



San Ramon Valley Fire Protection District

1500 Bollinger Canyon Road, San Ramon, CA 94583

Phone (925) 838-6600 | Fax (925) 838-6629

www.firedepartment.org | info@firedepartment.org

August 20, 2020

VIA ELECTRONIC AND FIRST CLASS MAIL

Contra Costa County

David Goldstein, MD

1340 Arnold Drive, Suite 126

Martinez, CA 94553

David.goldstein@hdsd.cccounty.us

**Re: Ambulance Services Contract with San Ramon Valley Fire Protection District
(Emergency Response Area IV)**

Dear Dr. Goldstein:

As you know, Contra Costa County ("County") has granted several extensions to its contract with the San Ramon Valley Fire Protection District ("District") exclusive provider of emergency ambulance, advanced life support ("ALS"), and 911 emergency response services for Emergency Response Area IV ("ERA IV") exclusive operating area ("EOA") (Contract No. 23-055-19). The contract is currently set to expire on October 31, 2020.

I write on behalf of the District's Board of Directors ("District Board") to formally request that the County enter a new, ten-year agreement with the District to provide such services within ERA IV. In addition, the District Board requests that Contra Costa County EMS ("CCCEMS"), as the County's local EMS agency, amend its local EMS plan to correctly identify the District as an agency operating pursuant to Health & Safety Code section 1797.201 ("Section 1797.201") and designate ERA IV as a so-called "grandfathered" EOA and the District as the exclusive provider of emergency ambulance, ALS, and 911 emergency response services within the EOA under Health & Safety Code section 1797.224 ("Section 1797.224"). Doing so will ensure that the District and the County work together to continue to provide exemplary, efficient, and cost-effective service to the District's and the County's residents and taxpayers.

Please let me know by September 15, 2020 whether the County and CCCEMS accept the District Board's request.

A. The County Cannot Find A Better Partner For EMS Than The District.

The District (and its predecessor districts) have been proudly serving our community since 1921. It has provided ambulance and ALS services since 1975 and 1984, respectively. It currently service 192,858 people in an area of approximately 155 square miles.

Throughout its history, the District's mission has been delivering an exceptional level of all-risk fire, rescue, and emergency medical services. Our board and management

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focus continually on positioning the Fire District operationally, financially, and politically to manage economic uncertainty and a changing EMS landscape, while creating a predictable and sustainable future. All District employees are committed to building and maintaining a resilient and dynamic organization, striving for excellence, respectfully serving all with pride, honor, and compassion, and having a positive impact on people's lives during their time of need.

Over the years, the District has clearly proven its ability to deliver a level of EMS to County residents and taxpayers that is second to none. Our save rates for cardiac arrests are at least double the national average, both for sudden arrests as well as witnessed, shockable arrests. Even with the systemic delays caused by COVID-19, we can show a Return of Spontaneous Circulation rate of 26.67%.

Our response time compliance rates are unparalleled. According to CCCEMS's own figures from January 1, 2020 to August 21, 2020, the District responded to Priority 1 calls in ERA IV within 10 minutes 95.88% of the time, and within 12 minutes 98.11% of the time. One of the reasons why the District performs so well is that we set internal response goals that are faster than what we have agreed to in our contracts with the County.

Our faster response times are partly attributable to the District's dispatch center. Our dispatch center is a primary public safety answering point (PSAP) that provides tiered emergency medical dispatch (EMD) services, which reduces our call intake/processing times. Most ambulance providers' dispatch centers are secondary PSAPs that rely on the primary PSAP to provide EMD services, which adds time to their responses. The District's dispatch center has been nationally accredited since 1994, and it is one of only eight centers in the entire country that has never had a lapse in accreditation.

Our residents and taxpayers deserve and expect world-class, state-of-the-art EMS services in exchange for their investment in the District. Its healthy financial position reflects the District Board's long-standing commitment to fiscal sustainability. Its FY2020-21 operating budget of \$ 89.01 million, provides for continued enhancements in core services, while at the same time ensuring that ongoing spending is paid for with ongoing revenues and maintaining a prudent level of reserve funds. Because property taxes account for 89% of its projected revenues for FY2020-21, the District does not depend on interfacility transport and nonemergency ambulance revenues, unlike private providers. As a result, the District has the strength and resiliency to maintain EMS operations during these uncertain times.

Unlike multinational conglomerates that ship ambulance revenues to their out-of-state or offshore headquarters, the District reinvests its property tax and service fee revenue in the infrastructure necessary to provide world-class EMS. Over the past five fiscal years, the District has invested/reinvested nearly \$10 million into its facilities, vehicle fleet, communications center, and equipment.

