construction cannot lead to unfair or absurd results but must be reasonable and fair.”].)

As County observes, the Code 3 ALS chart includes response time standards for Alpha level responses, which only require Code 2 responses. (SOS, §§ 3.2.F.1, 3.2.G.3.) But, Alpha level responses are also included in the Code 3 BLS table. (*Id.*, § 3.2.G.3.) Reading the Code 3 charts in this fashion not only creates ambiguity where none exists, but it also undercuts County’s argument.

Within the IAED’s MPDS dispatching system, Alpha level responses are “[t]ypically . . . associated with calls requiring [BLS]” and “usually require only a BLS level of care.” (A. Braunschweiger, *Determinant Codes* (2017) J. of Emerg. Dispatch, <https://www.iaedjournal.org/determinant-codes>.) Thus, the inclusion of Alpha level responses in a chart for ALS response times would appear to be the real “error” because Alpha level incidents, by definition, do not require ALS level responses and there are already clear response time standards for Alpha incidents in the BLS chart. But County’s interpretation itself is erroneous because, in contract interpretation, a more specific provision controls over a more general provision (Code Civ. Proc., § 1859; *Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225, 1235.) The Code 3 ALS and BLS tables (SOS, § 3.2.G.3) are the more specific and controlling provision because they provide response time standards, while the Priority Level provisions relied on by the County (SOS § 3.2.F.1 & p. 82) are the more general provisions, because they describe the ambulances’ response mode, i.e., how units are to respond, as opposed to the time when they must respond. Thus, assuming it is proper to the extent that it ignores the clear, unambiguous, and more specific language of the Code 3 tables by bootstrapping the more general Priority Level response mode language on to the tables (it is not), County’s interpretation creates even more ambiguity and improperly renders the BLS chart meaningless and superfluous. (*Boghos, supra*, 36 Cal.4th at 503.)

Furthermore, the Code 3 ALS and BLS tables include response time standards for Bravo and Charlie level responses (SOS, § 3.2.G.3), but Bravo and Charlie level responses require the dispatch of multiple resources (sometimes from different agencies), with the first due resource at Code 3 and second due resource at Code 2. (SOS § 3.2.F.1 & p. 82.) If the response time standards in the two Code 3 tables apply to both Code 3 and 2 calls, then, the second due resource dispatched Code 2 to a Charlie level must also satisfy the same time standard as the first unit dispatched at Code 3. Because it eliminates the clear distinction in the contract language between Code 3 and

Code 2 responses, County's interpretation is nonsensical and would not survive legal challenge. (*Temple of 1001 Buddhas v. City of Fremont* (2024) 100 Cal.App.5th 456, 481 [provision in city hearing officer's contract requiring officer to "[c]onduct an independent, objective, fair and impartial Administrative Hearing in accordance with Federal, State and local laws and the regulations promulgated by the City Manager" precluded interpretation that officer was required defer to city's instructions regarding how to decide administrative hearings].)

County's interpretation also results in absurdity. (*Hertzka & Knowles, supra*, 6 Cal.App.3d at 337.) The distinction between Code 3 and Code 2 response modes in the EOA-1 Contract also entails very significant public safety and legal consequences. A unit dispatched at Code 3 response mode activates the vehicle's red lights, sirens, and traffic preemption signals, while a unit responding Code 2 does not. These systems are necessary to protect the ambulance crew, patients, other motorists, pedestrians, and other bystanders from vehicle collisions. If Code 3 and Code 2 responses are subject to the same time standards, then the EOA-1 Contract provides negative incentives for public safety in that it encourages SCFD and ambulance providers to respond to Code 2 calls in a manner that endangers the public.

When an emergency vehicle responds at Code 3, the Vehicle Code exempts the driver from certain traffic laws (but still requires the driver to exercise due care under the circumstances). (*See* Vehicle Code §§ 21055, 21056.) But the Vehicle Code provides that such exemptions apply only when the emergency vehicle's red lights and sirens are active and prohibit the use of red lights and sirens when not authorized. (*Id.* § 21055.) Thus, when the vehicle is dispatched at Code 2 response mode, the driver may not activate the vehicle's red lights, sirens, and traffic preemption signals and must comply with all traffic laws. (*Id.*)

This creates potential legal liability for SCFD and its ambulance crews. One court construed Vehicle Code sections 21055 and 21056 as follows:

If the driver of an authorized emergency vehicle is responding to an emergency call and gives the prescribed warnings by red light and siren, a charge of negligence against him may not be predicated on his violation of the designated Vehicle Code sections [citation]; but if he does not give the warnings, the contrary is true [citations]; *and in the event the charged negligence is premised on conduct without the scope of the exemption a common law standard of care is applicable* [citation].

(*Gibson v. City of Pasadena* (1978) 83 Cal.App.3d 651, 658.) If one of SCFD's ambulance crews were found negligent under these Vehicle Code sections, then SCFD could also be held liable for the crew's negligence. (*Id.* at 657.)

In other words, if the EOA-1 Contract is interpreted to apply the same standards to Code 3 and Code 2 responses, then the contract creates public safety hazards to SCFD's ambulance crews, its patients, and the general public, while exposing SCFD and its crews to significant legal liability. Neither SCFD nor County could have intended for such absurd results when they entered the EOA-1 Contract.

