



Greathouse
Holloway
McFadden
Trachtenberg

Brian Trachtenberg

brian@GreatLaw.com
(713) 688-6789
4200 Montrose Suite 300
Houston, TX 77006
www.GreatLaw.com

July 29, 2020

Via email

George Vie III
Feldman & Feldman P.C.
3355 West Alabama, Suite 1220
Houston, Texas 77098
george.vie@feldman.law

Alison Sulentic
The Sulentic Law Firm PLLC
6575 West Loop S., Suite 500
Bellaire, Texas 77401
alison.sulentic@sulenticlaw.com

Re: Notice of Default under the June 20, 2013 Contract for Providing Emergency Medical Services (the "Service Agreement") between our client, Harris County Emergency Services District No. 11 (the "District"), and your client, Cypress Creek Emergency Medical Services Association ("CEMS").

Dear Mr. Vie & Ms. Sulentic:

As you know, the District has spent much of the last year and a half addressing CCEMS's breaches of its obligations and duties under the Service Agreement. For example, as far back as March 2019, the District requested that CCEMS renegotiate certain terms of the Service Agreement because of CCEMS's failure to meet response time performance standards and refusal to provide documentation showing how CCEMS spent the District's funding. The opportunities to cure these breaches were, at times, ignored by CCEMS and, at other times, countered with proposed terms that would only allow CCEMS to further avoid the District's reasonable need for oversight of CCEMS's use of taxpayer dollars. Despite this, the District spent much of 2019 extending reasonable, good faith offers to negotiate with CCEMS in hopes of closing the ever-widening rift caused by CCEMS's breaches of the Service Agreement and failures to perform as agreed, directed, and expected.

After no real progress was made, general counsel for the District, Regina D. Adams of Radcliffe Bobbitt Adams Polley PLLC ("RBAP"), sent a letter to CCEMS on January 9, 2020 in which she outlined CCEMS's ongoing failures to, among other things, provide adequate documentation to support the District's substantial monthly payments to CCEMS. Ms. Adams also highlighted the District's concerns regarding CCEMS's perception that any assets bought with the District's funds belonged to CCEMS when in fact, Texas law and the Service Agreement dictate that such assets are owned by the District. Once again, the District's requests went unanswered and CCEMS's breaches went uncured.



Since January, the District has consistently demanded that CCEMS provide documentation related to actual response times, financial information related to the use of the District's funds, information relevant to ascertaining the nature and extent of District assets in CCEMS's possession, and any information related to the investigation of the 2019 CCEMS maintenance facility scandal. It was not until the District published its Request for Qualifications for supplemental or replacement emergency medical services providers that CCEMS finally made attempts to cure its breaches by providing some (but by no means, all) of the information requested by the District months, if not years, ago.

While the level of transparency is still questionable and many issues remain unaddressed, one thing is very clear: CCEMS's breaches of the Service Agreement are substantial and have cost the District millions of taxpayer dollars over the last several years. Newly discovered breaches include, but are not limited to, CCEMS grossly overcharging the District for CCEMS employee health insurance and communication center ("Comm Center"), maintenance, and education employee wages.

For example, in its Fiscal Year Ending December 31, 2020 Budget (the "2020 Budget"), CCEMS requested \$2,560,000 to provide health insurance to CCEMS employees. To be sure, the District has always offered and expected to pay for insurance coverage for certain CCEMS employees. The District, however, has never offered or intended to pay for employees' family members' insurance. It is not surprising, then, that the 2020 Budget does not mention using District funds to pay for health insurance for CCEMS's employees' family members. In fact, the 2020 Budget specifically defines the Health Insurance Expense as "**employee** coverage [for] health, dental, disability, vision" (emphasis added). And yet, that's exactly what CCEMS has apparently and unlawfully been doing: according to CCEMS's Estimated ESD Health Insurance Costs for 2020, only recently provided to the District for the first time despite the District asking for such information for YEARS, it is now clear that the District's taxpayers have been paying for insurance coverage for CCEMS employees' spouses and children the entire time, resulting in overpayments to CCEMS of approximately \$588,822.28 in just the last 7 months alone. According to the limited records provided by CCEMS, the District is paying \$776.80 per month for each of the 150 EMS employees and \$373.41 per month for each of the 34 Comm Center employees. Based on those numbers, and assuming the District should actually be responsible for the wages and insurance for 34 Comm Center employees (see below), the District's share of employee-only health insurance coverage should amount to \$1,550,590.37. Instead, the District is slated to pay \$2,560,000 for CCEMS employees *and* their families by the end of 2020. This will result in the District overpaying CCEMS by over \$1,000,000 by the end of this year. Assuming this is not the first year CCEMS has over-billed the District in such manner, CCEMS owes the District a like amount for each of the past years.