The District currently fields five (5) front-line, state-of-the-art ambulances with 30 highly trained and experienced firefighter-paramedics in ERA IV on a 24 hours-a-day / 365-days-a-year basis. It has the surge capacity to immediately deploy four (4) additional ambulances. We staff each of our vehicles with two (2) paramedics, instead of one (1) paramedic and one (1) EMT like most providers. As a result, the District responds with five (5) paramedics on-scene for the majority of our 911 calls and has never needed to request ambulance mutual aid (while providing it multiple times). No private provider in the country could match our deployment or our track record.

The District and our employees are trusted members of the Contra Costa community. The District employs a total of 180 employees (164 full-time and 16 part-time), and 129 of them are firefighters. We are currently in the process of recruiting to fill open positions. And, 52 of our employees live in the District or the County.

The District also gives back to the community. It has allocated nearly \$30,000 in public education and information campaigns in its FY2020-21 budget, including CPR, disaster preparedness, traffic safety, and fire prevention programs. The District provides CPR instruction to all San Ramon Valley Unified School District students, allowing the schools to comply with the Ellis Bill. Our firefighter-paramedics mentor youths, support youth sports activities, volunteer in the community, participate in programs like Leadership San Ramon, and fundraise for charities and sponsorships. Our HeartSafe Committee provides CPR instruction to all types of community groups and organizations, including schools, offices, and even San Ramon's Art & Wind Festival. The District is heavily involved in the Community Emergency Response Team (CERT) program, augmenting our personnel with over 1,300 Disaster Service Worker Volunteers, who can volunteer with the District and throughout the State on disaster relief.

Undertaking a competitive procurement process to award ERA IV does not guarantee that CCEMS will find a better provider than the District. As the ambulance business grows more complicated, private providers consolidate, and EMSA imposes more mandates and requirements in connection with its review of RFPs for competitive process EOAs, local EMS agencies are receiving less and less responses on their solicitations. The District is aware of multiple RFPs issued for competitive process EOAs in the past five years that resulted in the local EMS agency receiving only one (San Mateo, Monterey, Santa Clara, Contra Costa) or two proposals (Stanislaus, Merced, Alameda), and usually resulted in an award to the incumbent provider. In Santa Clara and Monterey Counties, the RFPs developed by their local EMS agencies and approved by EMSA were so complicated that each county received only one proposal from the incumbent, American Medical Response, which were rejected as nonresponsive (Santa Clara) or too expensive (Monterey).

Nor will issuing an RFP result in a better deal for District and County residents and taxpayers. In Monterey County, for example, the county received only one proposal from the incumbent provider, which it rejected as too expensive. Under AMR's proposal, the average cost of an ALS ambulance ride under the incumbent's proposal would have been about \$10,000, which was three (3) times greater than the average cost for an ALS ambulance ride under the prior contract. That astronomical cost was due in part to EMSA's micromanaging of the RFP's financial terms but also the RFP's requirement that the winning bidder act as the dispatcher for all EMS-related calls in the county. In AMR's case, it could only recoup the cost of a new dispatch facility, equipment, and employees by charging consumers more for their ambulance transports.

The District is confident that its residents and taxpayers, local community leaders, and the County do not want to see a change in EMS delivery for ERA IV. We hope you agree.

B. The Sacramento Litigation Over Underground Regulations Has Been Resolved Against The California Emergency Medical Services Authority ("EMSA").

The existing contract between the County and the District is set to expire on October 31, 2020. The parties agreed to the most recent extension to allow time for the Sacramento

Superior Court to issue a decision in Cal. Fire Chiefs Ass'n, Inc. v. Cal. Emergency Med. Servs. Auth., Case No. 2019-80003163. There, the California Fire Chiefs Association, Inc. ("CalChiefs") sought mandate, declaratory, and injunctive relief against EMSA, alleging that the rules EMSA has used for over thirty years to implement and interpret Sections 1797.201 and 1797.224, including its review and approval of the transportation component of local EMS plans and exclusive operating areas, were void "underground regulations" that had never properly adopted under the Administrative Procedure Act ("APA"), Cal. Gov't Code §§ 11340 et seq., 11370 et seq., a mandatory state law governing state agency rulemaking procedures.

The Court agreed with CalChiefs. On July 15, 2020, the Court entered judgment in favor of CalChiefs, declaring EMSA Guidelines 141, 141-B, and 310-01 and the rules, criteria, and interpretations contained therein to be underground regulations ("Underground Regulations") and issuing a writ of mandate commanding EMSA to stop using or enforcing the Underground Regulations until and unless EMSA properly adopts them as regulations in compliance with the APA. Enclosed are copies of the Court's July 15, 2020 judgment and writ of mandate.

C. EMSA's 2017 Findings And CCCEMS's 2019 Recommendation Regarding The District And ERA IV Are Based On Underground Regulations.

