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August 3, 2020

Re: Emergency Service District #11 request for forensic examination for financial and asset information and documentation from Cypress Creek Emergency Medical Services Association (a non-profit association) and July 29 “Notice of Default”

Brian Trachtenberg
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Dear Mr. Trachtenberg:

This letter is submitted by the Board of Directors of Cypress Creek Emergency Medical Services Association in response to the July 2, 2020 request from Emergency Service District #11 for a forensic audit to be conducted at ESD expense by Danielle Supkis Cheek, CPA of PKF Texas. This letter also responds to your July 29 letter giving notice of various claims of default under the parties’ Contract for Providing Emergency Medical Service.

Regarding the allegations of “a long list of breaches” and other defaults under the Contract, I will respond separately and in detail to those claims at the appropriate time. At the moment, I stress that CCEMS and its Board absolutely disagree with any claim that CCEMS has defaulted in its material obligations under the Contract. Indeed, CCEMS has always provided the District’s residents with the highest level of emergency medical service possible – setting a “gold standard” for prehospital emergency medicine that no one contests. (Even competitors when responding to the District’s request for qualifications.)

Also, I note we are unaware of any action, decision, or vote by the ESD Commissioners made in an open session and in compliance with the notice requirements of the Open Meetings Act finding, determining, or declaring that CCEMS has defaulted under the Contract, or authorizing you to give such notice to CCEMS.

Regarding the July 2 request for audit, your July 27 letter, and the portions of your July 29 letter reasserting the need or desire for that audit, the CCEMS Board (through its counsel) has

previously advised that CCEMS is prepared to initiate the full on-site current asset inventory requested by the ESD Commissioners. Your July 27 letter says that Ms. Cheek, pursuant to the general discretion she has been granted by ESD to determine the manner and method of the audit, has rejected our suggestion that an asset inventory was an appropriate starting point for the forensic examination and site visit.

Given the July 27 and July 29 correspondence from you, the Board now formally responds to the audit request. In providing this response, the Board is guided by several considerations. First, the June 20, 2013 Contract says in Section 7.01 that

The District shall look to CCEMS for results only and the District shall not direct or oversee CCEMS or its agents, members, employees or volunteers in the delivery of such Emergency Services, or the manner, means, or methods by which the Emergency Services are performed or the manner in which CCEMS conducts its internal operations, except for financial and fiscal matters concerning CCEMS's receipt or expenditure of District appropriated funds. Provided, however, the District shall have the right to determine the appropriateness and sufficiency of CCEMS's delivery of the Emergency Services required under this Contract.

Second, the Contract provides in Section 7.02(B) that CCEMS will

at all reasonable times and upon reasonable request, permit the District to inspect or cause to be inspected, at the District's expense, CCEMS's financial records or excerpts therefrom as are reasonably necessary in order to generally determine the usage of District payments made to CCEMS.

In addition to these specific agreements, CCEMS also is guided by its desire, expressed several times recently, to rebuild the relationship between the Service and the District. To that end, the Board has encouraged more transparency and reporting, and has taken steps it thought could improve communications with the Commissioners, including significant changes in management and Board membership.

Unfortunately, ESD's actions in response have been ambiguous and uncertain as to the parties' relationship going forward. The CCEMS Board has watched as the District not only initiated requests for proposals from other EMS providers but continued to pursue a narrowed list of respondents for further interviews. Moreover, during the public portion of the respondents' presentations, several companies proposed a business model in which they would use "the present infrastructure," "retain the current system," or seek to hire CCEMS employees, including representations about existing programs, pay, and seniority and otherwise expressing a hope CCEMS employees "stay on board." And at the last regular meeting, the District unanimously moved to retain an EMS consultant. Next, one of the Commissioners in recent public statements said a decision would be made on the RFP process within 60 days, adding that the requested forensic examination by PKF Texas would also be completed in the

same sixty-day period. And most recently, you issued the default letter threatening litigation over alleged contract breaches.

Given these steps by the ESD Commissioners, the Board is troubled about requests for a forensic audit that includes items such as employee organizational charts; an employee listing or census for all employees over the last four years; and payroll details. The Board cannot ignore the reality that the financial audit appears designed to obtain enough information to take over the CCEMS operation or system. The fact that the schedule of the audit has been expressly tied to evaluation of other EMS providers by Commissioner Brost is even more reason for the Board to proceed cautiously.

But your “Notice of Default under the June 20, 2013 Contract” and its timing – just two days after your July 27 auditor “introduction” letter – answers any question about the audit’s present scope.

To be sure, the Board will honor its contract obligations to respond to requests concerning CCEMS’ receipt or expenditure of District appropriated funds. The Board likewise will meet its obligation to permit inspection of records to generally determine the usage of District payments made to CCEMS. But as much as it desires to be transparent and accountable, the Board cannot provide confidential financial and proprietary information, beyond the scope of the contract, that could then be used by competitors in the interview process, or by the consultant the District will hire, or by ESD to implement a takeover of the CCEMS operations.

If the Board and the Commissioners were solely engaged in negotiation and relationship building, discussing the terms of the contractual agreement, and perhaps workshopping (as we have suggested) on matters of mutual concern for continued business operations, we would certainly consider many of the PKF audit requests in that context. But at the moment the Board sees the District (1) continuing with steps designed to disengage with CCEMS; (2) while stating the Contract is in full effect; (3) but giving notice of default under the Contract, which the agreement does not require or address.

Accordingly, the Board will limit its audit response to documents and records strictly related to CCEMS’ receipt or expenditure of District appropriated funds. The Board has instructed its controller and legal counsel to maintain that scope in responding to Ms. Cheek unless a discussion between the Board and Commissioners shows progress towards a better long-term relationship.

Finally, because the Board’s instructions are consistent with the parties’ written agreement, any suggestion that the Board may withhold funds in escrow pending receipt of the PKF audit is without merit. Emergency Service District #11 should authorize payment of CCEMS bills as submitted without withholding, and release the present funds held in escrow.

Yours very truly,

/s/ George W. Vie III

cc:

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