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January 9, 2020

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Board of Directors & Executive Director
Cypress Creek Emergency Medical Services
c/o Mr. Andrew McKinney
McKinney Taylor PC
Three Riverway, Suite 900
Houston, Texas 77056

Re: Harris County Emergency Services District No. 11 (the "District"); Cypress Creek Emergency Medical Services ("CCEMS"); Term Sheet for Amendment to and Restatement of Contract for Providing Emergency Medical Services with CCEMS (the "Contract")

Dear Directors and Mr. England:

This letter serves as a response to the correspondence received by the Board from Mr. England, dated November 27, 2019, and Mr. Glen Henning, dated November 25, 2019, in regards to the District's proposed Term Sheet, both enclosed herewith. Please note that attachments referenced in Mr. England's letter (CCEMS' proposed term sheet and proposed form of contract) were not received by any recipient of such letter.

The Board of Commissioners (the "Board") wishes to further clarify and provide additional insight into its rationale for its proposed amendments to the Contract.

To address various statements throughout Mr. England's correspondence, and mentioned by Mr. England in previous conversations throughout the term of the Contract, in which he references that CCEMS has provided emergency medical services to the area for more decades than the District has existed and seems to bemoan the fact that the Board is duly-elected by the electorate. As we are all aware, the District was created in 2004, pursuant to voter approval by residents, in order to provide emergency medical services within the boundaries of the District- whether by taking on those services itself or contracting for them, all the while being good stewards of taxpayer funds. Since its creation, the District has chosen to contract with CCEMS to provide those services and would prefer to continue to do so. However, it is vital that CCEMS, although not a governmental entity itself, be able to comprehend the limitations and duties placed upon the District by laws that dictate how ESDs operate and govern.

Soon after the creation of the District, the law was changed to provide that the District's Commissioners be elected officials and therefore subject to change every 2 years at the will of the District's registered voters. The District has no control over the requirement for Commissioner

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elections nor has it any control over who is elected or what their personal views are of CCEMS. However, what the District does know is that each Commissioner has had the best interests of the constituency at heart when deliberating or voting on District matters.

Further, it should be evident to CCEMS that in the last several legislative sessions there has been further restrictions placed upon local governmental entities- in particular special purpose districts, such as ESDs- and a push for more transparent oversight of taxpayer dollars. The District expects that as ESDs mature, the restrictions and oversight will continue to increase.

Any questions or requests for data made to CCEMS by the District as they relate to the use of taxpayer dollars are currently contractually allowed. If CCEMS is going to operate under a contract that is worded similarly to the way the current contract is worded (i.e., the draft amendment CCEMS has proffered), then CCEMS should expect these requests and questions to continue. With the proposed contractual limitations offered by the District's term sheet, many of those questions are eliminated.

Mr. England stated in his correspondence that "not a single ESD 11 Board Member has the skill set or EMS experience to 'manage' an organization as large, complex and professional as CCEMS." The Board does not dispute this and the District's proposed terms were not intended to "interfere with CCEMS' management and operations", but rather to better define the relationship between CCEMS and the District as a true independent contractor relationship. The District does not desire to take on the responsibilities and liabilities of CCEMS. However, the current contract and most of CCEMS' proposed terms for amendment continue to blur the relationship between the two entities. CCEMS representatives also continue to state that it is the District (i.e., the taxpayers) that serves CCEMS, and not the inverse. CCEMS seems to desire that the District cede all contractual control (beyond the emergency medical services to be provided) over to CCEMS. The District wants CCEMS to control its employees and services. The District concurs with CCEMS' goal to continue to maintain quality services. But the District does not want CCEMS to essentially have exclusive power and control over the District's ability to terminate the contract if, at some time, the quality of services and employees diminishes in any way. To continue to hand over elected officials' power to contract to CCEMS and/or a panel of arbitrators is preposterous and flies in the face of public policy and effective governance. Anything could happen to CCEMS or its administration at any point that might detrimentally affect the quality of services CCEMS provides. The opposite of CCEMS' view of the District's motives is true. It would be very short-sighted for the Board not to be prepared for the possibility- despite how remote one might believe it to be- that CCEMS' quality of services declines, and have handcuffed the District to an overly cumbersome, inefficient and ineffective termination provision stripping the Commissioners of the ability to effectively terminate the Contract if such event should occur. The last thing anyone associated with the District wants is to be stuck without the level of emergency medical service its constituents have enjoyed for a number of years.

The District provided the attached term sheet, titled "District Term Sheet," to Mr. Andrew McKinney via email on April 29, 2019. The District received a revised term sheet on July 11, 2019 from Mr. England, also attached hereto, and titled "CCEMS Term Sheet." Among other items, the CCEMS Term Sheet eliminated proposed terms that are statutorily required of the District because it is a governmental entity in the State of Texas. For example, Section 2251.021(b), Texas Government Code, also referred to as the Texas Prompt Payment Act, stipulates that a political subdivision whose

governing body meets only once a month or less frequently has 45 days in which to make payment under a contract. The District proposed updating the Contract to reflect the Texas Prompt Payment Act deadlines for payment as this is what is required by statute.