It has also come to the District's attention that it is paying far too much for its share of Comm Center wages. The District has always offered and expected to pay for its proportionate share of Comm Center wages. According to CCEMS's May 2020 report to the Board (the "May Report"), Comm Center calls relating to the District account for approximately 47% of all calls received by the Comm Center. As you know, the remaining 53% of the call volume is comprised of calls for other EMS and fire departments not associated with the District, many of which are far outside the District's boundaries. It is apparent, however, that, according to salary information for Comm Center employees in 2019 – information only just provided but the likes of which the District has requested for YEARS and CCEMS has refused to provide – the District is paying *at least* 65% of the Comm Center wages, if not more. According CCEMS's "ESD 11



Requested Documents” report provided by Wren Nealy in April 2020 (the “April Report”), the average yearly wages for a Comm Center employee who worked for 12 months in 2019 was approximately \$58,000.00. Assuming the Comm Center had 40 full-time employees (the “par number” of Comm Center employees according to CCEMS’s Wren Nealy, which we take to mean the ideal number at any time), the District should be paying for, at most, 47% of Comm Center employees’ wages or, put another way, for only 19 such employees. This equals an annual total of \$1,102,000 in Comm Center wages that should have been paid by the District in 2019. Instead, the District paid \$1,676,933.00 for Comm Center wages pursuant to CCEMS’ Fiscal Year Ended December 31, 2019 budget (the “2019 Budget”). This resulted in the District overpaying CCEMS for Comm Center wages by approximately \$575,000 in 2019 alone. Assuming this is not the first year CCEMS has over-billed the District in such manner, CCEMS owes the District a like amount for each of the past years.

Based on the above discoveries, CCEMS has clearly breached its duty to provide an accurate and honest annual budget to the District, as required by Section 5.01 of the Service Agreement. On the health insurance and Comm Center budget items alone, CCEMS’s breaches are costing the District approximately \$1.5 million per year. However, the District believes this number is much higher because the District continues to find unexplained discrepancies between the amount of money budgeted and paid to CCEMS by the District, and the amount CCEMS actually expends. For example, under the 2019 Budget, CCEMS requested – and the District paid – \$420,000 for maintenance crew wages. However, document 17a in the April Report shows that maintenance crew wages only cost CCEMS \$342,274 in 2019. Additionally, CCEMS requested – and the District also paid – \$420,000 for wages attributable to CCEMS’s education division. In reality, CCEMS only paid about half of that amount. According to the April Report, CCEMS only paid \$282,288 for education wages in 2019. Assuming this is not the first year CCEMS has over-billed the District in such manner, CCEMS owes the District a like amount fo each of the past years.

The District believes these instances of over-billing and misuse of taxpayer dollars by CCEMS stretch back years and represent millions of dollars of taxpayer funding that CCEMS fraudulently acquired through its over-baked budgets. The District also believes that CCEMS’s misappropriation and misuse of the District’s funds extends beyond the issues addressed in this letter. As you know, the District has engaged a financial examiner, PKF of Texas, to further investigate these matters and others. PKF’s audit of CCEMS’s books and records along with a physical inventory of CCEMS and District assets is necessary to determine the extent of the District’s overpayments, CCEMS’s frauds and misappropriation of taxpayer dollars, and ensure the return of the many millions of taxpayer dollars by which the District believes CCEMS has been unjustly enriched. The District reserves the right to increase all amounts described in this letter pursuant to PKF’s and the District’s ongoing findings.

The CCEMS budget-related breaches discussed throughout this letter are just one category in an increasingly long list of breaches committed by CCEMS. Others include, but are not limited to, failing to timely provide information related to the maintenance facility investigation; improperly asserting title over District-owned ambulances; and unlawfully pledging the District’s assets as collateral in order to receive a tax-exempt conduit loan via Frost Bank. Additionally, it was discovered that in 2016 CCEMS signed an “Interlocal Cooperation Housing Agreement” with the Woodlands Township in which CCEMS misrepresented that it was “Harris County Emergency Services District #11, d/b/a Cypress Creek EMS”



Mr. Vie and Ms. Sulentic
July 29, 2020
Page 4

without the District's knowledge or consent. As the list of breaches and misrepresentations grows, CCEMS would be wise to continue increasing its level of transparency and cooperating with the District's efforts to provide reliable and trustworthy services to its taxpayers.

The District hopes and expects that CCEMS is as outraged as the District at the obvious malfeasance and overreaching of CCEMS management over the past several years. The District, therefore, hopes and expects that CCEMS will willingly offer to resolve the breaches and financial discrepancies described in this letter, cooperate in the District's ongoing examination and investigations, and make prompt payment of all sums due the District's taxpayers, either in the form of a return of cash or a turnover of assets to the District to satisfy all sums due. Should that not prove true, and should the District be forced to litigate these matters, please accept this letter as notice and presentment for all purposes that the District will seek and expects to recover not only its actual damages and any applicable penalties, but also the full extent of its attorneys fees and costs, which are likely to be extensive.

Sincerely,



Brian Trachtenberg