"[A]ny regulation not properly adopted under the APA is considered invalid," and where "a government agency acts in reliance on an invalid regulation under the APA, its action is also generally considered invalid." Reilly v. Superior Court, 57 Cal.4th 641, 649 (2013).

In 2017, EMSA denied CCCEMS's request for an extension of the time to undertake a competitive procurement process to select providers for ERA IV. EMSA also purported to find that the District had relinquished its Section 1797.201 status and ERA IV was not eligible for designation as a grandfathered EOA under Section 1797.224. EMSA's 2017 findings were made pursuant to Underground Regulations in Guidelines 141-B and 310-01.¹

In 2019, CCCEMS recommended to the County Board of Supervisors that a provider for ERA IV be selected through a competitive procurement process. CCCEMS's recommendation was based on EMSA's 2017 findings and Underground Regulations.

First, EMSA and CCCEMS took the position that the District had relinquished its Section 1797.201 rights and obligations and was integrated into the local EMS system simply by entering three contracts with the County. This is a straightforward application of the following EMSA Underground Regulations.

- "Plainly stated, a city or fire district that has previously signed an agreement can no longer rely upon HS 1797.201, as it is no longer applicable."
- "[A city or fire district loses Section 1797.201 status if it] entered into a written agreement with LEMSA for the type of service they were providing in 1980, including ALS, LALS, or emergency ambulance services."

¹ EMSA removed the guidelines from its website. However, you can find a copy of Guideline 141-B here: <https://calchiefs.org/download/ex-c-guideline-no-141b-2008-pdf/?wpdmdl=3359>; and a copy of Guideline 310-01 here: <https://calchiefs.org/download/ex-a-emsa-guideline-310-10-0415101-pdf/?wpdmdl=3366>.

- “After an agreement is reached with the local EMS agency . . . the [city or fire district] is considered ‘integrated and coordinated’ into the local EMS system. Authorization for ALS under 1797.178 is then derived from the local EMS agency. After an agreement is reached, an [city or fire district] may not reclaim ‘1797.201’ pre-agreement status.”
- “With the transitional legislative intent of 1797.201, it is reasonable that a city or fire district that entered into an agreement for EMS after June 1, 1980, is said to have done so consistent with the language in 1797.201. . . . Since section 1797.201 has been in place since June 1, 1980, local EMS agencies and city and fire districts should understand that an agreement would serve to fulfill the legislative intent to integrate into the EMS system.”

Guideline 310-01 at 11-12.

Second, EMSA and CCCEMS took the position that the District relinquished its Section 1797.201 rights by participating in three competitive processes to award ERA IV as a competitive process EOA under Section 1797.224. Again, this is a straightforward application of EMSA’s Underground Regulations:

- “With respect to ambulance service exclusivity, a City or Fire District cannot claim to both hold 1797.201 rights, and also simultaneously receive the benefits of exclusivity under 1797.224, as an integrated part of an EMS system.”

Guideline No. 310-01 at 22.

Third, EMSA found that “[t]he realignment of the [ERAs] in [the] County . . . from ten (10) to five (5) in 1984” may have resulted in a change in manner and scope rendering ERA IV ineligible for grandfathered EOA status. In its recommendation, CCCEMS found that it did. Section 1797.224 states that a LEMSA may designate an EOA without using a competitive process if it “develops or implements a local plan that continues the use of existing providers operating within a local EMS area in the manner and scope in which the services have been provided without interruption since January 1, 1981.” Cal. Health & Safety Code § 1797.224. EMSA and CCCEMS applied Underground Regulations that set forth criteria to determine whether a change in “manner and scope” has occurred, rendering the area ineligible for grandfathering under Section 1797.224:

- “The following would constitute a change in the manner and scope: . . . Changes to geographic area serviced by the provider since January 1, 1981 (e.g., combining multiple areas or splintering existing EOAs into smaller areas).”

Guideline 141-B at 14.

Fourth, CCCEMS took the position² that ERA IV could not be designated as a grandfathered Section 1797.224 EOA because “the scope of emergency services provided

² EMSA did not take this position in its 2017 findings. It stated that the District did not provide ALS ambulance services in 1980, which is the relevant date for Section 1797.201, while the relevant date for Section 1797.224 grandfathered EOAs is 1981. Thus, EMSA was incorrectly stating that the District could not increase from BLS to ALS under Section 1797.201. Apple Valley, 17 Cal.4th at 758.

by the [District] . . . expanded in 1984.” While it did not support its conclusion by citing to any statute, regulation, or case law, CCCEMS apparently relied on the following EMSA Underground Regulations, which erroneously conflate Section 1797.201 and 1797.224:

- “In the case of a 1797.201 city or fire district that was providing BLS (in some form) in 1980, moving from a BLS type of service to another type of service (i.e. ALS, LALS, or emergency ambulance service) would not be permitted without authorization from the local EMS agency. . . . [I]t is reasonable to also consider prehospital EMS types [for purposes of Section 1797.201] as ‘ALS, LALS, and emergency ambulance services’ as being consistent with [Health & Safety Code section] 1797.85. . . . This allows for consistency with the ‘grandfathering’ provisions contemplated in 1797.224. . . . [I]t is apparent that the types of service that may be created as exclusive types [under Section 1797.224] are defined in [Section] 1797.85 and are limited to [Emergency Ambulance Services, ALS, and LALS].”