Next, the calculation of response times is necessary not only to measure SCFD's performance but for County to assess certain types of agreed-upon liquidated damages set forth in the EOA-1 Contract. (SOS, § 3.8.) A liquidated damages provision is invalid if it was "unreasonable under the circumstances existing at the time the contract was made." (Civ. Code, § 1671, subd. (b).) "Under this subdivision, a liquidated damages clause becomes an unenforceable penalty if it bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach." (*Graylee v. Castro* (2020) 52 Cal.App.5th 1107, 1115, internal quotation marks omitted.) "The amount set as liquidated damages must represent the result of a reasonable endeavor by the parties to estimate a fair average compensation for any loss that may be sustained. [Citation.] Absent a relationship between the liquidated damages and the damages the parties anticipated would result from a breach, a liquidated damages clause will be construed as an unenforceable penalty." (*Id.*) "Courts look beyond the language of the contract to determine the actual circumstances of a liquidated damages clause." (*Id.* at 1114.)

Here, the RFP did not disclose, and the parties' governing bodies never discussed whether the response time standards in the two Code 3 tables would apply to Code 2 responses prior to approval and execution of the EOA-1 Contract. (*See Vallejo Police Officers Assn. v. City of Vallejo* (2017) 15 Cal.App.5th 601, 617 [individual's undisclosed, subjective understandings and understandings communicated outside the legislative approval process, are not admissible as evidence of local government's intent as to the meaning contractual language].)

As such, SCFD did not anticipate that it could be responsible for damages to the County resulting from SCFD's Code 2 response times failing to satisfy the response times standards for Code 3 responses and the agreed-upon liquidated damages provisions are not based on an estimate of such damages. Under those circumstances, the response time liquidated damages provisions of the EOA-1 Contract are void as providing for an unenforceable financial penalty. (Civ. Code, § 1671, subd. (b); *Graylee, supra*, 52 Cal.App.5th at 1118.)

In sum, retroactively interpreting the response time standards in the Code 3 ALS and BLS tables to also apply to Code 2 responses when the tables do not so provide (SOS, § 3.2.G.3), is contrary to the express language of the EOA-1 Contract, is unfairly prejudicial to SCFD by moving the proverbial goalposts, creating significant public safety hazards and endangering the lives of paramedics, EMTs, patients, and bystanders, exposing SCFD and its personnel to unnecessary liability for vehicular collisions, and renders the EOA-1 Contract's liquidated damages provisions unenforceable—all of which are absurd results that the parties could not have possibly intended. (*Hertzka & Knowles, supra*, 6 Cal.App.3d at 337; *Eucasia Schools Worldwide, supra*, 218 Cal.App.4th at 182.)

Second, County argues in your letter dated December 17, 2024, that the Code 3 language in the response time standards charts "is not intended affect [sic] the meaning or interpretation of the substance of the chart itself." In support of this point, it relies on section 44 of the EOA-1 Contract, which states: "[s]ections or other headings contained in this Agreement are for reference purposes only, and are not intended to affect in any way the meaning or interpretation of this Agreement." County overlooks section 29.a of the EOA-1 Contract, which provides: "The headings used herein are for reference only. *The terms of the Agreement are set out in the text under the headings.*" (*Id.*, italics added.) The Code 3 ALS and BLS Charts are not themselves

sections or headings; rather they are set forth in SOS section 3.2.G.3, under the heading “Response Time Standards.” County’s argument is also self-refuting. If the language in the top rows of the charts is not intended to affect the meaning or the substance of the charts, then the response time standards in the ALS chart could apply to BLS responses and vice versa. Again, County’s interpretation destroys the meaning of the contract and defies common sense.

Third, County argues that the RFP serves as competent evidence of the parties’ intent under the integration clause in section 42 of the EOA-1 Contract, and the RFP does not contain the Code 3 language. This argument also fails. The integration clause plainly states that “that the EOA-1 RFP and [SCFD’s] proposal shall be competent evidence of the parties’ contracting intent *but shall not be used to contradict, modify, or vary any of the express terms of this Agreement.*” (EOA-1 Contract § 42, italics added.) That is precisely what County is attempting to do here: it is attempting to contradict the clear, plain Code 3 language in the response time standards charts in SOS section 3.2.G.3.

Indeed, the omission of the Code 3 language in the RFP does not help County because a court must interpret the Code 3 language in the EOA-1 Contract in the sense in which SCFD (as the promisor) believed, at the time of making the agreement, that County (as the promisee) understood that language. (Civ. Code, § 1649; (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 842.). SCFD added the Code 3 language to the response time standards chart in the first draft of the SOS precisely to cure the ambiguities identified, above. SCFD reasonably believed that County agreed to this necessary clarification because at no part during back-and-forth contract negotiations spanning nearly six months did County question, much less object to, the Code 3 language. Given its silence during negotiations and acceptance of SCFD’s proposed language, SCFD reasonably believed County interpreted the response time standards charts to apply to Code 3 responses only, in accordance with the clear and unambiguous Code 3 language.

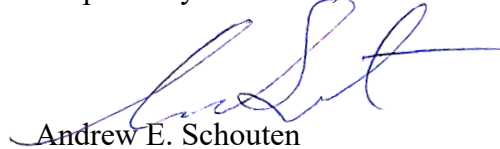
Finally, SCFD notes that while County has sole discretion to approve or deny correction requests under the EOA-1 Contract, that discretion must be exercised within the framework created by the contract language and subject to the implied covenant of good faith and fair dealing, which provides that neither contracting party will do anything to injure the right of the other to receive the benefits of the contract. (*Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 43.)

III. Conclusion.

SCFD appreciates the opportunity to submit its requests for second level review of its requests for time corrections. SCFD could have chosen to forgo submission of the instant request because County's resolution of these requests will not alter County's preliminary analysis showing SCFD to be in full compliance of the EOA-1 Contract's response time obligations for Q4 2024.

Nevertheless, SCFD submits the instant second level review requests because public agencies should be held accountable for the performance and administration of their contracts. Because the instant second level review requests implicate the parties' rights and obligations under the EOA-1 Contract, SCFD reserves all rights and remedies.

Respectfully submitted,



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