Further, the District proposed to update the Contract to require CCEMS to include adequate back-up information with each invoice submitted for payment at least 5 days prior to the District's monthly Board meeting. While this is not statutorily required, the District believes being provided the information used by CCEMS to calculate the invoice will allow the Board to verify the calculations, see certain trends in the calls for service and approve payment on a timely basis without the necessity to ask further questions of CCEMS. Such back-up information would be in lieu of the current lengthier monthly reports as well as the annual reconciliation audit required under the current Contract. The District requested a minute amount of information in comparison to the data maintained by CCEMS, including the overall number of calls/incidents for the prior month and the number of patient transports and the number of calls/incidents where no transport occurred. If CCEMS is amenable to amending the structure of payment to a cost-per-call basis, it is unclear why CCEMS is not willing to share such basic information in order to substantiate payment. Further, the District knows of no other governmental contractor that is not required to provide a basic report to substantiate its invoice and is unclear why CCEMS believes it can be the exception.

With regard to the facilities and equipment necessary to fulfill CCEMS' obligations under the Contract and the District's duty to provide emergency medical services to the residents of the District, the District proposed the following terms: "following the effective date of the Contract, title to and ownership of all assets acquired to fulfill the obligations under the Contract shall be in the name of the District. The District agrees to lease all such assets to CCEMS pursuant to a Lease Agreement for Vehicle Apparatus and Stations." Texas Health & Safety Code, §775.073(d), to which the District must abide, specifically states the following: "any property, including an interest in property, purchased or leased using district funds, wholly or partly, must remain the property of the district, regardless of whether the property is used by a third party under a contract for services or otherwise..." (emphasis added) It is therefore unclear why CCEMS removed such term as this is a condition dictated by State law and not simply a term requested by individual Commissioners. Regardless of CCEMS' desire, any property purchased using District funds during the term of the Contract or after any potential amendment to the Contract is and will remain the property of the District.

Further, the District term sheet specifically referenced the District's desire and intent to lease a certain number of ambulances and support vehicles to CCEMS for a "*de minimis* amount per year (i.e., \$10/year)." CCEMS' reaction to this term was rather unexpected by the District. There does not seem to be a rationale reason why CCEMS summarily refuses to lease vehicles proposed to be purchased by the District. It eliminates a capital expenditure for CCEMS thereby lowering CCEMS' bottom line which, I would think, benefits everyone. There has been no explanation why CCEMS is so steadfast in its unwillingness to lease a vehicle for \$10/year from the District.

In Mr. England's November 27 correspondence, he alleges that the District's proposed terms "would require a significant reworking of perfectly adequate, if not superior policies and procedures, for no apparent reason." We are uncertain what terms the District proposed would require such an onslaught of procedural changes. The District has proposed **Minimum** Performance Standards.

CCEMS has consistently made claims of being "superior", "professional" and "the gold standard". By these claims, it seems that CCEMS already meets or exceeds these *Minimum* Performance Standards so there would be no additional burden on CCEMS to be contractually bound to maintain them. Unmistakably, the Board concurs that CCEMS' level of emergency medical service is outstanding. The District has no intention or desire to dictate how CCEMS performs its emergency services operations.

As previously explained, the District's goal is to better define the independent contractor relationship between the District and CCEMS. General statements that an independent contractor relationship exists, as in the current Contract, without the facts to support such statement, are ineffective. The District has a duty to be a good steward of taxpayer funds and such *Minimum* Performance Standards are meant to ensure the District continues to receive the same level of service for the duration of the Contract. Performance standards, generally, are not aspirational. Performance standards provide a baseline for the services to be performed. CCEMS' desire to make the standards aspirational, and therefore completely subjective, defeats the purpose of having a contract at all. There is no reason why the performance standards cannot be and should not be clear and objective. The District fully appreciates that there may be extenuating circumstances preventing CCEMS from meeting the minimum standards 100% of the time, but that is what specific exceptions and *force majeure* clauses are for.

As with any other standard contract negotiations, the District's intent in presenting a term sheet was to kick off renegotiating the Contract with CCEMS to ultimately arrive at mutually-agreeable terms in a fair and equitable way to both parties. Despite the fact that some terms are non-negotiable because they are based in statute, the District never intended its term sheet to be "take it or leave it" and it was never presented as such. However, it seems clear from CCEMS' actions and Mr. England's verbal comments and letter that neither he, nor Mr. McKinney nor the applicable CCEMS Directors viewed the term sheet in the same light as the District. It has become apparent that Mr. England, in particular, took the District's term sheet as a personal affront. Between the time of first providing Mr. McKinney with the District's term sheet in April and receiving CCEMS's revised term sheet and proposed amended contract in July, my office inquired about the status of CCEMS' review and offered to answer questions about the District's proposed terms. During this time, the District did not receive any feedback beyond "we're reviewing it" from CCEMS- either to my office or any individual Commissioner. The District would have been happy to explain any of the "problematic" terms to circumvent CCEMS submitting a term sheet in response that was seemingly based on nothing more than paranoid assumptions about the District's intent. This could have all been avoided if there had been a meaningful discussion with the District during CCEMS' initial review. Despite the detours this attempt at negotiation has taken, the District remains willing and hopeful that the two parties can come to a meeting of the minds to amend the Contract, legally and validly.

CCEMS Directors and Mr. England

January 9, 2020

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Please let the District's contract committee, Commissioner Karen Plummer and Commissioner Kevin Brost, know when you are ready and willing to negotiate the term sheet in good faith.

Sincerely,

A handwritten signature in black ink, appearing to read "Regina D. Adams". The signature is fluid and cursive, with the first name "Regina" being the most prominent part.

Regina D. Adams

General Counsel for the District

RDA/mag

Attachments (4)

cc: Board of Commissioners, Harris County Emergency Services District No. 11 [*via email*]
Monica A. Garza (firm)
Carla Christensen (firm)