Guideline 310-01 at 16-17.

EMSA’s and CCCEMS’s application of these Underground Regulations are also contrary to law or without legal authority. Rather than repeat it here, I would direct you to the analysis of these issues by the District’s outside counsel, Andrew Schouten, in his June 26, 2019 letter to Supervisor Anderson. I have enclosed a copy of that letter for your convenience.

D. EMSA Withdraws Its Proposed Chapter 13 Regulations.

On March 6, 2020, EMSA issued a notice of proposed rulemaking for its Chapter 13 EMS System Regulations (“Proposed Regulations”). See <https://oal.ca.gov/wp-content/uploads/sites/166/2020/03/2020-10-Z-March-6-2020.pdf>. Pertinent here, the Proposed Regulations would have:

- Codified rules and criteria for determining whether a “change in manner and scope” has occurred for purposes of local EMS agencies creating EOAs without a competitive process under Section 1797.224. §100450.79.
- Deemed every EMS area in California “non-exclusive” unless and until EMSA approves it as an exclusive operating area under Section 1797.224. §100450.80(a).
- Provided rules, requirements, and criteria for local EMS agencies to apply when creating and evaluating grandfathered Section 1797.224 EOAs. §100450.81.
- Granted authority to, and imposed standards for local EMS agencies to recognize Section 1797.201 cities and fire districts. §100450.90.
- Placed limits on Section 1797.201 cities’ and fire districts’ expansion of services and service areas through LAFCO proceedings. §100450.91.

Had EMSA adopted the Proposed Regulations, EMSA and CCCEMS could have relied on them to reach the same conclusions regarding the District’s service rights as they

did in 2017 and 2019. That is no longer an option because CalChiefs and the California Professional Firefighters led a statewide groundswell of opposition against the Proposed Regulations. On August 14, 2020, EMSA announced that it would not proceed with the Proposed Regulations. See <https://oal.ca.gov/wp-content/uploads/sites/166/2020/08/2020-Notice-Register-Number-33-Z-August-14-2020.pdf>.

E. CCCEMS Must Amend Its EMS Plan To Correctly Identify The District As The Exclusive EMS Provider In ERA IV Under Sections 1797.201 And 1797.224.

In 2003, prior to EMSA's enforcement of its Underground Regulations, former CCCEMS Director Art Lathrop admitted in a letter to former District Fire Chief Craig Bowen that the District was a Section 1797.201 agency and the competitive process requirements for establishing EOAs therefore did not apply to ERA IV. Nothing has changed.

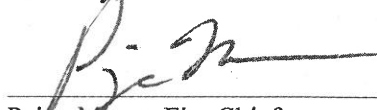
The District therefore requests that CCCEMS amend its EMS plan and enter into an agreement recognizing the District as the exclusive provider of emergency ambulance, ALS, and 911 emergency response services in ERA IV pursuant to both Sections 1797.201 and 1797.224. And since its 2017 findings are void and it cannot lawfully use or enforce the Underground or Proposed Regulations, EMSA would have no lawful reason to deny CCCEMS's amended local EMS plan.

F. Conclusion.

Please let me know whether the County and CCCEMS accept the District's request that CCCEMS amend its EMS plan and the County enter into a new ten-year agreement designating the District as the exclusive provider of emergency ambulance, ALS, and 911 emergency response services in ERA IV under Sections 1797.201 and 1797.224. I am available, as well as my staff/EMS team, to meet and discuss this request further.

If I do not hear from you by September 15, 2020, the District will have no choice but to explore all of its options, including but not limited to, filing a suit against CCCEMS and EMSA to establishing its rights under Sections 1797.201 and 1797.224.

Sincerely,



Paige Meyer, Fire Chief
San Ramon Valley Fire Protection District

Enclosures

cc: District 1 Supervisor, John M. Gioia
District 2 Supervisor, Candace Andersen
District 3 Supervisor, Diane Burgis
District 4 Supervisor, Karen Mitchoff
District 5 Supervisor, Federal D. Glover
County Administrator, David J. Twa
Andrew E. Schouten, esq.